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SCHMIEGELT, CHRISTIAN: DIE HISTORISCHE ENTWICKLUNG DER EHEVERBOTE WEGEN VERWANDTSCHAFT UND SCHWÄGERSCHAFT VOM REICHSPERSONENSTANDSGESETZ BIS ZUM EHESCHLIEßUNGSRECHTSGESETZ (1875 BIS 1998). DUNCKER & HUMBLOT, 2023 / Martin Gregor, Valéria Terézia Dančiaková

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Present Slovak Family Act No. 36/2005 Coll. governs the issue of marriage impediments in the clause §§ 9 and following relatively vaguely. Within this scope also falls the prohibition to contract a marriage between ancestors and descendants, including also the cases of kinship established by adoption. In the Czech Republic the marriage impediment of kinship is in relation to its content governed identically in § 675 of the Czech Civil Code No. 89/2012 Coll. In the Czecho-Slovak region, however, scholarly

literature that would analyse this issue in more detail is rather lacking.[1] Therefore, we would like to draw attention to a new German monograph that presents an extensive historical-theoretical probe of the problem of marriage impediment bound to kinship, affines, and sexual communion. Although it deals primarily with the development of German lawmaking since the promulgation of the Law on personal status (*Reichspersonenstandsgesetz*) from the year 1875 up to present reform opinions *de lege ferenda,* its theoretical scope could be extremely beneficial for all persons interested in marital law solely considering the comparative aspect.

Author Christian Schmiegelt analyses the discussed issue in the scope of six chapters. The first chapter is a general excursus that points out the origins and basic tendencies of the development of marriage impediments from antiquity to the nineteenth century. The second chapter analyses the already-mentioned law on personal status from 1875 and subsequently the regulation in the German Civil Code (*BGB*) from the year 1896/1900. The third chapter pays attention to the legislative ambit after the fall of the German Empire, while from the turbulent period of years 1919 – 1949, the biggest space is dedicated to the Nazi reform of family law from the year 1938. The fourth chapter includes an analysis of marriage impediments in the law of the German Democratic Republic (*DDR*). The fifth chapter can be understood as the conclusion of the current legal state in Western Germany and later all of united Germany, which is then directly followed by the sixth chapter with a philosophical analysis of the issue of marriage impediments and their relevance in legal practice.

Considering the broad period, especially the first chapter suffers from a certain level of academic curtness, which is reflected in insufficient citation of historic legal sources, as well as secondary literature. Despite this, the chapter is not only captivating with its content, but also necessary to explain further development of the analysed marriage impediments, and it serves its purpose. The author correctly deduces the significance of marriage impediments in Roman law relating to the fact that marriage was a state of fact.

Resulting from the teaching of the church, the approach to marriage differed in the Middle Ages compared to antiquity. Marriage was considered a sacrament, and the marriage impediment of blood-relation extended as far as the seventh grade. Moreover, based on the interpretation of the Bible, a theory was created, according to which a man and a woman constitute one body (*una caro*) resulting in the creation of the impediment of affines and gradually also the impediment of sexual cohabitation (*affinitas illegitima* or clearly *affinitas ex copula illicita*) – in case of kin of the person that had intercourse with the concerned. In this way, a complicated tangle of relationships was created that excluded marriage up to the seventh grade.[2] Significant expansion of marriage impediments in favour of the prohibition of incest aimed, according to the author, at strengthening the status of the Catholic church and breaking the social structures of the pagans (Schmiegelt, 2023, p. 28). The monograph further correctly points out the change in the understanding of the marriage due to reformation. In protestant countries the tendency dominated to minimise the scope of marriage impediments according to biblical law.[3] In the next pages of the book, a rationalist atmosphere of the Age of Enlightenment is described. The attention of the reader is focused on the process of

[1] From literature see: Kříženecký (1918, p. 361); Klabouch (1963, pp. 180–181); Bělovský (2003, p. 78). Concerning foreign literature independent from reviewed monograph see also: Lindner (1920); Weigand (1994).

[2] 1 Cor 6: 16: *„What? know ye not that he which is joined to an harlot is one body? for two, saith he, shall be one flesh."*.

[3] Luther originally refused them completely, later he sided with the accuracy of command in Lev. 18.

emancipation of the institute of marriage from the frame of ecclesiastical legislation and its transition under the egis of state and secular legal order.

The second chapter analyses two elemental legislative regulations of contracting a marriage in the nineteenth century that influenced Hungarian law as well. The first one is the "Imperial" law on personal status from 6th February 1875 (*RPStG*), which, as the result of *Kulturkampf*, was much more liberal than the later passed Civil Code (*BGB*) accompanied by the effort to achieve a political compromise with the German catholic party *Zentrum*. Although both regulations inclined to obligatory civil marriage, in contrast to *RPStG,* the *BGB* introduced marriage impediment of sexual cohabitation between ancestors and descendants (in Catholic areas of Germany again, in Lutheran for the first time). Considering the Slovak legal development, it is shocking that this marriage impediment was effective in West Germany until 1973 when it was abolished as unconstitutional by the Federal Constitutional Court. *BGB* is thus considered retrograde by the author of the book, although the lawgiver aimed to achieve a consensus about the new code of private law.

This bearing chapter, however, is not restricted only to the analysis of marriage impediments but is rather extensively concerned with related issues as well. It points to the question of whether the regulation of marriage fell under the competence of the Empire or separate states according to the Constitution from 1871, it describes in detail the motive of *Kulturkampf* in Germany and even refers to the development of marriage law in Austria as the result of creating a concordat with the Catholic Church.[4] The greatest space is dedicated to the historical analysis of the process of passing both regulations, especially the preparation of *BGB* in individual codification committees. In this regard – although the author works with stenographic minutes and published protocols from the proceedings of the Imperial Diet, as well as published materials from the preparation of *BGB* – it would still be an enrichment if the author would undertake broader archive research of this issue.

In the third chapter, the book analyses not only the legal state that occurred in Germany after the Weimar Constitution but, respectively, specialises in the analysis of a law from 12th April 1938 that changed the regulation of family law. Based on this law, the legal regulation of marriage impediments was softened. However, this legal state did not last long and Germany returned to its original regulation based on law n. 16 of The Allied Control Council from 20th February 1946. The author then again dealt extensively with the motivations of the Nazis for the new regulation of marriage impediments, where the relationship of the Nazi regime towards the Catholic Church and evangelical churches stands out the most.

The fourth and fifth chapters describe the same period of the second half of the 20th century, but both focus on different legal developments in East Germany and West Germany. In German Democratic Republic the reform of family law progresses in the spirit of Marxist ideals in a more revolutionary way. Radical abolition of the marriage impediment based on affines and sexual communion occurs already based on the Decree on Marriage and Divorce from 29th November 1955, while West Germany modernised its legal order much more carefully in the years 1976, or 1998. Resulting from the reception of West-German law after the unification of Germany, the East Germans were confronted with a much stricter regulation concerning the contracting of marriage.

[4] The relaxation based on the legislation of Joseph II. Was replaced by strict church authority in the matter of matrimony after the revolution of 1848 and the creation of concordat in 1855. For more see: Gregor et al. (2023, p. 149).

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The reviewed monograph represents an important contribution to the development of affine-based marriage impediments in the Middle European region. Concerning the topic, it can be considered an extremely original scientific endeavour. It is written in a light and captivating style not only concerning the formal view but also relating to the content that analyses attractive themes concerning a reader. We recommend the book in question to all interested in family law. Despite its legal-historical background, we are convinced that it will find full use and a positive response in legal practice as well.

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