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DISINHERITING THE JET SET?

INTRODUCTION - r.r.g.

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INHERITANCE LAW, by George C. Guins (Soviet Law and Soviet Society, Chapter XI, 1954)

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The new class appears to be suspected in the Kremlin of being both too prosperous individually and too acquisitive as a whole. That is the conclusion suggested by a most unusual article in Literature and Life (7 June 1959) which debates inheritance, in a manner highly unfavorable to the whole idea.

The crux of the argument is summed up by a "people's assessor" in whose opinion "according to Soviet conceptions, an estate should go to the nation." But Soviet law at present lays down that heirs may inherit an estate of any size on conditions far more favorable than those prevailing in many capitalist countries.<sup>1</sup> Although this has been the position for the last sixteen years (the scaled inheritance tax of up to 90% was abolished in 1943), Literature and Life now quotes a worker as having discovered that:

"the laws on inheritance encourage private property tendencies."

This massive understatement describes a position which is clearly incompatible with a would-be Leninist society. It was Lenin who said that: "there is nothing private in the USSR; everything is public,"<sup>2</sup> and obviously Khrushchev wishes that his predecessor had been somewhere near the truth. It was Khrushchev who repudiated his own Government's bonds in April 1957, and it is Khrushchev who is now trying to persuade the Kolkhozy that their indivisible funds are mysteriously becoming state property. But in the case of inheritance, the Kremlin's memory seems to be betraying it. What it now proposes is a return to something like the decree of April 1918 which limited inheritance to ten thousand gold rubles. In 1926, at the height of the NEP, this restriction was lifted, and the new class is already so classy (if no longer so very new) that

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1. The Government collects a fee of up to 10% maximum for issuing an inheritance certificate. See Appendix below, p. 2.
  2. See p. 3 of Appendix below.

a recent inheritance case in Ivanovo was fought over no less than 500,000 roubles. As the Soviet newspaper puts it:

"Would the heir to such a sum<sup>3</sup> work or acquire a qualification when the interest alone from the savings bank amounts to 15,000<sup>4</sup> rubles a year? Would work, for such an heir, be an organic necessity?"

Assuming the answer "no" to the latter rhetorical question, it is worth reminding these neo-Leninists why the 1926 law abolished the 10,000 ruble limit in the first place. The change was not only due to the urgent need for investment in industry and commerce arising out of the NEP, but also, as the Minister of Justice pointed out at the time, to the fact that it was difficult, if not impossible, to enforce the restriction.<sup>5</sup> Property owners simply presented their worldly goods to their offspring before death, as is now a common practice in Great Britain, where death duties have for many years been fixed at a penal level.

This obvious practical difficulty appears not yet to have occurred to those organizing the new press debate, so a return to 1918, however desirable it may appear to Khrushchev on equalitarian or demagogic grounds, is somewhat improbable. Moreover, the resistance of the new class can be relied upon to be rapid, widespread and highly influential. The jet set, needless to say, will be angry to a degree verging on flash-point, though its influence on the régime is probably fairly marginal. To grow up as the heirs of Stalin, only to be threatened with disinheritance under Khrushchev, must disturb the equanimity of both the communists and the "parasites" among them. The masses, of course, will remain disinterested spectators of the struggle. After all, they have no property worth leaving.

r.r.g.

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An example of how the disinheritance proposal could be applied is provided by the case of a Soviet patriot who recently became heir to a French textile manufacturer's estate.

"I shall accept the inheritance," he said, "but I do not wish to live as a parasite and shall transfer my right to the property to the Soviet state."

For the more compelling pragmatic reasons underlying this noble action, see the penultimate paragraph of the Appendix (p. 5 below).

3. The author understandably avoids the use of the word 'fortune'.

4. About double the income of an average worker.

5. See J.N. Hazard, Law and Social Change in the USSR, Stevens and Sons, Ltd, London, 1953, p. 30.



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## INHERITANCE LAW

Soviet Law and Soviet Society  
George C. Guins  
1954 (Chapter XI)

The development of Soviet law furnishes new evidence that inheritance is a natural and ineradicable institution.

In fact inheritance law, which means the right to designate successors to one's property after death, as well as the right to succeed to property of one's family, is a custom as inherent in human psychology as the right of property itself. It is also indissolubly connected with freedom of contracts and the institution of the family. The right over property loses its effect unless the owner can dispose of it, either in form of contract, or by making a will before death. On the other hand, family ties and the authority of parents are stronger if they are supported by the right of succession to parents' property.

The significant functions of inheritance law are revealed by various theories explaining its origin and essence.

### Soviet Laws of Inheritance

Following the most radical tendencies, the Soviet government originally abolished inheritance rights 'with the purpose of exterminating individualistic proprietary instincts.'<sup>2</sup> As one of the Soviet law-makers of that period explained 'private property was thus transformed into no more than a lifetime possession; an estate remains attached to a certain person not longer than the term of his life.'<sup>3</sup>

However, even the first Soviet anti-inheritance law did not abrogate inheritance completely. Nearest relatives were permitted to receive small estates not exceeding 10,000 rubles in value if they lived with the deceased, or to get for self-support a part of an estate exceeding 10,000 rubles in value.<sup>4</sup> This right was interpreted not as a universal succession but rather as a form of support necessary because of the lack of organized social security. It was originally taken for granted that the state would replace individual heirs and take all private estates under control. However, after the nationalization of all the land, industrial enterprises, banks, etc. and the nationalization of trade, there were no longer any estates of large size which could be inherited by private persons. Nor was the state interested in collecting the personal property of the rank and file, the instruments of craftsmen, and the implements, domestic animals and poultry of the peasants. The sum 10,000 rubles had but a minimal significance because of inflation, but the state was unable in practice to appropriate

the more valuable estates. Little could be done without specialized personnel. In the absence of relatives, the neighbors usually plundered the estate of a deceased person. In fact, during the period of War Communism, the Soviet state did not include in its budget any revenue from the escheat of estates.<sup>5</sup>

During the period of the NEP, inheritance was re-established. The Civil Code introduced succession both by the operation of law (ab intestato) and by will (ex testamento), but with essential restrictions concerning the persons who could succeed and the size of the estate which could be inherited.<sup>6</sup> The circle of heirs was limited to the direct descendants of the decedent, the surviving spouse and disabled and propertyless persons who were his actual dependents for not less than a year before his death. The size of the estate was limited again to 10,000 rubles, an amount which was acknowledged as the average value of an estate which a private person could possess in general.

In the further development of inheritance law in the Soviet Union, the above restrictions were gradually abolished. By the amendment of February 15, 1926, the limitation of the inheritance to 10,000 rubles was abrogated. This reform took place during the NEP and was motivated by the need to encourage investment in industrial and commercial enterprises.<sup>7</sup> Later, in order to encourage investment in government bonds and deposits in government banks, freedom of testament was established for bonds and deposits. There were no limitations either on the amount which could be transmitted or the persons to whom they could be transmitted.<sup>8</sup>

However, the most important reforms concerning inheritance were made during World War II. In 1943, the inheritance tax was abolished. Heirs were required to pay only a special fee for the issuance of inheritance certificates. The scale of the fee became progressive. Its highest rate became 10 per cent, while the progressive inheritance tax abolished in 1943 reached up to 90 per cent of the value of the estate.

The ukase of the Supreme Soviet of March 21, 1945, <sup>9</sup> added to the circle of potential heirs the disabled parents of the deceased, regardless of whether or not they had been his dependents. In the absence of heirs of the first class, namely offspring, the spouse, parents and actual dependents, the law established as heirs of the second class able-bodied parents, and as heirs of the third class, brothers and sisters. Thus the circle of potential intestate heirs has been essentially enlarged. At the same time there is more choice for the testator, who may, at his discretion, bequeath his estate in whole or in part to any of the potential intestate heirs. He cannot however 'deprive his minor children or other heirs who are unable to earn of the share which would belong to them under intestate succession.' If there are no surviving intestate heirs of the first three classes, the same law also gave to the testator the right to leave his estate to any other person.<sup>10</sup>

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Thus the new law on inheritance protects mostly the interests of the members of the family, but it also establishes greater



peasant households. Members of a family living together are supposed to cooperate and contribute common pooling of wealth. After the death of the head of the family, everything remains in the possession of the surviving members.

It appears then that it is only the upper strata of Soviet society, with their own dwellings and country houses, luxury objects and deposits, who are in fact interested in the provisions of the inheritance law, and it has been to their advantage to be freed from progressive inheritance taxes, to have a larger circle of heirs, the right of free disposal of bonds and deposits, and some discretion in the disposal of other property. However, as was noted above, Soviet law limits freedom of testament even for them, in order to insure support for their children and disabled members of the family who were their dependents at least a year before death.<sup>16</sup> In addition, those heirs living apart from the deceased, who do not claim their inheritance within six months, lose their right to the inheritance. Here again one notices a tendency to leave the estate in the hands of people living together and connected by the same economic interests.

Even if inheritance law is largely adapted to the interests of the upper classes, as in bourgeois countries, it does not mean that inheritance in the Soviet Union remains uncontrolled. That is hardly possible in a country where everybody is dependent upon the state; the Soviet government cannot be indifferent as to who is inheriting a fortune and how he is disposing of it. Wills and donations in an amount exceeding 1,000 rubles must be concluded in written form and certified by a notary. Inasmuch as the Soviet notariate is a governmental institution, the government is always informed as to how an estate is being distributed. The government is similarly informed on the disposal of bonds, and deposits in state banks.

As we have seen, the provisions of the recent Soviet laws on inheritance are adapted mostly to the interests of the upper strata of the population, but the general principle in Soviet inheritance law of encouraging cooperation among the members of a family and strengthening family ties is pertinent to all classes. Not less important is the new system of inheritance for the interests of the state itself.

The Soviet state abolished several restrictions in the original inheritance law in behalf of its own interests, as well as the interests of individual citizens. From the beginning, it became clear that the state itself was unable to organize universal social security. Inheritance is the best substitute for social security, since every one does his best not to leave his family without any means of subsistence. At the same time the working and saving done for this purpose aids the government economically.

'There is nothing private in the Soviet Union; everything is public,' said Lenin. Everything in Soviet law must

therefore be interpreted from the point of view of the interests of the socialist state. Even some secondary provisions of Soviet inheritance law are not insignificant from this point of view, as is illustrated by the following example.

According to the principles of private international law, foreign citizens may inherit the property of their relatives in the Soviet Union and vice-versa. There are only a few Russian emigrés whose relatives in the Soviet Union still possess some property, but they cannot realize their inheritance right because of the lack of notification, the irregularity of correspondence, if any, and the very short preclusive term of six months. If they are accidentally informed of the death of one of their parents or relatives, the short term has usually expired. On the other hand, Soviet citizens may inherit the property of their relatives abroad, where the terms are not short and protective measures are applied until the proper heirs are uncovered. The foreign currency thus collected under the supervision of Soviet consulates does not go directly to the Soviet heirs. Instead the State Bank pays them 'the corresponding equivalent in Soviet currency, after having deducted the established taxes and dues as determined by a competent tax-assessing office.'<sup>17</sup> In other words, they receive depreciated Soviet currency with a minimum of buying power, converted at such artificially established rates as four rubles to the American dollar. The real heir is thus the Soviet state. No wonder an inheritance tax under such conditions is quite superfluous and the Soviet government generously does not assess it upon property situated outside the U.S.S.R.<sup>18</sup>

The following conclusions may be drawn from the study of Soviet inheritance law. First, Soviet inheritance law rests as everywhere on the natural human attachment to the family; secondly, it encourages the upper strata of the population to accumulate wealth; and thirdly, as everywhere, it is designed to profit the nation no less than the individual. As has already been pointed out, it also assists in stabilizing the new social stratification. Succession to the estates of peasants and craftsmen, as it is regulated by Soviet inheritance law, insures the state that the members of these social groups will continue to exercise their present social functions. Succession to the estates of the new upper class insures its members the continuance of their dominating position. There are no iron-clad guarantees for the stability of individual members of the upper class, but the class, if any, is likely to continue regardless of the fate of individual members, and the existing inheritance law will contribute to its continuance.



2 Decree of April 27, 1918 (Collection of Laws, 1918, No. 34). See also A. Goikhbarg, Brachnoe, semeinoe i opekunskoe pravo (Moscow 1920), pp. 94-95.

3 A. Goikhbarg, Khoziaistvennoe pravo R.S.F.S.R., vol. I (Moscow 1923), p. 177.

4 Art. 9 of the Decree of April 27, 1918.

5 See A. Goikhbarg, op. cit., I, P. 176; also Freund, Ostrecht (1926), IV, p. 433.

6 Arts. 416-418 of the Civil Code.

7 Correspondingly Art. 417 of the Civil Code was repealed. This reform followed the decision of the Soviet government 'to aid the continued existence of commercial and industrial enterprises after the decease of their owners.' Quoted by Gsovski, I, p. 628. The motivation of the law lost its significance with the abolition of the NEP, but the former limit was never reestablished.

8 Article 436, added to the Civil Code in 1935. The full text has been translated by Gsovski, II, pp. 234-235.

9 Vedomosti Verkhovnogo Soveta, No. 15, March 21, 1945.

10 Article 422 of the Civil Code, as amended on June 12, 1945. Children born out of wedlock have no right of inheritance (Ukase of July 8, 1944).

11 Article 425 of the Civil Code.

12 There is a discrepancy in the legal terminology of Arts. 429 and 430 of the Civil Code. See Gsovski's comment, I, pp. 642-643.

13 Arts. 431, 433 of the Civil Code.

14 Low wages and high commodity prices furnish the best evidence of the income level available to the average man. See Izvestia, March 1, 1950.

15 Art. 421 of the Civil Code: '...those who have lived together with the decedent shall inherit property belonging to the usual household effects and furnishings (except objects of luxury) over and above the shares in the estate due them...'

16 This provision (Article 418) corresponds to similar provisions in other countries protecting the interests of children and limiting disinheritance.

17 See the full text in Gsovski, I, p. 630.

18 USSR Laws, 1933, text 349; cited by Gsovski, I, p. 628, note 26.