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The French revolution and the transfer of the open access order to the South-Western German states and Prussia

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Hamburg Institute
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The French Revolution and the Transfer of the Open Access Order to the South-Western German States and Prussia

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HWWI Research

Paper 5-10
by the

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The French Revolution and the Transfer of the Open Access Order to the South-Western German States and Prussia

Joachim Zweynert

1. Introduction

Twenty years after the fall of the Iron Curtain, there is again a debate on shock therapy versus gradualism, this time with regard to developing and emerging societies. This debate was mainly triggered by Dani Rodrik (2007), who argues that reform programmes in poor countries should not be implemented according to a ‘one fits all’ development blueprint (such as the Washington Consensus) but should try to relate to the specific conditions of time and space – a strategy calling for gradualism and the participation of local actors. Daron Acemoglu et al. (2009) have recently undertaken a forceful attempt to refute this view. In their paper ‘The Consequences of Radical Reform: The French Revolution’ the authors provide empirical evidence of the lasting growth-stimulating impact of the implementation of the Napoleonic Code and other post-revolutionary institutional innovations in other European countries and in particular in those parts of Germany that were occupied by France. As these changes were introduced at high speed and followed a radical top-down approach, the authors regard them as proof that it is certainly not always necessary to adapt reforms to local circumstances and that shock therapy ‘in certain institutional contexts’ is often the only means to ‘break the hold on land and people exercised by the ancient regime’ (Acemoglu et al. 2009, p. 6).

The present paper was originally intended as an extended comment on Acemoglu et al. Its aim, however, was never to refute their thesis but, rather, to complement their analysis. In my view, apart from the convincing empirical evidence of the positive long-term impact of the French invasion on the occupied territories, the explanatory power of their analysis is limited in several ways. In view of the fact that their paper is a contribution to a debate on economic policy in today’s developing and emerging economies, I find the drawing of conclusions from the experience of military occupation and the forced implementation of reforms highly problematical. This is not primarily a question of moral considerations. Occupation can be interpreted as the forced import of state capacity. Only its superior state capacity allowed France to accomplish both radical and economic reforms in the occupied territories in a short space of time. Developing countries, however, usually lack the state capacity needed to

accomplish an enlarged reform agenda within short periods of time and are thus forced to concentrate on only a few reform areas (Rodrik 2004, p. 6). Shock therapy versus gradualism, then, is not a matter of choice but of capacity. Also, if the use of force remains outside the scope of the possible means of accomplishing reforms, key political actors necessarily have to deal with the preferences of interest groups and broader strata of society (which does not necessarily exclude the option of a ‘big bang’ strategy).

The comparison between reforms in the German territories *occupied* by the French army and those in Western Germany and Japan after the Second World War (Acemoglu et al. 2009, p. 5) is also misleading: The Japanese and German governments acted under massive external pressure, but they were nevertheless able to choose between different reform strategies.¹ The situation in those territories of the German states that were not invaded by the French troops but which also came under strong pressure to react to the challenges imposed by the French Revolution is much closer to post-war Germany and Japan, and to today’s emerging countries, which are under economic pressure to adapt to the institutional settings in economically more successful countries. As Acemoglu et al. emphasise, in the case of the territories invaded by France political and economic reforms were pursued simultaneously, so that it is impossible to separate the impact of economic and political reforms (*ibid.*, p. 4). A comparison between the South-Western German states (in the following SWG) and Prussia is instructive in this regard. Being unable simultaneously to accomplish political and economic reforms at the same speed, the two groups of countries went for different strategies and sequences – rapid political and slow economic reforms in the South-Western German states, rapid economic and slow political reforms in Prussia – which led to different results.

My second point of criticism is that while Acemoglu et al. conclude that ‘radical institutional reforms can have long-run beneficial consequences, *at least in certain historical contexts*’ (*ibid.*, p. 32, my italics), they do not specify these contexts. However, without at least a rough idea as to the prerequisites of successful radical reform, it is very difficult to assess the relevance of the case of the French Revolution for today’s emerging and developing countries. Interestingly, this is a problem which Acemoglu et al. and Rodrik have in common. As Rodrik (2007, pp. 4-5) argues:

‘Learning from other countries is always useful ... But straightforward borrowing ... of policies without a full understanding of the context that enabled them to be successful ... is a recipe for disaster.’

¹ For Germany, for example, it can be shown that the reformers did a great job in explaining their reform strategy to the population. The speed of reform was certainly high, but as the reformers were eager to ‘win over’ society it is at least disputable whether we can speak of a top-down approach here.

However, since in methodological terms he nevertheless remains true to the neoclassical canon,² he lacks a theoretical approach to deal with the social context within which economic reforms have to work. As helpful as common sense considerations in this regard may be, what is really needed here is an approach that comes to grips with the interplay between the economic and non-economic determinants of social change.

In their recent book *Violence and Social Orders* Douglass C. North, John J. Wallis and Barry R. Weingast (in the following: NWW) offer a promising analytical framework for dealing with precisely this issue: the question of the socio-political conditions under which it is possible to transfer institutions from richer societies to economically less successful ones. However, although claiming to offer ‘a conceptual framework for interpreting recorded human history’, their main question is that of the emergence of modern Western societies since the late 18th century. Although NWW stress time and again that to them institutional change is not a teleological process, i.e. its direction is undetermined, the three case studies they illustrate in their book are the well-known success stories of Great Britain, France and the USA. The decisive question of whether and how the result of this development can be transferred to historical latecomers is raised in the book, and theoretically dealt with in more detail in an earlier paper (North, Wallis, Webb, and Weingast 2007). But the authors have not yet provided a historical case study of catch-up development and the transfer of institutions. In this sense the present paper can also be read as an attempt to fill a gap in NWW’s recent work.

My main thesis, then, is that because, first, the reforms in the German states after 1806 are one of the first historical examples of a massive transfer of institutions from an advanced country into a less developed region, and second, different roads of reform were taken in Prussia and in the South-Western German states, something can be learned from this historical experience for today’s developing and emerging countries. The remainder of the paper is organised as follows: in the next section I shall outline NWW’s concept of limited and open access orders. In section three I shall provide the historical case study of the German states after 1806. The paper will conclude with some remarks on the significance of the German experience for the world of today.

² This is a point Rodrik himself underlines repeatedly in his book. As early as on page three the reader learns: “First, this book is strictly grounded in neoclassical economic analysis” (Rodrik 2007, p. 3).

2. The NWW Concept: Limited and Open Access Orders

NWW identify violence as the basic problem with which all human societies have to cope. Social orders, then, can be classified according to the way in which violence is controlled. Apart from the central notion of violence, the basic elements of their conceptual framework are organisations, institutions and beliefs.³ Over the last ten millennia, NWW argue, human history has known only two social orders: *limited access orders*⁴ (in the following LAO) and *open access orders* (OAO). NWW's main theoretical innovation is the disposing of the notion of 'the ruler' as a single actor which prevails in public choice and related approaches (including the earlier works of North). Only in OAOs does the state command the firmly established monopoly of power which is so often taken for granted in the literature (NWW 2009, p. 23-4). Most social orders of the past, rather, were based on power-sharing agreements between rivalling groups forming a dominant coalition. The basic 'logic of the collective state' is that two experts in violence agree 'to divide the world into two parts, one controlled by each specialist, and then to recognize each other's rights to control the land, labour resources, and trading within their sphere' (NWW 2009, p. 19). As indicated in this quotation, there is a 'double balance' between restrictions of access to political and economic competition: the agreement on political power-sharing is based on privileged access to economically valuable resources, and these resources in turn stabilise the claim to power of the powerful actors (mostly by enabling them to maintain violence experts). In a similar fashion, open access to both political competition in OAOs accounts for and supports economic competition and vice versa.

Even though OAOs show a better economic performance, LAOs 'are not sick' (NWW 2009, p. 269) but represent a major step forward in the control of violence compared to the foraging order. Regarding institutional change, NWW distinguish between a development within the LAO (which they accordingly subdivide into three subtypes) and the transition from LAO to OAO. Only this latter process is relevant to us here. According to NWW, it proceeds in two steps. First, personal relations within the dominant coalition of the LAO are transformed into impersonal ones, until finally the 'doorstep conditions' (rule of law for elites, perpetually lived form of public and private elite organisations, consolidated control of the military) are fulfilled, and second, the members of the dominant coalition must find it

³ These conceptual elements are well-known from Douglass C. North's earlier works and are taken for granted here. In particular, North's strict distinction between organisations and institutions is much disputed in the literature. Although I am critical of this distinction, I will not elaborate upon this point here, as it is unimportant for the argumentation in this paper.

⁴ Also labelled 'natural states' by the authors, a terminology which will not be used in this paper.

advantageous to transform their personal privileges into general, impersonal rights (ibid., chap. 5).

It is impossible to discuss this understanding of transition in the necessary detail in this paper. However, three problems stand out when it comes to the problem of catch-up development. First, NWW repeatedly claim that beliefs play an important role in social transformations (e.g. NWW 2009, pp. 15, 27-9, 39, 111, 251), but all in all this dimension gets a rather raw deal in their book. There is always a trade-off between dealing with interests on the one hand and with beliefs, cognition and culture on the other. In this paper, more emphasis is placed on beliefs than on interests, but in line with Max Weber's famous 'switchmen' analogy, according to which 'very frequently ... "world images" ... have, like switchmen, determined the tracks along which action has been pushed by the dynamics of interest' (Weber 1958, p. 288), both dimensions will be related to each other. Secondly, NWW, dealing only with first movers, do not pay proper attention to a problem historians refer to as 'incontemporaneity': they convincingly argue that many problems related to today's development policy are due to attempts to implement single OAO institutions (such as the market or democratic elections) in LAO (North, Wallis, Webb & Weingast 2007), but they do not systematically deal with the scenario of a more or less mature LAO (which is thus more or less close to the doorstep conditions), undertaking an attempt to 'import' the whole institutional matrix of an OAO due to external pressure (exerted by a superior competitor state). Thirdly and decisively, NWW rightly criticise the single actor approach to the state for 'assuming away the fundamental problem of how the state achieves a monopoly on violence' (NWW 2009, p. 17), but when theorising the transition from LAO to OAO, they focus almost exclusively on the movement from personal to impersonal relations within the ruling elite (step one) and on the opening of access to broader strata of the population (step 2). Thus, the monopoly of power (or the lack of it) is central for the construction of the two ideal types, but its *emergence* during the transition from LAO to OAO is, surprisingly, hardly dealt with at all.

This problem certainly requires further theoretical elaboration, and I am planning to dedicate another paper to it. The main idea of the present article is to provide a historical illustration of some of the key problems arising in late emerging societies that are forced to adapt to the institutional structure of a dominant competitor state. In particular, a comparison between the SWG and Prussia illustrates how deeply the problem of achieving a monopoly of power and that of opening access are interwoven. In this sense, the case study provided here may also furnish helpful insights for the further theoretical development of the NWW framework.

3. The Experience of the German States

Despite all the talk by contemporary (especially Prussian) political actors of ‘revolution from within’ or ‘revolution from above’, what happened in the German states in the first quarter of the 19th century was, first of all, a ‘revolution from the outside’ (Hartung [1955] 1974, p. 74). Thus, as Thomas Nipperdey (1983, p. 11, my translation) aptly noted, at the beginning of modern German history ‘there was Napoleon.’ As Hardenberg wrote in his Riga memorandum of 1807, following the French Revolution there were only two options for the neighbouring states: either ‘decline’ or ‘forced acceptance’ of the new principles of social organisation (quoted from Wehler 1987, p. 401, my translation).

Well into the second half of the 20th century, German historiography was almost exclusively occupied with the Prussian reforms, which, according to the then prevailing assessment, represented a fairly autonomous reaction to the French challenge. Stein, especially, was praised for having managed to ‘organically’ combine imported ideas with national traditions. The reforms in the SWG, by contrast, were dismissed as ‘un-German’, entirely passive reactions to the external pressure exerted by Napoleon (for a critical overview of the literature see Fehrenbach 2008, pp. 138-40). Only since the 1970s, thanks to the efforts of a new generation of German historians around Hans-Ulrich Wehler (born in 1931), has German historiography overcome this biased attitude. Today, the reforms in both the SWG and Prussia are regarded as processes of ‘defensive modernisation’ (a term shaped by Wehler, see e.g. 1987, p. 361) triggered by external pressure to adapt.

The differences between the reforms in the SWG and in Prussia can mainly be explained by differences in

- the degree of external pressure
- the beliefs of the key political actors
- the domestic starting conditions (both social and cultural).

In the first quarter of the 19th century, the transition from LAO to OAO had not been completed anywhere in Europe.⁵ However, in line with the more recent literature,⁶ I shall argue that by the 1830s the SWG had advanced further on this road than Prussia. If this assessment is correct, the great riddle is why Prussia, that, as will be shown below, seemed to be a prime example of a society ‘on the doorstep’, was overtaken by states that looked utterly

⁵ According to NWW (2009, pp. 219-27), even France did not complete its transition until the 1870s.

⁶ Throughout this paper, my comparison between the reforms in the SWG and Prussia basically follows the lines of Paul Nolte’s (1990) study on this topic, which is, interestingly, the only monograph entirely dedicated to this comparison up to the present day.

backward in comparison not only to France but also to Prussia, which not only had a rather strong Enlightenment movement but also one of the most advanced legal codexes (implemented in 1794) of its time. In order to understand what ‘went wrong’ in Prussia, it will be helpful first to analyse the experience of the SWG and then compare it with the Prussian reforms.

3.1 The South-Western German States

For the countries of Continental Europe, post-revolutionary France⁷ became the model case of a double movement in which, in a first step, the nobility lost its traditional privileges and political power was firmly monopolised by the state, before access could be opened to broader strata of society (which of course still only means an enlarged privileged part of society) (Nolte 1990, p. 16). This preparatory step was of major importance because extending access before monopolising power would only have improved the possibilities of the old elite groups to pursue their interests. The all-decisive difference between France and the German states was that in the former there already existed something like a civil society prepared for, and indeed demanding, political participation, while such civil society was largely absent in the German states. For its emergence, the completion of state-building, the liquidation of the society of estates was a prerequisite, too: only individuals not born into corporate ties could turn into politically participating citizens (see e.g. Nipperdey 1983, p. 77).

If we take the degree to which the monopolisation of power had been accomplished as a benchmark, at the time of the French Revolution the ‘backwardness’ of the SWG compared to France has to be measured in centuries rather than in decades. For in the states that formed the *Rheinbund* [Rhine Union] in 1806⁸ following the Prussian defeat by the Napoleonic troops, absolutism had had a much weaker impact than in most parts of Europe. Therefore the SWG were still a patchwork of tiny knighthood territories and clerical estates. As a result of a truly radical concentration process, after the end of the Holy Roman Empire the number of *reichsunmittelbare* territories [territories directly subject to the suzerainty of the Emperor] was reduced from more than a thousand to somewhat over thirty (Fehrenbach 2008, p. 71).⁹

⁷ For an overview of this transition see NWW 2009, pp. 219-227.

⁸ On 12th and 16th July 1806 the *Rheinbundakte* [Rhine Union Treaty] was signed by sixteen delegates of German princes, who this way formally opted out of the Holy Roman Empire. Napoleon acted as protector of the Union, but France did not become a member of the Union. However, from 1807 on the Kingdom of Hanover was under French administration.

⁹ Or, to put it the other way round: Only 2% of the political entities existing in 1789 survived the year 1806. Even of the larger entities only 10% survived the concentration process (Wehler 1987, p. 365).

Everything that happened in the SWG in the first quarter of the 19th century happened under French influence. However, the governments' room for manoeuvre varied considerably: the 'model states' Berg and Westphalia, where Napoleon had appointed relatives as heads of government, were indirectly ruled from Paris, and from 1807 on the Kingdom of Hanover was under French administration. In the larger of the South-Western states, Baden, Bavaria and Württemberg, in contrast, Napoleon acted as a catalyst, rather than a trigger (Weis 1973, p. 583): in these three states the Prussian defeat of 1806 brought to power reform-oriented civil servants (*Reformbeamten*) who had followed the French events after 1789 with admiration. For more than fifteen years these men had been considering the question of how this experience could fruitfully be applied to their country. The best example, certainly, is the key figure behind the Bavarian reforms, Maximilian von Montgelas (1759-1838), who in his writings of the 1790s already opted for 'a strong constitutional monarchy, a national representation, and the political and civil freedom of the citizens' (quoted from Weis 1971, my translation) and thus expressed at a much earlier date similar ideas to those of Karl August von Hardenberg in his famous Riga Memorandum of 1807.

Even if the three outstanding reformers of the SWG, Montgelas in Bavaria, Reitzenstein in Baden and Friedrich von Württemberg (an enlightened monarch) could never act independently of France, the dissolution of the Holy Roman Empire opened a window of opportunity to them which they used for quite radical reforms. This window closed after the Congress of Vienna (1815), which marked the beginning of restoration.¹⁰ Apart from direct external pressure, there were a number of further reasons why the political reforms were pursued much more radically in the SWG than in Prussia. First of all, the task of state-building, the mediatisation of territories and the integration of the numerous tiny former knighthood territories and estates into the newly established larger political units could not be achieved simply by gradual reforms but demanded a radical top-down approach (Fehrenbach 2008, p. 85; Nipperdey 1983, p. 70). Secondly, the very fact that absolutism had been so poorly developed in the SWG meant that the reformers' eagerness to achieve maximal centralisation of political power was still unbroken. As we shall see, this was an important difference to Prussia, where the reformers tried to reduce the degree of centralisation. Thirdly, the South-Western reformers were not only geographically, but also mentally, nearer to the epicentre of the Revolution than their Prussian colleagues, as idealist philosophy, being almost entirely a Prussian affair, had no impact on their 'intellectual road maps'. This is a

¹⁰ More precisely, the window started to close around 1815, as some of the key reforms were completed in the following years.

further reason why the necessity of pursuing reforms in an ‘organic’ fashion did not play any significant role in their considerations.¹¹

However, neither the proximity to the French model nor the chosen top-down approach meant that French institutions were simply transferred to the *Rheinbund* states. At least the degree to which this was the case differed strongly: in some of them, mainly the smaller ones, the Code Civil was implemented fully or only with minor changes; in the case of the larger states, however, more recent German historiography (e.g. Schubert 1977) speaks of the ‘reception’ of the code, which was either implemented in a strongly modified form (*Badisches Landrecht*) or was only discussed but not codified (Bavaria and Nassau). Much the same applies to the constitutions that were implemented in some of the SWG. The first of these was drawn up in Paris and implemented in the satellite state of Westphalia in 1807. It served as a model for the first ‘German’ constitution that was implemented in Bavaria in 1808. The election to the National Assembly scheduled for 1810 was never to take place however. During the following years, other South-Western constitutional projects failed. None the less, another wave of constitutional projects soon set in. This was triggered on the one hand by the French *Charte constitutionnelle* (approved in June 1814), and by Metternich’s interventions aiming at a restoration of estate types of representation on the other. Confronted with the alternative of either being restricted by the traditional estates once again or opening access to the wealthy part of society, rulers and bureaucracy obviously found the latter option to their advantage. Accordingly, in the case of the SWG it was due to external pressure that the elites found it advantageous to open political access to broader segments of society. Finally, the three South-Western key states of Bavaria, Baden (both 1818) and Württemberg (1819) received constitutions still strongly favouring the wealthy, but overcoming the society of estates and thus paving the way for open political access.

The overall results of the reforms in the SWG are aptly summarised by one of the leading German experts on this topic, Elisabeth Fehrenbach (2008, p. 220, my translation):

‘The uncompromising expansion of the bureaucratic-authoritarian state, which subjected all particular, independent powers to its rule, at the same time encouraged the liberation of the individual from corporative bonds and the establishment of civil society based on the principle of equality.’

Nipperdey (1983, p. 79) thus speaks of the ‘sting of reform’ that continued to be effective during the entire 19th century: not by accident was it the German South-West that became the

¹¹ Some authors argue, in my view convincingly, that as idealist philosophy has its roots in Orthodox Lutheranism, the differences in the shared mental models of the key political actors in Prussia and the SWG are at least partly due to confessional differences (e.g. Winkler 2001, Vol. 1, p. 16-17). Although I agree that this is an important argument, for the sake of brevity I shall not go into it here.

cradle of German liberalism and constitutionalism. Nevertheless, it should be stressed that the constitutional dimension was the only sphere in which the South-West was ahead of Prussia: the Prussian economic, military and educational reforms pursued under Stein and Hardenberg had no equivalent in the SWG.

3.2 Prussia

According to Christopher Clark, author of the leading standard work on Prussian history, in the 1790s Prussia was in a ‘transitional condition’ (Clark 2007, p. 281). Nothing shows more clearly the degree to which this society was ‘poised between two worlds’ (ibid.) than the *Allgemeines Landrecht*, the legal codex implemented in 1794. On the one hand, it (Section 22) contained the idea of the equality of all citizens before the law: it spoke of *Einwohnern* (residents) instead of *Untertanen* (subjects) and explicitly declared that the law ‘binds all members’ of the state, ‘without regard to their Estate, rank or gender’. However, in another Section (82) it is stated that the individual rights of the citizen are a function of his/her ‘birth’ and ‘estate’ and that ‘the nobility is the first Estate in the State’ with a special Section dedicated to its rights and obligations (Clark 2007, pp. 281-2). Not only was the codex ambiguous, but its implementation caused major problems. According to Koselleck ([1962] 1989, p. 39), even after its implementation it was common practice to apply specific regional rules, while the general law tended only to be applied in exceptional cases. Apart from the codification of the ‘Janus-headed’¹² *Allgemeines Landrecht*, in the first one and a half decades after the French Revolution, there was – both within and outside of the state apparatus – a lot of debate ‘about virtually every domain of public policy’ (Clark 2007, p. 281). In 1799, in a conversation with a Frenchman, the Prussian Minister Karl Gustav von Struensee (1735-1804) even directly announced his country’s imminent transition: ‘The salutary revolution which you have conducted bottom-up will take place in Prussia gradually and top-down ... In a few years there will no longer be a privileged class in Prussia ...’ (quoted from Winkler 2001, p. 43, my translation). Announcements like this did not lead to any significant practical results, however.¹³ In fact, the country needed a further external shock to be set in motion.

Obviously, the military defeat of the Prussian troops in Jena and Auerstedt in 1806 struck a country on the doorstep of the transition from a limited to an open access society. In order to

¹² The famous characterisation of the Prussian *Allgemeines Landrecht* as ‘Janus-headed’ stems from the Prussian historian Heinrich von Treitschke, who borrowed it from Madame de Staël (see Clark 2007, p. 283).

¹³ The only major reform that was achieved before 1807 was the liberation of the seignior farmers between 1799 and 1805 (Wehler 1987, p. 353).

explain why Prussia benefited less from the external shock than the SWG regarding its social order as a whole, let us again consider the degree of external pressure, the beliefs of the key political actors, and the domestic starting conditions.

Opinions may differ regarding the thesis of the Prussian/German *Sonderweg* (special path of development), but it is quite indisputable that the East Elbian *Junkers* played a particular role in Prussian history. The emergence of the *Junkerdom* as an oligarchic group can be traced back to the 14th to 16th centuries and was a result of the decline of the Baltic cities, the secular agrarian crisis of the 15th century and the price revolution of the 16th century, which furthered the expansion of large-scale agrarian production in North-Eastern Germany (Carsten [1964] 1981; Rosenberg [1958] 1978). The Thirty Years' War further strengthened the position of the Prussian landlords. Under the conditions of economic backwardness it was especially true that absolutism was still a 'compromise *within* the Ancient Regime' (Nolte 1990, p. 201): Prussia's absolutist emperors did much to achieve a centralisation of state power. In order to reduce the power of the *Junkers*, Frederick Wilhelm I, who ruled from 1713 to 1740, systematically appointed foreigners, in particular Calvinists, to serve in the Hohenzollern bureaucracy (Clark 2007, pp. 56-61). However, as the *Junkerdom* was compensated for its loss of influence at the centre by a significant strengthening of its power position at the provincial level, according to Wolfgang Neugebauer (1992, pp. 65-86) we can still speak of a 'latent form of estate government'. Interestingly, it was precisely Prussia's enlightened monarch, Frederick Wilhelm II, who opened up the country to Western ideas on the one hand, but on the other restored *Junker* privileges in the countryside and thus in a way moved the country 'eastwards', i.e. in the direction of an authoritarian regime based on serfdom and noble privileges (Winkler 2001, p. 31). In brief, Prussian absolutism (this development culminated under Frederick II) was not marked by a disempowerment of the nobility but by a new staking of claims between two power-sharing elite groups which led to a stronger differentiation between centre and periphery (Clark 2007, p. 114).

External pressure was decisively lower in Prussia than in all of the SWG. The country had suffered a catastrophic military defeat and had lost almost half of its territory and population (Wehler 1987, p. 398) as well as its position among the leading European powers – but there was no direct threat of French occupation. From the beginning, Prussian defensive modernisation was both a reaction to, and directed against, the French model: there was a consensus among the key actors that they had to search for their own way of accomplishing

reforms,¹⁴ and the reform movement and the liberation movement were hard to distinguish. This might partly explain the priority of economic over political reforms in Prussia. As Koselleck ([1962] 1989, p. 14) argues, the Prussian rulers ‘deliberately opted for Smith as opposed to Napoleon in order to drive out the latter with the help of the former’. This might be true even in a double sense: first, they went for economic reforms not only in order to be able to pay the heavy reparations, but also to provide the material basis for strengthening the army; second, they tried to compensate for political reforms which they were partly unwilling and partly unable to accomplish.

Due to the lower degree of external pressure, the beliefs of the key domestic actors played an even more important role than in the case of the SWG. Although I do not agree with Nipperdey’s (1983, p. 33) characterisation of the Prussian reforms as an ‘idealistic-moral movement’, the ideas of Kant, Fichte and Hegel certainly had an important impact on the ‘intellectual road maps’ of the reformers. The organismic understanding of society so typical of German idealism stood in sharp contrast (and had indeed developed in opposition) to rationalist patterns providing the background to the French philosophy of Enlightenment. As can be seen especially in the example of Stein, the ideational distance to France led to a preference for British ideas and institutions (Fehrenbach 2008, p. 109). Great Britain indeed provided the prime case of an ‘organic’ development but it was hardly a good model for catch-up development precisely for this reason. Organismic patterns of thought contradicted the ideas of absolutism and of radical reforms. For example, Wilhelm von Humboldt (1767-1835) explicitly used a biological metaphor when arguing that ‘State constitutions cannot be grafted onto people like shoots onto trees’ and thus could not be introduced ‘by reason ... according to an existing plan’ (quoted from Nolte 1990, pp. 101-2, my translation). Last but not least, idealism promoted the idea that state bureaucrats had a superior insight into the ‘spirit of the time’ (*Zeitgeist*, a rhetorical figure omnipresent in the statements of the reform bureaucrats) and the ‘public welfare’ (*Gemeinwohl*), a belief that certainly did not favour the civil servants’ transformation from masters of the crown into agents of the public (Rosenberg 1958, p. 24).

Idealism also had a major impact on how the Prussian reformers interpreted the problems of their country. As has been outlined above, Prussian enlightened absolutism had been an ambivalent development. On the one hand, it had led to a concentration of power at the centre, but on the other it had left key privileges of the landed nobility untouched, or even restored,

¹⁴ Stein even explicitly warned against the ‘disastrous imitating of France’ (quoted from Nolte 1990, p. 57). He was particularly critical regarding the Code Napoleon, which in his view ‘destroys all civil conditions’ (ibid., p. 138).

undermining the central government's monopoly of power. The idealistic concerns about the centralisation of power in absolutism and the idealisation of the British patterns of participation led the Prussian reformers to a rather one-sided perception of the institutional structure of their society. Deeply worried about the predominance of the state, they saw their main task as letting the reorganised estates participate in the administration.

What they did not see was that in fact the state was anything but strong if the regional distribution of its ability to assert itself was taken into account. As the landed nobility still exerted the provincial jurisdiction, the state was far from having accomplished a firm monopoly of power. The differences between the conservative and 'organic' Stein and the 'absolutist' and 'rationalistic' Hardenberg were a favourite topic in older Prussian historiography. From the methodological position taken in this paper it is much more important that both shared the conviction that the state had gained a dangerous dominance over society and that society itself should be involved in the reform process. In his Nassau memorandum, Stein demanded the estates' 'inclusion in administration', and Hardenberg in his Riga memorandum even called for the 'amalgamation of both sectors' (quoted from Fehrenbach 2008, p. 111, my translation). However, whereas Stein still associated 'representation' with corporate self-governance, Hardenberg was 'decisively more etatist' and more aware of the potential conflict between central and patrimonial powers (Nolte 1990, p. 32 f.).

Among the Prussian reformers it was commonly acknowledged that, as the politician and historian Barthold Georg Niebuhr (1776-1831) put it, 'freedom is based much more on the administration than on the constitution' (quoted from Koselleck [1962] 1989, p. 217, my translation). When considering this statement, one should be aware of the starting-point of constitutional economics: that constitutions not only provide the foundation for increasing general representation and participation, but also the all-decisive means of depriving single groups or estates of their traditional claims to participation. The main difference between the Prussian and the South-Western reformers, then, is that the former gave priority to participation over state-building, and they obviously did so because they failed to see how weak the Prussian state in fact was. Otherwise it should have been clear to them how much it endangered the reform process itself to invite the main interest groups to participate in political decision-making. Yet it certainly has to be taken into account here that the power-sharing agreement of enlightened absolutism was a heavy burden for political reforms in Prussia.

The question as to whether this legacy was more decisive for the failure of constitutional reform in Prussia than the indecisiveness of the reformers can hardly be answered in this paper. As a matter of fact, however, instead of firmly establishing the state's monopoly of power, the reforms of Stein and Hardenberg even 'favoured the traditional forms of representation' (Nolte 1990, p. 45, my translation). Undoubtedly, the greatest achievement in view of the 'perfection of absolutism' (Nipperdey 1983, p. 39) was Stein's principle of municipal self-administration [*Städteordnung*] of 1808, which, however, was relatively easy to achieve because it did not touch the privileges of the landed nobility. Four years later Hardenberg undertook the decisive attempt to subordinate the countryside to central administration. Not surprisingly, the Gendamerie Edict, aimed at putting an end to patrimonial jurisdiction by introducing a bureaucratized system of rural government and a paramilitary state police, met with the fierce resistance of the *Junkers* (especially the East Elbian ones) and conservative members of the administration. Had this reform been successful, it might have provided the decisive prerequisite for Prussia's successful transition to an open access order. This did not happen, however, and the very fact that it was precisely the noble-dominated interim national representation meeting in Berlin in 1812 at which noble resistance to the Edict culminated, shows clearly how problematic participation was before the power of the traditional corporate bodies had been broken. As a result of the failure of the Gendamerie Edict, in 1837 about one third of the Prussian population was still subject to patrimonial courts (Nipperdey 1983, p. 163).

As the Prussian state had failed to break the power of the landed gentry, the attempts to establish a modern constitution were doomed to failure. In constitutional terms, Prussia did not overcome absolutism until 1848.¹⁵ Although the introduction of a constitution was repeatedly promised (Wehler 1987, p. 448-9), all that was finally achieved was the introduction after 1823 of neo-corporate provincial diets dominated by the *Junkers*. Not surprisingly, in the 1820s and 1830s these selective 'representational organs' provided the decisive channel through which the conservatives were able to assert their political goals (Obenaus 1996, p. 51). As Koselleck ([1962] 1989, p. 356) aptly puts it, the introduction of the diets meant little else than the 'legalisation of economic interest groups'.

But did Prussia not make up for its political-constitutional backwardness with its impressive economic reforms? From the perspective of the concept of a 'double balance' between the political and the economic order, this assessment looks highly doubtful. Indeed,

¹⁵ As Hans Rosenberg (1958, p. 204) aptly puts it: 'In social complexion, the Prussian revolution never went beyond 1787-1788, the incipient, the aristocratic phase of the French Revolution. Only in the realm of political ideas, social theories, and institutional experiment did Prussia reflect a more advanced stage of development.'

Prussian history provides good arguments for these doubts. On the one hand, rapid economic change certainly asserted a permanent pressure on the sclerotic political institutions to adapt. On the other, however, liberal economic reforms under the condition of limited political access in fact strengthened the political influence of the *Junkers*. The *Junker* estates had been in economic decline since at least the second half of the 18th century. Accordingly, though still illegally, a massive transfer of noble land to non-noble business people had set in, and it is but another sign of its ambiguity that the *Allgemeines Landrecht* explicitly forbade these sales. The famous October edict of 1807 then opened the floodgates for the massive sale of land: whereas, for example, 75.6 per cent of land had been in noble hands in the rural hinterland of Königsberg, this share had fallen to 48.3 per cent by 1829 (Clark 2007, p. 408). As the land was transferred to more productive owners, the decline of the agrarian sector was halted. Enjoying precisely the same social status and privileges as the noble landowners, the emerging group of agrarian capitalists was sociologically integrated into the *Junker* class (Obenaus 1996, p. 46).

Precisely because the *Junkers* had turned into ‘an open class of large landowners and capitalist entrepreneurs, without losing their traditional position as a legally privileged social and political group’ (Rosenberg 1958, p. 218), in 1816 they were able to re-negotiate the regulations on the liberation of peasants in their favour. As a result, liberation even led to a redistribution of land from the peasants to the squires and thus strengthened the position of the landowners. Furthermore, the October edict itself, but especially the re-negotiations in 1816, led to a far-reaching abolition of the protection of the peasants, which had only been achieved with difficulty, so that in fact the liberation even favoured a new wave of enclosures (Wehler 1987, p. 416). The weak bargaining power of the crown was not only due to the economic recovery of the *Junkers*. As a result of the war costs and contributions, the financial situation of the Crown had strongly deteriorated since the second half of the 19th century. In brief: whereas the Crown had supported the *Junkers* in their struggle for survival in the second half of the 18th century, now it was the reorganised *Junker* class who kept the Crown afloat, which was forced to mortgage a significant number of its domains (Koselleck [1962] 1989, p. 182-3).

This is precisely the constellation in which privileged interest groups are likely to be able to transform their increased economic strength (increased due to liberal economic reforms!) into political power – a power they are most likely to use to block any attempts to deprive them of their privileges. And this is precisely what happened in Prussia. As Hanna Schissler (1978, p. 198) aptly summarises, ‘the lasting political result of the struggle for reform was the

compromise between absolute bureaucracy and the newly arising class of agrarian capitalists, which replaced the power compromise of the 18th century which the crown had reached with the nobility.’ In other words, whereas in the SWG the implementation of constitutions laid the institutional foundation for the transition to an open access order, in Prussia this transition failed despite its seemingly much better starting conditions. Its defensive modernisation remained a ‘limited system change in order to prevent a greater upheaval of the political, social and economic power structure’ (Wehler 1987, p. 532-3, my translation) that never went beyond the logic of an LAO. Despite the growing speed of economic and social change, the new LAO, based on a power-sharing agreement between the bureaucracy and the agrarian capitalists, proved to be quite stable. The *Junkers* maintained patrimonial jurisdiction until 1848, landowner police power until 1872, were derated until 1861, and the law concerning domestic servants (*Gesindeordnung*) was not abolished until 1918. Much speaks in favour of the thesis that the economic decline of the *Junkers* in the second half of the 18th century could have been expected to lead to their disempowerment. It was due to the policy mix of quick economic liberalisation and slow political change that they regained not only their economic strength but also kept (or even strengthened) their position as a privileged class – a privileged class however, that already bore some typical features of an economic interest group.

The question remains as to whether this outcome of reform was really unintended or whether it reflected the interests of the bureaucrats. As a matter of fact, after 1806 the Prussian bureaucracy ‘transformed into a powerful, independent political oligarchy at the expense of the crown’ (Rosenberg 1958, p. 216). Selectively opening access to the *Junker* class and thus economically strengthening the decisive coalition partner in the power-sharing agreement between centre and periphery was the perfect strategy to maintain this power position – certainly at the cost of sharing the gains with the non-noble intruders of the power coalition (ibid., p. 211). In this scenario, considering the dimension of beliefs does not change the picture, for idealist philosophy had backed the bureaucracy’s claim to power, the critical attitude towards centralisation and the preference for corporate forms of representation, with all these elements providing excellent switchmen to pursue the bureaucracy’s interests. But although this story can be reconstructed convincingly from today’s perspective, such a ‘straight story’ looks highly doubtful from a historical point of view. The heritage of enlightened absolutism and the financial crisis due to war contributions certainly played a decisive role as well, and it should not be forgotten that with the Gendamerie Edict of 1812 the Hardenberg administration undertook a serious attempt to break the power of the landed gentry.

4. Conclusion

The comparison between the reforms in the SWG and in Prussia leads to the following conclusions regarding the social transformation processes in today's emerging markets. First, it illustrates that the political and the economic dimensions of social transformation are so deeply interwoven that even for analytical purposes they should never be looked at in isolation. Secondly, the experience of the German states clearly speaks in favour of the primacy of political reforms over economic ones. At the same time, and in my view this is the decisive message, it clearly shows that the extended discussion of whether democratisation is a prerequisite or an obstacle to economic reforms is missing the point. This discussion is just a good example of how likely Western scholars are to transfer their usual terms and concepts to conditions to which they simply do not fit. As NWW make perfectly clear, open access to political competition in the medium to long term is certainly necessary to sustain open access to economic competition. But opening access in both fields presupposes that the state has established a firm monopoly of power. Otherwise it will mainly improve the chances of privileged elite groups to appropriate rents. Prussia is the prime historical example of how liberal reforms were started before a firm monopoly of power was accomplished. Opening access to the *Junker* class without depriving it of its political privileges allowed them to transform their economic power into political power.

In the historical literature, sometimes parallels are drawn between Russian and Prussian/German catch-up development in the 19th and early 20th centuries (e.g. Gerschenkron 1962). Now a new chapter can be added to this, for the structural parallels between the Prussian reform experience after 1806 and the Russian post-1990s reforms are hard to overlook: due to worries about the 'strong' state, that in fact was extremely weak, the reforms under Gorbachev and Yeltsin further weakened the monopoly of power (that had been in decline under most of the Brezhnev era) through 'decentralisation' and 'democratisation'. In this situation, the 'liberal reforms', the partial opening of economic access, allowed the emerging class of entrepreneurs to gain decisive influence on the political process.¹⁶ In the relevant literature, this phenomenon is discussed as 'state capture' (Hellman et al. 2003) – a term that might well also be applied to describe what happened in Prussia after 1806. This

¹⁶ This critical assessment of the reforms under Gorbachev and Yeltsin and the emphasis here on the state's monopoly of power does not necessarily lead to a positive evaluation of the strengthening of the 'vertical of power' begun under President Putin. I will deal with this issue in a later paper that applies the NWW framework to post-Soviet reforms in Russia.

parallel also shows that the talk of the Prussian *Sonderweg* can be regarded as a mystification of a development that can well be explained as the logical outcome of a particular reform sequence (opening economic access to an elite group that had not been deprived of its privileged political access), and which is likely to occur wherever this reform sequence is chosen.

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