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Passages

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I came to Berlin with the intention of totally secluding myself from the world to complete a book-length project on the transformation of state power and property rights in the 19th century Ottoman Empire and France. The theoretical framework for the book had more or less been formulated during the previous two years in a number of conference papers. This framework had as its starting point a critique of the perception of state and society relations as formulated in a narrative of private property, rooted in 19th century liberalism and in its recent neo-liberal

reincarnations. In the terms of this narrative, state and society constituted separate domains and the development of property rights in the form of private ownership belonged to the domain of society or the sphere of commodity exchange activity of private individuals. This view assigned the determination of property relations to the domain of economic activity, more accurately, to the domain of choices on the part of rational individuals seeking to maximize their economic gains through exchange and therefore seeking to remove all obstacles (i.e. transaction costs) in the way of their enjoyment of or access to things. Land, as the primary source of wealth in the 19th century, was perceived as such a thing, and the establishment of absolute, private ownership rights came to be viewed as inseparable from the generalisation of a commodity economy in which land, like everything else, was to be rendered exchangeable. By stressing the economic determinations of property relations, on the one hand, and through reference to various arguments relating to the naturalness of "private property", on the other, the liberal narrative concealed the political power relations that not only underlay but were constitutive of relations of private ownership rights. Central to such concealment has been a conceptual isolation of the societal domain, in which property relations were assumed to have developed, from the political domain or from that of the state. The latter was assigned the role of night-watchman, or of securing or rubber-stamping in law those relations formed outside of the political domain. By contrast, I have argued that development of private ownership rights can not be viewed independently from the development of historical states which developed in the context of interstate competition during the 18th and 19th centuries, that it was the legal and administrative practices of a certain type of state that has been responsible for the rise of private ownership, and that property relations were about social and political power and not about Pavlovian responses of individual subjects to market stimuli. That is, these were relations among persons or groups and did not represent relations between maximizing individuals and "things". While up to this point the argument may have a ring of familiarity for those who are acquainted with Marxist critiques of the liberal narrative, including that by C.B. Macpherson, it took these critiques to task by emphasizing the fact that property relations were power relations embedded in law. The Marxist analysis, for the most part but with notable exceptions in the work of E.P. Thompson and his followers, had joined the liberal narrative in its perception of law as legitimating foil for property relations formed outside of law, in the societal domain. This understanding of law as superstructure was conjoined to the idea of the state as the handmaiden of dominant or commercial classes in civil society, a conception akin to that of the liberal state jealously watching over the interests of economic man.

When I arrived in Berlin, the theoretical focus of my work was pretty much fixed on law. On the one hand, law was constitutive of property relations in that it defined or named these relations; in doing this, it enabled these relations. On the other hand, it represented a domain of contestations and contentions whereby different groups or individuals representing different power positions confronted each other. This, as Peter Fitzpatrick, a maverick lawyer, once told me, was the impossibility of law. But I thought what was at issue was not so much the impossibility of law but the centrality of politics to law, without which law would not be possible. In that sense, property rights, at any given point in time and in any given place, represented settlements negotiated by different parties. I had with me a large part of the data from the Ottoman archives in support of my argument and I was to take advantage of the legendary library services at the Wissenschaftskolleg to look at the French materials.

But there were a few surprises, albeit pleasant ones. As the Kolleg life began to unfold itself, I found I was not able to isolate myself as I had hoped. First, I began to feel the tremors of that life by way of my daughter's various sporting activities. Before I knew it, I found myself saddled with the task transmitting messages to and from my daughter and the Fellows concerning ping-pong and volleyball appointments.

Just as exciting, around November, I began to discover the jurists among the Fellows, and my conversations with Eberhart Schmidt-Assmann made me realise that my critique of liberal perceptions of the separation of state and society has been very much the stock in trade of German jurists who engaged in public or administrative law. My conversations with Eberhart were also invaluable in imparting to me a sense of the activism of law, its ability to constitute social reality. This ability was, of course, very much part of our daily consciousness living in Berlin, in eastern Germany, where the processes of transition to a market economy in the form of new orderings and new regulation of social reality were visible to the naked eye. It was becoming clear to me that this transition has produced its missionaries, rather perhaps generated a sense of mission, a sense of excitement among the members of west German intelligentsia to take part in it. At the same time, it was evident that the transition to market society in eastern Europe was not a smooth process. It was characterised by political convulsions, as the local elections in Saxony indicated. But witnessing these debates (which in the post-1980s world were far from being unique to east Germany), I noticed that they were taking place against a background of an existing historically constituted vocabularies of property. In Germany, as my discussions with Jürgen Kocka revealed, these vocabularies were cast in the context of the social-political struggles of the late 19th and the first half of the 20th century and represented

private property as a highly negotiated space or a space of multiple entitlements. This was a far cry from vocabularies of property in the United States, where private ownership is represented as the singular entitlement of the owner to be defended, if necessary, through recourse to violent means and to the exclusion of all other entitlements. My point here is simply: private ownership represented a contested domain everywhere, but depending on the nature and intensity of contestations, or the intensity with which those contestations were silenced, the resulting institutions carried in them imprints of these negotiations in varying degrees. Looking at the American context from a German vantage point, I came to realise that, in the former, power configurations allowed for more effective concealments of such imprints, whereby the voices of "contesting" parties were far less audible in the institutions which constituted property rights. Instead they were drowned in the din of a shrill rhetoric of private property. Having been immersed, through my education, in American vocabularies, my reaction to these vocabularies was to develop a sensitivity to the negotiable character of property rights. I have also become sensitive to the tension between an ideology of private property and its actual formulations in state laws. My German jurists friends, quite understandably, found my insistence on negotiability slightly redundant; to them this was matter of course. And I found their commitment to private property more juridical than ideological.

Thus, before long, I began to realise that breaking through my isolation was almost imperative for my project, which was as much about the past as the present, and the passionate arguments the topic of property unleashed among the Fellows and especially Peter Behrens convinced me that this year was not meant to be one of seclusion.

Immersion in the world of jurists, however, while making me realise that I had to discover certain things anew which were common knowledge to jurists, also made me aware of the closures of legal discourse or of the domains which the legal field assumed and did not problematise. In this relation, I began to explore in more detail the links between law and state power. For the jurists, the talk about state and state power has relevance only to the extent that it relates to the enforcement of law. Beyond that, law is assumed to have a certain autonomy. Not having been trained as a lawyer, I had trouble with conceptions of law's autonomy. Having had the experience of working with historical societies in which centralised state mechanisms have been important, I did not view law as being independent of power configurations that underlay the different orderings and regulations of social reality. Ability to affect such orderings represents state power, and groups that seize that power at different times and places imbue it with different understandings or definitions of what a state is. The

latter refers to a self-definition, to a legitimating idiom. This idiom, in fact, provides a grid, a set of categories in relation to which different orderings take place. Law in this context is a vocabulary for orderings, but it has also been important in imparting legitimacy to these orderings. My problem has been to show how, at a historical juncture of state transformation in the 18th and 19th centuries, the categories in relation to which social reality was ordered and classified has changed. This also signalled legal transformation.

But as in the course of readings and conversations with the Fellows, my concern focused on the transformation of the state, I did not want to limit my work to law but also began to work on the administrative practices of the state, including those of the registration, surveying, recording, and mapping of people and of resources. In this context, I began to evaluate the land records compiled in the Ottoman Empire in the 1840s. What has been fascinating to observe was that the categories for classifying lands and persons in these surveys manifested remarkable parallels with those surveys compiled during the mid-19th century in India under the British, in Central America under the Spanish, and in France under Napoleon III. This realisation prompted me to assemble, with Martha Mundy, a volume of essays titled "Constitutions of Property Rights in the 19th Century: A Comparative Perspective", which is close to completion.

I should mention that while my perception of state transformation, as it crystallised in my work during the last year in Berlin, recalls M. Foucault's conception of the governmental state that, through administrative practices excluding law and politics, sought to bring under its gaze all aspects of social life. I agree with Foucault on the far-reaching gaze of states as these developed in interstate competition and were anxious to lay hands on resources and steer their economies and societies. Yet administrative orderings by individual states and law could not be abstracted from power configurations at any given point in time. And it is not simply that state orderings or law stood for or simply acted in the name of given groups. Instead legal agents, that is, administrators, state departments, jurists, and courts, themselves represented power positions confronting other positions. The understanding of state power in terms of a multiplicity of agencies has been useful in getting away from the conception of the state as a reified, monolithic entity. This flaw also plagued my earlier formulations and it was brought out all too clearly during the discussion at my *Vortrag*. The breaking down of the state into its various agencies may also be a response to Stephan Leibfried's comment about a missing level of conceptualisation between law, state and social reality. At the same time, conceptualisation of state power in terms of multiple agencies also has the advantage of not confining the state to the domain of "control"

confronting a domain of politics in society. Instead, the domain of politics is one in which all actors participate, whereby the positioning of no actor is reified or hypostastatised, but each actor participates within the boundaries of certain categories. On the other hand, these categories, to which different orderings refer, help to normalise certain ways or vocabularies through which power is exercised historically. What this suggests in terms of my thinking on power is that the exercise of power is not confined to any centre (including the state). Instead exercise of power presupposes potential and actual power positionings, it presupposes a power environment, or historically constituted power vocabularies within which various agents operate. Politics in that context becomes an awareness of the possibilities of a given power environment and of its vocabularies.

One ultimately has to relate what one does in one's work to the real world, to think about the implications of one's research in terms of their consequences for concrete actions and decisions. My study of the transformation of state property and property rights was primarily prompted by the changes that have been underway in local and global contexts since the 1980s. It was prompted by a need to develop analytical tools to make sense of a new social reality and in response to an incessant neo-liberal rhetoric that states, as they grew in their capacities to steer the capitalist market economies in various regions, were having a negative impact on the workings of the "market economy", which was assumed to have existed in abstraction removed from all political and social contexts. My search for analytical tools in reaction to the liberal anti-state rhetoric of the 1980s has started me thinking of the state in more diffuse terms – in terms of systems of ordering and of regulations that interpenetrate with and are constitutive of social life. The MITI model in Japan would probably best fit this conception. Moreover, instead of emphasizing the coercive dimension of state power, I began to see state power and its orderings as referring to processes whereby political spaces are continuously generated. This perception of an on-going creation of political spaces promises an expansion of the political space beyond the hitherto accepted boundaries of "civil society" institutions. At the same time, a conception of state power in terms of multiple orderings could allow for understandings that do not limit state power to territorial boundaries. One could imagine, for instance, overlapping orderings by different states in regional economies or cross-border regions.

As the year came to a close, conversations at lunches and Thursday dinners came to revolve around the theme that this year a certain bond has formed among the Fellows that was rather unusual for research institute environments, which typically attract competing virtuosos. It may have been a coming together of individuals who at a certain stage in their lives

were ready to look beyond the rigid and narrow confines of professional existence and see each other. Be that as it may. For me, the underside of the re-casting of the conceptual underpinnings of my work has been to recover the joy of forming friendships, untainted by marketplace considerations, as if being transported to pre-professional phases of one's life.

But this could not have happened independently of the environment created by the staff of the Wissenschaftskolleg, whose actions carefully blended the professional with the personal. A single image will remain with me: it is that of Wolf Lepenies, in the midst of an extremely busy schedule, responding to letters laden with philosophical turns of phrases penned by Ryôsuke Ohashi regarding inappropriate treatment of my daughter by a bus inspector. Incessant negotiations initiated by Wolf Lepenies yielded a letter of apology from the company, a document which in the end proved to be to the satisfaction of a scrupulous Heideggerian and a critical, exacting teenager. For incidents of this nature, as much as for the excellence of its library facilities, my year in Berlin has been an important one.