

THE HISTORY OF GERMAN LAW IN THE BOHEMIAN COUNTRIES

Hans Hirsch

The history of law offers no support to the hypothesis that some Germanic elements remained in the Bohemian countries and had any great influence on the law of the Slavs, or on their political and legal organisation. It would also be wrong to infer from the similarity of the legal institutions in Bohemia and in the German Reich an German influence, since the Slavs, belonging to the Indo-european family, have some cultural characteristics in common with the Germanic tribes—the law system, for example. This can be seen by comparing early Germanic Laws with the Ruskoje Pravda of the 12th Century.

The German immigrants of the Middle Ages were the first to introduce German Law into the Slav countries. The first evidence of a particular legal position of the Germans in Bohemia is the granting of franchise by Duke Sobieslaus in 1178, which can be traced back to an older privilege of Wratislav II in the second half of the 11th Century. The granting of franchise to the German commercial and craftsman community in the Prague-Vorburg, did not yet mean civic law, though through it the German community became a municipality. These German civic rights protected the citizens from denationalization in foreign surroundings and were at the same time the first adjustment of national minority problems on Bohemian ground.

Parallel to German civic law in the towns, the rights of the German settlers in the country developed under the significant name "*jus teutonicum*", Feudal law or "*jus civile*". It was the law of free inheritance derived from the "*Precarie*" whereby the duration of the lease of the land was unlimited. This meant the legal duties of the settlers were not very significant and were confined to the paying of material dues. In the course of time this German law also influenced favourably the Slav Village-Law towards more free standards of right.

The German town settlements in the Bohemian countries adopted models of Law from the German Reich, so that the history of Bohemian Civic Law could be called a feature of the history of German Law. The north Bohe-

mian, Silesian, and north Moravian towns, and Prague-Kleinseite, modelled themselves on the Magdeburg Civic Law, whereas in the remaining parts of Bohemia and Moravia, and in the Prague-Altstadt, the influence of South- and Middle-German Law prevailed. Each of these towns which had a German Civic Law had its "Oberhof" i. e. its Superior Court, in the town on which it was modelled. Bearing witness to the law system of the German settlements in the Bohemian countries are City account-books, tax-accounts, land registers, trade regulations, and Court reports of all kinds, which are still awaiting publication. The existence of German Law in the towns is further shown by Johann von Saaz's "Ackermann aus Böhmen", the greatest Bohemian literary monument of the late Middle Ages in the German language. The controversy between the farmer Johann and Death is carried out with the methods of German death penalty law. The German influence is shown also in Constitutional-, Feudal- and State-Law. The power of the knights ("Kastellanieverfassung" of the Slavs) was replaced by bailiffs and feudalism, and in the late Middle Ages led to territorialism, as in Germany.

The German feudalism achieved special importance during the time of Ottokar II, for example in Bishop Bruno's diocese Olmütz. The first granting of a lease is dated 1248. It was only in the 18th Century, after the acceptance of Roman Law, that the Bohemian countries in the Austrian State in conjunction with the Natural Law movement, took part in the development of German Law. From this the Austrian Common Law developed in 1811.