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FRANCES FOSTER-SIMONS

## The Development of Inheritance Law in the Soviet Union and the People's Republic of China

In 1848, Karl Marx proclaimed that the communist revolution would effect the "abolition of all right of inheritance."<sup>1</sup> Inheritance runs counter to the basic tenets of communism. By facilitating private accumulation and distribution of wealth, it perpetuates the social inequalities characteristic of bourgeois capitalism as criticized by Marxism, Leninism, and Mao Zedong Thought alike.<sup>2</sup> Yet, in nearly all of today's communist party states, the right of inheritance has been enshrined in national constitutions.<sup>3</sup> In addition, complex statutory provisions,<sup>4</sup> case law,<sup>5</sup> and legal institutions<sup>6</sup> have been developed to guarantee this protected status and administer devolution of private personal property.

This paper proposes to examine the persistence of inheritance in communist countries in the face of its fundamental incompatibility with official state ideology. There will be a direct comparison of the blueprint originally outlined by Marx with the Soviet and Chinese experiences. The paper will argue that despite these nations' distinct legal traditions and variant doctrinal interpretations, there are striking parallels in the course of their inheritance laws. These will be discussed in terms of a three-stage process of survival, insti-

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1. Marx, "Manifesto of the Communist Party" (1848), in Tucker (ed.), *The Marx-Engels Reader* 335, 352 (1972).

2. The institution of inheritance has been severely criticized by proponents of capitalism, as well as communism. Two notable figures were Andrew Carnegie and Theodore Roosevelt. See generally, Clark, Lusky & Murphy, *Gratuitous Transfers* 2-4 (2d ed. 1977).

3. See, e.g., Constitution of the People's Republic of Albania, art. 50, in 3 *Rev. Soc. Law* 227, 237 (1977): "Citizens enjoy the right to personal property. The right of inheritance is regulated by law."

4. See, e.g., Czechoslovakian Civil Code, §§ 460-87 (1964), in 5 *Bull. Czech. L.* 131-36 (1964).

5. See, e.g., Estate of Rogozhina, *Sovetskaiia Iustitsiia* ("Sov. Iust."), no. 13, 27 (1960).

6. Some examples include probate courts [see, e.g., Szirmai (ed.), 5 *Law in Eastern Europe* 266-69 (1961) (Yugoslav system)], notaries [see, e.g., id. at 241 (role of notaries in Rumania)], administrative authorities responsible for the inventory and taxation of the estate [see, e.g., id. at 175-78 (Hungarian law)], and custodians (see, e.g., Tay, "The Law of Inheritance in the New Russian Civil Code of 1964," 17 *Int'l. & Comp. L.Q.* 472, 491-92 (1968) (Soviet system)].

tutionalization, and expansion. Finally, the paper will use the inheritance example to illustrate two important features of communist statecraft and law—the accommodation of ideological precepts to practical governmental imperatives and the melding of customary and statutory law in a single legal framework as a response to the recognized failure of national ideology and law to penetrate to the lowest levels of society.

### THE MARXIST INHERITANCE SCHEME

As apologists for current communist inheritance laws have been quick to remark,<sup>7</sup> Karl Marx's basic views regarding inheritance were not those suggested by the 1848 *Communist Manifesto*. Although Marx did indeed envision eventual disappearance of inheritance under communism, he believed that its abolition immediately subsequent to a successful communist revolution would be economically ineffective at best and politically disastrous at worst.

The proposition that social revolution should commence with abolition of the right of inheritance was first set forth by St. Simon in 1830. It became a major issue of contention between Marx and the Russian revolutionary anarchist, Bakunin, a clash that was to dominate radical politics of the 1860s and 1870s. Some commentators have even attributed the collapse of the International Working Men's Association (the "First International") in large part to the Marx-Bakunin split.<sup>8</sup>

Marx's first argument against the "old Saint-Simon panacea"<sup>9</sup> was that it was theoretically unsound. It was built on the faulty premise that "actual jurisprudence [is] the basis of our economical state" rather than correctly viewing "our economic order [as] the basis and source of our jurisprudence."<sup>10</sup> To Marx, inheritance was the effect, not the cause of the existing economic and social apparatuses.<sup>11</sup> Accordingly, abolition of inheritance would not be suitable until there had been a complete transformation of economic and so-

7. See, e.g., Nikitiuk, "Nasledovanie i Okhrana Interesov Semyi" (Inheritance and Protection of Family Interests), 7 *Sovetskoe Gosudarstvo i Pravo* ("Sov. Gos. i Pravo"), 35 (1974); Chen & Zhang, "Zhengque Renshi Wo Guo Jicheng Zhidu de Xingzhen Jiqi he Jixu Cunzai de Biyao Xing" (A Correct Understanding of the Character and Necessary Continued Existence of our Country's Inheritance System), *Faxue Yanjiu* (Legal Research), no. 4, 11, 12 (1980).

8. See Padover's introduction to 3 *The Karl Marx Library* xl (1973).

9. Marx, "Marginal Remarks on the Program and Rules of Bakunin's International Alliance of Socialist Democracy (1868)," in id. at 158. In an 1870 letter written in English to Paul and Laura Lafargue, Marx resorted to French to denigrate the Bakunin proposal for immediate abolition of inheritance: "vieillesse St. Simoniste, dont le charlatan et l'ignoramus Bakunin se faisait l'editeur responsable." Id. at 505.

10. Id.

11. See, e.g., Marx, "Report of the General Council on the Right of Inheritance" (2-3 August 1869), in id. at 110-11.

cial relations. Once the state had appropriated land, ended private ownership of the means of production, and socialized the means of labor, the right of inheritance would "disappear of itself."<sup>12</sup> Until these changes had been effected, however, each man must retain the ability to provide for his dependents after his death through the vehicle of inheritance.<sup>13</sup>

Marx considered the most likely consequence of immediate abolition of inheritance to be the end of the social revolution, rather than its beginning. Such a measure by "offend[ing]" and "irritat[ing]"<sup>14</sup> the peasantry, could become a rallying point for a powerful counterrevolutionary union of the peasant and petit bourgeois classes<sup>15</sup> against a newly-installed communist regime.<sup>16</sup>

According to Marx, the more successful governmental strategy would be to adopt an initial attitude of tolerance vis-à-vis existing inheritance patterns. Only two specified "transitory" reforms should be instituted—the expansion of inheritance duties for purposes of funding social emancipation, and the limitation of rights of testation.<sup>17</sup> The main focus of governmental activity should be on accomplishing an overall economic, social, and political transformation of society. The result would be a gradual erosion of the category of property available for private post mortem distribution, followed by the inevitable withering away of the institution of inheritance itself.<sup>18</sup>

#### THE COURSE OF INHERITANCE LAW IN THE SOVIET UNION AND CHINA

The Union of Soviet Socialist Republics (the "U.S.S.R.") and the People's Republic of China (the "P.R.C.") have diverged widely from the path forecast by Karl Marx. In both nations, the dominant pattern has been one of extension, rather than disappearance, of inheritance law. The growth of inheritance has been accomplished in the three stages of survival, institutionalization, and expansion.

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12. See Minutes of the General Council, 20 July 1869, in id. at 109.

13. Id.

14. Id.

15. There could also be strong opposition from the aristocratic class. Marx predicted that abolition in England of the right of inheritance and the hereditary functions associated with it could be accomplished only upon the death of "15,000 lords and 15,000 ladies." Id. at 108.

16. Letter to Paul and Laura Lafargue, *supra* n. 9 at 505.

17. See "Report of the General Council . . .," *supra* n. 11 at 111-12. For a general discussion of testamentary succession, see Marx's 1861 letter to Ferdinand Lassalle, in Padover (ed.), 7 *The Karl Marx Library* 99-100 (1977).

18. See Minutes of the General Council, *supra* n. 12 at 108-09.

### A. *Survival*

#### The Soviet Union<sup>19</sup>

Within four months of assuming power, the Soviet regime officially abolished the right of inheritance. According to the 1918 R.S.F.S.R. Central Executive Committee's "Decree on the Repeal of Inheritance," "testate and intestate succession are repealed. Following the death of the owner, property belonging to him (both movable and immovable) becomes the property of the Russian Socialist Federated Soviet Republic."<sup>20</sup> A similar prohibition against inheritance was issued for the Ukrainian Republic.<sup>21</sup> Contemporary jurists viewed these decrees as "annul[ing] altogether the entire institution of succession as such, leaving nothing of this institution in any respect, nor any part thereof."<sup>22</sup>

In conformity with the Marxist model, however, these measures actually did not abrogate inheritance law altogether. Despite the uncompromising language of its opening clause, the R.S.F.S.R. Decree of 1918 expressly permitted the continued succession of "close relatives"<sup>23</sup> of the deceased in certain specified cases. An estate was eligible for this exception if its value did not exceed 10,000 rubles, or it consisted primarily of "a farmhouse, domestic furniture and means of economic production by work, in either city or village."<sup>24</sup> An even more striking exemption appeared in Article 4 of the Decree, which authorized propertyless and disabled close relatives to take from an estate exceeding the 10,000 ruble limitation a sum sufficient for self-support. This exception was to remain in effect "until a decree for universal social insurance is issued."<sup>25</sup>

On 21 May 1919, an official interpretation of the 1918 Decree was published. Under this Commissariat for Justice Decree, the 10,000 ruble ceiling was deemed inapplicable to "workers' households." Any such estate was to pass automatically to the surviving spouse and close relatives resident in the household.<sup>26</sup>

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19. The following review of the historical development of inheritance law in the U.S.S.R. is substantially similar to earlier descriptions contained in Gsovski, Hazard, Szirmai, Tay and other cited works. A thorough survey of the recent literature, including Soviet publications, indicates that their expositions are still valid.

20. Decree of 14 April 1918, art. 1, *Sobranie Uzakonenii i Rasporiazhenii Rabocheho i Krestyanskogo Pravitelstva RSFSR* ("S.U. RSFSR") no. 34, art. 456; 2 *Dekrety Sovetskoi Vlasti* 187-190 (1959).

21. Law of 11 March 1919, S.U. RSFSR, no. 24, art. 268.

22. Goikhbarg, 1 *Khoziaistvennoe Pravo R.S.F.S.R.* (Economic Law of the R.S.F.S.R.) 176 (1st ed. 1923).

23. "Close relatives" were defined by Art. 9 to include the deceased's direct descendants and ascendants, full and half brothers and sisters, and surviving spouse who had lived with him.

24. Decree of 14 April 1918, art. 9.

25. *Id.* at art. 4.

26. S.U. RSFSR, no. 20, art. 242.

Thus, at least a limited form of inheritance survived the Russian Revolution of 1917. Although Soviet commentators have strongly denied that the Decrees of 1918-19 introduced succession rights,<sup>27</sup> the more persuasive view is that these laws represented a "tacit recognition of the peasant customary law of succession."<sup>28</sup> The property which devolved upon close relatives of the deceased in accordance with the Decree provisions, was officially denominated "inheritance" in several administrative and judicial rulings of this period of Militant Communism.<sup>29</sup> Moreover, evidence suggests that few attempts were made by Soviet authorities to enforce the provisions of the inheritance repeal measures.<sup>30</sup> Most Soviet jurists are agreed, however, that the Civil Code of 1922 began the process of institutionalizing inheritance in the U.S.S.R.<sup>31</sup>

### China

In contrast to the Soviet case, no immediate abolition of inheritance was attempted by the initial Communist Chinese leadership. The favored approach bore a close resemblance to the Marxist strategy. The government chose to ignore the inheritance issue and concentrate on a radical restructuring of Chinese society through agrarian and social reforms.

27. See, e.g., Serebrovskii, *Nasledstvennoe Pravo; Kommentarii k st. 416-435 Grazhdanskogo Kodeksa RSFSR* (Law of Inheritance; Comments on Sections 416-435 of the Civil Code of the RSFSR) 5 (1925).

28. Gsovski, 1 *Soviet Civil Law* 625 (1948). In prerevolutionary Russia, there were two coexisting bodies of inheritance law—the official civil law rules governing testate and intestate succession and the specific local customs pertaining to peasant succession. Although the former were basically patterned after European codes of the time, there were a number of peculiarly Russian provisions. For example, the testator's right to dispose of the "patrimonial estate" (*rodovoye imushchestvo*) was restricted. Furthermore, the issue, spouse, and parents of the decedent were not guaranteed any portion of the estate. Civil law inheritance regulations did not extend to peasants or peasant households; succession was carried out instead according to local customary law. Peasants were usually organized into households or work communities with all movable and immovable property jointly owned by participating members. Accordingly, the death of one individual (even if he was the head of household) would generally not entail significant division or reallocation of peasant holdings. Under the favored scheme, the decedent's share in household property would devolve upon other members of the collective, including in-laws, adopted and foster-children. Thus, the determinant for succession was not blood relationship to the deceased, but participation in the peasant household. See generally *id.* at 621-23; Beermann, "Prerevolutionary Russian Peasant Law," in Butler (ed.), *Russian Law: Historical and Political Perspectives* 179, 189-90 (1977); Shinn, "The Law of the Peasant Household," 20 *Slavic Rev.* 601 (1961); Wagner, "Legislative Reform of Inheritance in Russia, 1861-1914," in *Russian Law* 143.

29. See Serebrovskii, "Istoriia Razvitiia Sovetskogo Nasledstvennogo Pravo," (The History of the Development of Soviet Inheritance Law) in 1 *Voprosy Sovetskogo Grazhdanskogo Prava* (Problems of Soviet civil law) 160 (1945).

30. See Goikhbarg, *supra* n. 22 at 176.

31. See, e.g., Ruling of 7 August 1923, Third Division of the R.S.F.S.R. Commissariat for Justice.

Although the P.R.C. was not founded until 1949, it was two decades earlier that Chinese territory first fell under Communist Party rule. In November 1927, the First Soviet Republic of China was established at Hailufeng in Jiangxi province. During the next four years, other soviets were set up in Fujian, Hubei, Guangxi, Sichuan, Guizhou, Zhejiang, Jiangsu, Anhui, and Hunan. The basic policies instituted by the newly-installed communist authorities in each of these provinces were "confiscation of land of the wealthy, abolition of bordermarks on the fields, and burning of the deeds and other documents establishing title to land."<sup>32</sup> In short, "[t]he Agrarian Revolution had begun."<sup>33</sup>

In 1931, the provincial soviets were officially united as the Chinese Soviet Republic and placed under the command of the Provisional Government of Soviet China. Before its fall in 1934, the Republic was to expand to encompass 15,000 square miles and one-sixth of China's total population.<sup>34</sup>

Throughout its three-year history, the Provincial Government issued no specific legislation or guiding directives regarding inheritance. Succession rights were indirectly affected, however, by the institution of sweeping land and marriage reforms. For example, land redistribution regulations proclaimed that property would be confiscated and redistributed to families on the basis of their size and labor power.<sup>35</sup> At the same time, however, the Government reserved to itself the right "in the event of births or deaths, [to] transfer the land of deceased persons to the newly-born, as circumstances may require."<sup>36</sup> Thus, the inheritance system envisioned most likely was one in which property was to devolve upon family member heirs in accordance with traditional succession patterns,<sup>37</sup> subject to possible governmental review and amendment of

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32. Yakhontoff, *The Chinese Soviets* 81 (1934). For an excellent summary of inheritance law during the Soviet Republic and Yenan periods, see Aronowitz, "Chinese Succession Law: An Historical Survey," 12 *Portia L.J.* 265 (1967).

33. Yakohntoff, *supra* n. 32 at 86.

34. The provisional Government had direct authority over the Central Soviet Republic territory, which was inhabited by 3,000,000 people. In addition, a population of approximately 6,000,000 people was ruled by smaller rural soviets. See Meisner, *Mao's China* 32 (1977); Kun, *Fundamental Laws of the Chinese Soviet Republic* 1 (1934) (hereinafter *Fundamental Laws*).

35. "Law of the Provincial Executive Committee of the Soviets of North-East Kiangsi Concerning the Distribution of Land," pt. 2, § 2, in *Fundamental Laws* at 29.

36. *Id.* at pt. 3, § 2.

37. In traditional China, most movable and immovable property was held in common ownership by large family entities. Either during the lifetime of the head of the household or at his death, all property was partitioned according to fixed rules, the general pattern being one of equal division among sons. In contrast, succession to family religious functions and primary duties of support devolved upon the eldest son only. Under the traditional system, disinheritance of heirs was rare and testamentary succession was nonexistent. Furthermore, the elaborate set of succession rules was designed to make it nearly impossible for females to inherit, although, as a mother of

the distribution to conform with its fundamental social and economic objectives.

The marriage laws may also have had a significant impact on Chinese inheritance practices. A cornerstone of the communist programme was "to guarantee the emancipation of women. . . ." <sup>38</sup> One measure to promote this emancipation was granting women rights to individual ownership of land on an equal basis with men. <sup>39</sup> This would seem to imply that women simultaneously became eligible to receive any property distributed under the land reform redistribution regulations or by inheritance. Unfortunately, insufficient documentation has survived the Chinese Soviet Republic period either to confirm or refute this hypothesis.

The second major Chinese communist government was established at Yen'an in 1937. <sup>40</sup> This so-called "Border Region Government," like its predecessor in Jiangxi, made no official announcements regarding inheritance law. However, under its authority private property rights were affirmatively recognized for the first time. In the 1 January 1942 "Regulations for Guaranteeing Civil and Property Rights," "anti-Japanese" people were officially given the rights to own and use private property, including any land distributed under the agrarian reforms. <sup>41</sup> It is clear that succession rights as well were at least informally sanctioned by communist authorities during the Yen'an period. Documents from 1934-41 record

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sons, a woman could have a significant voice in management and disposal of family property. See generally Aronowitz, *supra* n. 32 at 265-83; Jamieson, "Chinese Family and Commercial Law," in *Chinese Family and Commercial Law* 17-23 (1970), originally published in 1921; Shiga, "Family Property and the Law of Inheritance in Traditional China," in Buxbaum (ed.), *Chinese Family Law and Social Change in Historical and Comparative Perspective* 112 (1978).

In 1931, the Nationalist Government enacted a Civil Code with articles regulating inheritance. These provisions, a product of the early twentieth century drive to modernize Chinese society, were most distinctive for their abolition of ancestor worship and grant of inheritance rights to women. The Civil Law scheme, however, was largely ineffective in Nationalist China. There was little attempt to accommodate its Western-style legal provisions to the realities of a Chinese society, still dominated by the traditional family structure and its system of support relations. See generally, Hung, *Outlines of Modern Chinese Law* 196-207 (1934); Riasanovsky, *Chinese Civil Law* 278 (1938).

38. Constitution of the Chinese Soviet Republic, art. 11.

39. See "Regulations Concerning Marriage in the Chinese Soviet Republic," pt. 5, art. 17 (1931), in *Fundamental Laws* 86.

40. The definitive work on the Yen'an period is Selden, *The Yen'an Way in Revolutionary China* (1971).

41. See Yung, *A Survey of Shensi-Kansu-Ninghsia Border Region* 86 (1945). Confiscation of property was permitted, however, when demanded for public purposes. Id. Moreover, it should be noted that the pre-liberation legal order was characterized by party leaders' disregard of promulgated laws. Hence, there may have been a large disparity between actual practices and statutory provisions with respect to ownership of private property. See Stahnke, "The Background and Evolution of Party Policy on the Drafting of Legal Codes in Communist China," 15 *Am. J. Comp. L.* 506, 512 (1967).



that forty-two legal cases involving inheritance disputes were settled by the courts.<sup>42</sup>

Thus, inheritance continued to exist in the territories of China under Communist Party governance. However, the leadership at no point undertook to establish norms for its regulation or to redefine its scope and nature in light of socialist principles. Inheritance was to remain an unacknowledged vestige of pre-communist China until the 1950s, when it received governmental imprimatur in the Marriage Law of 1950 and constitutional protection in the 1954 Constitution.

### *B. Institutionalization*

#### The Soviet Union

On 22 May 1922, succession rights were given official recognition in the decree "Concerning Basic Private Property Rights Admitted in the RSFSR, Safeguarded by its Laws and Protected by its Courts."<sup>43</sup> Shortly thereafter, the Civil Code of the RSFSR<sup>44</sup> was enacted to effect the decree directive and provide guidelines for regulation of inheritance. Soviet succession rights, as contemplated by the Civil Code, were sharply curtailed both as to the size of estates available for distribution<sup>45</sup> and the circle of heirs eligible for descent by intestacy or by will.<sup>46</sup> At the same time, all distributions of property were made subject to a progressive inheritance tax.<sup>47</sup>

The next two decades witnessed a gradual erosion of Civil Code restrictions on succession rights and an elevation of inheritance to constitutionally guaranteed status. Article 10 of the 5 December

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42. Yung, *supra* n. 40 at 93.

43. S.U. RSFSR, no. 36, text no. 423 (1922).

44. R.S.F.S.R. Laws, item 904 (1922).

45. Art. 416 of the Civil Code set a maximum net value (after deduction of the deceased's debts) of an estate at 10,000 gold rubles. Estates exceeding the statutory limitation were transferred to the government to be jointly administered by the government and the heirs. Contracts between the decedent and the State (irrespective of value) were not includable in the estate and passed directly to the designated heirs.

46. Permissible intestate takers constituted the deceased's spouse, direct descendants (including illegitimate or adopted issue), and those disabled persons who had been dependent on the deceased for at least one year prior to his death. Civil Code, art. 418. All qualifying beneficiaries shared equally. Art. 422. The legislation also provided for devolution of property according to a notarized will. Only those individuals who fell within the circle of heirs prescribed for intestacy purposes could share in a testate distribution. *Id.* Inheritance was on a *per capita* basis with no right of representation. The term "*per capita*" denotes distribution of an estate in equal shares to all persons who stand in equal degree to the deceased. This is in contrast to the "*per stirpes*" method, whereby one takes "by the stock" or as the representative of a deceased ancestor who is nearer in degree of relationship to the deceased.

47. Law of 11 November 1922, S.U. RSFSR, no 71, item 905 (1922). The maximum rate was 50%.

1936 Constitution of the U.S.S.R. declared, "The personal property right of citizens in their incomes and savings from work, in their dwelling houses and subsidiary husbandries, in articles of domestic economy and use and articles of personal use and convenience, as well as the rights of citizens to inherit personal property,<sup>48</sup> is protected by law." Amendments were made to the Civil Code as early as 1 June 1925 when it was decided to exclude from net estate computations amounts paid under policies of "personal insurance," regardless of value or receipt by a statutorily ineligible beneficiary.<sup>49</sup> Similar exemptions were later extended to home furnishings,<sup>50</sup> State securities on deposit in government banks, certain savings accounts,<sup>51</sup> and cash deposits in government banks.<sup>52</sup>

In February 1926, the 10,000 ruble limitation on inheritable estates was abolished. The official rationale was "to aid the possibility of the continued existence of commercial and industrial enterprises after the decease of their owners and to establish more attractive conditions for the creation and influx into the country of material and resources."<sup>53</sup> This measure was somewhat counterbalanced by the introduction of a steeper inheritance tax, with rates of up to 90% on estates of over 500,000 rubles in value.<sup>54</sup> This tax was eliminated

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48. In the *Communist Manifesto* Marx wrote, "The distinguishing feature of Communism is not the abolition of property generally, but the abolition of bourgeois property." Marx, *supra* n. 1 at 346. The Soviets have redefined the disapproved "bourgeois" property as "private (*chastnaia*) property and differentiated it from "personal" (*lichnaia*) property. Only the latter is a permissible object of individual ownership and inheritance in the U.S.S.R. As one commentator has explained, "While the elimination of private property is linked with the victory of socialism, the transformation of personal property takes place in the course of the building of communism." Stepanyan, "Communism and Property," *Oktyabr*, no. 9, 3 (Sep. 1960). Thus, in the transitional stage from socialism to communism, two forms of property exist in a socialist state—individual "personal" property and collective "social" or "socialist" property. Although Soviet scholars have made clear ideological distinctions between "private," "personal," and "social" property, serious definitional problems have arisen in practice. See *infra* at 53-56. In contrast, in the P.R.C. ownership, use, and disposition of individual "private" (*siyou*) property is expressly permitted. See *infra* at 37. However, the Chinese have also had difficulties distinguishing "private" from "social" property. See text, *infra* at 44-46. See generally Hazard, *Communists and Their Law* 200-22 (1969).

49. Art. 375(a) of the Civil Code, introduced by R.S.F.S.R. Laws, item 283 (1925).

50. Art. 421 of the Civil Code, added by R.S.F.S.R. Laws, item 793 (1929). This exemption has been justified by Soviet commentators: "the division of household effects and furnishings among the heirs would lead to destruction of the home created by the deceased, usually not without some involvement of the heir residing together with him (her) and which they had jointly used during the deceased's lifetime." Antimonov & Grave, *Sovetskoe Nasledstvennoe Pravo* (Soviet Inheritance Law) 135 (1955).

51. R.S.F.S.R. Laws, item 80 (1930).

52. Art. 436 of the Civil Code was added by R.S.F.S.R. Laws, item 43 (1935).

53. Law of 15 February 1926, R.S.F.S.R. Laws, item 73, preamble (1926).

54. Law of 6 February 1929, R.S.F.S.R. Laws, item 78 (1929).

by the Edict of 9 January 1943<sup>55</sup> and replaced with a progressive schedule for notarial fees (not to exceed 10% of the distributive share) payable by the heir for issuance of a certificate of inheritance by the government.<sup>56</sup>

The class of eligible beneficiaries was expanded in 1928 to include the State, Communist Party, and professional or public organizations.<sup>57</sup> The Code of the Byelorussian Republic was amended the following year to permit testate succession by parents of the deceased. A significant broadening of the circle of heirs occurred in 1945. On 14 March 1945, the Federal Presidium issued an edict calling for a comprehensive reorganization of Soviet inheritance law.<sup>58</sup> Three months later, a substantially amended version of the Civil Code was published.<sup>59</sup> A system of inheritance according to classes of heirs was established that closely resembled the approach taken in the major European codes of the time. The primary heirs consisted of the 1922 Civil Code "circle of heirs" (the deceased's children,<sup>60</sup> surviving spouse, and actual dependents) plus disabled parents of the deceased. The estate was to be divided equally among members of this group, provided that the mandatory form was filed within six months after the decedent's death. Descendants of the deceased's issue would take on a *per stirpes*, rather than *per capita* basis. Able-bodied parents of the deceased were the secondary heirs and would inherit only if there were no primary heirs. In their absence, the estate would devolve upon the tertiary heirs, the full brothers and sisters of the deceased.<sup>61</sup>

Under the amended version of the Civil Code, the testator was free by a written notarized will "to bequeath all of his property or part of it to one or several persons from among those belonging to any one of the three above-mentioned classes" as long as he did not "deprive his minor children or other heirs who are unable to earn, of the portion which would belong to them under intestate succes-

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55. Law of 9 January 1943, Vedomosti Verkhovnogo Soveta SSR ("Vedomosti") 1943, no. 3.

56. Law of 10 April 1942, R.S.F.S.R. Laws, item 71 (1945).

57. R.S.F.S.R. Laws, item 468 (1928), amending Civil Code, art. 422. In a 1948 decision, the court held that a church did not constitute a qualifying "public organization" or "state agency" and, hence, was not legally entitled to take under a will. *Hamlet Soviet v. Kichatova*, case no. 1068, 1 Sudebnaia Praktika SSSR 5 (1948).

58. Vedomosti, no. 15 (1945).

59. *Id.*, no. 38.

60. Illegitimate children had limited succession rights. A child born out of wedlock before 8 July 1944 could inherit from his father only if he had been officially acknowledged as the decedent's offspring pursuant to a declaration of paternity by either his father or court decree and was registered accordingly in the Civil Status Record. An illegitimate child born after 8 July 1944 was deprived of succession rights unless he had been legitimized by subsequent marriage of his parents.

61. Edict of 12 June 1945, § 1, *supra* n. 5a, amending Civil Code art. 418.

sion."<sup>62</sup> In addition, he could make bequests to State agencies or public organizations. In the absence of surviving statutory intestate takers, the property could pass by will to "any person" denominated by the testator. The estate or a distributive share would escheat to the State in only two cases: where there were no heirs by law or by will, or where authorized heirs renounced their succession rights or failed to present their claims within the prescribed period of three months for heirs present at the opening of succession or six months for absent heirs.<sup>63</sup>

Two types of property remained largely outside of the Civil Code inheritance scheme and were governed by special statutory provisions. Marital common property, defined as the "property earned by the spouses during the marital state,"<sup>64</sup> could be disposed of by will but only to the extent of the testator's share. The surviving spouse was automatically entitled to his or her share upon the termination of the marriage by death or divorce. This share, generally constituting one-half of the marital property unless otherwise determined by judicial decision, was not includable in the estate, and, hence, would not be distributed in accordance with the testator's direction.<sup>65</sup> Similarly, there were no succession rights to property belonging to "farming households." Pursuant to the Land Code, only "property proved to have been acquired by his personal means or property considered to be personal belongings under local customs"<sup>66</sup> could be regarded as part of a farmer's disposable estate. The dwelling house and any agricultural assets, such as poultry, cattle, buildings, and equipment, belonged to the entire farming household and could not descend by inheritance.<sup>67</sup>

By 1960, inheritance had been transformed from a soon-to-be eradicated vestige of the former regime into a full-blown legal institution. Limited succession rights were acknowledged by constitutional, statutory, and judicial decree. The 1961 "Fundamental Principles of Civil Legislation" ushered in a new period of Soviet inheritance law, notable for a freedom of testation rivaling that permitted in the capitalist civil and common law systems.

### China

Inheritance finally achieved legitimacy in the P.R.C. with the en-

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62. Id. at § 2, amending Civil Code art. 422.

63. Id.

64. "R.S.F.S.R. Code of Laws on Marriage, Family and Guardianship," § 10, R.S.F.S.R. Laws (1926).

65. See Gsovski, *supra* n. 28 at 650-51.

66. "Land Code of the R.S.F.S.R." § 77, S.U. RSFSR, no. 68, text no. 901 (1922).

67. Id. at §§ 66, 67, 72; 2 *Grazhdanskoe Pravo* (Civil Law) (1938).

actment of the Marriage Law of 13 April 1950.<sup>68</sup> Article 12 of the statute provided that "[b]oth husband and wife shall have the right to inherit each other's property." Mutual succession rights were also given to their issue and parents<sup>69</sup> by Article 14. Four years later, the right to inherit private property<sup>70</sup> was officially extended State protection pursuant to Article 12 of the Constitution of 20 September 1954.<sup>71</sup> Except for the period in which radical forces dominated Chinese politics and immediately subsequent to the death of Mao Zedong,<sup>72</sup> succession rights have been reconfirmed in the revised versions of the Constitution<sup>73</sup> and Marriage Law.<sup>74</sup>

The three cited legislative and constitutional articles represent the sum total of statutory directives with respect to Chinese inheritance law. Nevertheless, a complex succession system has been operative<sup>75</sup> in China since the founding of the P.R.C. in 1949. Unlike the Soviet case, inheritance patterns in China have been established primarily by judicial practice and scholarly commentary, rather than by legislative decree.

Inheritance of property in the P.R.C. may take place by intestacy or by will.<sup>76</sup> As discussed above, only three classes of intestate takers are statutorily prescribed: spouses, issue, and parents. How-

68. "The Marriage Law of the People's Republic of China" (1950), translated in Blaustein (ed.), *Fundamental Legal Documents of Communist China* 266-75 (1962).

69. The legislation apparently intended there to be no distinction made between legitimate and illegitimate children for inheritance purposes. According to Art. 15, "[c]hildren born out of wedlock shall enjoy the same rights as children born in lawful wedlock. No person shall be allowed to harm them or discriminate against them. . . ."

70. See supra n. 48.

71. P.R.C. Constitution of 1954, art. 12, in Selden (ed.), *The People's Republic of China: A Documentary History of Revolutionary Change* (1979): "The state protects the right of citizens to inherit private property according to law."

72. P.R.C. Constitution of 1975, in id. at 571 contains no guarantee of the right of inheritance. More surprising is the similar deletion in the 1978 revised version of the Constitution [see *Peking Rev.* 5 (17 March 1978)] in view of post-Mao restoration of a more moderate line in the P.R.C. See generally Cohen, "China's Changing Constitution," 76 *China Q.* 794, 808-09 (1978).

73. P.R.C. Constitution of 1982, art. 13, in 25 *Beijing Rev.* 10 (27 December 1982).

74. Marriage Law of 10 September 1980, art. 18, in 24 *Beijing Rev.* 25 (16 March 1981).

75. There is some question as to the actual continuation of inheritance during the radical "Gang of Four" period. See Chen & Zhang, supra n. 7 at 11-12.

76. For definitions of the two inheritance methods, see Cheng, "Yizhu Jicheng de Falu Xiaoli" (The Legal Force of Testamentary Inheritance), *Faxue Yanjiu*, no. 4, 54, 54 (1982):

Carrying out inheritance according to the statutorily prescribed range of heirs by the order of succession and principle of estate distribution is called statutory [intestate] succession; carrying out inheritance according to the contents of the testator's will is called testamentary succession. The two possess identically equal legal force . . . [and] receive the same national legal protection.

One commentator has suggested that testamentary succession has greater legal force than intestate succession. Huang, "Guanyu Jicheng Wenti de Yixie Butong

ever, the courts have consistently expanded this circle of heirs to include dependents, brothers and sisters, and direct descendants of the deceased. Eligible beneficiaries are generally divided into three groups. First priority is given to the surviving spouse(s) if legally married to the decedent at the time of his death,<sup>77</sup> issue,<sup>78</sup> parents,<sup>79</sup> and individuals who had been economically supported by the decedent for not less than one year.<sup>80</sup> In the absence of heirs of this first class, members of the second class partition the estate. These comprise the brothers and sisters (including half-brothers and half-sisters) who had had a relationship of mutual support, or at least some substantial economic ties, with the deceased.<sup>81</sup> If no qualified heirs of the first or second class survive the decedent, then his grandparents most likely will inherit. However, judicial practice and scholarly opinion are far from unanimous on this issue with the recent trend being to include grandparents in the second class of heirs.<sup>82</sup>

Kanfa" (Different Views Regarding Inheritance Questions), *Faxue*, no. 4, 52, 52 (1982).

77. The marriage must be valid under the provisions of the Marriage Law of 1950 (or presumably the revised version of 1980) and the "Law Concerning Registration of Marriages of 1955." All succession rights are extinguished by divorce. See *Basic Problems in the Civil Law of the People's Republic of China* 344 (1958), translated by Joint Publication Research Service 4879 (15 August 1961) ("*Basic Problems*"). However, where there are multiple legal spouses (former concubines), all share equally in the estate. See discussion of *Pan Wentien* case in Research Bureau of the Secretariat of the Standing Committee of the National People's Congress, "Reference Material Relative to Problems of Inheritance" (hereinafter "*Reference Material*"), in Meijer, *Marriage Law and Policy in the Chinese People's Republic* 324, 325 (1971).

78. All male, female, legitimate, illegitimate, and adopted issue of the deceased have equal succession rights, except in cases of bad parent-child relations. Adopted children are generally unable to inherit from their natural parents. Step-children, on the other hand, have a right to inherit only from their natural parents, unless all relations with their natural parents have been effectively severed. See van der Valk, "The Law of Inheritance in Eastern Europe and in the People's Republic of China, pt. II—China" in *Law in Eastern Europe*, no. 5, 322-38 (1961); Corinth, "The Law of Succession of the People's Republic of China," in Cohen (ed.), *Preliminary Materials on the Law of Communist China* 235, 236 (1961); Liu, "Guanyu Jicheng Ying Cong Heshi Kaishi de Tantai" (Study on Commencement of Inheritance), *Faxue*, no. 5, 23, 23 (1982) (inheritance by illegitimate daughter).

79. As a rule, parents, including adoptive parents, inherit equally with the surviving spouse and issue. See *Reference Material* at 334; Shih Huai-pi, "Lueh lun wo kuo chi ch'eng chih tu ti chi ko chi pen wen t'i" (A short discussion of a few basic problems of our country's system of succession) 26 (1957). Based on the Soviet model, there have been suggestions, however, that a distinction be made between disabled and able-bodied parents, with only the former being included in the first class of heirs. See *Reference Material* at 334-35. "[I]n conformity with the customs of the masses" (id. at 329) the courts have consistently assigned to the first class of heirs parents who had lived with the deceased at the time of his death. This approach has been sharply criticized by commentators. See id. at 334.

80. In China, the mandatory provision for dependents did not originate with the Communists. For example, Art. 1149 of the Nationalist Civil Code of 1931 dealt with the succession rights of concubines. The one-year period was apparently derived from Art. 418 of the Soviet Civil Code. See van der Valk, supra n. 78 at 331.

81. See *Reference Material* at 326.

82. Compare Liu, "Zufumu Ying Lieru Disan Jicheng Xunsu" (Grandparents

The general rule for intestate distribution is equal allotment among eligible heirs of each class, with direct descendants inheriting by representation.<sup>83</sup> However, the courts are free to adjust the portions to reflect "the number of people concerned, the fact whether or not they have the capacity to work, their respective economic circumstances, the fact whether or not they have been living together with the decedent and whether or not they fulfilled duties of support and funeral rites towards the decedent."<sup>84</sup> There is some question as to the appropriate treatment of marital property. An official report to the draft version of the 1950 Marriage Law defined inheritable marital property to include separate property owned by the spouses before marriage or acquired after marriage.<sup>85</sup> This approach is in direct contrast to that adopted in the Soviet Civil Code and marital community property legislation of most Western nations,<sup>86</sup> and is rejected in most recent P.R.C. commentaries.<sup>87</sup>

The Chinese system of testamentary succession can be summarized as follows: "wills are allowed, except when their provisions clash with . . . basic policy and law, and it is necessary to impose

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Ought to be Included in the Third Order of Succession), *Faxue Jikan* (Law Quarterly), no. 1, 26 (1982) with Wang, "Zufumu Ying Lieru Dier Jicheng Xunsu" (Grandparents Ought to be Included in the Second Order of Succession), *Faxue Jikan*, no. 1, 24 (1982).

83. *Reference Material* at 327; Meijer, *supra* n. 77 at 260. For an in-depth discussion of Chinese law regarding inheritance by representation and its application to a concrete case see Zhao, "Hu You Jichengquan de Shuren Tongshi Siwang Ying Zemyang Jicheng?" (When Several People Who Have Inheritance Rights Die at the Same Time, How Should Inheritance Proceed?), *Faxue Jikan*, no. 3, 70, 71 (1982).

84. See Huang, *supra* n. 76; Shih, *supra* n. 79 at 28, 31.

85. "Kuan yu chung hua jen min kung ho kuo hun yin fa ch'i ts'ao li yu ti pao kao" (Report concerning the grounds for and the proceedings of the drafting of the marriage law of the People's Republic of China) presented to the Central People's Government Council on 13 April 1950.

In the 1954 "Chung hua jen min kung ho kuo min fa tzu liao hui pien" (Collection of Materials on the Civil Law of the People's Republic of China) 312 ("Collection"), family property comprised:

1. All property owned by the spouses before marriage.
2. All property acquired during the period of life in common, meaning:
  - a. Property acquired by labor.
  - b. Property inherited by either of the spouses during this time.
  - c. Property belonging to the children (like land obtained in the land reform).
3. Property acquired as a gift by either of the spouses during marriage.

Meijer, "Marriage Law and Policy in the People's Republic of China," in Buxbaum (ed.), *Chinese Family Law and Social Change in Historical and Comparative Perspective* 461 (1978). Meijer's conclusion was that "[t]his does not leave anything outside family property, except perhaps the trousseau of the woman." *Id.* See generally, Jin, "Cong Yijian Jicheng An Kan Fuqi Caichan Yueding" (Seeing the Property of Husband and Wife Agreed Upon from an Inheritance Case), *Faxue*, no. 2, 28 (February 1982); Wang, "Peiou Jicheng He Xueqin Jicheng Bu Ke Pianfei" (Inheritance by Spouses and Blood Relations Cannot be Annulled), *Faxue Jikan*, no. 2, 24 (1982).

86. See *supra* text at 43 and n. 64 & 65; and *infra* text at 51-52 and n. 126.

87. See, e.g., Cheng, *supra* n. 76 at 55.

restrictions."<sup>88</sup> The testator is generally at liberty to dispose of his private property to the individuals, cooperatives, or public groups of his choice or to the State.<sup>89</sup> He is also permitted to charge the legatee with a testamentary burden.<sup>90</sup> However, in cases in which there is a clear conflict between testamentary dispositions and fundamental laws, policies, or "socialist morality," such as the equality of the sexes or protection of the inheritance rights of dependents or minors, violative will provisions are invalidated.<sup>91</sup>

Wills may be in either written or oral form and must be confirmed by a notary, or, if none, by an administrative agency or office of a political organization.<sup>92</sup> To execute a valid testament, the testator must have reached the legal age of majority (16 years old) and possess testamentary capacity.<sup>93</sup> A will may be amended, altered, or revoked at any time upon satisfaction of the testator of the prescribed notarial procedure.<sup>94</sup>

Immediately subsequent to the decedent's death, the estate is administered by the executor appointed by testament, heirs living in close proximity to the property at issue, or the local notary or administrative agency.<sup>95</sup> Transfer of the inheritance is commenced by the heir making a legal statement of acceptance within three months after the date of death or declaration of death of the deceased, or within six months after public or personal notification if the heir was absent at the opening of succession.<sup>96</sup> The courts are

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88. *Reference Material*, supra n. 77 at 339. For a general discussion of Chinese testamentary succession, see Cheng, supra n. 76; Zhu, "Lun Yizhu Jicheng" (Discussing Testamentary Inheritance), *Faxue Yanjiu*, no. 6, 38 (1982).

89. Officially, such dispositions are designated as "testamentary donations." Cheng, supra n. 76 at 55. See generally Corinth, supra n. 78 at 238; Huang, supra n. 76 at 53. But cf. "What Legacy to Bequeath Children?," 25 *Beijing Rev.* 6, 6 (4 October 1982) ("In China, donations to the government are not encouraged . . .").

90. See Shih, supra n. 79 at 44; *Basic Problems*, supra n. 77 at 350.

91. See *Reference Material*, supra n. 77 at 339. But cf. Cheng, supra n. 76 at 54 ("There are very few testaments that violate law, statute, and socialist morality").

A major issue of debate in China today is to what extent a testator may use a will to deprive his daughters (especially illegitimate daughters) of their statutory successional portion. The Marriage Law expressly prescribes that women and men enjoy equal inheritance rights. However, some scholars interpret this provision as applicable only to intestate succession and advocate that testamentary disinheritance of daughters should be permitted as long as the children are self-supporting. See Huang, supra n. 76 at 53.

92. See Cheng, supra n. 76 at 56; Shih, supra n. 79 at 39.

93. See Chen, "Dui Jingshen Bingren You Yizhu Negli de Jianbie" (Differentiation of the Ability from Non-Ability for a Mental Patient to Make a Will), *Faxue*, no. 4, 39 (1982); van der Valk, supra n. 78 at 344.

94. See Shih, supra n. 79 at 39.

95. See van der Valk, supra n. 78 at 348. See generally Han & Wu, "Dui Jicheng Cong Heshi Kaishi de Renshi" (An understanding of When Inheritance Commences), *Faxue*, no. 1, 29 (1983).

96. See *Basic Problems*, supra n. 77 at 355.



free to extend the acceptance period in hardship cases.<sup>97</sup> A legacy may be irrevocably waived by the beneficiary's failure to file a timely acceptance or by his express declaration of waiver.<sup>98</sup> Disclaimer of the inheritance, however, will not excuse the heir, if related by blood to the decedent, from obligations to support family members or dependents of the decedent.<sup>99</sup>

Escheat of the estate to the public domain can occur in three cases: "(1) where there are no statutory or testamentary heirs to the decedent; (2) where the decedent has by will rescinded the right of inheritance of all his heirs for valid reasons without appointing other heirs; and (3) where all the heirs have waived the right of inheritance."<sup>100</sup> Nevertheless, practical and ideological objections may militate against the State's acceptance of an inheritance even in the specified situations.<sup>101</sup> As a result, the courts have frequently rejected governmental nationalization of estate property in favor of its distribution to distant relatives or sisters-in-law of the decedent, public organizations, or national enterprises.<sup>102</sup>

Perhaps the major issue for P.R.C. inheritance law purposes is determining the types of property includable in the inheritable estate of a Chinese decedent. The only directly relevant statutory and constitutional provisions speak in vague terms about inheritance of family or private property.<sup>103</sup> This had led Chinese and Western commentators alike to look to other articles of the Marriage Law and Constitution for an interpretive gloss on the inheritance provisions.<sup>104</sup> Also helpful in resolving definitional questions have been judicial decisions, legislative pronouncements, and administrative ordinances regarding property issues both within and without the succession context.<sup>105</sup> As a general rule, privately owned "means of life" (defined to include income from labor, savings, and dwelling houses),<sup>106</sup> small plots of household land,<sup>107</sup> minor tools or imple-

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97. See van der Valk, *supra* n. 78 at 347.

98. See *Reference Material*, *supra* n. 77 at 342-43.

99. See Shih, *supra* n. 79 at 54.

100. Aronowitz, *supra* n. 32 at 298.

101. See van der Valk, *supra* n. 78 at 345-46.

102. *Id.* "The policy seems to have been to avoid escheat as much as possible." Meijer, *supra* n. 85 at 473.

103. See *supra* text at 37 & n. 69-74.

104. Cited provisions have included the Marriage Law articles concerning joint marital or family property (arts. 13 and 31 of the new Law) and constitutional definitions of state and private property (arts. 8-11, 13-15 of the 1982 Constitution; arts 5-9 of the 1978 P.R.C. Constitution). Art. 14 of the 1982 Constitution is virtually identical to its counterpart, Art. 9 of the 1978 Constitution. "The state protects the rights of citizens to own lawfully earned income savings, houses and other lawful property."

105. See, e.g., Aronowitz, *supra* n. 32 at 299-305; Shih, *supra* n. 79 at 5-14; van der Valk, *supra* n. 78 at 304-13.

106. *Id.* at 310, 312; Liu, *supra* n. 78 at 23.

107. Van der Valk, *supra* n. 78 at 308.

ments,<sup>108</sup> poultry and domestic animals,<sup>109</sup> personal property,<sup>110</sup> and consumer goods purchased with the decedent's lawfully earned wages<sup>111</sup> are permissible objects of intestate or testate disposition. Succession to private businesses and enterprises or shares in them has also been allowed in a number of instances.<sup>112</sup> In contrast, three general classes of property are not includable in the decedent's estate: (1) land and residences leased from a collective or commune;<sup>113</sup> (2) joint marital property;<sup>114</sup> and (3) joint family property.<sup>115</sup>

In sum, since the establishment of the People's Republic in 1949, inheritance as a legal institution has become increasingly embedded in Chinese Communist society. Although this process was initiated by the enactment of legitimating statutory and constitutional provisions in the 1950s, it has been carried out largely through judicial decisions and scholarly and administrative interpretations. The result is a highly complex system, riddled with inconsistencies and lacunae that only the promulgation of a long-awaited uniform national inheritance law will resolve.

### C. Expansion

#### The Soviet Union

In 1961, the All-Union Supreme Soviet adopted the "Fundamentals of the Civil Law of the U.S.S.R. and the Union Republics."<sup>116</sup> These were given statutory form three years later with the enactment of the Civil Code of the R.S.F.S.R. on 11 June 1964.<sup>117</sup> That this legislation was intended to represent a sharp break with past inheritance law (and civil law in general) was evidenced by the fact that it

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108. Chen & Zhang, *supra* n. 7 at 12.

109. Aronowitz, *supra* n. 32 at 304-05.

110. *Id.*

111. *Id.*

112. *Id.*

113. See Cheng, *supra* n. 76 at 55.

114. An individual cannot dispose of the entire portion of joint marital property, but only his half portion. See *supra* text at 46.

115. Houses or other movable property purchased from the income of several family members are regarded as joint family property and only the specific share belonging to the deceased is inheritable individual property. See Cheng, *supra* n. 76 at 55.

116. *Vedomosti*, no. 50, item 525 (1961).

117. *Zakony RSFSR* (June 10-11, 1964).

For excellent summaries of the 1961 *Fundamentals* and 1964 Civil Code, see Antimonov, "Nasledstvennoe Pravo v Osnovakh Grazhdanskogo Zakonodatel'stva Soiuza SSR i Soiuznikh Respublik" (Inheritance Law in the Fundamentals of Civil Law of the U.S.S.R. and Union Republics), 32 *Sov. Gos. i Pravo*, no. 5, 6 (1962); Nikitiuk, "Nasledovaniie Po Novim Grazhdanskim Kodeksam" (Inheritance According to the New Civil Code), 42 *Sotsialisticheskaya Zakonnost'* ("Sots. Zakon."), no. 7, 28 (1965).

was officially denominated a "new" Civil Code, as opposed to an amended version of the Civil Code of 1922.

Inheritance and succession rights are discussed in Articles 527-61 of the Code. Perhaps the most outstanding feature of these provisions is their elimination of virtually all restraints on testation.<sup>118</sup> According to Article 534, "Every individual may leave by will all of his property or a part thereof (including ordinary household furnishings and articles) to one or more persons, irrespective of whether they are heirs at law, or to the state or to individual state cooperative or public organizations. A testator may in his will disinherit one, several, or all of heirs at law." A testator is forbidden, however, by Article 535 of the Civil Code to deprive certain individuals of their so-called "obligatory share." Minors or disabled children, disabled surviving spouse, disabled parents or adoptive parents, and any actual dependents all have been guaranteed two-thirds of their intestate share. For computational purposes, the value of any domestic furnishings or utensils acquired upon the testator's death is included in the obligatory share. If distribution of the estate pursuant to the terms of the will would deprive any or all of the statutorily denominated heirs of their obligatory share, the will will be found void to that extent.<sup>119</sup>

The new legislation has also made significant changes in the intestate succession area. Inheritance according to class of heir has been replaced by a streamlined system. There are two groups of eligible heirs: the first comprising the issue of the deceased (including

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118. Soviet commentators have acknowledged: "The legislation now in force not only regulates inheritance by law in detail but also affords every Soviet citizen nearly unlimited opportunities to dispose of his (her) property by testament." Fleishits & Makovsky, *The Civil Codes of the Soviet Republics* 265 (1976). For a recent discussion of testamentary disposition in the U.S.S.R., see Barshchevskii, "Sub'ekty prava nasledovaniia po zaveshchaniu" (The Subjects of Testamentary Succession), 51 *Sov. Gos. i Pravo* 119 (1981).

Despite permitting an extraordinary freedom of testation, the 1964 legislation provides that certain persons may be statutorily barred from testate (or intestate) succession. Pursuant to Art. 531, "Citizens will have no right to succeed under a will or on intestacy if their being called to the succession was due to their illegal acts directed against the deceased or any of his successors, or against the carrying out of his wishes as expressed in his will, provided these facts are confirmed in judicial proceedings. Parents have no right of succession on intestacy to children in respect of whom they have been deprived of parental rights . . . as well as parents and children of full age who maliciously declined to fulfill duties to maintain the decedent. . . ."

This disfavoring of "unworthy heirs" codifies a long-standing judicial practice, that originated in a 1926 court denial of inheritance to a murderess and was reaffirmed in a 1960 lead case. *Ermolaeva and Osokina v. Kozlova*, 8 *Sov. Iust.* 27 (1960). See generally, Ioffe, 3 *Sovetskoe Grazhdanskoe Pravo* (Soviet Civil Law) 290 (1965); Krylova, "Nasledniki po zakonu" (Statutory Heirs), 24 *Sov. Iust.* 14 (1965).

119. For an excellent analysis of the "obligatory share," see Chepiga, "Nekotorie Voprosy Nasledovaniia Obyazatel'noi Doli" (Some Problems Concerning Inheritance of the Obligatory Share), *Vestnik Moskovskogo Universiteta* ("Vestnik"), no. 3, 64 (1964).

adopted children),<sup>120</sup> the surviving spouse, and natural or adoptive parents; the second containing the brothers and sisters, and grandparents of the deceased. Members of the first group share equally in the estate, with grandchildren or great-grandchildren inheriting *per stirpes* by right of representation. In their absence or disinheritance by will, the property devolves in equal shares upon the members of the second group. Actual dependents<sup>121</sup> are also qualified claimants and divide the estate with statutorily eligible relatives of the deceased. It should be noted, however, that dependents cannot take as members of the first group, and, hence, deprive members of the second group of their intestate portion, unless they share equally in the estate with at least one surviving blood relative of the deceased.<sup>122</sup>

Illegitimate children normally are not considered eligible statutory heirs to their natural fathers' property. Succession is permitted only in cases in which the child has been legitimized by subsequent marriage of his parents, or by paternal acknowledgement in judicial form.<sup>123</sup> Similarly, step-children are barred from sharing in their step-parents' intestate estate unless they have either been adopted or constitute qualified dependents.<sup>124</sup>

A legally recognized marriage to the deceased at the time of his death is the basic requirement for a surviving spouse to inherit by intestacy. Thus, a mere *de facto* marriage to the deceased does not entitle the "spouse" to succession rights. The dissolution or invalidation of a marriage prior to the death of the decedent, or even subsequent to the opening of succession, is also grounds for denying the "spouse" his or her usual intestate share.<sup>125</sup> Like its 1922 predecessor, the 1964 Code has not directly incorporated provisions with respect to the division of marital community property upon the termination of a marriage by the death of one of the spouses. As under

120. For information on the Soviet adoption system see Azizova, "Otmena Usynovleniia i Priznanie ego Nedeistvitel'nym" (Abolition of Adoption and Recognition of its Invalidity), *Vestnik*, no. 33, 59 (Nov.-Dec. 1978); Vebers, "Sushchnost' Usynovleniia i ego Pravovye Posledstviia" (The nature of adoption and its legal consequences), 10 *Pravovedenie*, no. 4, 53 (1966).

121. Civil Code, art. 532. To constitute a dependent, a person must be disabled and have relied on the continual material support of the deceased as his basic source of maintenance for at least one year prior to the death of the deceased. See Vasil'eva v. Vasil'eva, Judicial Division for Civil Cases of the Supreme Court of the R.S.F.S.R., 10 June 1966, in *Biulleten' Verkhovnogo Suda SSR (Biulleten)*, no. 10, 4 (1966); Paniugin, "Court Practice in Inheritance Cases," 43 *Sots. Zakon.*, no. 11 (1966), trans. in 6 *Soviet Law and Government*, no. 1, 37 (1967).

122. Civil Code, art. 532.

123. See Tay, *supra* n. 6 at 484. This discrimination against illegitimate children has largely been repealed by the adoption in 1968 of new national family law fundamentals. *Vedomosti*, no. 27, item 241 (1968).

124. See Khalfina, *Personal Property in the U.S.S.R.* 87 (1966).

125. See Tay, *supra* n. 6 at 483.

the previous law, all property acquired during the marriage is considered to be joint marital property, one-half of which generally passes directly to the surviving spouse. Only the remaining half is includable in the decedent's inheritable estate and distributed to either the statutory heirs or to such persons as may be designated by will.<sup>126</sup>

The new statute has also introduced into Soviet inheritance law the concept of "ordinary substitution." Under Article 536, a testator can specify an alternative beneficiary upon whom the estate would devolve in the event that the primary beneficiary should die before the opening of succession or reject or fail to accept his bequest within the prescribed period. Soviet commentators have carefully distinguished this "ordinary substitution" from the "feudal *fideicommissum*," under which a testator could provide for the disposition of his property even after death of his named heir.<sup>127</sup> It is permissible, however, to condition an inheritance on the performance of a legally enforceable testamentary charge. The charge may be for the benefit of a specific individual or "directed toward the accomplishment of any purpose which promotes the general welfare."<sup>128</sup> In such cases, the beneficiary is not regarded as an heir. As a result, he is not liable for any inheritance fees and his assets cannot be reached by creditors of the estate.<sup>129</sup>

Under the 1964 legislation, with its relaxation of restrictions on testamentary disposition and enlargement of the class of heirs eligible to take by operation of law or by will, the potential for escheat to the Soviet government of all or part of a decedent's estate has been significantly reduced. This continues a trend that originated with the 1945 reforms<sup>130</sup> and stands in marked contrast to the proclamation immediately subsequent to the October Revolution that an owner's property (whether immovable or movable) would become upon his death the property of the Russian Socialist Federated Soviet Republic.<sup>131</sup> According to current statutory provisions, escheat

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126. See Khalfina, *supra* n. 124 at 88; Johnson, *An Introduction to the Soviet Legal System* 190 (1969). See generally Johnson, "Matrimonial Property in Soviet Law," 16 *Int'l. & Comp. L.Q.* 1106 (1967); Krylova & Eidinova, "Okhrana Nasledstvennykh Prav Grazhdan" (The Protection of Citizens' Inheritance Rights), *Sov. Iust.*, no. 24, 6 (1966).

127. The ability of the testator to exercise so-called "dead-hand control" has been severely curtailed in the common and civil law systems through such devices as the Rule Against Perpetuities and restrictions on fideicommissary substitution. See generally, Ryan, *An Introduction to the Civil Law* 206-08 (1962); Leach, "Perpetuities in a Nutshell," 51 *Harv. L. Rev.* 638 (1938); Merryman, "Policy, Autonomy, and the *Numerus Clausus* in Italian and American Property Law," 12 *Am. J. Comp. L.* 224 (1963).

128. Civil Code, art. 539.

129. *Id.* at art. 538.

130. See Fleishits & Makovsky, *supra* n. 118 at 267.

131. See Decree of 14 April 1918, art. 1, *supra* n. 20.

occurs in only three cases: where there are no qualified intestate or testate takers; where all heirs have either refused or failed to accept their allotted shares; or where all statutory heirs have been disinherited by the testator and no alternative beneficiaries have been designated.<sup>132</sup> These situations have arisen so infrequently in the Soviet Union and its satellites that one can reach the "compelling" conclusion that "in the Marxian socialist states there is strong objection to escheat of an estate to the state. . . ."<sup>133</sup>

Will formation and probate in the Soviet Union are governed by elaborate statutory provisions.<sup>134</sup> Governmental notarial offices are assigned the crucial role in both processes, from the original mandatory registration of the will document<sup>135</sup> to the inventory and protection of estate property during probate.<sup>136</sup> The second major institution potentially involved in estate distribution is the local court. Its functions include resolving disputes,<sup>137</sup> taking appeals from notarial actions,<sup>138</sup> and overriding statutory inheritance provisions in certain cases. For example, the court has the power to extend the prescribed period for acceptance of an inheritance (six months after the opening of succession for both present and absent heirs) where justified by valid reasons, such as illness of the beneficiary.<sup>139</sup>

The Civil Code and subsequent judicial, legislative, and scholarly interpretations have placed special emphasis on the problems of determining what should constitute inheritable property in the U.S.S.R. The Code solution is to exclude particular types of property from its coverage. Thus, a share in a collective farm cannot be transmitted by inheritance,<sup>140</sup> and assets such as government bonds,

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132. Civil Code, art 527. The State may also acquire property in cases in which it has been named as a testamentary legatee or in which an heir refuses his bequest in favor of the State. *Id.* at art. 528.

133. Hazard, *supra* n. 48 at 240 (1969).

134. Civil Code, arts. 540-61.

135. *Id.* at art. 540.

136. *Id.* at arts. 555-56.

137. See Decree of the Plenum of the Supreme Court of the U.S.S.R. of 1 July 1966, no. 6, "On Judicial Practice in Cases Involving Inheritance," *Biulleten'*, no. 4, 20 (1966).

138. See "Law of the U.S.S.R. on the State System of Notary's Offices," art. 21, in *Pravda*, 21 July 1973 at 3-4.

139. Civil Code, art. 547. See Estate of Filonova, Ruling of the Judicial Division for Civil Cases of the Supreme Court of the R.S.F.S.R., in *Biulleten'*, no. 4, 6 (1962); Paniugin, *supra* n. 121.

For an excellent discussion of the interplay between courts and notaries in regulating inheritance, see Bondarev & Eidinova, "Koordinatsiia Raboti Sudebnikh i Notarial'nikh Organov Po Nasledstvennim Delam" (Coordination of the Work of Judicial and Notarial Organs on Inheritance Matters), *Sov. Gos. i Pravo*, no. 4, 98 (1968).

140. Civil Code, art. 560. See Rudenko v. Rudenko, Ruling of the Judicial Division for Civil Cases of the Supreme Court of the R.S.F.S.R., 18 May 1964, in *Biulleten'*, no. 4, 30 (1964); Stoyanovitch, *La Régime de la Propriété en U.R.S.S.*, ch. V (1962);

bank deposits, and life insurance proceeds are excludable from the estate if the decedent had so directed under the prescribed procedure during his lifetime.<sup>141</sup> Similarly, devolution of marital property<sup>142</sup> and domestic furnishings<sup>143</sup> is not governed by Civil Code inheritance provisions. These forms of property automatically pass on to the appropriate individuals. In recent years, difficult definitional questions have arisen with respect to rights in intellectual property (e.g., copyrights, patents, and invention rights), government pensions and subsidies, claims receivable by the decedent, housing tenancies, and shares in various types of cooperatives.

The operative distinction has been between "personal" and "social" property, inheritance of the former only being constitutionally authorized.<sup>144</sup> It is generally agreed that government pensions and subsidies, and membership shares in cooperatives constitute social property, the rights to which terminate upon the death of the owner-grantee.<sup>145</sup> On the other hand, the value of any installments paid to a cooperative is inheritable personal property.<sup>146</sup> A housing tenancy may not be the object of testamentary disposition, but instead is continued by the other household members.<sup>147</sup> The majority position of Soviet scholars is that claims or receivables should be in-

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Voloshin, *Razdely i Vydely v. Kolkhoznom Dvore* (Division and Paying Out in the Kolkhoz-Dvor) (1958).

141. Civil Code, art. 561. See Magomaev v. Senior Notary of Makhachkala Notarial Office, Decree of the Presidium of the Supreme Court of the Daghestan A.S.S.R., in *Biulleten'*, no. 3, 15 (1965); Raikher & Voznesenskii, "Sovremennye Problemy Strakhovaniia Gosudarstvennogo Imushchestva v. SSSR" (Current Problems in Insuring State Property in the U.S.S.R.), 24 *Pravovedenie*, no. 5, 71 (1980).

142. See *supra* text at 43.

143. Civil Code, art. 533. Ordinary household effects and furnishings pass directly to any statutory heirs (regardless of their class or share in the estate) who lived with the decedent for not less than one year prior to his death. See Shardakova v. Kraev, Ruling of the Judicial Division for Civil Cases of the Supreme Court of the R.S.F.S.R., 3 Aug. 1965, *Biulleten'*, no. 1, 5 (1966).

144. U.S.S.R. Constitution of 1978, arts. 10-14. See *supra* n. 48.

145. See, e.g., Khalfina, *supra* n. 124 at 5-7. But cf. Sawicki, *Soviet Land and Housing Law* 138 (1977) (Shares in Housing Cooperatives Inheritable).

146. See, e.g., Antimonov & Grave, *supra* n. 50 at 83 (1955) ("the deceased's membership rights in co-operative organizations do not pass by inheritance. This is applicable equally to the kolkhoz, industrial and disabled person's co-operative. The heirs will obtain only the unpaid emoluments for the period during which the deceased had worked and repayment of his financial contributions paid to the co-operative organization (his paid-in share)).

147. See Asknazii, Braude & Pergament, *Zhilishchnoye Pravo* (Housing Law) 89 (1955). See generally Merryman, "Toward a Comparative Study of the Sale of Land," 2 *Ius Privatum Gentium: Festschrift für Max Rheinstein* 737 (1969).

It should be noted, however, that a residence purchased, rather than rented by an individual, may be the subject of inheritance, although there is no corresponding right to dispose of the land on which it is situated. See Ikonitskaia, "Pravo Grazhdanna Pol'zovanie Zemel'nyimi v Chastkami" (Citizens' Rights to Use Plots of Land), 47 *Sov. Gos. i Pravo* 123 (Jan. 1977); Terebilov, "The Law Guarantees—Taking the Interests of Society and the Individual into Account," *Pravda*, 31 Jan. 1983 at 3, in 35 *Current Digest of the Soviet Press* 12 (2 March 1983).

cluded in the decedent's estate.<sup>148</sup>

Finally, rights in intellectual property have been analyzed in terms of a definitional differentiation between "proprietary" and "non-proprietary" rights. Proprietary rights are includable in the inheritable estate, unless they are personal to the testator and become extinguished upon his death. Registered rights in intellectual property are generally viewed as inheritable proprietary rights. The decedent's heir normally has no right of succession to non-proprietary rights. An exception is made, however, for non-proprietary rights that are essential to the realization or defense of inherited proprietary rights. Under this reading, it is permissible for an heir to acquire the testator's unexercised right to register a patent, invention, or work of authorship.<sup>149</sup>

### China

Unlike the U.S.S.R., the P.R.C. has not as yet provided any unmistakable legislative signpost to initiate a new stage of expansion of inheritance. There has been no Chinese counterpart to the landmark Russian Civil Code of 1964. Although there are indications that China's first civil legislation is soon to be published,<sup>150</sup> its intended scope and coverage of inheritance matters are far from clear. Notwithstanding this absence of a clear legislative or administrative mandate, however, the seeds for a significant extension of inheritance in the near future are currently observable in the P.R.C.

Most notable are the recent policies favoring accumulation of private income.<sup>151</sup> In the past, there prevailed in China the "erroneous view that to be poor was to be revolutionary and to become rich was revisionist."<sup>152</sup> In contrast, peasants today are encouraged to "become rich through hard work."<sup>153</sup> The government has passed a

148. See, e.g., Novitskii & Lunts, *Obshchee Uchenie ob Obiazatel'stve* (General Theory of Obligations) 409 (1950).

149. See Civil Code, arts. 496, 518, 525; Golosovker v. Medgiz, *Biulleten'*, no. 1, 14 (1966).

150. In March of this year a draft of a Civil Procedure Law was approved. See *Xinhua*, 8 Mar. 1982, in *Foreign Broadcast Information Service* ("FBIS") K6 (8 Mar. 1982); Editorial, "Strengthen the Building of the Legal System, Facilitate the People's Litigations," *Renmin Ribao* ("RMRB"), 11 March 1982 at 4, in FBIS K1 (16 Mar. 1982). According to one commentator, this law is applicable to "disputes over marriage problems, inheritance rights. . . ." *Xinhua*, 14 March 1982, in FBIS K3 (16 Mar. 1982).

For an excellent discussion of the codification of the P.R.C. civil law, see Kato, "Civil and Economic Law in the People's Republic of China," 30 *Am. J. Comp. L.* 249 (1982).

151. See Editorial, "Appropriate Development of Individual Economy Is a Necessity of the Social Economic Life," RMRB, 9 Jan. 1983, in FBIS K1 (11 Jan. 1983); "Is This Way to Wealth Permitted?," 25 *Beijing Rev.* 23 (31 Jan. 1983).

152. "Change in Peasants' Mentality," 26 *Beijing Rev.* 6 (10 Jan. 1983).

153. See, e.g., Xu, "Broaden the Horizon and Get Rich Through Hard Work," *Jingji Ribao*, 9 Mar. 1983 at 1, in FBIS K15 (16 Mar. 1983).



number of measures designed to facilitate and protect legally individual economic activities.<sup>154</sup> Various contract responsibility systems have been instituted and given constitutional guarantee.<sup>155</sup> Under this new approach, individuals enter into purchase agreements with state organs to supply a fixed quota of output. After fulfilling the contractual quota and paying taxes, the individual may retain any surplus as private property.<sup>156</sup>

As a result, there has been a "remarkable improvement in living standards"<sup>157</sup> and growth in possession by Chinese citizens of potentially inheritable consumer goods.<sup>158</sup> This emphasis on personal private property has also been reflected in the introduction of trial rural insurance programs. As one *Renmin Ribao* commentator explained, "[i]n recent years, because of the development of rural production and the growing prosperity of commune and production brigade-run enterprises and household sideline production, the peasants have built new houses and many households have also acquired farm implements, draft animals, TV sets and more valuable garments."<sup>159</sup> Insurance is assigned the "role of supplementing social welfare undertakings."<sup>160</sup> The other major force tending to promote a rapid expansion of inheritance in the near future is the current governmental programme for strengthening the family as the "cell of China's society."<sup>161</sup> In the past two years, the Chinese media have bombarded the population with accounts glorifying the family, its protective functions, and crucial importance to the P.R.C.'s modernization drive.<sup>162</sup>

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154. See Commentary, "It is Imperative To Provide Legal Protection for the Peasants' Legitimate Economic Activities," *Xinhua*, 5 May 1983, in FBIS K12 (10 May 1983); Commentary, "Protect the Legitimate Trading Activities of Peasants," RMRB, 6 Jan. 1983 at 2, in FBIS K11 (10 Jan. 1983).

155. P.R.C. Constitution of 1982, art. 14.

156. See, e.g., Huang, "Special to China Daily," *China Daily*, 4 Mar. 1983 at 2, in FBIS K18 (4 Mar. 1983); Shen & Yu, "Raise Household Contract System to a New Level," RMRB, 3 Mar. 1983 at 5, in FBIS O2 (4 Mar. 1983); *Xinhua*, 28 Feb. 1983, in FBIS K16 (1 Mar. 1983).

157. Li & Zhang, "Remarkable Improvement in Living Standards," 25 *Beijing Rev.* 15 (26 April 1982).

158. See *Xinhua*, 10 Mar. 1982, in FBIS R2 (17 Mar. 1982); *Xinhua*, 23 Nov. 1982, in FBIS K16 (24 Nov. 1982).

159. Commentary, "Develop the Rural Insurance Business," RMRB, 22 Jan. 1982 at 2, in FBIS K1 (28 Jan. 1982).

160. Id. See generally Heuser, "The Insurance Industry in the People's Republic of China," 5 *Rev. Soc. Law* 333 (1979); "China's Insurance Business Revitalized," 26 *Beijing Rev.* 24 (15 May 1983).

161. *Xinhua*, 19 Jan. 1982, in FBIS K6 (20 Jan. 1982).

162. See, e.g., Commentary, "May All Families Be Harmonious, May All People Love Each Other," RMRB, 23 Jan. 1982 at 4, in FBIS K4 (29 Jan. 1982); Wang & Chen, *Hongqi*, no. 5 (March 1982), in FBIS K15 (18 March 1982).

THE ESSENTIAL NATURE AND ROLE OF INHERITANCE IN COMMUNIST  
RUSSIA AND CHINA

As the foregoing materials have demonstrated, the Soviet Union and the People's Republic of China have experienced a corresponding growth in succession law since their establishment as socialist nations in 1917 and 1949 respectively. Inheritance, which began as a temporarily necessary, although distasteful holdover of pre-communist days, has gradually developed into an important legal institution and vehicle for executing major governmental policies.<sup>163</sup>

The transformation has been reflected in Soviet and Chinese ideological discourses regarding the character and future of inheritance patterns. In both countries the original approach was closely akin to that articulated by Marx in the nineteenth century. A limited form of inheritance was permitted to survive the communist takeover of power, with the understanding that its disappearance was assured in the near future, when private property had been completely abolished and the State had acquired the capability of satisfying all material needs of the population.<sup>164</sup>

With the official recognition of succession rights in national constitutions and legislation, new interpretations of inheritance were necessary. In the Soviet Union, the 1922 Civil Code provisions were justified as a momentary compromise to fulfill the particular governmental objectives associated with the New Economic Policy ("NEP").<sup>165</sup> However, it was still maintained that there was no place or need for inheritance in a socialist society.<sup>166</sup> The persistence of inheritance after the close of the NEP period and its elevation to constitutionally protected status in 1936 marked the end of the view of inheritance as merely a transitory measure. Soviet jurists began to assert that a "socialist law of inheritance" had been established to remain operative until the U.S.S.R. had attained the very highest stage of communism.<sup>167</sup> This has been echoed in Chi-

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163. See *infra* text at 58.

164. See *supra* text at 36-40. Although the 1918 decree expressly called for the repeal of inheritance, Soviet jurists have argued that no general abolition of inheritance was intended. "[T]hey were then attacking only an element of the tsarist system, a means of perpetuating class domination resting upon fortunes invested in productive resources . . . and they had no desire to disinherit workers and peasants. . . ." Hazard, *supra* n. 48 at 223 (1969); Antimonov & Grave, *supra* n. 50 at 23 et seq.

165. See Goikhbarg, *supra* n. 22 at 234-35.

166. See *Grazhdanskoe Pravo* 386 (1935).

167. See 2 *Grazhdanskoe Pravo* 277 (1944). At this time, Soviet scholars reinterpreted the 1918 Decree as containing elements of a new socialist law of inheritance. See, e.g., Davidovich, "Osnovnye Voprosy Sovetskogo Nasledstvennogo Prava" (Fundamental Questions of Soviet Inheritance Law), 1 *Uchenye Zapiski Moskovskogo Iuridicheskogo Instituta* (Learned Papers of the Moscow Law Institute) 58, 59 (1939); Antimonov, "Nasledstvennoye Pravo v Osnovakh Grazhdanskogo Zakonodatel'stva

nese treatises as well.<sup>168</sup>

The shift in approach towards inheritance is justified by the Marxian analysis of the relationship between law and societal property relations. Under this view, inheritance law reflects the superstructure of productive relations. Hence, its continued existence is dictated until all private ownership has been eliminated. Abolition of succession rights during the period of transition to communism would be premature and would have an ideologically unwarranted impact on the property system. The fundamental Marxian precept is that law should constitute the effect, and not the basis, of socio-economic change.<sup>169</sup>

A clear distinction has been made between "socialist" and "bourgeois" systems. The objective of the latter is to "serve the goal of strengthening this [private capitalist] property . . . as one of the means for continued concentration of wealth in the hands of a small group of people."<sup>170</sup> Inheritance in a socialist state cannot by definition be a source for exploitation of man by man because only means of life, not means of production, can be passed from one generation to another.<sup>171</sup> Socialist succession is merely "one of the stimuli for development of personal ownership, for increase in the productivity of labor, and for fortifying the socialist family."<sup>172</sup>

Chinese and Soviet apologists have utilized legal, as well as ideological, justifications for inheritance. They argue that "protection of citizens' individual legal property rights and interests" consistently has been a "fundamental content"<sup>173</sup> of national constitutions and laws. These guaranteed "rights and interests" are said to include the rights to "possess, use, and dispose"<sup>174</sup> of individual property. Since the right of inheritance has an "indivisible connection"<sup>175</sup> with and is "derived"<sup>176</sup> from the right of ownership, Chinese and Soviet scholars contend that it is ensured full national legal protection.

Soviet and Chinese succession laws "are no longer temporary concessions . . . but stable arrangements for living in the pres-

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S.S.S.R. i Soyuznykh Respublik" (Inheritance Law in the Fundamentals of Civil Legislation of the U.S.S.R. and the Union Republics), 5 *Sov. Gos. i Pravo* 87 (1962).

168. See, e.g., Cheng, *supra* n. 76 at 54; Huang, *supra* n. 76 at 52; Shih, *supra* n. 79 at 15-19.

169. See text, *supra* at 34-35.

170. Vasantsev, 2 *Sovetskoe Grazhdanskoe Pravo* (Soviet Civil Law) 458 (1965). See also Chen & Zhang, *supra* n. 7 at 12.

171. See 2 *Grazhdanskoe Pravo* (Civil Law) 277 (1944); Chen & Zhang, *supra* n. 7 at 12.

172. 2 *Grazhdanskoe Pravo* (Civil law) 450-51 (1938).

173. Cheng, *supra* n. 76 at 54.

174. Civil Code R.S.F.S.R., 1922, *supra* n. 44 at art. 58.

175. Chen & Zhang, *supra* n. 7 at 13. See Khalifina, *supra* n. 124 at 83.

176. Huang, *supra* n. 76 at 52.

ent."<sup>177</sup> This is the direct result of inheritance becoming indispensable to both the Soviet and Chinese governments in the realization of several important objectives. First, the right to dispose freely of earned income and individual property encourages labor productivity and, hence, increases national wealth.<sup>178</sup> Inheritance is an integral part of the overall governmental programme of material incentives, whereby wages are scaled according to the actual productivity of the laborer and are "the principal source of satisfying the working people's material and cultural needs."<sup>179</sup> This interest in promoting productivity is directly reflected in the inheritance law itself. For example, in the P.R.C. the government retains the right to review any division of an estate, whether by intestacy or by will provision, to ensure that productivity will not be adversely affected by the distribution.<sup>180</sup> Moreover, an heir may be assigned a share larger than that to which he is entitled under intestate or testate succession as a reward for his special labor productivity.<sup>181</sup>

Second, by providing for dependents of the deceased, inheritance relieves the State of an onerous duty to provide social aid.<sup>182</sup> This, after all, was the official justification for retaining a limited form of inheritance in Soviet Russia after the October Revolution. According to the Decree of 1918, succession rights were to be retained by certain individuals "[u]ntil the issuance of a decree on general social welfare."<sup>183</sup> The social welfare function of inheritance is fulfilled by rules, such as the mandatory reservation of an "obligatory share" for qualified dependents and voiding of any testament that deprives such individuals of their appropriate portion.<sup>184</sup>

Third, the institution of inheritance consolidates family unity, a necessary prerequisite for achieving both of the above goals. In contrast to earlier policies,<sup>185</sup> family stability is now regarded as essential to the fulfillment of State modernization goals.<sup>186</sup> Moreover, by "rearing the young and supporting the old,"<sup>187</sup> the family has become the main source of social support for dependents.<sup>188</sup> To pro-

177. Tay, *supra* n. 6 at 472.

178. See 2 *Grazhdanskoe Pravo* 277 (1944); *Reference Material*, *supra* n. 77 at 339.

179. Khalifina, *supra* n. 124 at 7.

180. See *Reference Material*, *supra* n. 77 at 338; van der Valk, *supra* n. 78 at 319.

181. *Id.*

182. See Hazard, *supra* n. 48 at 224; Parish, "Socialism and the Chinese Peasant Family," 34 *J. Asian Stud.* 613, 622-25; Wang, *supra* n. 82 at 25.

183. *Supra* n. 20, Decree of 14 April 1918.

184. See text, *supra* at 45, 50-51.

185. For a discussion of Chinese communist attempts to "emasculate" the family, see Aronowitz, *supra* n. 32 at 306-07.

186. See Berman, "Soviet Heirs in American Courts," 62 *Col. L. Rev.* 257, 260 (1962); Wang & Chen, *supra* n. 162 at K15.

187. Shih, *supra* n. 79.

188. See, e.g., P.R.C. Marriage Law of 1980, arts. 15, 19-23. Art. 15 provides that "[p]arents have the duty to rear and educate their children; children have the duty to

mote family unity and harmonious relations,<sup>189</sup> the inheritance systems of the U.S.S.R. and P.R.C. have tended to favor heirs related by blood to the decedent.<sup>190</sup> This is particularly evident in China where "both the legislature and the courts . . . wish to limit the right of succession to the members of the family in the narrow sense: spouse, children, parents. . . . Inheritance is limited to relatives by blood and marriage who live and work together in a selfless spirit of mutual aid and support. . . ."<sup>191</sup> Family harmony is also encouraged by the general rule for equal division of property by qualified heirs.<sup>192</sup>

Fourth, inheritance performs an educative function and aids the government in its policy of promoting "socialist morality."<sup>193</sup> Under the Chinese system, an heir is expected to consider the needs of all other heirs before accepting the distributive share assigned to him by intestacy or by will. Where sufficient provision has not been made for other heirs, he has the moral socialist obligation to voluntarily waive all or part of his share.<sup>194</sup> Inheritance is also used to put into practice fundamental governmental reforms, such as the recognition of equality of the sexes.<sup>195</sup> In this way, inheritance can promote "fortifying the relations uniting the citizen of the U.S.S.R. with the socialist society. . . ."<sup>196</sup>

Fifth and finally, formal, detailed rules and regulations regarding inheritance matters may possibly be instrumental in promoting ties with the non-socialist Western nations. One obstacle to improved relations has been foreign concern over potentially discrimi-

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support and assist their parents." Arts. 19-23 discuss the duties owed to illegitimate children, adopted children, step-parents and step-children, grandparents and grandchildren, and younger brothers and sisters by their elder siblings.

A major drive is currently underway in China to convince P.R.C. citizens that daughters and sons have equal duties and capacities to support their parents. This has been necessitated by the intense public resistance to the recently instituted "one-child family" campaign to limit population growth. See Opinion, "Sex Discrimination Incompatible with Socialist Principles," *China Daily*, 3 Mar. 1983 at 2, in FBIS K11 (3 Mar. 1983); Yang Fan, "Save the Baby Girl," *Zhongguo Qingnian Bao*, 9 Nov. 1982 at 3, in FBIS K55 (7 Dec. 1982).

For Soviet views, see Vorozheikin, "Zabota Sovershennoletnykh Detei o Svoikh Nuzhdaiushchikhsia v Pomoshchi Roditeliakh—Iuridicheskaja Obiazannost'," (Adult Children are Legally Obligated to Care for Their Needy Parents), *Sov. Iust.*, no. 6 (1976), trans. in 15 *Soviet Law and Government* 48 (1976-77).

189. The promotion of harmonious relations between spouses and among relatives is a recurring theme in Chinese commentaries on family and inheritance law. See, e.g., Commentary, "May All Families Be Harmonious, May All People Love Each Other," supra n. 162.

190. See supra text at 44-47, 50-51.

191. Meijer, supra n. 77 at 262.

192. See *Reference Material*, supra n. 77 at 336.

193. See Johnson, supra n. 126 at 239-40; Cheng, supra n. 76 at 54.

194. See Meijer, supra n. 77 at 263.

195. See Shih, supra n. 79 at 20; Cheng, supra n. 76 at 56.

196. 2 *Grazhdanskoe Pravo* 277 (1944); Shih, supra n. 79 at 18.

natory application of socialist inheritance rules to alien beneficiaries.<sup>197</sup> In the Soviet case, the response has been to institute succession reforms<sup>198</sup> and publish numerous articles describing the Soviet inheritance system and its impact on alien beneficiaries<sup>199</sup> as a means to inform and reassure foreigners. In view of the P.R.C.'s interest in attracting the financial and political backing of the large overseas Chinese population,<sup>200</sup> it may choose to adopt a similar approach in the near future.

Current Chinese and Soviet inheritance systems are best understood as amalgams of ideological, customary, and civil law principles. In both nations, attempts to introduce a purely socialist approach to succession met with dismal results. One example is the early abandonment in the Soviet Union due to administrative enforcement difficulties of limitations on the value of inheritable estates.<sup>201</sup> As for the P.R.C., "[d]espite the efforts of the Communists to transform China into a modern state, and to revolutionize the thinking of the population, people in China still cling to the ideas of the traditional system of succession."<sup>202</sup> The Chinese case has been particularly complicated by the fact that until recently rule by law has been largely rejected by communist authorities in favor of rule by individual cadres. This approach, when combined with the broad discretion granted to judicial cadres in interpretation and resolution of inheritance issues, has resulted in there being no guarantee of actual governmental implementation of inheritance policies.

Because of these problems in transmitting new socialist inheritance norms and procedures to the people, the U.S.S.R. and P.R.C.

197. See Bader, Brown & Grzybowski, "Soviet Inheritance Cases in American Courts and the Soviet Property Regime," 1966 *Duke L.J.* 98 (1966); Chaitkin, "The Rights of Residents of Russia and Its Satellites to Share in Estates of American Decedents," 25 *So. Cal. L. Rev.* 297 (1952); Heyman, "The Nonresident Alien's Right to Succession Under the 'Iron Curtain Rule'," 52 *Nw. U.L. Rev.* 221 (1957). But cf. Berman, *supra* n. 186; Ginsburgs, "Inheritance by Foreigners Under Soviet Law," 51 *Iowa L. Rev.* 16 (1965).

198. Commentators have characterized the U.S.S.R. succession reforms of the early 1960s as "a conscious effort by the Soviet government to abandon the policy of insulation of Soviet life from contacts with the outside world." Baker, Brown & Grzybowski, *supra* n. 197 at 110-11.

199. See, e.g., Cheburakhin, "Praktika Primeniia Zakonodatel'stva SSSR o Grazhdanskoi Pravospobnosti Inostrantsev" (Practice in Application of the U.S.S.R. Legislation on the Civil Law Capacity of Foreigners), *Sov. Gos. i Pravo*, no 8, at 114 (1957); Volchkov & Rubanov, "Ogorvorka o Vzaimnosti v. Sovetsko-Amerikanskikh Nasledstvennykh Otnosheniakh" (Reciprocity Requirement in Soviet-American Inheritance Relations), 1960 *Sovetskii Ezhegodnik Mezhdunarodnogo Prava* (Soviet Yearbook of International Law) 308 (1960).

200. See generally Chang, "Overseas Chinese in China's Policy," 82 *China Q.* 281 (1980); Editorial, "Great Prospects for Overseas Chinese Work in the New Period," *RMRB*, 3 Jan. 1983 at 1, in *FBIS K20* (5 Jan. 1983).

201. See text, *supra* at 41; Hazard, *Law and Social Change in the U.S.S.R.* 30 (1953).

202. Aronowitz, *supra* n. 32 at 308; Shih, *supra* n. 79 at 15-19.

leaderships have elected to permit the persistence of certain elements of customary succession laws. This is especially notable in the agricultural context, where pre-communist patterns for succession to a peasant "*dvor*" or "household" consistently have been followed.<sup>203</sup> Moreover, in China express reference to the "customs of the masses" is frequently made for purposes of resolving inheritance disputes. This appeal to customary law has appeared in cases involving, *inter alia*, will formation, eligibility of heirs, and estate partition.<sup>204</sup>

Notwithstanding this incorporation of ideological and customary inheritance concepts, the Soviet and Chinese systems in the final analysis differ little from those in effect in civil law nations.<sup>205</sup> In fact, many of the Soviet provisions are directly derived from the Romanist law of succession.<sup>206</sup> Thus, "[s]ocialist inheritance law's claim to uniqueness [must be] in what it does and not in what it is."<sup>207</sup> With the continuing expansion of succession rights and growth in inheritable property, it becomes increasingly difficult to argue that a socialist inheritance law flourishes in either the Soviet Union or the People's Republic of China.

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203. See generally, Johnson, *supra* n. 126 at 1127-28; Szirmai, "The Law of Inheritance in Eastern Europe and in the People's Republic of China, pt. I—The Soviet Union," in 5 *Law in Eastern Europe* 25-27 (1961); van der Valk, *supra* n. 78 at 335.

204. See *Reference Material*, *supra* n. 77 at 324, 329-30, 340; Shih, *supra* n. 79 at 23-39.

205. See Ginsburgs, *supra* n. 197 at 55; Gsovski, *supra* n. 28 at 656-57; Aronowitz, *supra* n. 32 at 308.

206. See Taylor, "Roman Influences in Russian Wills," 16 *Am. J. Comp. L.* 430 (1968).

207. Hazard, *supra* n. 48 at 227.