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State Involvement in the Institution of Marriage in Serbia in the First Half of the Nineteenth Century

Aleksandra VULETIĆ

The institution of marriage in Serbia was under the jurisdiction of the Orthodox Church from the Late Middle Ages. The loss of the independent state and the imposition of the Ottoman rule in the fifteenth century contributed to the weakening of the influence of the Church. From the formal and legal point of view, the Ottoman state did not interfere in the matrimonial questions of the subjugated peoples: the state officials were not only prohibited from intruding into the domain of the Orthodox Church, but also enjoined to help the Orthodox clergymen in the performance of their duties.

The local representatives of the Ottoman state – officials and spahies – did not, however, always act in conformity with these instructions of the central authorities and they often compelled Orthodox priests to make decisions concerning marital issues which were not in harmony with the church canons. Their increasing meddling in the matrimonial affairs of the Christian subjects was facilitated by the growing impotence of the Porte to control its officials, particularly those in the peripheral provinces of the Empire, such as Serbia. Without the support of the state authorities, the power and influence of the Orthodox Church decreased increasingly. The

church discipline slackened as a result of frequent warfare and dislocation of the population: many areas were without a bishop for years, or were too remote from their bishop's seat, so that the ordering of many affairs which were under the jurisdiction of the bishops and the ecclesiastical courts - and this included the regulation of marital relations - was left to the people themselves and to the parish priests. In many cases not only laymen, but also the local priests, were ignorant of how certain matters should be regulated according to canonical norms, so they settled them as they deemed just or as it seemed conformable to the general opinion. A kind of customary law which evolved in these circumstances rose in time above the canonic laws regarding marital issues and, subsequently, the influence of the local community on the institution of marriage became more important than the influence of the Church.[1]

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The liberation from the Ottoman rule and the establishment of the Serbian state at the beginning of the nineteenth century marked a turning point in the development of the Serbian society. From the very beginning, the Serbian state sought to establish full control over all the segments of the society, including the institution of marriage. The first half of the nineteenth century saw the promulgation of a number of legal acts designed to eradicate backward marriage customs not sanctioned by the Church and various forms of abuse in marital relations. The institution of marriage continued to be under the jurisdiction of the Church, but the ecclesiastical authorities alone were not able to ensure the practical observance and implementation of the canonical rules. Therefore, the state sought to ensure and supervise their enforcement by its own legal provisions. In pursuing this policy, the state rose in time

above the Church and imposed itself as the supreme authority in matters concerning marriage.

One of the main objectives of the emergent Serbian state was to organize the country in accordance with the principles prevailing in the enlightened countries of Europe. Consequently, it began to issue regulations controlling marriage already in the period of the formation of the first state institutions, i.e. while the insurrection against the Ottoman rule was still in progress. These regulations emphasized the need for the eradication of backward folk customs which had become very common in the meantime, and which were not only at variance with the church provisions concerning marital issues, but also incompatible with the customs prevailing in the civilized world. The state authorities frequently stressed the need to follow the practice of the enlightened countries and to abandon obsolete customs, which, as an official document stated, "makes the Serbs the laughing stock of the whole world".[2]

The legal acts which the state passed emphasized its civilizing role in the development of the society and the need for the integration of Serbia into the system of enlightened European countries. It was, however, by no means easy to carry out that civilizing task and to achieve the integration of the country into civilized Europe.

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The first regulations against marital abuses were issued already in 1804 – in the first year of the insurrection against the Ottoman authorities.[3] The aim of these regulations was to suppress the abduction of girls – a traditional custom of contracting marriage which was rather common in the early nineteenth century. One of the laws proclaimed by the insurrection authorities in the liberated territory prescribed the

punishment for the kidnapping of girls already in its second article, immediately after the article concerning homicide:

> Whoever carries away a girl by force (as it occasionally happens, particularly during rebellions, when the administration of justice is disorganized), the bridegroom, the godfather and the best man are to run the gauntlet and the others involved are to be punished with bastinado.[4]

Abduction had been prohibited by law from as early as the Middle Ages, but the custom nevertheless persisted and survived into the period of the Ottoman rule.[5] This way of contracting marriage tended to become particularly frequent in the periods of upheavals and war, and, consequently, it was rather common in the time of the First Insurrection. Therefore, the regulation against the abduction of girls was re-enacted several times during the Insurrection, but in spite of that, the custom was not eradicated.[6] Abduction continued to be practiced by both the Turks and the Serbs even after the end of the insurrection period, for the disordered political circumstances in the country were conducive to its survival.

The greatest number of abductions took place in the areas bordering on the Ottoman Empire, where the abductors could easily escape with the girl across the frontier. Therefore, the Serbian authorities used cases of abduction by the Turks as a means of applying political pressure on the Ottoman authorities. In the years immediately following the successful conclusion of the insurrection period (1815), the legal position and the boundaries of Serbia within the Ottoman state were not precisely defined, and the Serbian authorities used, with considerable success, the abduction of girls and their carrying across the frontier to buttress their demands for the speeder and more efficient solution of these issues.[7] The stabilization

of the political conditions, and, particularly, the exodus of the Turkish population from Serbia and the settlement of the boundaries with the Ottoman Empire, contributed to the disappearance of the custom of abduction by the middle of the nineteenth century.

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The insurrection authorities also took measures to suppress some other usages not in harmony with the church regulations, such as the "bride purchase" custom or the voluntary dissolution of marriage. These customs were far more difficult to root out than abduction, as is testified by the repeated re-enactments of legal provisions aimed at their suppression during the greater part of the nineteenth century.

Already in 1818 – three years after the end of the Second Serbian Insurrection and the establishment of the first bodies of the new Serbian authority – a Marriage Law was promulgated which laid down detailed rules controlling marriage.[8] Since the custom of "bride purchase" was the most common marital abuse in that period, Prince Milo? Obrenoviæ stressed in the preamble to this Law:

> We find it beneficial and just finally to free this people, as much as the present circumstances permit, from the shameful and ignominious abuse of our daughters and sisters, for it happens that as soon as a girl is old enough to marry, her parents start thinking of the profit they can make thereby and earnestly seek to marry her into a well-to-do family, not in order to secure a good and carefree life for her, but only to sell the girl to their best advantage. As a result, we can see people selling their daughters and sisters like livestock from the fold, and by doing this the parents do not seek to breed love between the husband and wife, for what kind of contentment can a man have in his newly brought

> daughter-in-law, or the bridegroom in his bride, if he broods over his empty purse and the debts incurred in bringing her to his house. Our people do not seem to mind that this brings the Serbian name into discredit among the other Christian nations.[9]

The first article of the Marriage Law set a limit on the amount of money the girl's parents were allowed to ask from the bridegroom. The "bride purchase", characteristic of the peasant societies, was particularly common in Serbia because it was one of the rare countries in nineteenth century Europe in which men outnumbered women. The disproportion was the greatest in the first half of the nineteenth century, and it gradually decreased in the second half of the century, but men continued to outnumber women until the early twentieth century.

In the peasant communities, the woman was just as important an economic factor as the man was. She was even more valued, particularly when it came to arranging a marriage, because of the greater proportion of men. The money paid by the bridegroom to the girl's family is rather to be considered as the compensation for the loss of womanpower then for the trousseau which the bride brought to her new family, since the amount of money paid by the bridegroom exceeded the value of the trousseau. Besides, at the beginning of the nineteenth century it was not unusual for the bridegroom to pay for the trousseau as well.[10] Therefore, the second article of the Marriage Law laid it down that the bride's parents must not ask the bridegroom to buy clothes and jewelry for the bride, but their purchase should to be left to the will of the bridegroom, who would decide according to his wishes and means.

In spite of the regulations designed to prevent parental abuse when negotiating a marriage, the custom of "bride purchase" persisted. Parents often put off the marriage of their daughter

trying to obtain a better price for her and used her in the meantime as woman's labor in the household. Such procrastination sometimes resulted in the birth of children born out of wedlock, and that, in turn, led to the greater incidence of infanticide. The local authorities were therefore instructed to keep an eye on the families with girls of marriageable age and to take good care that parents did not delay unduly their marriage. Thus in 1827, the state found it necessary to warn the parents of girls again:

> Loose behavior and the consequent infanticide occur mostly because parents do not marry their sons and daughters in time and because no one can get married without considerable expense, which the parents exact from their future son-in-law for their daughter. If a girl guilty of the offence in question [i.e. killing a child born out of wedlock] had been asked in marriage, and if her parents had refused their consent for any reason other than kinship, the parents are to be punished more severely than the trespasser herself. Parents can avoid this ignominy and the greatest of sins if they marry their daughters in time and do not demand gifts from the bridegroom, as the still persisting pernicious custom requires.[11]

Instead of demanding money from the future son-in-law, the state recommended, the girl's parents should assist the newly wed couple, i.e. endow the girl with a dowry.[12] However, the institution of the dowry did not suit the peasant society and economy. Endowment of the girls became common only in the urban communities, since this was in conformity with the character of the urban economy, in which the woman did not play such an active role as in the rural communities.

Since the limitation of the amount of money the girl's parents were allowed to demand from the bridegroom yielded no results

in practice, a legal act from 1844 completely abolished the so-called "bride-price", i.e., payment for the girl, and the civil courts were instructed not to give legal recognition to contracts whereby the bridegroom undertook to pay a certain sum of money to the girl's family as the so-called "brotherly gift".[13] Neither this regulation was, however, easy to enforce, since parents found various devious ways of satisfying their financial appetites. Therefore the state authorities sought to prevent this abuse not only by legal acts, but also by offering guidance and advice, and the clergy and police officers were instructed to edify the people and dissuade them from the "bad and shameful custom of blackmailing girls". None of these measures was very effective, and the "bride purchase" custom survived into the second half of the nineteenth century, although it became less common.[14]

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Another traditional way of entering marriage which was widespread in nineteenth century Serbia was elopement. The reasons for elopement were various. In many cases elopement was caused by the "bride purchase" custom: the procrastination of the parents in marrying their daughter and the demand of a high "bride-price" made many a girl put an end to that awkward situation by eloping to the house of her sweetheart.[15] A further reason which contributed to the widespread practice of elopement was the refusal of the parents to give consent for the marriage of their children, so that running away was a way of putting pressure on them and confronting them with a *fait accomplis*.[16] This way of contracting marriage was chosen also by many people who wanted to avoid some legal obstacle for the intended marriage. The most frequent legal bar was kinship. According to the canons of the Orthodox Church, wedlock

was prohibited between relatives less than eight times removed. Moreover, the proscription applied not only to degrees of the blood relationship but also to kinship by marriage. In a peasant community, where there was little mobility of the population, it was sometimes difficult to find a suitable partner for marriage outside the prohibited range of kinship. Consequently, it frequently happened that a related boy and girl decided to start living together (in the majority of cases the relationship was distant and indirect), hoping that the ecclesiastical authorities would "dissolve" their kin ties.[17] It was also common for the parents themselves to persuade the girl to elope, for elopement provided a way of evading the heavy costs of normal marriage. Namely, the wedding ceremony with an "eloped" bride was usually curtailed, so that it did not put great expense on either party. [18] Besides, elopement could also be a question of prestige in the rural communities – having a girl run away to him was something of which each young man was proud.

The police were bound to intervene in all cases of elopement and to separate the young couple. If there were no legal obstacles for the contraction of marriage, the couple was charged to follow the usual church procedure for the wedding. Problems arose when there were legal bars to the marriage. In many cases of this kind, the parted couple came together again and resumed joint life. Some couples were forcibly separated several times and punished for disobedience, but, in spite of all the penalties, the state authorities were rarely successful in parting them for good.[19]

A frequent obstacle to the contraction of marriage was spiritual kinship. Unlike the range of relationship of blood or of marriage, the degrees of spiritual kinship recognized by the Church were not numerous. However, the ordinary people were much stricter in the observance of spiritual ties, and regarded

as bars to marriage much more distant degrees of spiritual kinship than the Orthodox Church. Consequently, there were instances of the refusal of parental consent for a marriage because of a degree or form of "spiritual kinship" not recognized by the church canons. It is significant that the ecclesiastical and state authorities, too, were reluctant to issue the marriage license in such cases. The local clergymen and officials were instructed to sound out the opinion of the local community in such matters. If such a marriage was inadmissible according to the views of the community, both ecclesiastical and state authorities sought to dissuade the couple from entering wedlock, even if there were no legal bars for the marriage. As a result of this complicated system of forbidden and allowed degrees of kinship, which not only laymen, but also many parish priests were insufficiently acquainted with, the state authorities tended to comply with the opinion of the rural community where the alleged "spiritual relationship" was concerned. This was due to fear of the authorities that the issue of a marriage license in such cases could only cause even greater confusion in conceiving of the system of kinship and, subsequently, the fear that it could provoke the swelling of the already large number of applications for the contraction of marriage between couples within canonically forbidden degrees of kinship.[20]

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According to church canons, the conditions for the contraction of marriage were the freely expressed will of the bride and the bridegroom and the blessing of their parents. It frequently happened, however, that parental consent was the decisive factor in effecting a marriage. Therefore an act passed as early as 1818 enjoined parents

> not to force the girl to marry a man she does not love, and also not to prevent a man from taking in marriage the girl he loves, because such a biased attitude has many evil consequences for young men and girls, and the parents who act in this manner may be called the murderers of their children.[21]

Consequently, the state sought to limit parental authority and to leave the choice of the spouse to young men and girls. Since parental consent was indispensable for the contraction of marriage according to canonical regulations, the couple whose parents persisted in refusing their approval could apply for a civil court certificate that there were no legal bars to their marriage, which enabled them to marry even without the consent of their parents.[22]

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Voluntary dissolution of marriage was another custom which the state sought to suppress. During the Ottoman rule it had become possible for married couples to separate before the village chief, the parish priest and the village council, after which they could contract a new marriage based on the consent of their community and without the knowledge of the superior ecclesiastical authorities. A factor which contributed to the establishment of this custom was the example of the dissolution of Muslim marriages among the Turks. The people regarded such divorces without canonical recognition as fully justified, since social and economic constraints were in their view sufficient ground for them. As for the church regulations, they did not pay any regard to them, and many did not even know what their purport was.[23]

Therefore one of the first legal acts of the insurrection authorities prohibited the voluntary dissolution of marriage. The prohibition was repeated several times in various legal regulations in the course of the nineteenth century. Thus a decree issued by Prince Milo? in 1827 authorized "the spiritual authorities to anathematize and excommunicate the wife or husband who deserts or drives away his or her lawful spouse without church permission, and continues to live out of wedlock with another person."[24]

The voluntary dissolution of marriage was frequently followed by the formation of a new, non-legitimate marital union. Cohabitation outside marriage was practiced not only by those who could not enter a new marriage according to the church regulations because of a non-legitimate divorce, but also by numerous widowed persons who were bared from re-marrying.[25] According to the church regulations, a person was allowed to marry three or, in exceptional cases, four times. As the mortality rate of the population was high, the number of widowed persons who were forbidden to re-marry was very great, and they included many fairly young people, aged between thirty and forty, and sometimes even younger. A peasant household was difficult to run without a spouse, so that many widowed persons forbidden to re-marry opted for cohabitation outside wedlock.

In spite of the numerous acts aimed at suppressing both voluntary dissolution of marriage and cohabitation outside wedlock, the state was not able to eradicate them. The police were ordered to bring together again the couples who had split up voluntarily. In a great number of cases, however, the parties brought together under coercion parted again, and many of them could not be dissuaded by any threats or penalties from their intention to leave their spouse for good. Unmarried

cohabitants presented a similar problem: the police were charged to compel them to part, but many of these couples came together again. Wishing to suppress extramarital cohabitation, the state launched several extensive campaigns throughout its territory for the detection and compulsory separation of unmarried couples. All these actions had scant success. Neither corporal punishment, nor imprisonment, nor repeated compulsory partings were of any avail, for once separated, the couple would come together again, arguing that separate life was impossible for them. In all these cases private reason proved stronger than state coercion.

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Of all the marriage customs which are discussed above and which the state sought to suppress, only the abduction of girls disappeared by the middle of the nineteenth century. It was the most retrograde of all ways of contracting marriage, and the Serbian society discarded it at that stage of its development. The other customs – "bride-purchase", elopement, voluntary divorce and cohabitation outside marriage - persisted tenaciously in spite of all the efforts by the state to eradicate them. Marriage customs could be neither abolished nor imposed "from above" by legal acts and decrees. Depending as they did on the prevailing social conditions, they could be changed only as these conditions changed, and that process took time.

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Although they professedly insisted on the observance of the marriage regulations, the state authorities often violated them in practice, particularly during the reign of Prince Milo? Obrenović (1815-1839). The Prince's autocratic

high-handedness was apparent in the domain of marriage regulations, too. Publicly, he declared himself a guardian and advocate of the church canons, but he himself frequently disregarded them, ordering the ecclesiastical authorities what decisions to make – e.g., to join a couple in wedlock or to dissolve a marriage – even when such decisions contravened the church regulations.

In practice, he often abandoned his role of the enlightened ruler and acted like the chief of a traditional community. He interrogated himself the parties in marital cases and adjudicated their disputes, sending afterwards his verdicts to the ecclesiastical authorities for formal confirmation. No official dared marry without his goodwill and permission; he himself would often help in finding a suitable mate for his subordinates, and his recommendation was, understandably, difficult to ignore.[26]

After Prince Milo?'s abdication the new authorities no longer interfered directly in marital questions, but they continued to pass regulations concerning the institution of marriage. In addition to trying to suppress unenlightened marriage customs, they took steps to regulate the position of the marriage partners. That was done by the Civil Code which was promulgated in 1844.

The Serbian state wanted to base its civil legislation on the legal principles in use in the enlightened countries of Europe, although some legal experts were of the opinion that Serbia had not reached a sufficiently advanced stage of development to be regulated by the laws of a developed country. After an abortive attempt to found its civil law legislation on the French model, the state turned to neighboring Austria. Thus the Serbian Civil Code represented an abridged version o the Austrian Civil Code from 1811.[27]

The positions of the husband and wife in marital relations were defined after the Austrian model. Thus Articles 109 and 110 formally recognized the dominant position of the husband in marital relations, i.e. the subordinated role of the wife. The idea of the dominance of the husband over the wife was a common feature of the Family Law in the majority of the European states of the time. The idea was, however, of a moral rather than formal and legal character, since it did not have any explicit legal repercussions on the position of the wife. The only two points on which the Serbian and the Austrian Civil Codes differed substantially concerned the legal position of the married woman and the exclusion of women from the right of inheritance. The Serbian legislator deprived the wife of the right to work: it was laid down that she could enter no employment without her husband's consent, so that she was restrained in her public rights. Besides, the law contained a provision whereby male children excluded female children from the right of inheritance. This provision, too, was without a counterpart in the Austrian Code and it was taken over from the Serbian customary law.

The legislators were long in doubt concerning these provisions, since they had to make the difficult choice between the customs deeply ingrained in the life of the people and the principles of modern legislation. The view prevailed, however, that in this case a departure from the customary law would provoke great discontent and could not be implemented. In the second half of the nineteenth century the provisions concerning the exclusion of female children from the right of inheritance were partly mitigated, but the inequality of gender persisted.[28]

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While the efforts of the state to extirpate some old marriage customs and to impose new ones were either inefficient or achieved the intended effect at a much slower rate than the state desired, some of the state regulations controlling gender relations became gradually obsolete or proved incompatible with the new social conditions, and therefore created problems in practice. For example, Article 121 of the Civil Code laid down that a married woman could not enter state employment without her husband's consent. However, the law did not provide for the right of the husband to demand his wife's dismissal, since there were hardly any cases of this kind at the time of the drawing up of the Code. In the second half of the nineteenth century there was a certain number of women who had entered employment with their husband's consent and whose husbands wanted to withhold their permission later, but there were no legal grounds for such an action.[29] In many respects the development of the society lagged behind the development of the legislation, but in this particular instance the opposite was the case, and legal regulation and social practice were shown to be at variance again.

NOTES

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2 NOVAKOVIC, S., *Ustavno pitanje i zakoni Karadjordjeva vremena. Studija o postanju i razvicu vrhovne i sredisnje vlasti u Srbiji 1805-1811,* Belgrade 1907, p. 135. See also: Archive of Serbia, File "Knjazeska kancelarija" (AS, KK), XXXV/51, f. 425.

3 PAPAZOGLU, D., *Krivicno pravo i pravosudje u Srbiji 1804-1813,* Belgrade, 1954, pp. 143-144.

4 *Ibidem.*

5 GRUJIC, R. M., *Matrimonialia*, 10.

6 *Delovodni protokol Karadjordja Petrovica*, No 896, 897, Kragujevac-Topola 1988, pp. 63-64; "Protokol Sabackog magistrata od 1808 do 1812 godine", No 695, p. 717, *Glasnik SUD,* 1868, pp. 168, 175.

7 AS, KK, XI/26; XII/650, 654, 655, 656, 657, 658, 660, 679, 694; XIV/840, 1159, 2098; XXXI/404, XXXII/52.

8 AS, KK, XIV/438.

9 *Ibidem.*

10 AS, KK, XXXII/32.

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12 AS, KK, XIV/438.

13 "Zbornik zakona i uredaba u Knjazestvu Srbiji", IV, 1849, pp. 184-185; V, 1853, 20; VI, 1853, p. 226.

14 AS, File "Ministarstvo unutrasnjih dela, Policajno odeljenje" (MUD-P), 1851/IX-783.

15 AS, File "Mitropolija beogradska" (MB), 1848/5; AS, File "Kragujevacki sud", 1826/98, 1827/508.

16 AS, KK, XIV/1736, 1834, 1907; XXXI/304; AS, MB, Nesredjena gradja 1832.

17 AS, MUD-P, 1840/II-7; AS, MB, 1838/33; 1840/725, 1841/187, 188, 189; 1845/52, 90, 209, 737; 1847/745, 746.

[18] MILICEVIC, M. Dj., *Zivot Srba seljaka,* Belgrade, 1894, p. 219.

[19] AS, MB, 1846/437, 438, 549.

[20] AS, MB, 1838/220, 221; 1839/15, 16; 1840/616; 1841/17; 1843/132, 668; 1844/1024; 1846/48, 49, 454, 486; 1856/5; 1858/256.

[21] AS, KK, XIV/438.

[22] "Novine Srpske", 47, 1834; AS, MB, 1846/414.

[23] GRUJIC, R. M., *Matrimonialia,* pp. 10-13.

[24] PETROVIC, M., *Finansije i ustanove obnovljene Srbije do 1842,* I, Belgrade, 1898, p. 600.

[25] AS, File "Ministarstvo prosvete" (MPs), 1839/310, 1840/42, 67, 120, 152; 1841/I-1, 1841/V-6; AS, MB 1846/633, 735, 1848/687; AS, "Kragujevacki sud", 1840/334.

[26] AS, ÊÊ, IV/307; XII/618, 622; XIV/98, 2147; XXII/80; XXV/92; XXVII/133, 136; XXXI/405; XXXV/67; XXXVII/52, 638, 1733.

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[28] *Ibidem.*

[29] AS, MPs, 1863/III-325, VIII-1517; 1864/VIII-1275; 1866/V-1044.

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