Commentary

An Eighteenth-Century Engine of Reform

Ernst Wangermann

There is little in Waltraud Heindl's admirable outline of bureaucratic development from the middle of the eighteenth century from which I should wish to dissent. I do, however, want to elaborate on what she has written about the bureaucratic implications of the modernizing reforms embarked upon in the Habsburg monarchy to make good the loss of territory, power, and prestige that resulted from the last wars in Charles VI's reign and the first wars in that of Maria Theresa. Professor Heindl mentions only the new centralizing administrative bodies set up in the course of the first phase of the reforms associated with Friedrich Wilhelm von Haugwitz. I want to draw attention to the bureaucratic implications of the second phase, which followed Prince Kaunitz's "entry into internal policy,"[1] when the strains of the Seven Years' War brought the Habsburg monarchy to the brink of financial and economic collapse. Kaunitz reformulated the government's reform objectives, significantly widening their scope. Every effort was to be directed toward raising to their full potential the productivity of agriculture, industry, commerce, and communications, and eradicating every obstacle standing in the way of this "as a cancer inside the body of the state." To provide the impulse for the new policy objectives, Kaunitz proposed the establishment of a Council of State to supervise and co-ordinate the entire administration, to consider all matters from the standpoint of the monarchy as a whole, and to prepare draft resolutions by majority vote. The council was quickly established and began its work in 1761. Most important for its future role was that Kaunitz's version of the reform objectives became the ideological framework for its work. Reform initiatives, launched from time to time in the past by enterprising but isolated *Projektanten,* were henceforth to be initiated and systematically encouraged by the Council of State. This, in the words of Franz Szabo, "in effect institutionalized the very principle of reform."[2]

By accepting Kaunitz's advice, Maria Theresa committed herself to his program of raising the productivity of agriculture and industry, promoting commerce and communications, encouraging everything conducive to these objectives, and eradicating everything obstructing them. There was bound to be resistance from the upper ranks of the bureaucracy recruited largely from the privileged orders, whose interests would be no less adversely affected by many of these more widely ranging reforms than they had been by the centralizing reforms of Haugwitz. In this second phase of reforms associated with Kaunitz, more would clearly be required

[1]Friedrich Walter, "Kaunitz' Eintritt in die innere Politik. Ein Beitrag zur Geschichte der österreichischen Innenpolitik in den Jahren 1760/61," *Mitteilungen des Instituts für österreichische Geschichtsforschung* 46 (1932): 37–79.

[2]Franz A. J. Szabo, *Kaunitz and Enlightened Absolutism, 1753–1780* (Cambridge, 1994), 58.

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from the bureaucracy than the ability to carry out orders received from the central authorities efficiently. Little of Kaunitz's ambitious objectives would be realized if the more reform-oriented elements in the bureaucracy were not willing and able to take reform initiatives in the spirit of Kaunitz's perspectives.

Professor Heindl describes clearly and concisely how the study of natural law as professed by Karl Anton von Martini helped to provide the new generation of officials with the requisite qualifications. Equally important in meeting these requirements was the study of political science and economy (*Kameralwissenschaften*). Significantly, the creation of a chair in this field was the result of an initiative of the Council of State, as was Joseph von Sonnenfels's appointment to it. In the positions he advanced, Sonnenfels was not guided by existing laws and practices. Instead, he took the purpose of his chair to be the instruction of his students in the political principles which he thought most likely to promote the true end of the state, defined as the happiness of its citizens ("die Glückseligkeit der Bürger"), even if these principles were clearly at variance with existing laws and practices.[3] Sonnenfels was repeatedly attacked and called to order by the conservative ministers for the evident discrepancy between the political principles expounded in his lectures and existing laws and practices. When the matter came before the Council of State, Kaunitz strongly supported Sonnenfels's position. The whole point of his chair, Kaunitz argued, was to air ideas for the improvement of the monarchy's laws and constitution.[4] True to the spirit of her commitment to reform, Maria Theresa decided in the end that Sonnenfels should be allowed to teach political science in accordance with the principles that he held to be valid.[5] After this resolution, Sonnenfels's chair became in effect a chair in the principles of enlightened reform.[6]

Under these circumstances, officials could, and sometimes actually did, become pioneers of enlightened reform. The bureaucracy could, and sometimes actually did, function as an engine of enlightened reform. Let me briefly recall some outstanding examples of this. The implementation of Kaunitz's reform perspectives with regard to agriculture began with the regulation of peasant obligations in the 1760s and 1770s. Raising the productivity of agriculture and securing the peasants' ability to fulfill their tax obligations presupposed definite limits on the dues and services the manorial lords (*Grundherrn*) could extract from their subjects. The commissions set up to prepare such a reform, which were presided over by representatives of the powerful lords, proposed little more than the reaffirmation of existing legislation and the suppression of manifest abuses. The reform initiative, vital if Kaunitz's perspectives were to be realized, came from a humble newcomer to the commission in Austrian Silesia, the retired army captain

[3]In a submission in his own defense to Maria Theresa, Sonnenfels wrote: "Sobald nun festgesetzt ist, die Bestimmung [meines] Lehramtes sey nur dasjenige vorzutragen, was mit dem Endzwecke der Staaten, die Glückseligkeit der Bürger, am meisten übereinstimmet, so ist leicht vorzusehen, daß der Lehrer sehr oft mit der Ausübung im Widerspruch stehen, daß er sehr oft Sätze behaupten wird, bey denen er es nicht vermeiden kann, bey seinen Zuhörern oder Lesern eine stillschweigende Anwendung auf das, was sie vor Augen haben, zu veranlassen." Quoted in Joseph Feil, "Sonnenfels und Maria Theresia," in *Sylvester-Spenden eines Kreises von Freunden vaterländischer Geschichtsforschung* (Vienna, 1858), 17–19.

[4]Szabo, *Kaunitz*, 188.

[5]Feil, "Sonnenfels," 20.

[6]Karl-Heinz Osterloh, *Joseph von Sonnenfels und die österreichische Reformbewegung im Zeitalter des aufgeklärten Absolutismus: Eine Studie zum Zusammenhang von Kameralwissenschaft und Verwaltungspraxis* (Lübeck, 1970), 79–116, 123–34. Note especially the passage: "Im ständigen Vergleich zwischen Theorie und Praxis sollte die Kameralwissenschaft nach dem Willen der Kaiserin und ihrer Ratgeber die Funktion einer Kontrollinstanz ausüben, von der aus nicht nur Mängel in der bestehenden Verfassung zu erkennen waren, sondern auch Impulse und Richtlinien für den zukünftigen Entwicklungsgang ausgingen." Ibid., 133.

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Franz Anton von Blanc. He submitted a *votum separatum,* which raised precisely the question posed by Sonnenfels in his university lectures: that is, whether existing laws and practices were conducive to the true end of the state, which Blanc formulated as the "lasting bonds of society and the potential perfection of the whole." Having raised this question, Blanc concluded that, for the peasant to achieve his individual potential within the bonds of society, he must have "sufficient food for himself and his family, enough clothes and shelter to protect himself [and his family] from the weather, and a reasonable surplus of all these to replace losses in case of a catastrophe." This *votum separatum,* submitted by a subordinate official, gave Maria Theresa the cue she needed to launch the reform. In 1769, she issued a decree prescribing the essence of Blanc's conclusion as the fundamental guideline for the general regulation of the peasants' obligations to their lords undertaken by her government in the years that followed.[7]

A reform in another field, the abolition of torture in 1776, came about in a strikingly similar way. Though the penal code that came into force in 1769, the Nemesis Theresiana, confirmed the place of torture in judicial procedure, Sonnenfels maintained in his lectures from the day of his appointment to the chair of political science that "torture was an unsuitable and unjust method for proving the guilt of the accused." One of his students, a future professor of political science in Graz, translated Beccaria's *Dei delitti e delle pene,* which also condemned torture. These new and critical ideas shook Maria Theresa's confidence in the justice of her own legal code. In 1773, she ordered the question of torture to be reopened. Many of her ministers tried obstinately to stick to the time-honored practice and were indignant at the challenge from the universities. Sonnenfels, who by this time had been appointed a councilor of the Lower Austrian *Regierung,* submitted in this capacity a *votum separatum* in 1775, putting the case against torture with conviction and passion. Though bound by the rule of bureaucratic confidentiality, he allowed his *votum* to reach a printer in Zurich, who published it. After that, the Supreme Chancellor and Co-Regent Joseph, to whom Maria Theresa had delegated the final decision in this matter, judged the conservative position to be untenable. Torture was abolished in January 1776. That it was abolished within merely a few years of the Nemesis Theresiana coming into force was due not least to a reform initiative by a middle-ranking official, who brought the factor of enlightened public opinion into play.[8]

In connection with the factor of public opinion, we should also remember the role of the enlightened men appointed in 1781 by Joseph II as censors. Aloys Blumauer, Joseph Friedrich von Retzer, and the enlightened president of the Censorship Commission, Gottfried van Swieten himself, did what they could within the censorship regulations of 1781 to get publications justifying and popularizing enlightened reforms—including those not on Joseph II's agenda—to circulate freely among the reading public. They interpreted Joseph's regulations, liberal as they were in comparison with previous practice, in the broadest possible way, and thus applied much needed lubrication to the engine of reform.[9]

If this aspect of bureaucratic development and practice is borne in mind, it will become evident what a tremendously negative change the instructions that Emperor Francis II/I issued to officials in the period between the revolutions of 1789 and 1848 implied. Professor Heindl has done a great service by drawing our attention to these characteristic, but insufficiently known

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[7]Karl Grünberg, "Franz Anton von Blanc. Ein Sozialpolitiker der theresianisch-josefinischen Zeit," *Schmollers Jahrbuch für Gesetzgebung, Verwaltung und Volkswirtschaft* (1911), 133–42.

[8]Robert A. Kann, *A Study in Austrian Intellectual History: From Late Baroque to Romanticism* (London, 1960), 186–89; Osterloh, *Joseph von Sonnenfels*, 166–69.

[9]For this aspect, see, in general, Ernst Wangermann, *Die Waffen der Publizität. Zum Funktionswandel der politischen Literatur unter Joseph II.* (Vienna, 2004).

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documents of the Habsburg Empire's period of unenlightened absolutism. The change in what was demanded from the bureaucracy was of course accompanied by a corresponding change in the subjects taught in schools and universities, as well as in the way these subjects were taught. On no account should the teaching of any subject whatever give rise to critical thoughts ("schiefe Urteile") in the mind of the students.[10]

On the important question of public servants' security of tenure, Professor Heindl mentions Joseph II's harsh decrees of 1787 and 1789, which were intended to facilitate the dismissal of incompetent, inefficient, and quarrelsome officials—terms liable to arbitrary interpretation. She then notes with evident surprise that, after about 1816, arbitrary dismissal became almost impossible. The bureaucracy had apparently achieved in administrative practice a security of tenure that had no basis in law. If this seems rather contradictory to the reader, it is because Heindl has omitted reference to the important struggle against arbitrary dismissal and for due process that enlightened officials and ministers fought out at the time of the persecution and prosecution of suspected "Jacobins" in the 1790s. I think it was no accident that the arena in which this struggle took place was the Council of State, where the tradition of enlightened reform lingered on after Francis II had opted for unenlightened absolutism. The minister of police, Count Pergen, and others of like mind urged the emperor to dismiss officials, teachers, and priests who were compromised by having been mentioned in the depositions or confessions of the accused, with an *ex gratia* payment of one year's salary. The protagonists on the side of the rule of law were Kaunitz—one of his last *Vota* in the Council of State before his death in June 1794 concerned this issue—Friedrich von Eger, and Count Karl Zinzendorf. Their *Vota* on this issue in the Council of State secured the acceptance of the principle that dismissal or suspension *ab officio* was a punishment that could only be meted out to persons who had been convicted of an offense under the law according to normal legal procedure.[11] Thus, if the motto adorning the new *Burgtor* built in 1824—IUSTITIA REGNORUM FUNDAMENTUM—reflected to any extent the political reality in the Habsburg Empire at the time of its construction, it was the result of this rearguard action fought by its (still) enlightened bureaucracy against the attempts to turn the empire into a police state.

Ernst Wangermann is a University Professor in the Institut für Geschichte at the University of Salzburg, Austria.

[10]Ernst Wangermann, "Wandlungen in der österreichischen Bildungspolitik von Maria Theresia bis Franz II.," in *Polen und Österreich im 18. Jahrhundert,* ed. Walter Leitsch and Stanislaw Trawkowski (Warsaw, 2000), 46–50.

[11]Ernst Wangermann, *From Joseph II to the Jacobin Trials,* 2nd ed. (Oxford, 1969), 179–87.

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