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NEW COMMUNIST CIVIL CODES OF CZECHOSLOVAKIA AND POLAND: A GENERAL APPRAISAL

ALEKSANDER W. RUDZINSKI

NEW CIVIL CODES

A remarkably abundant crop of new civil codes has been harvested late in 1963 and during 1964 in Czechoslovakia, Poland, and the U.S.S.R. In Czechoslovakia at least five important civil law statutes were enacted. A statute concerning family law was enacted simultaneously with a code on foreign trade (zákonik mezinarodního obchodu) on December 4, 1963. They were followed by a new civil code (občansky zákonik) of February 26, 1964 and a separate statute of the same date concerning management of apartments (hospodarení s byty). Finally, a special code governing the (socialized) economy (hospodarsky zákonik) was passed on June 4, 1964.

In Poland a new family code was adopted on February 25, 1964, and on April 23, 1964, a new civil code which entered into force on January 1, 1965. In the Soviet Union, where the Fundamental Principles of Civil Legislation of the U.S.S.R. and Union Republics were adopted by the Supreme Soviet of the U.S.S.R. on December 8, 1961, many republics adopted new codes; the R.S.F.S.R. enacted a new civil code on June 11, 1964 which entered into force on October 1, 1964.

This paper does not attempt to deal with all the above mentioned statutes. It restricts its scope to the new Czechoslovak and Polish civil codes and tries to evaluate their more striking and characteristic features as well as their political and ideological significance.

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2. Sb. No. 101. The Statute on International Private and Procedural Law, and the new Code of Civil Procedure (1964) were also adopted the same day.
Continental jurists, liberal and Marxist alike, are unanimous in considering some civil codes as monumental and significant edifices of legal creativity, and as important stations along the road of evolution of human civilization to be placed in the same category as the Pyramids, Dante's *Divine Comedy*, and Newton's *Philosophiae Naturalis Principia Mathematica*. Justinian's *Corpus Juris Civilis* and the French *Code Napoléon* of 1804 come easily to mind. Obviously not all of past and existing civil codes can pretend to such a high rank. However, all are products of the society and civilization which brought them about, and all have a broad eloquence and significance which surpass the strictly technical field of legal concepts, legal doctrine and legal solutions.

The *Code Napoléon* represents a special subcategory important for our purposes, which could be called a revolutionary civil code—revolutionary in the sense that it was the fruit of the great French social and political revolution. This does not imply that all or most of the revolutionary changes were brought about by this code. The revolutionary upheaval in the legal and economic status of the individual, equality before the law, civil liberties, the abolition of class privileges, the radical reform in the tenure of real property, in the order of inheritance, in the system of mortgages, the introduction of civil marriages and civil divorces—all these fundamental measures amounting to the abolition of the feudal system were already effected by a number of statutes enacted by the National Assembly and the Convention starting in 1789.9 The *Code Napoléon* consolidated the new legal order in a systematic manner, even rejecting some excesses of the revolutionary zeal, particularly in matters of marriage and divorce.10 Besides consolidating the new revolutionary legal order, the French Civil Code translated into legal prose the new revolutionary ideology of the Revolution proclaimed in the Declaration of the Rights of Man and of the Citizen of August 27, 1789 and repeated in the 17 principles at the head of the Constitution of September 3, 1791. The first three of those "natural, inalienable and sacred" rights, i.e. "equality [before the law], liberty and property"

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9. For a detailed presentation of revolutionary enactments in these fields see Sévin, *Études sur les Origines Révolutionnaires des Codes Napoléon* (1879).
10. Id. at 25-29. The wave of the "revolutionary spirit" in France was over. There was internal tranquility again and time for construction of a durable civil order. *Portalis, Discours, rapports et travaux inédits sur le Code civil* 3-4 (1844). Communist China has so far deliberately refrained from introducing a civil code because it would be incompatible with the rapid transformation of Chinese economy and society which is underway. Even a "revolutionary" civil code presupposes a period of relative stability ahead.
NEW COMMUNIST CIVIL CODES

were the guiding principles of the Napoleonic civil legislation.\(^1\)

It is noteworthy that the revolutionary content and ideology of the *Code Napoléon* did not prevent it from preserving a vast treasure of the French legal pre-revolutionary heritage (Roman jurisprudence and French customary law as well), skillfully blending it with the new legal order. This dual feature, part revolutionary and part traditional, did not prove to be an obstacle to the world-wide influence exerted by the *Code Napoléon* nor to its reception by a number of other nations, European and non-European alike. Therefore, when the “revolutionary” character of the *Code Napoléon* is emphasized,\(^2\) the rather restrictive meaning of this adjective has to be kept in mind. It did not introduce, but merely consolidated, the new revolutionary legal order. It expressed in legal terms the ideology of the revolution. It nevertheless managed to preserve a vast part of the legal tradition. The term “post-revolutionary” would be equally accurate for it. As Napoleon, First Consul, put it bluntly on December 15, 1799: “Citoyen, la Révolution . . . est finie.”\(^3\)

The German Civil Code of 1896 and the Swiss Civil Code of 1907 fall into a different category. Born after decades of comparative social and political stability in a climate of confidence in steady and peaceful progress, they fulfilled only one function in common with such revolutionary codes as the French code. They unified the civil law which was diverse in the different parts of Germany and the Swiss cantons as it was in pre-revolutionary France. But beyond unification and the elimination of obviously obsolete law, the German and the Swiss civil codes did not try to introduce any basic change in the established economic and social order. On the contrary, their purpose was to preserve and to consolidate the *status quo*. The attitude of the authors of the German Civil Code was succinctly characterized by an eminent jurist, Anton Menger, in the following biting words: “Yes, we can be sure that had the authors [of the code] found slavery and serfdom as binding law in Germany, they would have carefully preserved those time-honored

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13. SORÉL, *op. cit. supra* note 11, at XXIV, XXVII.
legal institutions in their draft." Together with such a basic conservative attitude goes obviously a lack of any militant and dynamic social ideology. Legal positivism, the restriction of the theory and praxis of law to the contents of legal statutory texts and customary practices, represents the dominant philosophy of the law during the reign of liberal capitalism in the second half of the 19th and the beginning of the 20th centuries.

The basically passive attitude of the drafters of revolutionary, as well as non-revolutionary civil codes, seems to confirm Friedrich Engel's opinion that "civil law in essence sanctions only the existing, under given conditions, normal economic relations between individuals." There cannot be any serious doubt that a civil code reflects the kind of economy it regulates. It would be naive and unrealistic to expect to find the same civil law provisions governing a society of independent peasants and artisans engaged in simple commodity production, a society of laissez-faire capitalism, an economy dominated by oligopolistic and monopolistic concentrations of capital, and an economy based on state ownership of the basic branches of economy and state-directed economic planning.

Engels himself realized that there existed a reciprocal influence exerted by the law on the economic base—a very trivial truth indeed. Nevertheless he predicted the disappearance of civil law and law in general and their replacement by administering of things, after the withering away of the state when the reign of socialism had been reached. This doctrine, strongly espoused by E. B. Pashukanis, was rejected completely in the U.S.S.R. in the 1930's and the withering away of state and of the law was transferred to the distant future. The same view, accepting the compatibility of law and socialism, still prevails in the Soviet Union.

A controversial problem discussed by Communist jurists relates to a more special point. Can a civil code, besides its stabilizing function,
be used as an instrument of social change, as a tool of steering an economy and a society in a direction desired by the legislator in accordance with an ideology? If so, what kind of provisions can serve such a dynamic purpose? The question becomes more difficult in the present Soviet and Polish system where class struggle is a part of the past and the state has been declared "a state of the whole people." Discrimination along class lines can therefore no longer be used, at least officially. Dynamic provisions of civil law must therefore be found elsewhere. They consist in the general subordination of the civil law to political and constitutional law and to the goals of policy established by the party and government at a given time. Another dynamic tool of civil law consists in the role played by the principles of socialist (or "social") intercourse, representing socialist morality which will be discussed below.

The Czechoslovak Civil Code of 1964

The Czechoslovak Civil Code has a programatic ideological preamble, similar to that contained in the more important Soviet enactments, followed by eight separately numbered principles of civil legal relations.

The eight parts of the code proper are: (1) General Provisions, (2) Socialist Social (sic) Property and Personal Property, (3) Personal Use of Apartments, other Premises and Lots, (4) Services, (5) Rights and Duties arising from other Legal Transactions, (6) Liability for Damages and for Undue Enrichment, (7) Inheritance, (8) Final Provisions. The code numbers 510 sections and is therefore comparatively short.

The matters which have been left out of its scope are as important for an appraisal as those it deals with. Family law, in accordance with Soviet legal doctrine accepted by all people's democracies, does not form a part of the civil law because family relations in a socialist system are of a personal nature, not dominated as they allegedly are in capitalist societies by property and financial considerations. The Czechoslovak statute on family law of December 4, 1963, goes one step further than the R.S.F.S.R. Family Code of 1926, in transferring matrimonial property relations from the family to the civil code. Only the alimony

obligations connecting next of kin, spouses, and due to unmarried mothers remained in the Czechoslovak Family Code.\textsuperscript{23}

What is more important, the new Czechoslovak Civil Code contrary to the Soviet and Polish pattern and to section 212 of the Czechoslovak Civil Code of 1950 leaves the area of relations between state and cooperative enterprises and organizations in the fulfillment of economic planning outside of its scope and restricts itself to relations between units of the socialized economy (called "socialist organizations") and citizens and, somewhat marginally, to the relations between citizens themselves. Thus, the long dispute among Soviet jurists which resulted in the rejection of a special "economic law" (Wirtschaftsrecht, as this new branch of public law was called in Germany where the idea originated in the early 1920's), was not considered as decisive in one of the most obsequious of Soviet former satellites. The example of East Germany was followed instead.\textsuperscript{24} This demonstrates that the same type of economy is not mechanically reflected in the legal superstructure of the communist countries but clearly leaves a choice between different solutions to the communist legislators.

Finally, international trade relations remain outside the Czechoslovak Civil Code and are governed by a special act on international commerce.\textsuperscript{25} Thus, divergent legal provisions govern, for example, a contract of sale depending on whether it has been entered into (a) by two socialized organizations, (b) between such an organization and a citizen, (c) between such an organization and a foreign merchant, or (d) between two citizens. The (a) and (c) varieties no longer belong to the domain of civil law, and (b) and (d) are different in nature ((b) not being a contract at all) but are regulated inside the same civil code.\textsuperscript{26}

Even a brief perusal of the new Czechoslovak Code gives the impression that it is a remarkable legal document. The spirit permeating it differs radically from the traditional civil law mentality, embodied in a liberal capitalistic code of the Napoleonic type or even of a later socially conscious, capitalistic code of the Swiss type, and which still lingers on in the R.S.F.S.R. Civil Code of 1922. There are several important innovations which severally and jointly create the impression of such a new spirit.

\textsuperscript{26} C.S.R. Civil Code §§ 239-256, §§ 399-406 (1964).
New Legal Doctrine

A traditional continental lawyer is struck by the abandonment of the centuries old civil law system of legal concepts and categories dating back to Justinian's *Corpus Juris* elaborated in the *Usus modernus Pandectarum* and accepted by the authors of the *Code Napoléon* as embodiment of natural reason itself. Suffice to mention only two of them: property and obligations (contracts).

*New Concept of Personal Property.* It has been correctly stated that the Soviet-type legal system is oriented towards state and social property, whereas the capitalist system is private-property-minded. But it has not been stressed sufficiently that the U.S.S.R. Constitution of 1936 and Soviet legislation has simply taken over the French revolutionary concept of (private) property as an inalienable and "sacred" right and transferred it to socialist, i.e., state and social, property even with the same "sacredness."27 The other kind of property, the personal one, was only downgraded, devoid of sacredness, restricted as to its possible objects, but still surrounded by constitutional guarantee28 and considered as legally separate from social property. Section 123 of the new Czechoslovak Civil Code provides: "Things intended for the personal need of individual citizens shall be transferred from socialist social ownership to the personal ownership of the individual or shall be left to them for personal use." (Emphasis added.) Thus, personal property has become a derivative of socialist property strictly within the limits of personal needs it has to satisfy. The guarantee which is left applies not to personal property as such but to the personal needs it is to satisfy.29

This conclusion is strongly confirmed by section 130 (2): "Things accumulated contrary to the social interest in excess of the personal needs of the owner, his family and his household do not enjoy the protection of personal property." (Emphasis added.) Obviously the question whether the accumulation is excessive or not is a matter of discretion to be decided in each case by the court or generally by an executive ordinance of competent ministers. One is left wondering whether an owner of two or three wristwatches or a collection of rare postage stamps is protected under the new Czechoslovak code.

It is consistent with such a conception of personal property that its purely consumptive character has been introduced in a specific legal

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Pursuant to section 130 (1): "An individual shall have the right to use a thing he owns for his own needs and for the needs of his family and household; he shall hold title to the profits and accessions to the thing, and shall also have the right to transfer the thing to another person. If it is not contrary to the interests of society, the owner may let the thing to be used by another person or dispose of it in another way." Since personal property has to satisfy his own needs, letting it go to someone else's use transgresses in principle the rights of the owner.

Art. 9 of the Czechoslovak Socialist Republic Constitution of 1960 "permits" within the limits of the socialist economic system small private enterprises (private property) based on the labor of the owner himself and excluding exploitation of another's labor power. The new Czechoslovak Civil Code relegates private property to the Final Provisions and gives it protection only against illegal transgressions. Empty urban building lots can be sold only to the state or a specially authorized socialist organization. Private property is clearly treated as a marginal bourgeois remnant destined to disappear in the near future.

In view of the above-mentioned radical innovations, it is not surprising to find a more or less Soviet patterned provision that property acquired from dishonest sources does not enjoy legal protection granted to personal property. Since this is not a criminal but a civil rule, it opens the door to various kinds of chicanery and irresponsible objections by dishonest debtors. It must be stressed in this connection that the new Czechoslovak Civil Code does not provide for the traditional Roman protection of factual possession, whether legal or not, against unauthorized unilateral transgression and self-help. This institution was obviously considered obsolete and was replaced by a different provision forbidding "evident violations of law violating the socialist intercourse," (a double qualification). Obviously, dishonestly earned property may be taken away from the owner by anybody with no legal remedy left to the dispossessed.

Another less striking restriction consists in the general principle applied to all civil rights: "No person may abuse his rights against the interests of society or of fellow citizens nor may he enrich himself to
the detriment of society or of fellow citizens.” Enrichment as such is illegal, not enrichment by illegal means.

Contract Category Omitted. A real breakthrough has been achieved by the authors of the new Czechoslovak Civil Code in abandoning the traditional abstract heading of the law of obligations and even the narrower one, equally abstract, of the law of contracts.

A non-jurist would wonder why a seemingly technical change such as the rejection of an old legal category is emphasized as a breakthrough. It must be realized that legal doctrine elaborated by learned jurists during centuries and reflected in statutes and codes as well as in court judgments has as much political and ideological significance as have doctrines and schools of thought in the science of economics. It is quite superfluous to try to elaborate what kind of political and philosophical attitude is represented by the Manchester school of economic liberalism. The ideological and political differences separating different schools of legal thinking and systems are much less known to the general public, but are not less real. The only difference was that until now there was no real counterpart in civil law to the school of Marxist economics. The concepts and categories of the advanced capitalist legal systems were taken over, more or less modified, and allowed to perform an allegedly completely different legal function inside the socialized economy. The Czechoslovak Civil Code tries to create a new socialist legal system. Contrary to other communist civil codes including the recent Polish and R.S.F.S.R. codes of 1964, the new Czechoslovak code introduces two novel legal categories covering in an unorthodox spirit much of the old traditional ground.

Services. First comes the category of services. This concerns relations between socialist organizations and citizens. The former are obligated to satisfy the material and cultural needs of the latter. For example, the commercial purchase and sale of merchandise in a socialized store by a private citizen, the renting of a hotel room, a loan of a sum of money by a bank to a citizen, legal advice and aid of an attorney-at-law, a railway trip, insurance of property, life insurance and civil liability insurance are, according to the Czechoslovak Civil Code, neither

contracts nor quasi-contracts, but services. Therefore, the overriding consideration in all these relationships is the orderly, timely and continuous satisfaction of the needs of the citizen with his cooperation when needed. Services are rendered as a rule for a price paid by the citizen.

The traditional Western principle of freedom of contract has been explicitly rejected. "If the duties of an organization include the provision of a service, the organization shall have the duty to provide it at the request of an individual unless it is precluded by the scope of its operational possibilities."

It is important to emphasize in this connection that the Czechoslovak Civil Code has gone far down the road of rejecting traditional abstract legal concepts, categories, and provisions which bring under one abstract heading legal transactions and institutions notwithstanding their important economic and social differences. The new Czechoslovak legislation sacrificed with ruthless consistency the traditional Western scholarly legal doctrine and favors the creation of special legal provisions for each field of significantly different social and economic relations. Instead of the traditional law of contracts (with the continental sub-species of commercial law contracts) covering the whole area of commodity turnover, domestic and foreign, irrespective of persons involved, the Czechoslovak civil legislation introduced four different legal regulations: (1) for foreign trade, (2) for transactions between socialized organizations pursuant to the economic plan, (3) for socialized organizations in their

40. Services may originate from contractual basis "or on the basis of other facts stipulated by legal regulations." C.S.R. Civil Code § 224(1) (1964). Transportation of persons and goods by railroad and other carriers is a right which does not require any contract. C.S.R. Civil Code §§ 307, 312 (1964). The same applies to the purchase of things from a trade organization which is obliged to sell selected merchandise. No contract is involved. C.S.R. Civil Code § 239 (1964).
44. This view is not based on a specific provision of the code and is therefore open to challenge. However, it seems to follow from the new conception of services to the citizens by socialized organizations created for these purposes. Contracts are only a means to the end of satisfying the needs of the citizen. Therefore, the respective provisions of the code must be considered as ius cogens unless they clearly permit otherwise. This is an exact reversal of traditional contract law.
relationships with private citizens,\(^4\) and (4) transactions between private citizens.\(^4\) Each legislation deals with purchase and sale or loan, but each in a different way. There is no trace of the effort so evident in the new Polish Civil Code of 1964 to preserve the unity of the traditional system and institutions and to accommodate the inescapable differences and deviations within the old system.

**Civic (Mutual) Assistance.** Another original category was introduced in the area of relations among the private citizens themselves. It is called civic (citizens) assistance.\(^5\) It resembles extra-legal, customary good-neighborly assistance as it is understood in American frontier conditions. Section 384 says: "(1) When a citizen performs some work for another citizen on his request or loans him money or helps him in another manner civic assistance is given. (2) The rendering of civic assistance shall be in accordance with the principles of socialist intercourse." Such assistance is as a rule to be given free. Quite consistently, a loan granted by one citizen to another has to be free of interest unless otherwise specifically agreed upon and naturally not exceeding the legal interest rate. Any other advantage is null and void.\(^6\) Thus, a socialist economy returns to the oldest Roman law of the classical period where *mutuum* (money loan for consumption) was interest-free, a sign of a rural pre-commercial primitive commodity economy, and interest had to be specifically stipulated outside the *mutuum* transaction.\(^7\) Purchase and sale between citizens, donation and mandate,\(^8\) are not considered as falling within the civic (mutual) assistance category. They are, however, clearly treated in a perfunctory manner as marginal phenomena not worthy of serious attention by the legislator in a socialist state.

**Duty to Prevent Injury and Damage.** The Czechoslovak Civil Code introduces a new sweeping civil law obligation to prevent injury to health or property and undue material gain detrimental to society or an individual.\(^9\) This duty is imposed on "everybody" and consists of the obligation of notifying the competent governmental organ about serious imminent danger and of intervening actively if an emergency situation arises. Only when weighty circumstances prevent intervention, or, if by intervening one would expose himself or another person closely

\(^{50}\) C.S.R. CIVIL CODE 384-389 (1964) (civic aid).
\(^{51}\) Ibid. If things in kind were loaned, only the same amount has to be returned. A promise to return more is invalid. C.S.R. CIVIL CODE § 388 (1964).
\(^{52}\) BERGER, ENCYCLOPEDIC DICTIONARY OF ROMAN LAW 591 (1953).
\(^{54}\) C.S.R. CIVIL CODE § 415 (1964).
connected with him to serious danger, does the duty to intervene cease.  There are certain privileges granted to those who intervene to prevent damage. They are, as a rule, not liable for damage which results from their intervention and they may claim the reimbursement of expenses incurred and indemnification of damage they suffer. There is a specific civil sanction attached. He who fails to prevent damage by intervening may be required by a court to contribute to the compensation of damages to an extent determined by the circumstances, if damages cannot otherwise be recovered. In other words, the passive onlooker may be held responsible for damages as a substitute for the actual wrongdoer. The authors of the Czechoslovak code went much farther here than the new Polish Civil Code which introduces only a duty to prevent damage to social property with some privileges but without any civil sanction. The Czechoslovak code incorporates the same idea of prevention in connection with contracts. The contracting parties are obliged when drafting their contractual relations to avoid anything which could lead to a controversy. Law suits must be prevented at their very source.

This new broad policy of legal prevention (somewhat similar to preventive medicine) has three significant features: first, it explicitly stipulates a civil law duty to rescue not only human life but more broadly to prevent any injury to human health, thus supplementing the criminal provisions demanding rescue in cases where life is in instant danger. Now, civil liability for failure to attempt rescue exists beyond any doubt and claims are clearly encouraged in Czechoslovakia; secondly, every kind of property, not only social property, enjoys preventive protection by the obligatory intervention of outsiders and onlookers; finally, prevention is directed not only against injuries and damages but equally against unwarranted gains.

The treatment of unwarranted gain represents another highlight of the Czechoslovak Civil Code. Part VI deals with “liability for damage and for unwarranted material gain.” Coupling together these tradition-
ally separate grounds of liability creates a new legal concept.\textsuperscript{62} This merging was greatly facilitated by Czechoslovak acceptance of the Soviet principle that liability for damage is not based on fault\textsuperscript{63} and by the above-stressed new principle that enrichment \textit{per se} is illegal.

The authors of the Czechoslovak code went much further in pressing this new legal conception. In an introductory chapter of Part VI “the duty of every citizen to intervene in order to avert immediately threatening damage to health or property” is twice put on the same level of a corresponding duty of every citizen to prevent a threatening (sic) important unwarranted (material) gain.\textsuperscript{64} With a ruthless doctrinaire consistency and an obvious lack of humor the authors of the Czechoslovak code treat a windfall about to accrue without legal foundation to a socialist organization or to an individual\textsuperscript{65} on a par with a catastrophic explosion or collision of two passenger trains or airplanes. It remains unclear what (if any) civil sanction arises from a failure to prevent an impending unfounded gain. Does the “culprit” (like he who failed to prevent damage)\textsuperscript{66} have to contribute to the repayment of the unfounded gain by the enriched organization or person?\textsuperscript{67}

It seems noteworthy that the new code grants compensation for actual losses suffered (\textit{damnium emergens}), not for gain lost (\textit{lucrum cessans}). If damage was deliberately inflicted, the court may grant other damages, if a \textit{refusal} to grant such larger compensation would be contrary to the principles of socialist intercourse.\textsuperscript{68} It is not clear why Poland which is comparatively poor economically should grant traditional full compensation while much wealthier Czechoslovakia restricts compensation in such a drastic manner.

\textbf{Principles of Socialist Intercourse}

One of the basic principles preceding the new Czechoslovak code reads: “The realization of rights and duties flowing from civic legal relations has to be in harmony with the principles of socialist inter-

\begin{itemize}
  \item[62.] Torts are separated from undue enrichment in \textit{Polish Civil Code} arts. 415-49, 465-14 (1964). It is interesting that the Czechoslovak code expands the category of undue enrichment which is traditionally residual in nature into a larger one embracing not only gain acquired without legal ground, gain derived from invalid transactions and dishonest sources, but also from the appropriation of an object found by a person as well as the benefit to a person from the fact that somebody else performed what he himself was obliged to do. \textit{C.S.R. Civil Code} §§ 452-454 (1964).
  \item[63.] \textit{C.S.R. Civil Code} § 420(1); \textit{R.S.F.S.R. Civil Code} art. 444 (1964).
  \item[64.] \textit{C.S.R. Civil Code} §§ 415-6 (1964).
  \item[65.] \textit{C.S.R. Civil Code} § 415 (1964).
  \item[66.] \textit{C.S.R. Civil Code} § 425 (1964).
  \item[68.] \textit{C.S.R. Civil Code} § 442 (1964).
\end{itemize}
The same principle is repeated in connection with the new category of civic (mutual) assistance. Thus, principles of Marxist morality have been on the Soviet model, set over and above the provisions of civil law restricting and modifying its application. It remains for the courts to decide whether those principles of socialist intercourse should be construed as referring to values and standards generally accepted by the population—a solution traditionally prevalent in Western countries and reflected by the Roman notion of boni mores—or whether they refer to values and standards preached and demanded by Marxist doctrine and not shared by the wide majority of society. In the latter case the code acquires a revolutionary dynamic character as a weapon to impose forcibly from above a new set of values and standards and ways of behavior and to eradicate old moral appraisals branded as bourgeois and reactionary. A new ideology stands behind and above the provisions of the code.

CONCLUSION

Only the most striking features of the new Czechoslovak code have been touched. Its style is rather didactic, as a rule clear and concise, combining legal regulation with a kind of a textbook exposition.

Summing up, this new piece of civil legislation must be considered as a truly revolutionary civil code, even more revolutionary (in a specific sense) than the French Code Napoléon was in its time. The latter consolidated the gains achieved by the French Revolution, at the same time incorporating them in the traditional legal system of Justinian’s Corpus Juris and the usus modernus Pandectarum. The new Czechoslovak Civil Code rejects traditional Western civil law doctrine, explodes its categories of the law of obligations and law of contracts, introduces its own categories such as services and civic (mutual) assistance, and deprives certain everyday transactions of their contractual character. These changes transcend by far the purely technical legal field. They introduce a new spirit, a new application of law. They have profound political eloquence and importance as well. To put it crudely in Marxist terms: the superstructure has changed. There is no longer the same legal form borrowed from the capitalist world but covering a different socialist content. Now there is a new socialist form as well.

The very idea of contract has been replaced by the idea of public

69. C.S.R. Civil Code Preamble art. VI (1964). There was no such provision in the 1950 code.
70. C.S.R. Civil Code § 384(2) (1964).
service. Contract where still needed has been downgraded to a means to an end, the end being a duty to render public service. This duty is paramount, and a contract must be concluded which is fit to achieve that purpose. It has an ancillary role analogous to an obligatory contract between socialized enterprises in the fulfillment of the national economic plan. The evolution of legal institutions from status to contract, described in 1861 by Sir Henry Sumner Maine, followed during the second half of the 19th and the first half of the 20th centuries by limitations of the freedom of contract through social and labor unions, legislation and standardization of contracts (in transport, insurance, mortgage and landlord and tenant contracts, and sale of mass manufactured goods) has finally resulted in the dethroning of the concept of contract and its total elimination in retail trade and transport.

THE POLISH CIVIL CODE OF 1964

In contrast to the Czechoslovak Civil Code, a much more moderate and rather stabilizing than dynamic spirit is evident in the new Polish Civil Code. After an almost uninterrupted preparatory drafting since 1947, and the publication of at least six markedly divergent versions, the Polish Sejm (parliament) adopted on April 23, 1964, a new civil code, the first Polish code since Poland regained independence in 1918.

Contrary to the Czechoslovak code, the new Polish code follows the traditional Western pattern. It contains four “books”: I. General Part, II. Property and other rights in re, III. Obligations, and IV. Inheritance (Estates). The major deviation from Western tradition is the exclusion

72. MAINE, ANCIENT LAW, ITS CONNECTION WITH THE EARLY HISTORY OF SOCIETY AND ITS RELATIONS TO MODERN IDEAS 141 (1946).
73. FRIEDMANN, op. cit. supra note 15, at 145, 480.
75. Some of them were in book form. The 1954 and 1955 heavily Soviet-modeled drafts were abandoned after the 1956 upheavals. A new draft appeared in 1960 accepted in first reading by a panel on Civil Substantive Law of the Codification Commission. It included family law and represented a politically significant return to traditional Western solutions. Then the wave of national Polish renaissance began to recede before the returning tide of Marxist-Communist orthodoxy. The chairman of the panel, Marowski, retired from the commission and Szer, a neo-Stalinist took over. In 1961 and final 1962 drafts no longer contained family law. Indications were that the inclusion of family law was regarded as a breach of solidarity of the “socialist” camp, thus it was a political-ideological and not a purely legal matter.
76. Several civil law fields were codified in Poland in the inter-war period. The POLISH CODE OF OBLIGATIONS (1933), and POLISH CODE OF COMMERCE (1934) were the important ones. The post-World War II unification decrees left both pre-war codes in force. See Rudzinski, Sovieitization of Civil Law in Poland, AMERICAN SLAVIC AND EAST EUROPEAN REV., April 1956, p. 216.
of family law, which was separately enacted as a statute on February 25, 1964.  

The Polish code is much larger than the Czechoslovak code and is a more detailed piece of legal craftsmanship, running up to 1088 articles, not counting a separate statute of the same date containing introductory provisions in 45 articles.  

There is no introductory ideological preamble and the text is free from pseudo-theoretical and didactic or hortatory language. It adheres strictly to the old Roman principle: lex imperat non disputat.

In a crass contradiction to the Czechoslovak code, a strong effort is evident throughout the Polish code to preserve and maintain the integrity and unity of civil law inside its new confines (after family law has been left out), not merely in the purely scholarly sense, as an academic teaching subject or in juridical textbooks, but as a branch of legislation as well. Civil law has to cover and regulate in a single code all forms of property and all commodity-money relations entered into on the basis of legal equality of the parties. The reason for such unity is to be found, according to one of the principal authors of the new code, Professor Jan Wasilkowski, First President of the Supreme Court, in the economic base which forms an indivisible whole. This argument, if true, proves too much. The exclusion of a number of areas from the new Polish Civil Code whose civil law character remains beyond dispute would become inexplicable. The laws on estate records and mortgages, copyright and patents, bills of exchange and checks, to mention only the most important ones, were deliberately excluded from the new code, mainly for reasons of drafting expediency. Whether the economic base is an indivisible whole is beside the point. It certainly is not homogeneous, and it permits the legislator a choice between regulating different sectors separately or introducing uniform regulations covering all or some of them. The Polish drafters, following halfway the Soviet model, chose the latter solution.

HIERARCHY AND COEXISTENCE OF THREE KINDS OF PROPERTY

Contrary to the rigid and ruthlessly consistent Czechoslovak treatment of personal property as derivatives of social property transferred and left to personal consumption within the limits of personal needs

77. Dz. U. No. 9 poz. 59.
78. Dz. U. No. 16 poz. 94.
80. PROJEKT KODEKSU CYWILNEGO RAZ PRZEPISOW WPROWADZAJACYCH KODEKS CYWILNY, KOMISJA KODYFIKACYJNA PRZY MINISTRZE SPRAWIEDLIWOŚCI 195 (1962) [hereinafter cited as PROJEKT].
and as long as actually needed, the Polish code openly preaches a rather static somewhat Aristotelian hierarchy and coexistence of three kinds of property.

**Social Property.** Social property is proclaimed as the dominant kind, and is endowed with a great number of legal privileges in the new code. Social property itself is divided into two legally unequal subcategories: (a) *state* (i.e., national) property and (b) *cooperative* property and property of agricultural circles and of other organizations of the working people. While both of these subspecies of social property enjoy the privilege that every citizen is legally obliged to protect them from threatening damage, and that all the provisions of the civil code have to be construed and applied with due consideration of the special protection granted by law to social property, state property is "more equal" than cooperative property and endowed with several additional privileges of its own. State-owned real estate cannot be acquired by usucaption. The construction of a building on a state-owned lot by a citizen does not result in the acquisition of the lot by the builder. Movables forming part of the permanent (capital) equipment of a state enterprise or institution can be vindicated when sold even from a bona fide purchaser. There is no statute of limitations for a vindication claim concerning state-owned movables against citizens and private associations. The state, being at the same time owner of property and sovereign, often appears in the civil code under the traditional Roman civil law disguise as the Treasury (Skarb Państwa) or under a new term of a "state organization unit" (państwowa jednostka organizacyjna) covering state enterprises, banks, institutions, and other state units having the legal character of juridical personality. The equality of persons before the law, on which traditional civil law is based and which is still stressed by Polish drafters of the new code, has been actually changed into a hierarchy of several degrees. What the code still tries to preserve is not equality before the law, but in the field of civil law the

82. **Polish Civil Code** arts. 33, 44, 126 (1964).
83. **Polish Civil Code** art. 127 (1964).
84. **Polish Civil Code** art. 129 (1964).
85. **Polish Civil Code** art. 177 (1964).
86. **Polish Civil Code** art. 231(3) (1964).
87. **Polish Civil Code** art. 171 (1964).
88. **Polish Civil Code** art. 233(2) (1964).
89. **Polish Civil Code** art. 33 (1964). The term "state organization unit" is to be distinguished from "unit of socialized economy" (jednostka gospodarki wspólczesnej) which is broader and covers cooperatives, rural circles and other social organizations of working people having a legal personality. **Polish Civil Code** art. 33 (1964). See Wolter, Pravo cywilne Zarys czesci ogolnej 167-80 (1963).
90. Wasilkowski, op. cit. supra note 79 at 739.
prevention of the subjection of one civil law person to the public authority and power (imperium) of the other.

**Personal Property.** At a lower level we find personal property. It enjoys not “special” but “complete” protection of the law. Its purpose to satisfy the personal material and cultural needs of the owner and persons next to him (bliskich) is clearly stated, but its derivative character in relation to social property or to work as its source is not mentioned at all. Nor is there any general quantitative maximum stipulated à la Czech beyond which legal protection is withdrawn when more property is accumulated, with one exception flowing from the consumption character of personal property. A one-family house, an apartment (lokal mieszkaniowy-legally an immovable) must remain within certain limits of size prescribed by pertinent regulations. But they can for good reasons be leased by the owner to third persons without losing the character and protection of personal property.

**Private Property.** On a still lower level resides individual (private) property of land, buildings, and other means of production which are not affected by social monopoly of ownership. This category also is split into two subspecies: (a) individual farms of working peasants enjoying simply “protection” (opieka, care without any adjective) of the law and (b) individual property of a capitalist character, i.e., using hired labor or urban lots and buildings which exists only on the basis and within the limits of statutes in force without any constitutional guarantee.

The descending degree of legal protection means more than a kind of constitutional guarantee which would be of doubtful value because of the usual European lack of judicial review of constitutionality of statutes enacted by the legislature. It means first of all a directive addressed to the courts and to administrative authorities to attach proper value to and take care not to violate in their judgments and decisions the rights of all three kinds of “protected” ownership. Judging from the grounds often adduced in court judgments, this directive is being kept in mind by the courts. Politically significant changes and shifts in judicial

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92. **Polish Civil Code** art. 132 (1964).
94. **Polish Constitution** (1952) art. 12; **Polish Civil Code** art. 131 (1964). It is significant that the code fails to repeat the protection granted by art. 12 of the Constitution to individual property owned by artisans. The legal status of their property remains precarious. Another sign may be the omission from the code of a routine provision of the 1962 draft concerning a two year statute of limitations of claims of craftsmen. **Projekt** art. 698 (1962).
95. **Polish Civil Code** art. 30 (1964). Wholesale expropriation of individual non-peasant property by a simple statute would not be unconstitutional.
practice can be noted in cases where protection of social property rights collides with the protection of personal or private property.

Thus a kind of coexistence between the three main categories was established with two of them subdivided. In all, there are five kinds of property descending downward in amount of legal protection and privilege. All of them (with the probable exception of the fifth species, i.e., the non-peasant, capitalist type of private property) are obviously intended to remain for a long time. There is no hint of a drive or attempt to bring peasant private property to an end. On the contrary, a recent (1963) statute introducing limitations of the division of peasant farms,\textsuperscript{96} tried to halt or to slow down the atomization of peasant farms by sale, donation or inheritance. It has been incorporated into the new Polish Civil Code\textsuperscript{97} making it quasi-permanent legislation. A policy to collectivize peasant farming into kolkhozes would repose on the atomization of farms as a splendid justification.

**PEASANT PROPERTY CLASS LEGISLATION**

There is a peculiar, very paradoxical feature evident in this recent Polish peasant farm legislation. It has undoubtedly a class character, but not a proletarian one. It is intended to further the class interest of the independent, land-owning middle and small peasantry to such an extent that it clearly discriminates against industrial workers, even if they happen to be sons of peasants. Private peasant land property in Poland enjoys special privileges very different politically and ideologically from those connected with state and co-operative property.

First, only persons having qualifications to run a farm properly and efficiently may buy a peasant\textsuperscript{98} farm. Furthermore, as will be seen below, such a farm may be transferred through inheritance virtually only to persons who have the required qualifications to run a farm.\textsuperscript{99} In other words, non-farmers are not entitled to own peasant farms nor to inherit them.

**UNIFORM BUT PARTLY SPLIT CONCEPT OF OWNERSHIP**

In spite of the above-described differentiation of property into five hierarchically arranged categories, the Polish Civil Code retains a uniform legal concept of property in general embracing them all and a host of general provisions concerning the contents and exercise of the right of property, transfer of property, usufruct, other means of ac-

\textsuperscript{96} Law of June 29, 1963, Dz. U. No. 28 poz. 168.
\textsuperscript{97} Polish Civil Code arts. 163-7, 1058-88 (1964).
\textsuperscript{98} Polish Civil Code art. 160(1) (1964).
quiring and losing property, joint property, and protection of property. The traditional Roman definition of the content of the right of property has been changed. The new definition authorizes the owner to use the property—excluding other persons—in accordance with the social-economic destination within limits prescribed by statutes and the principles of social intercourse—and in particular to take profits and other income from the property. The absolute character of private property proclaimed by the Code Napoleon, abandoned by later capitalist codes, has not been replaced in this general definition by the historic feudal germanistic conception, on including social obligations into its notion. Statutes and principles of social intercourse act as limitations only, and so acts also the social economic purpose of the right of ownership. A significant change was introduced, however. Socialist ethics limit the exercise of the right of property on a par with statutory restrictions.

But having established the common core, the uniform concept of ownership splits nevertheless into two different ones. State property contains inherent duties. Art. 141 provides that persons to whom management of separated portions of national property has been entrusted are duty bound to conduct their management in a way which assures the best possible fulfillment of tasks which were the basis for entrusting management to them. It is surprising and difficult to explain why co-operative property should be exempted from this inherent obligation. A duty under public law to exploit properly social property seems evident. However, in view of the clear but permissive liberal language of Art. 140, specifying the contents of all kinds of ownership, it will be difficult for Polish courts to construe the criterion of "socio-economic destination" as imposing on the owner of personal and private property a duty to make use of his right in the proper direction.

Unity of State Property

The Polish legislators preserved the principle of unity (indivisibility) of state property. State enterprises and other state legal persons receive parts of state property for management and exercise rights derived from state ownership within the limits of their legal capacity in their own name.

102. *French Civil Code* art. 544: "la maniere la plus absolue."
105. *Polish Civil Code* art. 224 (1964) exempting a bona fide independent possessor from any liability for deterioration or loss of property supports this view.
The principle of indivisible state ownership is said to reflect in the legal superstructure the unity of the political power of the socialist state and the "democratic centralism" of its structure which enables the state to guide the economy through state-wide economic planning. The indivisibility of state ownership enables also proper distribution and redistribution of means of production among the producing units. The rejection of this unity of state ownership would lead to granting to the enterprises themselves full ownership rights, thus creating a kind of group ownership by a group of undefined composition. Such a result would raise, it is stressed, basic social and political objections.  

The Yugoslav version of socialism has been disregarded. Means of production there are owned not by the state as a political organization and not by the workers, but somewhat vaguely by society as a whole. Such a "revisionist" legal conception obviously transcends the realm of purely legal technicalities. It avoids the orthodox Soviet-type exaggeration and supremacy of the state both as sovereign and as manager of the economy and by distinguishing between these two functions fits better into a civil lay system.

Effort to Preserve Uniform Law for All Sectors of Economy

The same tendency to preserve as far as possible uniform and general legal regulation and traditional legal concepts is evident in the field of obligations. Book III (by far the largest in the code), dealing with this subject, embraces all four areas of the exchange of goods and services (1) between the units of socialized economy themselves in the fulfillment of the national economic plan, (2) between citizens and units of socialized economy, (3) between citizens themselves, and (4) between the state and foreign countries. The Czechoslovak Civil Code covers only areas (2) and (3) and treats them in a fundamentally different manner.

In the Polish code, for all its efforts at uniformity in the general part, as well as in the provisions pertaining to specific types of contracts, the uniform picture is constantly marred by repeated introduction of special provisions concerning relations between units of socialized economy themselves or relations between the latter and private citizens.

107. POLISH CIVIL CODE arts. 128(2), 535(2) (1964). "Exclusive disposition" not ownership is transferred by sale from one state unit to another.
108. Wasilkowski, supra note 79, at 741.
Special Provisions for Social Economy

These special provisions can be roughly divided into (1) special principles and special institutions concerning socialized economy only, (2) a stricter discipline prescribed for social economy, and (3) privileges enjoyed by units of socialized economy or by the state as such.

The state-wide economic plan, representing the foundation of the exchange of goods and services between units of socialized economy, had to be reconciled with the rejection of a special economic law and the adoption of a regime of contractual relations between and strict financial accounting of those units. As a consequence, the traditional freedom of contract had to be rejected in their interrelations and substituted, Soviet style, by a legal duty to enter into contracts.

Obligation to contract. This duty may be incumbent upon both sides of the required contract. It thus differs from the Western style contracts of adhesion of public utilities where only the latter are duty-bound to contract with a member of the public. A special chapter deals with “Obligation to conclude contracts between units of socialized economy.” The contracts concerned may be purchase and sale, a contract of supply of goods to be produced (dostawa) or contracts concerning other performance. This institution does not differ substantially from its Soviet prototype. The relationship of both parties obliged to conclude a contract is regulated in terms of civil law, including an offer, its possible rejection, and a “pre-contract litigation.”

Special institutions restricted to social economy. There are three special institutions restricted to the field of socialized economy only:

A. “Perpetual usufruct” may be established by contract only on state-owned urban lots on behalf of private persons, apartment construction cooperatives, and other juridical persons. Contrary to its name, it represents a time-limited kind of ownership of buildings to be constructed on state property lasting as a rule for 99 years. A compensation has to be paid to the user for the buildings at the expiration of his right.

B. Contract of supply of (industrial) goods determined in kind and to be produced and delivered in batches or periodically, may be concluded only between two units of socialized economy. The recipient

112. POLISH CIVIL CODE arts. 386, 141 (1964). The criterion for “social-economic destination” governing the exercise of all civil rights (art. 5) and property in particular (art. 140) is here being construed not as a general purpose, intrinsic in the given kind of object, e.g., bread for eating, but concretely as a goal determined by the current national economic plan. Wasilkowski, supra note 79, at 741.
113. POLISH CIVIL CODE art. 401 (1964).
114. POLISH CIVIL CODE art. 397-404 (1964).
(creditor) for whom the goods are being produced has the right to inspect the supplying factory. The supplier's liability for defects of goods produced by him exceeds the limits of a seller's warranty.\textsuperscript{116}

C. Contract concerning \textit{construction work} is also restricted to units of socialized economy on both sides. The unit on whose terrain the construction has to be built has to conduct the preparatory work and provide a detailed technical blueprint. The contract itself may be contingent on the opening of financial bank credit.\textsuperscript{117}

A further special feature distinguishing socialized economy consists in the authorization of the Council of Ministers or, if empowered by it, of a Ministry to issue for specified categories of contracts general conditions or standard contracts between units of socialized economy and between such units and other persons. Such standard contracts may be invested with the force of \textit{ius cogens}, depriving the parties of the right to enter into a contract on other than the standard terms.\textsuperscript{118}

A simple consequence of the retention of a sole title-owner of state property, i.e., the state itself, may be found in the provision that a contract of sale between state organizational units does not transfer ownership of goods sold but only "exclusive management and disposition." Thus, a sale contract is concluded between two state juridical persons, none of them owning the goods sold and purchased, both legally \textit{obliged} to enter into the contract and leaving intact and unchanged the ownership of the goods sold even after they have changed hands. Such a contract comes quite near to being an agreement negotiated by a person with himself under duress, something clearly unthinkable under traditional Western civil law doctrine.

Art. 2 of the new Polish code provides that transactions between units of the socialized economy, when their special needs so require, may be regulated by the Council of Ministers or any other supreme governmental organ authorized by it—in a manner differing from the provisions of the civil code.\textsuperscript{119} Thus, the whole multitude of special provisions governing planned economy remain in force\textsuperscript{120} and the civil code is relegated to a \textit{subsidiary} role to be enforced only in the absence of

\begin{footnotesize}
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\item \textsuperscript{116} Pol. Civil Code arts. 605-12 (1964).
\item \textsuperscript{117} Pol. Civil Code art. 647-58 (1964).
\item \textsuperscript{118} Pol. Civil Code art. 384 (1964).
\item \textsuperscript{119} Pol. Civil Code art. 2 (1964).
\item \textsuperscript{120} Art. IX, Introductory Provision of April 23, 1964, Dz. U. No. 16 poz. 94. A special resolution of the Sejm requested the government to bring the special regulations into harmony with the civil code in two years unless the specific needs of socialist turnover require their further retention. Wasilkowski, \textit{Uchwalenie kodeksu cywilnego}, Nowe Prawo, June 1964, p. 581.
\end{itemize}
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ad hoc special ordinances. The uniformity of civil law has been thus preserved more in principle than in fact.

**Stricter Discipline**

A second distinguishing feature consists in some special provisions imposing stricter and more exacting discipline on the socialized sector than the more lenient regime for the same categories of contracts when entered into by private persons. The statute of limitations affecting claims of one unit of socialized economy against another results in complete extinction of the claim. The time limit for such extinction is only one year for units of social economy *inter se* and much longer (ten years as a rule and three years for periodic benefits) for other relations. The flow of this one-year time limit is not liable to interruption by an act of acknowledgment of the claim by the debtor social unit when another social unit is the creditor.

When sale of goods has been contracted between socialized units, a later enacted price ceiling, price floor, or a fixed price has retroactive force, and the liability warranty of the seller for defects of the goods sold cannot be restricted or eliminated by contract. Similarly, some other rights of the creditor social unit are greater and some duties of such debtor unit more extensive during the performance of all types of contracts among them.

**Privileges of Social Units**

As if to counterbalance the rigors imposed on units of socialized economy, the new Polish code grants them some significant privileges, putting them apart from private citizens and their associations. Inside the socialized economy a gradation is introduced again. Some privileges are granted (1) to all units of social economy, others (2) to state units alone.

The most important general privileges are the following. A higher than usual standard of due diligence is required from every debtor if the obligation refers to social property. In relations between social units the buyer has the right to withdraw unilaterally from a sales contract for

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121. *Polish Civil Code* art. 117(2) (1964). In other relations the debtor may renounce his right to invoke the statute of limitations.
125. *Polish Civil Code* arts. 558(1), 563(2), 569 (1964) introduce stricter requirements of this seller's guarantee for social units only.
important reasons upon payment of damages to the seller. A socialized unit financing an installment sale by another social unit enjoys a statutory lien on the goods sold as long as they remain in the purchaser's possession.

More numerous are privileges granted exclusively to state units. The right of retention of a movable (until the outlay spent on it or the damage it had inflicted are paid or secured) does not exist in relation to a state organization unit. A rather odd consequence may result from the provision denying to a possessor of a plot of land the right to seize an animal that happens to be state-owned. A kolkhoz-owned horse or cow however may apparently be seized. The farmer is evidently supposed to be able to recognize a state cow when he sees one. Similarly, the code excludes the routine statutory lien on movables resulting from a lease of office or commercial or industrial space, the same lien in connection with an agency (brokerage) contract, a commission (factor) contract, a transportation of goods (carrier) contract, a forwarding contract, and a contract of storing of merchandise (warehouse).

In relation to peasant farms, the code grants the Treasury a statutory pre-emption right relating to them in case of division of joint ownership of them through sale on auction and in analogous cases of division of an estate containing a peasant farm.

A somewhat different significance than just a state privilege must be attributed to the provision making all donations to non-state organizational units (therefore also to co-operatives and non-social associations and institutions, but obviously not to individuals) contingent on the permission of a competent state organ. This restriction, creating by inference a privilege for donations to the state, covers movables as well as real estate. As a consequence, even a transfer of ownership of a rural

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peasant farm or plot of land in exchange for life-long support for the conveyor (the traditional Polish contract of use for life [dozywocie]) has to be permitted by a state organ if the conveyee is a non-state organizational unit.\textsuperscript{141} It may represent a partial donation.\textsuperscript{142} Besides creating a privilege in favor of the state, this strange provision discriminates not only against non-socialist, i.e., church and other religious associations and parishes but also at least on the surface against co-operatives and rural circles and other "social organizations of the working people." All donations except to the state and the individuals have to be kept under close supervision and control.

The special provisions regulating the liability of the state for damage done by its officials during performance of their duties\textsuperscript{144} have a dual aspect. On the one hand they restrict state liability in principle to cases where damage is inflicted by violation of criminal or disciplinary law and the guilt of the perpetrator is determined in a criminal sentence or disciplinary decision or admitted by his superior. Hence it may be considered as a state privilege, a \textit{lex specialis} more favorable than the common rule of liability for torts.\textsuperscript{144}

But the political and legal significance of this \textit{lex specialis} points overwhelmingly in the opposite direction. Before the 1956 upheaval there was in Poland no state liability whatever for damage done by acts of state authority, and citizens had no remedy even against tortures and death inflicted during secret police interrogations and in prisons. After the events of October 1956 a statute was enacted on November 15, 1956, re-introducing state liability for damage inflicted by state officials.\textsuperscript{145} It contained a provision (also taken over by the civil code) enabling a court to grant indemnification for bodily injury or loss of a parent or guardian when principles of social intercourse require it even if no criminal or disciplinary sentence has been obtained—particularly when the victim is an invalid or in a serious financial situation.\textsuperscript{146} The statute of November 15, 1956, generally regarded as an important step toward restoring the rule of law in Poland, has been incorporated into the civil code, thus making it semi-permanent.

From the above, the conclusion seems to follow that the attempt to preserve the traditional framework of the law of obligations for the

\begin{itemize}
\item \textsuperscript{141} \textit{Polish Civil Code} art. 909 (1964).
\item \textsuperscript{142} Wasilkowski, \textit{supra} note 120, at 575.
\item \textsuperscript{143} \textit{Polish Civil Code} art. 417-21 (1964).
\item \textsuperscript{144} A provision along these lines may be found in \textit{Hungarian Civil Code} § 349 (1959).
\item \textsuperscript{145} Dz. U. No. 54 poz. 243.
\item \textsuperscript{146} \textit{Polish Civil Code} art. 419 (1964).
\end{itemize}
whole area of domestic exchange of goods and commodities, whether socialized or not, resulted inevitably in frequent departures from general rules in order to accommodate the needs of the social sector of planned economy. The principle of freedom of contract had to be explicitly abandoned in this field. The principle of equality of parties before the law was not retained in relations between citizens and state and socialized units. Nevertheless, the drafters of the Polish civil code have shown that it is to a great degree possible to preserve and adjust the Western capitalist legal system to a centrally state-directed planned economy based on social property of means of production.

**SOME POLISH INSTITUTIONS RETAINED**

A conservative tendency was frankly admitted by the drafters of the Polish Civil Code. When explaining in the official comments accompanying the last draft why the traditional principle of culpability (French principle of *faute*) was retained as basis for liability for damages, they stress that it was done “in spite of theoretical doubts” because it “made possible the retention in force of a rich body of judicial decisions which solve in accordance with social needs the many problems raised by the accepted provision.” Thus the Soviet casual principle of liability for damages and the Soviet presumption of fault was rejected as well as the Soviet principle that as a rule only illegal actions create such a liability.

Contrary to the Soviet doctrine that only material (property) damage has to be indemnified and moral grief and even physical pain suffered can and should not be repaired in money, the Polish Civil Code retains the traditional Polish compensation for moral harm (krzywdza) to be paid in money to the victim by the wrongdoer. It may be granted in case of bodily injury or disruption of health, deprival of liberty, and in cases where a woman was induced by deceit, force, or abuse of dependent status to submit to a lewd act. However, the remaining part of Polish tradition vesting such a right to reparation for moral harm and suffering in the surviving children and widow of a victim who lost his life through another man’s fault and in a victim of slander or libel, though hotly debated, was not included as contrary to socialist morality. As a pseudo-compromise, the victim of slander or libel or of an

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147. POLISH CIVIL CODE art. 415 (1964) is almost a literal reproduction of the famous formula in the FRENCH CIVIL CODE art. 1382 (1804).
148. PROJEKT (1962) at 212.
149. R.S.F.S.R. CIVIL CODE art. 444 (1964). The same principles were accepted by the C.S.R. CIVIL CODE § 420 (1964).
infringement on copyright or patent (or similar personal rights) was granted the right to demand that the wrongdoer pay an appropriate amount of money to the Polish Red Cross, thus creating a moral satisfaction for the victim.

A rather solidaristic idea was introduced in the law of obligations. It consists of the general legal duty of any debtor and any creditor to cooperate in the fulfillment of the obligation. This cooperation has to be guided by the contents of the obligation, the social-economic destination, and the principles of social intercourse and established customs. It is highly ironical that this idea of cooperation has been borrowed by the Polish communist legislators from the fascist (!) Italian civil code of Mussolini of 1942.

This duty to cooperate is broader and more specific when both debtor and creditor happen to be units of social economy. It embraces also the conclusion of the contract itself and has as its guidelines the duties flowing from the national economic plan, the requirements of an economical production and distribution and avoidance of losses to the national economy.

The new Polish Civil Code, with an eye on the fact that in the present Polish economy the creditor in the great majority of cases is a state or cooperative unit, grants the creditor broader powers than did the late capitalistic socially minded civil codes (including the Polish Code of obligations of 1933). This tendency is quite clear when both sides of the obligations are units of socialized economy as well as in contracts reserved exclusively for such units, i.e., supply of goods to be produced and construction. The right of the creditor to inspect the debtor's factory and check his production methods is the most striking. The same right of supervision and inspection serves the creditor (always a social unit) in relation to the debtor (as a rule, a private farmer, sometimes a rural co-operative) under the contract of raising and delivering agricultural produce (kontraktacja). But the most radical step in this direction consists of the general authorization granted to all creditors to use self-help in case of urgency without the permission of a court by

154. Wolter, op. cit. supra note 74, at 217; see also Italian Civil Code arts. 1615-1620 (1942) concerning “interesse della produzione.”
NEW COMMUNIST CIVIL CODES

performing themselves the action due by the debtor or removing unilaterally what the debtor did contrary to his duty to refrain.\textsuperscript{160}

INHERITANCE LAW

There are few noteworthy features in the inheritance law (Book IV).\textsuperscript{161} The main features of Western classical inheritance law (a blend of individualism and legal obligatory family ties) are preserved intact. There is almost complete freedom of last will and testament and bequest.\textsuperscript{162} The circle of legal heirs has been already narrowed in the 1946 statute on inheritance to descendants, to surviving spouse, parents, siblings, and their descendants.\textsuperscript{163} After all, the system of the German civil code of 1896 extending the circle of legal heirs to the great-grandparents and their descendants and even further up and down\textsuperscript{164} reflects the feudal and ancient “grand family” and not the small family (unit) of the modern mobile industrialized Western society, and has been already obsolete for decades in Western Europe. Nevertheless, a limited extension of this circle has been introduced now in Poland in favor of grandparents who are in need;\textsuperscript{165} this was obviously done to bring the law in line with public opinion and a popular sense of justice.

It seems that inheritance law can safely be taken over practically unchanged by a society based on social property and state-directed planned economy because what is to be inherited is decided outside the framework of inheritance law. The farther socialization goes the more personal property—only—is inherited.\textsuperscript{166}

There is, however, one major and very important innovation. A separate and different inheritance law for peasant farms has been introduced\textsuperscript{167} alongside the above-described restrictions on alienations

\textsuperscript{160.} Polish Civil Code art. 480(3) (1964). Arts. 479 and 552 strengthen the legal position of every creditor.
\textsuperscript{161.} Polish Civil Code art. 922-1057 (1964).
\textsuperscript{162.} A radically individualistic and liberal provision authorizes a contractual renunciation of the future estate by the legal heir \textit{inter vivos}. The renunciation includes the descendants. Polish Civil Code arts. 1048-1050 (1964).
\textsuperscript{163.} Law of Oct. 8, 1946, Dz. U. No. 60 poz. 328.
\textsuperscript{164.} It is paradoxical that the Hungarian Civil Code § 610 (1959) preserves this relic of antiquity including great-grandparents and their issue into the circle of legal heirs. Even the Austrian Civil Code art. 741 (1811) excluded the issue of great-grandparents. The Hungarian Minister of Justice said that the old law of succession was “deeply rooted in our people’s legal mentality.” Civil Code of the Hungarian People’s Republic 196 (1960).
\textsuperscript{165.} Polish Civil Code art. 938 (1964). A similar provision, art. 966, applies to testamentary inheritance.
\textsuperscript{166.} The authors of the C.S.R. Civil Code (1964) seem to share this opinion. There is nothing particularly original in Part VII of the code. It is a far cry from the abolition of inheritance law demanded by the Communist Manifesto of 1848.
\textsuperscript{167.} Polish Civil Code arts. 1058-1088 (1964).
and divisions of peasant farms *inter vivos*. The circle of legal heirs is a narrower one for peasant farms than the general one. Great-grandchildren and descendants of siblings are excluded. A peasant farm has to remain and belong to the immediate next of kin.

The main features of this class law are:

1. The requirement of qualifications to run a farm for legal heirs, testamentary heirs, legatees, acquirers through division, or purchasers of the estate farm. The idea is that only those who are capable of keeping agricultural production at a satisfactory level should own and run them.

2. The process of dividing peasant farms into ever smaller parts by conveyances *inter vivos* and by inheritance should be halted.

3. The deprivation of private peasant economy of money needed for investment by excessive periodic or one-shot payments to co-heirs who did not get the estate farm or to such co-owners should be prevented. Therefore such payments may be reduced by the court to make them economically bearable by the peasant farm left by the deceased and by its new peasant owner (heir). Some categories of heirs may be completely deprived of any such participation in the peasant estate.

A kind of supplementary specialized though unavowed inheritance law is created by provisions placing certain assets outside the scope of the general inheritance law and inheritance proceedings.

A recent amendment to the Polish Banking Law of 1962 obliges a state bank to reimburse the burial costs of a saving account depositor out of his saving account to a person who actually paid them, and what is more important, to honor after the depositor's death his written request for a bequest up to 50,000 zl. to his wife, children, parents, grandparents, grandchildren, or siblings. Any such sums remain outside of the deceased estate and inheritance proceedings. Less surprising is a provision contained in the Polish Civil Code proper providing that a sum stipulated in a life or accident insurance contract due to be paid to the beneficiary in case of death of the insured does not form a part of his estate. There is no doubt that these Polish and Russian institutions have been patterned after their Western capitalist models.

172. An analogous and more liberal provision is found in R.S.F.S.R. Civil Code art. 561 (1964) which does not restrict in any manner the freedom to choose legatees from a savings account nor limits the bequest by any ceiling.
NEW COMMUNIST CIVIL CODES

PRINCIPLES OF SOCIAL INTERCOURSE

The new Polish Civil Code puts heavy and often repeated emphasis not only on the social-economic destination of rights and duties but also on "principles of social intercourse." The nature of these principles can be traced back to the Stalin Constitution of 1936 which makes it a duty of every citizen "to respect the rules of socialist society" (Art. 130). Soviet jurists were generally of the opinion that socialist-Marxist morality, as opposed to bourgeois morality, is meant. The same concept of socialist ethics was introduced under Soviet influence into Polish civil law in 1950 under the name of "principles of social intercourse in the People's State" and in 1959 in Hungary under the name of "demands of socialist coexistence."

Socialist morality (as referred to in Art. 3 of the general provisions of civil law dealing with abuse of rights) was used on a wide scale in Poland since 1950 to rescind or change by Supreme Court decisions many important specific provisions of the still binding Polish pre-war civil legislation without the benefit of any new legislative enactment and in clear violation of the law in force. After the events of October 1956, a sustained effort was made to eliminate entirely the provision of Art. 3 from the new civil code as dangerous for the newly restored socialist legality and the 1960 draft actually omitted it. The judicature of the Supreme Court after 1956 began to construe principles of social intercourse as referring not to some doctrinal class warfare teachings of Marxism-Leninism but to moral principles actually adopted and recognized as binding by public opinion of the population. Thus, they acquired to some degree the features of the traditional Western boni mores, a permanent fixture of the Western law system.

The complete omission of any provision governing misuse of rights (because that was the ostensible purpose of Art. 3) proved to be a too radical measure for routine-minded Polish jurists on the one hand and Stalinist-oriented party members who slowly regained influence since 1959 on the other. During the public discussion of the 1960 draft, strong opposition developed against total omission of Art. 3. The new code not only contains Art. 5 defining abuse of rights and retains the criterion of "contradiction with the principles of social intercourse in the Polish People's Republic" but couples it alternatively with a second measuring criterion.

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176. PROJEKT KODEKSU CYWILNEGO POLSKIEJ RZECZPOSPOLITEJ LUDowej 7 (1960).

However, references to "principles of social intercourse" were made in some detailed provisions of the draft.
rod, i.e., “contradiction with the social-economic destination” of the right appraised. Thus, according to the official comment, the criterion becomes more concrete. The trouble is that for misuse to be present, the contradiction with only one of the two criteria is sufficient. Therefore, the question, what will be understood by “principles of social intercourse” remains as crucial as before.

The trend in Poland seems toward assuming that what is meant is the prevailing moral convictions, values, and attitudes in “the minds of citizens,” a kind of “social conscience.” These moral standards are not static; they are evolving and changing as a result of transformations of social and economic relations. What seems to follow is that the courts have to apply only those values which have been already accepted by the population as part of their “social conscience” and refrain from imposing arbitrarily or prematurely abstract doctrinal precepts.

The same standpoint has been expressed even more pointedly by another Polish jurist who bluntly rejects the accepted opinion that the principles of social intercourse are precepts of ethics or morality, Marxist or otherwise, evaluating behavior in terms of good and evil, and stresses that what is meant are actual rules of intercourse, largely of an organizational nature, in present day Polish society more concrete in their demands than moral precepts.

Thus, the principles of social intercourse came somewhat closer to earth, but still retain their changing dynamic character. In the hands of the Supreme Court, issuing binding directives and acting under the guidance of the Communist Party, they may become at any time not a reflection of existing reality but a tool of remodeling the civil law and pushing economic and personal relations a step or two further on the road to socialism. This feature of flexibility which the principles of social intercourse are granting to the provisions of the new civil code has been stressed by two of its main sponsors. It enables adaptation of the code to the requirements of a changing social and economic structure. According to reliable reports, there are at the present time no intentions to use them for radical transformation from above of Polish society or economy in the direction of the communist goal. On the contrary, there is, as far as could be learned, a widespread desire to improve things within the present framework and run it more efficiently. But

177. PROJEKT (1962), at 203. The social-economic destination is easy to ascertain in relations between socialized units. The national economic plan provides the yardstick.

177a. Wasilkowski, op. cit. supra note 79, at 745.


the civil code includes the tools needed to turn it from an instrument of stabilization and preservation of things as they are into an instrument of social change.

Role of Social Ethics. This possibility is enhanced by the important role assigned to the principles of social intercourse by the new code irrespective of the manner in which they are understood. One thing is now beyond dispute in Poland: they do not form part of the written law which refers to them and they are not legal but rather "social" or moral principles. In order to appraise correctly the role played by those principles in the system of the new Polish Civil Code, two points must be made clear:

1. The admittedly vague content of the principles of social intercourse enables the courts to bring under this heading a fanatical, class-warfare, militant, partisan, orthodox Marxist-Lenist spirit overriding binding and specific provisions of the law, as well as on the other extreme the prevailing Christian ethics of the Polish population, leaving room in between for a humanistic, social-minded morality of a "state of the whole people" in which class-warfare is a thing of the past.

The Polish Minister of Justice tried to define those principles by stressing that they protect "interests of a higher rank" against formally legal claims. The examples quoted by him make it clear that some of the protected "interests" represent socially useful institutions (eviction of a pharmacy, kindergarten, peasant farm, or removal of a building on another man's plot) while others are rather of a moral nature (cases approaching exploitation, guarantee of minimum standard of life to the debtor). Such an interpretation would place the principles discussed somewhere between the Stalinist rigidity and belligerence and the post-1956 Westernized humanistic attitude of 1956-1958. Therefore, in spite of the obvious fact that Western Continental, as well as common-law legislation fully accepts and practices the principle that the social interest takes priority over private and personal interests, there still remains a significant difference in contents between the kind of morality referred to and operating through Western civil codes and socialist ethics even of the post-Stalinist type in communist civil codes. This point must be kept in mind when comparing several provisions of the new Polish code with their Western counterparts and finding a close resemblance.

2. Alongside such provisions, clearly taken over from Western civil legislation and filled with a new content, we find a number of practically new (non-Western) provisions referring to social (or socialist)

180. Rybicki, supra note 179, at 616.
morality. The most important in the first category is the above discussed Art. 5 about abuse of civil rights.\textsuperscript{182} Equally new is the above-stressed introduction of the principles of social intercourse into the contents of the right of property, easements, and perpetual usufruct.\textsuperscript{183}

The new institution of a subsidiary liability of the State Treasury for bodily injuries or loss of a provider caused by state officials, a liability based \textit{directly} on social morality\textsuperscript{184} was also mentioned above. A similar subsidiary liability for damages, based directly on social ethics, is imposed on a minor and an incompetent who caused it, if, the damages cannot be recovered otherwise and a comparison of the financial situation of the perpetrator and of the victim justifies it.\textsuperscript{185} The same applies to damage caused by a domestic animal or an animal kept in custody. This subsidiary liability, based directly on principles of social intercourse, has been placed on the person keeping or using the animal.\textsuperscript{186} Liability for damages may not only be extended beyond the fault principle, but indemnity may be also restricted on grounds of morality if a comparison of the financial conditions of the person liable with those of the victim justifies it.\textsuperscript{187}

A radical innovation may be found in the chapter on property insurance. The insuring institution is as a rule not obliged to pay indemnity when the insured caused the damage through flagrant negligence or failed to undertake steps to prevent and diminish the possible damage. Nevertheless, even then the insured indemnity has to be paid in full or in part if, under the given circumstances, the principles of social intercourse or the interests of national economy so require.\textsuperscript{188}

A clearly Soviet-inspired provision declares the forfeiture for the benefit of the Treasury of any performance or payment deliberately

\textsuperscript{182} \textit{Polish Civil Code} art. 5 (1964) which enjoins everybody to act in accordance with morality is similar to \textit{Swiss Civil Code} art. 2 (Treu und Glauben) (1907).

\textsuperscript{183} \textit{Polish Civil Code} arts. 140, 233, 287, 298 (1964).

\textsuperscript{184} \textit{Polish Civil Code} art. 419 (1964).

\textsuperscript{185} \textit{Polish Civil Code} art. 428 (1964) is similar to \textit{R.S.F.S.R. Civil Code} art. 406 (1922) which does not invoke socialist intercourse. It must be noted, however, that the \textit{Swiss Code of Obligations} art. 54 (1881) and the \textit{Polish Code of Obligations} art. 143 (1933) contained an analogous provision based on equity (\textit{billigkeit}).

\textsuperscript{186} \textit{Polish Civil Code} art. 431 (1964). Here again the \textit{Polish Code of Obligations} art. 149 (1933) was parallel.

\textsuperscript{187} \textit{Polish Civil Code} art. 440 (1964) is similar to \textit{R.S.F.S.R. Civil Code} art. 411 (1922) and \textit{R.S.F.S.R. Civil Code} art. 458 (1964) which do not, however, invoke socialist intercourse.

\textsuperscript{188} \textit{Polish Civil Code} arts. 826(2), 827 (1964). Of lesser importance are art. 446 granting a claim based on social morality for a life pension as indemnity to persons whom the dead tort victim voluntarily and constantly supported without legal obligation to do so and art. 754 granting a claim for reimbursement of expenses to a \textit{negotiorem gestor} who acted against the known will of the person whose business he took care of if the latter's will was contrary to social morality.
made in return for a deed contrary to social morality or in fulfillment of a transaction of the same nature. Western continental civil codes leave forfeiture and confiscation as clearly penal measures to the criminal courts and codes.

The sweeping use made by communist civil codes, and the Polish code in particular, of the principles of social intercourse recalls the passionate attacks made by Soviet jurists and their imitators against the “general clauses” introduced in the capitalist civil codes of the period of imperialism (B.G.B. and Swiss Z.G.B.) and the growing role played by such concepts as “gute Sitten” and “Tru und Glauben” as symptoms of the bankruptcy of bourgeois legality. It is therefore difficult to refrain from a suspicion that the new general clauses again referring to morality represent potentially as many escape clauses from socialist legality, creating the possibility of overriding legal considerations when and where considered as politically necessary.

CONCLUSION

The overall impression created by an analysis of the new Polish Civil Code is that it attempts to stabilize and consolidate the present Polish economic and social system at its present stage, not quite unlike Stalin’s attempt in the U.S.S.R. Constitution of 1936. What is to be stabilized is not only the Soviet model of economy accepted in industry, trade, communication, and banking, but also the overwhelmingly privately owned peasant agriculture. Further deviations from Soviet law consist in the retention of the French system of tort liability based on fault to be proven by the claimant and embracing not only illegal actions but violations of social morality as well. Equally retained was the institution of money compensation for physical pain and moral harm in cases of bodily injury, deprivation of liberty, and sexual abuse.

A new uniform definition of the contents of the right of ownership has been formulated and a hierarchy of three unequal but coexisting basic types of ownership constructed. An analogous inequality of rights and duties prevails in the field of obligations. Here, however, privileges of state and social juristic persons are counterbalanced by a stricter discipline imposed on them. The duty of debtor and creditor to cooperate in the fulfillment of the contract strikes a Western-trained jurist as a

189. Polish Civil Code art. 412 (1964) is similar to R.S.F.S.R. Civil Code art. 473 (1964) but the latter does not mention socialist intercourse but rather “the interest of the socialist state and society.”

190. An example from East Germany: Kleine, Das Zivilrecht der Deutschen Demokratischen Republik 56-57 (1958), “It is a small step indeed from the general clause to the Fuhrerbefehl [order of the Fuhrer].”

191. Hazard, op. cit. supra note 12, at XXXII.
significant idea. The often repeated emphasis on principles of social intercourse as a limitation of the exercise of civil rights and as a direct source of legal duties and claims seems to exceed the Soviet model. Its significance depends on the meaning which practice will attach to them. They may perform a function similar to the old notion of *boni mores*, providing the civil code with the flexibility needed for adaptation to changing social and economic developments and keeping the judicature in line with moral standards accepted by the bulk of population. They may, however, serve as a tool of imposing drastic changes from above without the benefit of a formal amendment of the law in force, should a militant class-war oriented and doctrinal meaning be given to them.

Therefore, a clear-cut answer to the question whether the Polish civil code can be considered a revolutionary one in the sense the Napoleonic code is cannot be easily given. The Polish code certainly is *not* revolutionary when compared with the Czechoslovak code. When compared with the Code Napoleon, the obvious difference is that there was no spontaneous social revolution in Poland preceding its enactment. The Soviet system was introduced from above. That makes a big difference. There was, however, a spontaneous revulsion against the Stalinist terror and oppression in 1956 and a return to a modicum of “socialist legality” and “socialist democracy” vaguely reminiscent of the last stages of the French Revolution. Only when we remember the firm determination of the authors of the *Code Napoléon* to avoid any unnecessary innovations will it be possible to give reluctantly an affirmative answer. Certainly any crusading ideology is absent. Whatever ideology exists is ambivalent and vague. Therefore, “post-revolutionary” would be a much better characterization of the new Polish code.