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NEGOTIATING SOVIET INHERITANCE LAW, 1917-1965

By

Marcie Katherine Cowley

A DISSERTATION

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ABSTRACT

NEGOTIATING SOVIET INHERITANCE LAW, 1917-1965

By

Marcie Katherine Cowley

This study of the legal and social dimensions of inheritance in the Soviet Union challenges the notion that the Soviet Union was defined by a lack of individual property rights, which in turn limited labor productivity due to the lack of incentives, and ultimately led to the collapse of Soviet socialism. It contributes to the global history of inheritance that has largely ignored socialist societies. Drawing upon archival materials from the State Archives of the Russian Federation and a wide array of court cases, legal treatises and laws, it demonstrates that Soviet officials made accommodations that allowed and even promoted property rights. Inheritance was closely connected with the family in efforts to first reinvent and then redefine these institutions within a socialist context. The exploitation of others as the basis for private property concerned Marxists and inheritance represented the means by which such property could be transferred and kept within a limited stratum of the population. Soviet officials progressively broadened inheritance laws to allow for more testamentary freedom and a wider circle of heirs at law. However, while they recognized personal property rights in items of a consumerist nature and rights of usage to housing, officials largely succeeded in abolishing capital. The paradox of property relations in the Soviet Union is thus far more complicated than a complete abolition of individually held property. This study explores the complexities of Soviet inheritance from the first attempts to abolish it in 1918 through years of upheavals and international conflict, until the debate finally became moot under Khrushchev once the law broadened to allow for testamentary freedom with minor exceptions.

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For Katherine

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Introduction

"Everything I have I have earned through hard work.
My generation of Russians had to. There was no inherited wealth."[1]

The institution of inheritance in the Soviet Union, official debates surrounding inheritance law and inheritance cases provide a link between property (and property relations), civil law (and its application), and the family. This dissertation argues that the Bolsheviks in 1917 and later Soviet authorities had two essential goals with respect to inheritance. The first involved abolishing private property (*chastnaia sobstvennost'*) or "bourgeois" property earned from the income of others as the foundation of property received through inheritance. This goal derived from the ideological call for the abolition of inheritance in *The Communist Manifesto.* I argue that the Bolsheviks and Soviet officials were largely successful in this endeavor. Officials abolished most forms of property ownership and Bolsheviks and Soviet legal theorists would call the property that remained "personal" property (*lichnaia sobstvennost'*) which consisted of living space and household or consumer items. By 1936, Soviet officials and jurists claimed that the "bourgeois" character of property that concerned Marx and Engels no longer existed, and to a large extent, this was true. Personal property in the Soviet Union was much more limited than the private property in Western countries that reproduced extreme wealth among a small proportion of the population in families such as the Rockefellers, Carnegies, Vanderbilts, Mellons, or Fords. No heirs to tremendous amounts of unearned inherited income existed in the Soviet Union. It was only the collapse of the Communist

[1] Louise Carpenter, "Russia's Super-rich Take Advantage of Recession to Storm Britain's Public Schools," *Telegraph* July 23, 2009 http://www.telegraph.co.uk/education/5872498/Russias-super-rich-take-advantage-of-recession-to-storm-Britains-public-schools.html

system in 1991 that allowed the reemergence of a new class of wealthy property owners such as Boris Berezovsky, Mikhail Prokhurov and Roman Abramovich. Thus, businesswoman Dina Karpova's observation at the beginning of this introduction rings true.

However, the latent structure of property relations remained largely unaltered. Soviet citizens continued to build houses and dachas outside urban areas and had de facto tenure in urban apartments. They entered into buy/sell contracts and, despite prohibitions on such measures, used their property to earn additional income such as by using automobiles as "taxis" and renting rooms in their apartments, dachas or houses. They also cared about what happened to the property of a deceased family member, and engaged in protracted court battles to inherit property. In attempting to remake property relations and alter the forms of property in the Soviet Union, Soviet authorities enacted and enforced laws through the civil court system following the various republic civil codes except for in situations involving the death of a member of a collective farm. In this case, the property passed to other members of the collective under the Land Code. The rule of civil law and its application played an important role that differed from the criminal law system. Soviet citizens petitioned procurators, Ministry of Justice officials and judges for help with their inheritance disputes.

Another primary goal of the Bolsheviks, I argue, involved the remaking of the institution of the family, so that in terms of inheritance, it would differ from "bourgeois" countries. Soviet citizens would not murder in order to obtain property from a relative and citizens would not engage in protracted inheritance disputes because on the one hand, the state would provide for citizens' well-being and the social welfare characteristic of

inheritance would no longer be needed and, on the other hand, the bourgeois family would no longer exist and therefore, such disputes would not arise. This attempt largely failed. The chronic shortages of housing and consumer goods meant that inheritance remained a very important means of obtaining this type of property. Conceptually, the focus on the family influenced the changes to inheritance laws. As Bolshevik and official Soviet attitudes toward the family and its role in a socialist society changed, so too, did the inheritance laws. The official change in attitude toward an emphasis on strengthening the Soviet family by allowing inheritance as a right did not abolish the disputes among family members over personal property. Prior to 1926, the limited circle of heirs which included a spouse, children and dependents produced no cases that reached the Supreme Court of the USSR. When unregistered marriages were allowed from 1926-1944, there were several disputes between a de facto and registered spouse. Subsequently, after the enlargement of the circle of potential heirs in 1945 to potentially include parents and siblings, the nature of inheritance cases changed and most disputes now involved in-laws or sibling rivalry. Therefore, the authorities' efforts to strengthen the family by allowing a wider circle of heirs increased the potential for inheritance disputes. Certainly, World War II also provided the conditions for an increase in inheritance disputes because of the enormous death toll, but the court cases reflect that the majority of the court cases involved those recently added as potential heirs under the law, evidencing the effect of the changes to the law.

This study is an examination of the theory and reality of inheritance law and practice, and its centrality to the changing official view of the family in Soviet society. As such, it relies heavily on two types of primary sources. The first consists of Soviet

legal texts and journals in which theorists debated and described the changes to inheritance law and its role in Soviet society. These sources are used to illuminate the official view of what constituted "socialist" inheritance and how it differed from "bourgeois" inheritance. The other major source is archival cases from the Supreme Court of the USSR and letters written by citizens to the Ministry of Justice. This source base is important for two reasons. First, it demonstrates the relationship between the state and citizen in the realm of civil law. Second, Supreme Court cases, while not likely typical of inheritance in general because they involved disputed property and were those that had already passed through several lower courts, are, on the other hand, revealing precisely because of these limitations. The USSR Supreme Court was much more accessible to the average citizen than, say, the United States Supreme Court. Once a case had been heard by the People's Court, Regional Court and Republic Supreme Court, a citizen could petition directly to the Supreme Court of the USSR and the case would potentially be reviewed by three members of the Judicial College of Civil Affairs. Many petitions were handwritten. Some indicate knowledge of the law, and presumably, some legal consultation for advice. Others are a narrative of the facts based upon personal notions of fairness. Sometimes a procurator would intervene on behalf of a citizen and make the petition. In either case, the appeals disclose much about the reality of Soviet family life and society.

These petitions reveal themes that include placing the blame for "wrong" decisions of lower courts on local corruption that should be corrected at the Union level. The shortage of living space and the resulting conflicts are also forefronted. Other trends reflect attempts to narrate individual stories in a light calculated to obtain a favorable

result, emphasizing ideas about Soviet justice, sacrifice in the Great Patriotic War, being elderly or disabled. In addition, the Supreme Court cases reveal how the nature of the disputes changed over time from a more privileged and wealthy class of petitioners in the 1930s to the everyday citizens of the postwar years who often spent years in legal battles contesting a portion of a house or small amounts in saving accounts. Thus, these cases allow an intimate view into the relationship between the civil legal system and Soviet citizens.

While most inheritances passed without dispute (as, indeed, is also the case in capitalist countries), it is precisely the contested cases which are most telling about the relationship between state and citizen, about the success or failure of officials' attempts to redefine the role of the family and property in the Soviet Union, and about the nature of the property in question. It is through these cases that one can observe the general success of the official attempt to do away with most forms of "bourgeois" property based on capital earned from the labor of others, but the unsuccessful attempt to rid Soviet society of individualistic attachments to property. Furthermore, despite the argument advanced by officials that once bourgeois property no longer existed, inheritance would constitute a means by which to strengthen the socialist family, the cases reveal that this privileging of the individual family over the collective enhanced the potential for battles among family members. Therefore, the allowance of inheritance as an institution in a society ravaged by wars, endemic housing shortages and a lack of consumer goods exposed in a legal framework familial discord.

Beyond the examination of the role of the family in Soviet society through the prism of inheritance, another important theme of this project is that rule of law existed in

inheritance court cases in the USSR. Furthermore, the evidence demonstrates a two-way relationship between state officials and citizens. Authorities did not just act but rather, they also *reacted* to complaints from citizens by changing inheritance laws. Thus, this study addresses several fundamental questions regarding the institution of inheritance and its role in the relationship between property, law and the family in Soviet society. These include the following: Why allow exceptions to a decree abolishing inheritance in 1918? If it was to provide social welfare for minors and dependents during a volatile period of war, civil war and the construction of socialism, then why make inheritance a constitutional right in 1936 after socialism had purportedly been achieved? Why allow for de facto marriages between the years 1926-1944, and make no distinction based upon whether children were born of a registered marriage, but change this policy during the war years to limit inheritance to spouses in a registered marriage, and patrilineal inheritance to children born of a registered marriage? Why continue to expand the circle of heirs beyond minors and dependents to privilege other family members over the collective by potentially including parents and siblings in 1945 or even non-family members if there were no living heirs? Why allow near complete testamentary freedom in the 1961 reform? These questions are not presented to suggest that laws should be constant over time, but rather to emphasize the ways in which the law changed that reflected an accommodation with Soviet citizens and the family as an institution in Soviet society. In analyzing these questions relating to property and inheritance, my dissertation contributes to an understanding of the Soviet family and policy making.

Chapters one through three and chapter six examine the evolution of Soviet inheritance law in theory and in practice using a chronological framework. Chapter one

introduces the historical evolution of inheritance from the 1917 revolution to World War II, including Stalin's 1936 Constitution which specifically incorporated a right of inheritance. It argues that inheritance as an institution progressively expanded during the early Soviet years, despite its ideologically problematic nature. From its early abolition with minor exceptions for purposes of social welfare to its elevation to a Constitutional right in 1936, Soviet policy leaders and theorists struggled with how to articulate the role of the institution in a socialist society. Inheritance was ideologically problematic but needed on a practical level which made it central to the attempts to restructure society. The upheavals of World War I, civil war and famine and the inability of the State to meet goals of collectivized services resulted in the allowance of limited inheritance in the early post-revolutionary years. Legal theorists argued that this provided social welfare for minors and dependents during the years of building socialism. Furthermore, jurists asserted that capital had been abolished by nationalization of land and industry. Thus, inheritance did not allow for the reproduction of bourgeois wealth but rather the transfer of earned income and necessary material items accumulated from contributions to socialist society. With the proclamation in the 1936 Stalin Constitution of the achievement of socialism, the emphasis in the legal literature shifted away from a social security argument and focused on the contributions to socialism. That is, citizens had a right to transfer personal property accumulated in the building of socialism and this would, in fact, strengthen the new Soviet family.

Chapter two examines the history and context surrounding the reforms made to inheritance law during World War II which culminated in a law in 1945 that expanded the circle of allowable heirs to include parents and siblings of the deceased and, even

more remarkably, to allow for a will to designate non-family members to inherit if there were no living persons within the circle of heirs. This chapter asserts that the realities of war combined with a petition and letter-writing public initiated a project to reform Soviet inheritance law to allow for a broader circle of potential heirs. It further examines inheritance court cases relating to World War II and demonstrates that Soviet citizens presented petitions for inheritance in terms of entitlement and ownership, comparable to what one would expect in a private property regime. Some citizens couched their petitions in terms of service to the motherland during the war, but many petitions also employed a language of rights to property. This chapter explores this discourse of rights and how it applied to families affected directly by the war, as well as to those who petitioned for inheritance after the natural death of a family member. Finally, it highlights familial relationships and tensions when second spouses and children born out of wedlock were involved.

Chapter three analyzes the arguments advanced by Soviet legal scholars in the late Stalinist period concerning the achievement of socialism as a premise for the theory that everyone who contributed to work in the socialist economy should receive fruits of that labor in the form of income and savings for satisfaction of material needs. In addition, Soviet legal literature emphasized the moral degeneracy of inheritance in "bourgeois society," arguing that it caused children to await impatiently the death of their parents and pushed the ruling class toward vindictiveness and crime for the sole purpose of achieving property. Accordingly, this chapter argues that the ideological underpinnings of the Soviet leadership and particularities of Soviet society resulted in a commingling of the private and public spheres in relation to inheritance as Soviet legal

scholars struggled to redefine the bourgeois institution of inheritance in a socialist context. It further addresses late Stalinist court cases and the continued redefinition of Soviet inheritance as an institution which strengthened the Soviet family, in opposition to the deleterious effects of inheritance in capitalist "exploiter" societies.

Chapters four and five use a thematic approach to examine inheritance practice on the individual level domestically within the Soviet Union in the late Stalinist and early post Stalinist periods and internationally during Cold War tensions. Chapter four illuminates the relationship between state and society with an examination of Soviet citizens' tools of self-narration in letters and petitions to state and court officials about inheritance matters. It focuses on the late Stalinist and early post Stalinist periods with the complication of inheritance cases by the aftereffects of the purges of the 1930s when citizens received notifications of the deaths of their loved ones, the addition of a wider circle of heirs after 1945, and World War II. It utilizes letters written to the Ministry of Justice and petitions to the Supreme Court of the USSR to illustrate how Soviet citizens defined and constructed a personal view of entitlement. These sources provide a lens through which to examine the institution of inheritance in the USSR and the importance of personal property in a socialist society. Soviet citizens' employment of various narrative strategies when petitioning or writing state and court officials demonstrate the attachment to, and importance of property, in particular housing. Citizens employed various themes in narration of their circumstances and portrayed a site of self perceived entitlement to special help from state officials. These included service in the Great Patriotic War, victimization by the Nazis, disability, and old age. These sources evidence

how Soviet inheritance was both practiced and constructed on a familial level, and offer a glimpse into families torn apart by arrests, war, death, and rivalries.

Chapter five situates inheritance laws within the Cold War and demonstrates the abrogation of individual rights of persons living in the United States to transfer property upon death to residents of the Soviet Union and East bloc countries in the contemporary political situation, in contrast to the purported existence of testamentary freedom in the United States. This theme is important to this project because Soviet legal theorists used the dichotomy of bourgeois versus socialist throughout the evolution of Soviet inheritance and Western legal scholars generally lamented the restrictions on inheritance enjoyed by Soviet citizens. This chapter examines the rhetoric employed in the cases and the precedents relative to Nazi Germany that resulted in a tendency of American courts to violate individual testamentary rights to dispose of property with respect to "enemy" countries. Soviet legal scholars argued that reciprocity existed and that property from estates of persons who died in the Soviet Union had been transferred to heirs living in the United States and the evidence supports this assertion. Thus, this chapter explores how the political and legal conflicts of the Cold War played out on the level of the individual in an investigation of American and Soviet legal debates and court cases concerning personal property and inheritance rights. This chapter also focuses on one particularly well documented case from the Russian archives in order to illustrate the politics of personal property and how the Cold War affected testamentary freedom. Therefore, chapters four and five provide important thematic examinations of Soviet inheritance domestically and internationally during Cold War tensions.

Chapter six explores the continuity between the late Stalinist and early post-Stalinist years in inheritance disputes, challenging the traditional periodization of Soviet history which has relied on a clear break with the transfer in leadership. It also analyzes the changes to the law culminating in the broadening of the allowable circle of heirs in addition to removing restrictions on the amounts of transferable property that resembled Western legal codes in the 1960s. Restrictions on to whom property could be bequeathed no longer existed, other than mandatory shares for minor children and dependents. This chapter also details the official concern with citizens' use of personal property to earn illegal income, which undermined the ideological basis of allowing personal property in the first place. At the same time that Soviet officials argued that bourgeois property no longer existed, they also admitted that some citizens had transformed personal property into a type of bourgeois property by using their automobiles as taxis or renting rooms in their homes, providing a source of income not earned within the framework of the official Soviet economy.

Inheritance and Property Relations in Russia and the Soviet Union

My dissertation can be situated within several fields of historical inquiry. The legal and social dimensions of inheritance in the Soviet Union add a dimension to the global history of inheritance that challenges both popular notions and scholarly research of what socialism in practice entailed. In the popular mind, a lack of property rights which in turn undermined labor incentive defined Soviet socialism. To some extent, this

view has also been defended by historians.[2] In contrast, I examine accommodations made by Soviet officials with respect to property and the family. My study draws upon an emerging body of literature on family and private life in Soviet Russia and adds to the scholarly literature of everyday life and the public and private sphere in the Soviet Union, in particular with respect to property relations. It also relies upon a parallel legal literature about Soviet property and family law, a literature which focuses mostly on changes in the laws with little analysis of the social background precipitating revisions, and the resulting practical effect on the personal level of individual Soviet citizens.

Furthermore, as noted above, my research challenges the traditional periodization of Soviet history that has been characterized by changes in leadership. It finds that inheritance in law and practice followed an overall continuous pattern from the late Stalinist years until the 1960s. The law did not change with Stalin's death, rather it changed in 1945 and remained in place until the Civil Code of 1964. Inheritance practices largely reflected the aftereffects of World War II during this period. However, even prior to Stalin's death, citizens were beginning to receive confirmed death notices for loved ones who were victims of the 1930s mass arrests and inheritances associated with these deaths were also an issue during these years.[3]

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[2] For example, Richard Pipes has argued that private property was abolished without examining the complexity of property rights in the Soviet Union, including usage rights and personal property rights. For example, Pipes compares the Soviet Union and Nazi Germany and concludes that "[u]nlike the Soviet Union, Nazi Germany tolerated private property but treated it as a revocable trust rather than an inherent right, and regulated it minutely for the benefit of the state." Richard Pipes, *Communism: A History of the Intellectual and Political Movement* (London: Phoenix Press, 2001), 104.

[3] Other recent research to challenge the conventional periodization by leader includes Mie Nakachi, "Replacing the Dead: The Politics of Reproduction in the Postwar Soviet Union, 1944-1955" (PhD diss., University of Chicago, 2008) and Mark Smith, "Individual Forms of Ownership in the Urban Housing Fund of the USSR, 1944-1964," *Slavonic and East European Review* 86, no. 2 (2008): 284-305.

This study comes at an opportune time, as the post socialist countries continue to struggle to integrate their economies into a market based property system. My study contributes an examination of inheritance in a socialist society that explores the extent of difference between Eastern and Western Europe in the twentieth century, by examining the effect of public opinion in broadening inheritance laws in the Soviet Union as well as the discourses that surrounded the institution of inheritance and how inheritance operated on an individual level. Given that the laws of inheritance in Western European countries were in place, more or less, prior to the twentieth century[4] (with the exception of broadening the rights of women and inserting some social welfare provisions such as mandatory shares for minor children), it is not surprising that the social literature for this region focuses on earlier periods. The literature on twentieth century European inheritance practices is attentive to the reproduction of the social elite and the rise of the so-called welfare state. Inheritance in the Soviet Union, as in Europe, concerned the family. I agree that a "crucial point is that inheritance practices do not only concern the family itself; they also concern the rest of the community" and "tend to be strongly backed by public opinion and embodied in laws"[5] and find that this was true of socialist inheritance as well, in particular as it expanded over the course of the Soviet period.

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[4] For an overview of rural inheritance practices in Western Europe from the late Middle Ages to the industrial age, see the essays in Jack Goody, Joan Thirsk and E.P. Thompson, ed., *Family and Inheritance: Rural Society in Western Europe 1200-1800* (Cambridge: Cambridge University Press, 1976). For essays dealing with inheritance in towns, primarily in Britain, during the age of industrialization see Jon Stobart and Alastair Owens, ed., *Urban Fortunes: Property and Inheritance in the Town, 1700-1900* (Burlington: Ashgate, 2000).

[5] Patrick Heady and Hannes Grandits, "Introduction: Property, Family and Community in a Changing Europe: A System and Historical Approach," in *Distinct Inheritances: Property, Family and Community in a Changing Europe*, ed. Hannes Grandits and Patrick Heady (New Brunswick: Transaction, 2003), 4.

Moreover, I situate Soviet inheritance within the recent scholarship about modernities and argue that Soviet inheritance reflected European inheritance practices more than global inheritance practices because of its focus on individual property ownership and rights. Recent scholarship has placed Soviet family law changes, in particular, within a paradigm of modernity, either within Europe or, alternatively, within a global context. For example, the European modernity paradigm positions the changes to Soviet laws in the 1930s concerning control of reproduction within a wider context of European countries and the modern state aiming to control population.[6] The global model situates the Soviet Union outside a "Eurocentric hierarchy of modernity with global pretensions," in which it experienced an alternative form of modernity. Thus, its "understanding of the self as 'backward' and its conscious attempt to create or imagine its own unique path to modernity" precipitated the claims of "the superiority of the socialist system over the Western capitalist system."[7] However, I argue that a European paradigm of modernity is more appropriate for Soviet inheritance. Most Soviet jurists situated inheritance within a socialist versus bourgeois framework yet the reforms during World War II specifically consulted laws from Western Europe and the United States. The official literature from the Revolution through the late Stalinist years, in particular, took pains to distinguish socialist inheritance from bourgeois inheritance and the socialist family from the bourgeois family. This would seem to favor the alternative modernity discussed above because of the focus on claiming superiority of the socialist system over

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[6] David Hoffmann, *Stalinist Values: The Cultural Norms of Soviet Modernity, 1917-1941* (Ithaca and London: Cornell University Press, 2003). See chapter 3 in particular.

[7] Nakachi, "Replacing the Dead: The Politics of Reproduction in the Postwar Soviet Union, 1944-1955," 16-17.

the Western capitalist system. However, Soviet inheritance practices were not so far apart from European and American practices as the bourgeois versus socialist framework would suggest. Eastern and Western systems of inheritance (in the sense of Europe and Eurasia) were part of a system in which adults were viewed as individuals before the law and economy and strategies of inheritance were more similar than dissimilar in comparison with practices in, for example, Africa. While a socialist redistribution of property was clearly the most radical, other forms of egalitarian redistribution did and do exist in Western Europe in the form of social welfare.[8] Thus, property relations and the development of private property actually unite Russian and European history and "[n]othing so firmly attaches Russia to European instead of Asian history than the fact that its nobility created for State service settled down in the long run, like their congeners further west, as private landowners."[9]

My project focuses on the most important time period for the political divisions between East and West. Thus, "after the Second World War, Europe was divided into two parts characterized by fundamentally contrasting property regimes. In Western Europe the importance of 'private property' as a fundamental basis of the whole democratic system was stressed. Inherited forms of property continued to play a significant role in economic organization, and in the reproduction of the social elite."[10] In this sense, while the welfare state may have been on the rise in Western Europe, the

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[8] Jack Goody, "Sorcery and Socialism," in *Distinct Inheritances*, 391-406.

[9] V.G. Kiernan, "Private Property in History," in *Family and Inheritance: Rural Society in Western Europe 1200-1800,* 381.

[10] Heady and Grandits,"Introduction," in *Distinct Inheritances*, 18.

ideological debate between East and West continued to characterize the two forms of government as antithetical because of the "lack" of private property rights in Eastern Europe and the Soviet Union.

Inheritance in pre-revolutionary Russia[11]

The customs and laws of inheritance in pre-Soviet Russia provide the background for the redefinition of inheritance after 1917. While there is a body of literature about wider property relations in pre-revolutionary Russia, this overview focuses on the research findings specifically related to inheritance to provide the context for my research on Soviet inheritance. Much of the literature on inheritance in Kievan and Muscovite Rus' and Imperial Russia has centered on the issue of women's inheritance rights, peasant inheritance practices and restrictions to absolute inheritance.

Some women had the right to inherit landed property in the Kievan and Muscovite period from the twelfth century up until Ivan IV's reign, even though these rights were not codified in Muscovite law.[12] However, social class largely defined women's property rights. For example, bondswomen had no rights to inherit, were not entitled to a dowry or inheritance, and did not even own personal items. Married women and widows from upper classes, however, could "own and dispose of both movable and

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[11] I have discussed the following works in this section in some depth, although they do not appear in the text of the chapters of the dissertation. Rather, they provide the essential background to pre-revolutionary inheritance law and custom as well as an introduction to the dichotomy presented between socialist and capitalist property regimes in the twentieth century.

[12] George G. Weickhardt, "Legal Rights of Women in Russia, 1100-1750," *Slavic Review* 55 (1996): 1.

immovable property almost on a par with men" by the end of the fifteenth century. [13] Rights to landed property dramatically improved during the period 1627-1750 with the result that at this time their rights "exceeded women's rights in western Europe and North America."[14] However, community property among family members characterized ownership of landed property, and neither husband nor wife "held a significant 'portion' of property independently."[15] In addition, gentry practices of testators that guaranteed support for daughters and widows were not always in accordance with formal law. Legal administrators sometimes allowed for female inheritance despite legal prohibitions. In the seventeenth century decrees limited women's rights to inherit; yet in the administration of the law, officials frequently protected the female line of inheritance.[16]

Law limited property rights for the nobility in Imperial Russia. The extent to which an owner had rights to transfer property depended on the classification of the property as patrimonial or acquired property. Patrimonial property consisted of "any immovable property inherited by a member of the patrilineal kin-group of the deceased owner or bequeathed by an owner to his or her direct legal heirs..."[17] Patrimonial property "could not be transferred to anyone other than the direct legal heirs except by

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[13] Natalia Pushkareva, *Women in Russian History from the Tenth to the Twentieth Century,* trans. Eve Levin (Armonk: M.E. Sharpe, Inc., 1997), 46, 49.

[14] Weickhardt, "Legal Rights of Women in Russia, 1100-1750," 1.

[15] Pushkareva, *Women in Russian History,* 106.

[16] Valerie A. Kivelson, "The Effects of Partible Inheritance: Gentry Families and the State in Muscovy," *Russian Review* 53 (1994): 207.

[17] William G. Wagner, *Marriage, Property, and Law in Late Imperial Russia* (Oxford: Clarendon Press, 1994), 228.

[conditional] sale" which resulted in direct heirs having a secure right to inherit their share.[18] Other property "was considered 'acquired property,' over which the owner enjoyed unlimited powers of disposition."[19] Thus, noble property rights in Imperial Russia remained constrained by the clan and the monarchy. The clan restricted property rights because heirs had redemption rights to property of deceased relatives (i.e. patrimonial property) for forty years (eventually reduced to three). This effectively meant that during this time the purchaser of property could not be fully secure in the ownership of that property because a member of the clan from whom it was purchased could demand the property back in exchange for payment of the redemption fee.

The monarchy also limited the development of true private property rights because of its confiscation of property, often arbitrarily, under no clearly defined rule of law. Consequently, Russian nobles had a limited sense of security in the ownership of their lands.[20] In addition, the combination of the limitations to disposal of patrimonial property and partible inheritance:

> resulted in the constant division of landed property, the effects of which were exacerbated by the practice of dividing single estates into smaller and often vaguely defined parcels. Law and custom together thus produced a pattern of landholding in which the property of an owner frequently lay scattered among several districts or provinces and, within a

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[18] Ibid.

[19] Ibid.

[20] Lee A. Farrow, *Between Clan and Crown: The Struggle to Define Noble Property Rights in Imperial Russia* (Newark: University of Delaware Press, 2004). For a study concentrating on noble women's property rights in pre-emancipation Russia see Michelle Lamarche Marrese, *A Woman's Kingdom: Noblewomen and the Control of Property in Russia, 1700-1861* (Ithaca: Cornell University Press, 2002).

district, was fragmented into numerous holdings that were intermingled with those of other owners.[21]

Thus, limitations to absolute rights to landed property had a long tradition in Russia even for the elites and the constant division of land reduced its overall productivity. The nobility expressed concern with the ultimate feasibility of the system but even Catherine II "argued that a system of partible inheritance..... served state interests more effectively by ensuring adequate material means for more people, including widows and daughters."[22]

Russian intellectuals recognized the European principle of absolute property rights in their writings but these were subject to conditions under which the state could violate property rights for the general good. In addition, property relations were complicated by the existing social conditions in Russia, namely serfdom. Therefore, there existed an inevitable tension between the notion of individual property rights when the majority of individuals were in fact, considered property that could be bought, sold or

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[21] Wagner, *Marriage, Property and Law,* 234.

[22] Ibid., 238.

inherited.[23] Still, this intellectual current had its parallel in juridical literature after the 1850s that began to emphasize the individual in relationship to property over the kin group and support for expanding the rights of individual owners.[24] Jurists attacked the social base regarding the favoritism of male heirs and argued that the "right to only a meager portion of an inheritance consequently often compelled women to marry solely for convenience, which increased the dependence of wives on their husbands and thereby also their vulnerability to abusive treatment by a husband."[25] Emancipation of the serfs complicated property relations in Russia even more because "the nobility lost a considerable portion of its land to its former serfs and the rest was thrown open to ownership by people of any social estate" and "problems of management, impediments to reorganization, and questions of fragmentation assumed much greater importance than

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[23] D.V. Timofeev , "Poniatie sobstvennost' v Rossii v pervoi chetverti XIX veke," *Rossii'kaia istoriia* 1 (2009): 165-180. The tension between human property and property ownership was not limited to Russia. In the United States, for example, property rights in relationship to slavery were one of the central contested themes in the Civil War Era. President Lincoln and others believed that the notion of private property preempted any freeing of slaves without compensation to their owners because it would interfere with private property rights. The Emancipation Proclamation underscored this point because it only freed slaves within rebellious territories. See, for example, Allen Guelzo, "The Emancipation Proclamation: Bill of Lading or Ticket to Freedom?" *History Now* 6 (2005) http://www.historynow.org/12_2005/historian.html The famous *Dred Scott* decision in the Supreme Court held that temporary residence by a slave in a territory that did not allow slavery did not abrogate the rights of property of the slave owner declaring that "[e]very citizen has a right to take with him into the Territory any article of property which the Constitution of the United States recognises as property" and "[t]he Constitution of the United States recognises slaves as property, and pledges the Federal Government to protect it. And Congress cannot exercise any more authority over property of that description than it may constitutionally exercise over property of any other kind." *Dred Scott v. Sandford,* 60 U.S. 393 (1856).

[24] Wagner, *Marriage, Property and Law,*256.

[25] Ibid., 259-60.

previously."[26] Although changes to inheritance and property law had been debated for most of the Imperial period, the debates acquired increasing urgency after emancipation.

For the peasantry in the nineteenth century, pre-emancipation inheritance practices were subject to restriction by the manor lord. When not restricted, peasants followed a partible inheritance system of dividing all resources among male children and women received dowries. However, peasants used strategies including unequal divisions and sometimes withholding of shares in order to ensure that the partitioned households could sustain themselves. While this system could be unstable in creating households that were not economically viable, it served to limit "to a great extent the growth of a stratum of landless and disinherited peasant laborers."[27] Furthermore, "[d]uring both the pre- and post- emancipation periods, the extended family household of Russian peasants functioned as both an economic component of the commune and a welfare institution that supported the elderly, infirm, or orphaned....."[28] A communal rather than individual nature that carried over into the early Soviet years characterized post-emancipation peasant inheritance practices. Peasant property customs included common ownership by the peasant family in which the head of the household had rights comparable to an administrator or trustee of common property rather than as a legal owner with rights to dispose of property.

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[26] Ibid., 243-44.

[27] Rodney D. Bohac, "Peasant Inheritance Strategies in Russia," *Journal of Interdisciplinary History* 16, no. 1 (1985): 29.

[28] Christine D. Worobec, *Peasant Russia: Family and Community in the Post-Emancipation Period* (Dekalb: Northern Illinois University Press, 1995), 42.

The post-emancipation system of family property differed from private property by limiting the rights of head of household, and it differed from collective ownership in that, rather than each member holding a share of the property, family property consisted of "participation in the group-ownership of the whole property" but focused on equality among male members of the household.[29] Furthermore, inheritance in practice united peasant custom with codified law. Up to 1906, the law reflected actual social behavior because of special peasant courts that decided cases "in accordance with custom."[30] The "right to use local customs in inheritance cases gave peasants possibilities that were unavailable to people whose property arrangements were determined by the civil code."[31] The community strictly regulated inheritance in the Russian north.[32] Therefore, the communal and collective nature of property rights dominated in non-urban areas. In addition, partible inheritance "meant that young male peasants, unlike their contemporary Western European counterparts, were not immediately forced to migrate to urban centers to earn money" before returning to the village and, thus, "the multiple family household

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[29] Teodor Shanin, *The Awkward Class: Political Sociology of Peasantry in a Developing Society, Russia 1910-1925* (Oxford: Clarendon Press, 1972), 220-23.

[30] Ibid., 219.

[31] Jane Burbank, *Russian Peasants Go to Court: Legal Culture in the Countryside, 1905*-1917 (Bloomington: Indiana University Press, 2004), 104.

[32] I.N. Beloborodova, "Obychnoe pravo v traditsionnom prirodopol'zovanii Russkogo Severa kontsa XIX-nachala XXvv." in *Sobstvennost' v predstavlenii sel'skogo naseleniia Rossii (seredina XIX-XX vv.): regional'no-istoricheskii aspekt* in ed. D.S. Tochenyi (Ulianovsk, 2001), 51.

constituted the norm in both the pre- and post-emancipation periods."[33] In summary, landlords and communes restricted peasant inheritance rights in the Imperial period.

Inheritance practices were not uniform across the empire and local tradition and religion were important in non-Slavic areas of the empire. In terms of my project, the evidence of this pre-revolutionary diversity in customs of inheritance among non-ethnic Russians is important to any analysis of Soviet inheritance and the degree to which local customs persevered into the Soviet period. Although I concentrate on Soviet Russia, my research draws upon Supreme Court cases from throughout the USSR and demonstrates that a Soviet law of inheritance did indeed prevail over religious and ethnic customs existing in the pre-revolutionary period. An examination of local inheritance practices outside the purview of the court system is beyond the scope of this study, and I do not claim uniformity of inheritance practices throughout the Soviet Union in every instance or that local customs did not prevail outside the realm of law (which they clearly did as evidenced in media articles concerned with bride price and veiled women).[34] But in those cases that did make it to the Supreme Court of the USSR and in the laws enacted in, for example, Central Asian Republics, local and religious customs were considered irrelevant to the civil rule of law.

Distinctions in the level of social and economic development and the preservation of patriarchal attitudes enhanced the complexity of inheritance practices in pre-revolutionary Central Asia. The observation of common law or custom, or, in the

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[33] Worobec, *Peasant Russia,* 43.

[34] For an excellent analysis of official attempts to eliminate these customs in Stalinist Central Asia, see Douglas Northrup, *Veiled Empire: Gender and Power in Stalinist Central Asia* (Ithaca: Cornell University Press, 2004).

alternative, the religious law of Islam (Shari'a), also influenced inheritance practices. Custom predominated among the Kazakhs and Kirghiz whereas Turkmen, Tadjiks and Uzbeks were generally guided by Shari'a.[35] For the first group, a nomadic way of life predominated in a community based on communal land tenure combined with private ownership of cattle and preservation of patriarchal attitudes. The high bride-price paid for marriage affected property transfers more than inheritance in some respects. Women had no property rights and were expected to marry a relative of their husband if he died. Women only controlled property as a trustee for minor children in the unique situation where they did not remarry a relative of their deceased husband.[36] The historical instances where women did receive part of an inheritance were likely the result of the influence of the norms of Shari'a.[37] Turkmen occupied a special status in terms of inheritance practices among Central Asians peoples because, while the bride-price remained an important custom, women also had a right to partial inheritance after the death of their husband as well as to property upon leaving a marriage.[38] Uzbeks and Tadjiks were more settled and urban, engaged in trade, and the norms of Shari'a allowed for female inheritance. Furthermore, for these peoples, the transition from a subsistence economy to a commodity focused economy accompanied changed patterns of ownership in which property ceased to be collectively held by the community or patrimonial group,

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[35] N. A. Kisliiakov, *Nasledovanii i razdel imushchestva u narodov Srednei Azii i Kazakhstana* (Leningrad: Izdatel'stvo Nauka 1977), 10-13.

[36] Ibid., 102-03.

[37] Ibid., 22.

[38] Ibid., 108.

and became the property of small separate families. These historical developments reflected favorable conditions of development and the transition to a market economy more than the recognition of Shari'a for female rights of succession.[39]

Property relations in Russia remained important in the years leading up to the Bolshevik revolution, providing context for the immediate attention given to inheritance after the revolution. In the period from 1906-1929, the law departed in major ways from its former reliance on custom. The law of 1910 abolished peasant family property, making it the private property of the head of household and the "legal basis for customary partitioning disappeared with the disappearance of family property." Yet, these legal reforms that aimed to limit the partitioning of peasant land in order to make the size of land worked more economically viable did not really happen on the ground and even into the Soviet period the Land Code of 1922 and other NEP legislation "legalized once more the basic principles of peasant customary law as it had existed during the period of 1861-1905."[40]

This further evidences a non-exclusive tradition of private property rights even before the Bolshevik Revolution. While Bolshevik attitudes toward inheritance were aimed at remaking property relations and the family, they did not have to deal with a stronger system of absolute private property that existed in other countries, notably England and the United States, where property rights had long been seen as not subject to official interference. The tradition of private property rights that existed in pre-

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[39] Ibid., 112-113.

[40] Shanin, *The Awkward Class,* 224-27.

revolutionary Russia differed from that of absolute private property. Peasants engaged in family property practices and even nobles' rights were not absolute.

Family, Property and the Public/Private sphere

Soviet inheritance law intersected with family law and concerned the family on a personal as well as ideological level. In this regard, there is an emerging literature on family and private life in the Soviet Union.[41] In addition, a considerable number of scholarly contributions on women in the Soviet Union focus on their role as workers, liberation from the domestic household and "bourgeois" marriage, and the resulting "double burden" of full-time employment in the public sphere with continued primary responsibility for household tasks and child rearing.[42] The effort of Soviet authorities to reshape and control relations within the family produced mixed results. For example, the

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[41] Catriona Kelly, *Children's World: Growing up in Russia, 1890-1991* (New Haven and London, Yale University Press, 2007); Orlando Figes, *The Whisperers: Private Life in Stalin's Russia* (New York, Metropolitan Books, 2007); Cynthia Hooper, "Terror of Intimacy: Family Politics in the 1930s Soviet Union," in *Everyday Life in Early Soviet Russia: Taking the Revolution Inside* , ed. Christina Kiaer and Eric Naiman (Bloomington and Indianapolis: Indiana University Press, 2006); Alan M. Ball, *And Now my Soul is Hardened: Abandoned Children in Soviet Russia, 1918-1930* (Berkeley: University of California Press,1994), Edward D. Cohn, "Disciplining the Party: The Expulsion and Censure of Communists in the Post-war Soviet Union, 1945-1961" (PhD diss., University of Chicago 2007) (see chapter 4 in particular); Sheila Fitzpatrick, "Wives' Tales" in *Tear off the Masks: Identity and Imposture in Twentieth-Century Russia* (Princeton: Princeton University Press, 2005). For earlier (pre-1991) sociological and policy works on the family in the Soviet Union see Vladimir Shlapentokh, *Love, Marriage and Friendship in the Soviet Union: Ideals and Practice* (New York: Praeger, 1984) and *Public and Private Life of the Soviet People: Changing Values in Post-Stalin Russia* (Oxford: Oxford University Press, 1989); H. Kent Geiger, *The Family in Soviet Russia* (Cambridge: Harvard University Press, 1968); David and Vera Mace, *The Soviet Family* (New York: Garden City, 1963); April A. Von Frank, *Family Policy in the USSR Since 1944* (Palo Alto: R&E Research Associates, 1979).

[42] Mie Nakachi provides a thorough review of the literature concerning women, family and medical issues and women's liberation from domesticity and women workers in the introduction to her dissertation. See Nakachi, "Replacing the Dead: The Politics of Reproduction in the Postwar Soviet Union, 1944-1955," 25-33. I have concentrated on the works specifically concerning family law and policy as described in the above footnote because that is what is most pertinent to my project on inheritance law and practice. I would be remiss, though, not to mention the contributions of scholars including Lynne Attwood, Barbara Clements, Barbara Alpern Engel, Beatrice Farnsworth, Gail Lapidus, Richard Stites, Lynne Viola and Elizabeth Wood in this regard.

practices of the Terror aimed at destroying small family loyalties were counterproductive because "relatives often had no choice but to engage...in frantic processes...in hopes of reintegrating with the socialist system by peeling the black mark off their family's name and affixing it to someone else's."[43] In this manner, kinship networks were strengthened rather than diminished. Thus, "the practices of the Terror were grounded in the very bourgeois belief they were designed to combat, for the premise behind such an assiduous tracing of personal ties was that 'private' relationships, however casual, were always more genuine than official ones."[44] This is not to say that the interests of the state were never privileged over familial ties. There were, of course, well published cases of denunciation of a family member such as that of Pavlik Morozov. Soviet citizens also voluntarily involved Party officials in family matters in efforts calculated to produce a resolution to an internal family matter. This differed from informers, denunciations and renunciations, and interaction with the criminal justice system which was implicitly involuntary or often motivated by fear. Rather than about acting preventatively or retroactively out of a sense of desperation based on fear of arrest or some sort of exclusion (from university or the Komsomol based on "tainted" family ties, for example), this is about individual Soviet citizens seeking the assistance of the state in controlling an adulterous husband, for example, or, in the case of this dissertation, in resolving a dispute over property between family members. Thus, in the post-war years, "the regime's growing concern about the stability of the Soviet family was translated into an increase in the expulsion and censure

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[43] Hooper, "Terror of Intimacy," in *Everyday Life in Early Soviet Russia,* 77.

[44] Ibid., 71.

of Communists guilty of 'improper behavior in family life'"[45] including deadbeat dads and abusive husbands. In enforcing the provisions of the 1944 Edict on the family which recognized only registered marriages and children born of registered marriages as legal heirs and restricted divorce, a wife's denunciation played a crucial role in the process of "strategies women developed for extracting child support payments from the fathers of their children..." and the "party Committee...was an especially popular target of complaints, since it had daily contact with its members and could easily exert pressure on them."[46] This project expands this relationship between Party and citizens about internal family members to civil law and citizen, and explores the strategies and methods citizens employed to pursue rights of property.

A small body of historiography examines law and society in the civil realm of family law either through the study of debates preceding legal changes, the effects of decrees and policy changes, or judicial practices.[47] Adoption cases represented both a preference for biological ties and "[p]arents' party membership or their adherence to the socialist canon usually remained besides the point" and "Soviet family law at the judiciary's highest level did not deviate significantly from family practice in so-called

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[45] Cohn," Disciplining the Party," 369.

[46] Ibid., 326.

[47] Wendy Z. Goldman, *Soviet Family Policy and Social Life, 1917-1936* (Cambridge: Cambridge University Press, 1995); Laurie Bernstein, "Communist Custodial Contests: Adoption Rulings in the USSR after the Second World War," *Journal of Social History* 34, no. 4 (2001): 843-861 and "The Evolution of Soviet Adoption Law," *Journal of Family History* 22, no. 2 (1997): 204-226, Nakachi, "Replacing the Dead: The Politics of Reproduction in the Postwar Soviet Union, 1944-1955" and "Population, politics and reproduction: Late Stalinism and its legacy," in *Late Stalinist Russia: Society between reconstruction and reinvention*, ed. Juliane Furst (London: Routledge, 2006), 23-45; Deborah A. Field, *Private Life and Communist Morality in Khrushchev's Russia* (New York: Peter Lang, 2007) and "Irreconcilable Differences: Divorce and Conceptions of Private Life in the Khrushchev Era," *Russian Review* 57, no. 4 (1998): 599-613.

'bourgeois' states."[48] This parallels my findings that Soviet officials reached an accommodation with the traditional biological family and even promoted it from the mid-1930s on even as state sponsored terror disrupted and destroyed many families in the purges. Furthermore, despite the official demands for marital stability and communist morality in the 1950s and early 1960s, "Moscow city court judges...were increasingly liberal in granting divorces," and "wrote their decisions in a remarkably neutral style."[49] The court decisions in inheritance cases also reflect neutrality. While some citizens invoked official rhetoric in their court petitions and letters to the Ministry of Justice, the judicial decisions and responses from the Ministry either ignored such rhetoric or responded that immorality was immaterial to the operation of inheritance laws. The examination of adoption and divorce court cases in addition to my investigation of inheritance court cases offers a window into the lives of Soviet citizens and their interaction with the civil court system, a dimension which has been largely ignored in favor of research on criminal justice and abuse in the Soviet Union.[50]

My project adds to an analysis of everyday life and property relations in the Soviet Union through an examination of handwritten letters and petitions regarding

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[48] Bernstein, "Communist Custodial Contests: Adoption Rulings in the USSR after the Second World War," 845.

[49] Field, "Irreconcilable Differences: Divorce and Conceptions of Private Life in the Khrushchev Era," 606.

[50] It should be noted that Soviet citizens petitioned state officials on a variety of other matters as well. Some petitions were aimed at the idea of a paternalistic state and others concentrated on appeals and denunciations based on ideology (either trying to reclaim rights as a Soviet citizen or accusing others of not being proper Soviet citizens. See, for example, Lewis Siegelbaum, "'Dear Comrade, you ask what we need need': socialist paternalism and Soviet rural 'notables' in the mid-1930s," in *Stalinism: New Directions,* ed. Sheila Fitzpatrick (London and New York: Routledge, 2000); Golfo Alexopoulos, *Stalin's Outcasts: Aliens, Citizens, and the Soviet State, 1926-1936* (Ithaca and London: Cornell University Press, 2003); Sheila Fitzpatrick, *Tear off the Masks,* See chapters 9-11.

inheritance in which individuals reveal their life histories.[51] In particular, this study adds to recent research into property in socialist societies that conceptualizes property relations and the usage of property as conferring informal ownership rights.[52] Weekend cottages in the country, separate single-family apartments and supermarkets stocked with goods are not what commonly come to mind when envisioning everyday life under socialism. Privilege in property ownership among party members existed in a system whereby the state owned property but the Party bureaucracy controlled and distributed it. Thus,

> [c]ountry homes, the best housing, furniture, and similar things were acquired; special quarters and exclusive rest homes were established for the highest bureaucracy, for the elite of the new class. The party secretary and the chief of the secret police in some places not only became the highest authorities but obtained the best housing, automobiles, and similar evidence of privilege.[53]

In addition, a culture of severe housing shortages reproduced hierarchy. With so much of the housing stock destroyed during the war, access to housing (in a society already suffering from a housing shortage before the war), occurred through a hierarchy of

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[51] My project contends that inheritance was intertwined with the family as in institution and uses this as a framework. However, I have included an extensive overview of this literature because much of it is reflective of how I conceive of this project. Despite the fact that these works are not specifically about inheritance, they provide an important conceptual framework for considering the relationship between Soviet law and society. In addition, they provide a background of issues concerning property relations in Eastern bloc countries following World War II.

[52] Charles Hachten, "Property Relations and the Economic Organization of Soviet Russia, 1941-48" (PhD diss., University of Chicago, 2005); Lewis H. Siegelbaum, Ed., *Borders of Socialism: Private Spheres of Soviet Russia* (New York: Palgrave Macmillan, 2006); Lewis H. Siegelbaum, *Cars for Comrades: The Life of the Soviet Automobile* (Ithaca: Cornell University Press, 2008); Stephen Lovell, *Summerfolk: A History of the Dacha, 1710-2000* (Ithaca: Cornell University Press, 2003); Katherine Verdery, *The Vanishing Hectare: Property and Value in Postsocialist Transylvania* (Ithaca: Cornell University Press, 2003); Smith, "Individual Forms of Ownership in the Urban Housing Fund of the USSR, 1944-1964," 283-305; Steven Harris, "Moving to the Separate Apartment: Building, Distributing, Furnishing and Living in Urban Housing in Soviet Russia, 1950s-1960s" (PhD diss., University of Chicago, 2003).

[53] Milovan Djilas, *The New Class: An Analysis of the Communist System* (New York: Frederick A. Praeger, 1957), 65, 57.

entitlement. Party and state elites who had been displaced by the war "saw their privileges ensconced and strengthened in legislation that secured their return to their previous [pre-war] apartments."[54]

However, everyday citizens did acquire and conceive of property in terms of individual ownership. Social practice shaped property rights. For example, the criteria of "who used and maintained the resource in daily life" influenced the conception of a property right rather than formal ownership status. State propagandists encouraged this practice, especially during wartime exigencies, by promoting the individual gardener and the proper care of state housing stock. Furthermore, social practice for purposes of welfare and inheritance law including keeping household effects within the household. Thus, while the state presented itself as centralized and as having managed on a micro-level everyday life during the war, essentially propagandists ratified "everyday practice even when practice preceded codification and representation."[55] Rights of possession allowed citizens to use and maintain the property for themselves. Patterns of ownership allowed possession and management of some property without absolute ownership rights.[56] Therefore, "state-sponsored construction of separate houses, often by individual citizens themselves and owned according to the tenure of personal property, was an

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[54] Rebecca Manley, "'Where should we resettle the comrades next?' The adjudication of housing claims and the construction of the post-war order" in *Late Stalinist Russia*, 237.

[55] Charles Hachten, "Separate yet Governed: the Representation of Soviet Property Relations in Civil Law and Public Discourse," in *Borders of Socialism,* 65-82.

[56] V.V. Grebennikov, *Sobstvennost' i grazhdanskoe obshchestvo v Rossii* (Moscow: Manuskript, 1997), 45-46.

indispensable aspect of reconstruction following the Great Patriotic War."[57] In addition, "[r]einforcing this quantifiable growth in personal property was citizens' expressive attachment to it; the experience of war sharpened the sense of ownership that citizens felt for the housing that was theirs according to this tenure."[58]

To speak in terms of absolute ownership rights is inaccurate in many cases except with respect to personal (as opposed to private) property (that is, mostly consumer items and not the means of production). For example, authorities considered it acceptable to own and use an automobile for personal purposes but not for commercial purposes such as a private taxi. Thus, the property system under socialism requires a more nuanced understanding of property and to "grasp that system has required setting aside questions about ownership and looking at patterns of use, administrative rights, and social networks of exchange and reciprocity."[59]

The distinction (or lack thereof) between the public and private spheres in the Soviet Union, and the tensions between state and family in terms of privacy demonstrate an accommodation with citizens to some extent, but did not necessarily undermine the socialist project. Under Khrushchev, the socialist project was reinvigorated rather than compromised. Authorities did not conceive of giving families separate apartments as a move towards private life. Rather, the state would continue to monitor or shape how

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[57] Smith, "Individual Form of Ownership in the Urban Housing Fund of the USSR, 1944-1964," 286.

[58] Ibid., 289.

[59] Verdery, *The Vanishing Hectare*, 70. See also Smith, "Individual Forms of Ownership in the Urban Housing Fund of the USSR, 1944-1964," 283-305.

people would live by designing the interiors of the apartments. Thus, "[i]deologues, planners and other specialists were preoccupied not only with providing the masses with homes, but also with the minutiae of how they should furnish and dwell in them," but citizens did exercise agency in the decoration of their interiors, resisting state ideas of what constituted the ideal Soviet apartment.[60] Even in communal apartments, "the campaign against 'domestic trash' did not triumph in the majority of communal apartments" but rather "the so-called domestic trash rebelled against ideological purges and remained as the secret residue of privacy that shielded people from imposed and internalized communality."[61] While "the privacy afforded by the separate apartment revolved around a person's greater control of space and time within the context of the family and to the exclusion of state and society," citizens were still prompted to appeal for help from authorities in resolving issues concerning noisy neighbors or defects in construction.[62] Therefore, with regard to the separate apartment and everyday life, citizens' quest for privacy sometimes resisted state intervention (such as furnishing apartments) yet also appealed to the state for help (with the noise problem), suggesting an expectation of some privacy that citizens believed state officials should enforce. This tension between the public and private spheres with respect to ownership of property continued in the Brezhnev era. For example, while the state expanded the opportunities

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[60] Susan E. Reid, "The Meaning of Home: 'The Only Bit of the World you can Have to Yourself,'" in *Borders of Socialism*, 145-170.

[61] Svetlana Boym, *Commonplaces: Mythologies of Everyday Life in Russia* (Cambridge: Harvard University Press, 1994), 150.

[62] Steven E. Harris, "'I Know all the Secrets of my Neighbors': The Quest for Privacy in the Era of the Separate Apartment" in *Borders of Socialism*, 171-189.

for personal individual car ownership, it did not correspondingly expand the infrastructure necessary to support the new levels of ownership adequately (service stations, gas stations and so forth). Therefore, Soviet citizens resorted to more illegal activity and second economy activities, and retreated to private spaces such as garages resulting in a Faustian bargain between the state and society. Thus,

> in mass producing cars and allocating most of them to the 'population,' the Soviet state virtually guaranteed that millions of its citizens would become entangled in webs of essentially private-in the double sense of invisibility to the state and as particularistic as opposed to collective-relations that were often ideologically alien and often in violation of Soviet laws.[63]

The state could hinder ownership of property as well as promote it when, for example, citizens appealed to the state through courts to recognize their property rights. The dacha symbolized continuity between pre-Soviet and Soviet times and the inheritance of interests in dachas did come before the Soviet courts. The concept of dacha evolves from its meaning as a plot of land to a summerhouse. Yet the dacha is an exurban rather than a country phenomenon and thus differs from the country estate. Thus, the *dachniki* or summerfolk were not country dwellers, but rather individuals who primarily worked and resided in the city. By the mid-nineteenth century, the dacha had made a transition from being a place as defined by physical coordinates to a cultural space with its own set of practices and values and "the dacha had acquired its own way of life, its own ideology; that it had become a space more than a place."[64] The cultural significance of dachas carried into the Soviet period. Dachas continued to be built during

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[63] Lewis H. Siegelbaum "Cars, Cars and More Cars: The Faustian Bargain of the Brezhnev Era" in *Borders of Socialism*, 83-103.

[64] Lovell, *Summerfolk,* 41.

the Soviet era with the best appointed dachas being used by the Party elite and favored artists and writers. Stalin had more than one dacha and Boris Pasternak lived in a dacha in a community of writers. Also, since a dacha could mean anything from an ill-equipped peasant house to a well-appointed multi-room dwelling, it is significant that this private cultural space existed for many ordinary Russians as well. Clearly, the dacha does not seem to fit with the collectivist ideology that discourages private property and spaces. Furthermore, there were two crucial distinctions between the pre-revolutionary and the Soviet era dacha. In the Soviet era, the life choices of individuals were tied to organizations with access to goods more important than ownership of goods.[65] Ordinary Russians who had access to dachas may not have owned them yet a dacha market did continue to exist throughout most of the 1920s. The dacha as a cultural space with its own ideology remained in the memory of individuals during the Soviet era, so much so that it seems even the regime accepted the dacha as a part of cultural practice despite its questionable socialist function.

Despite the focus of this dissertation on Soviet inheritance, it is important to situate property ownership in the Soviet Union within the context of how it paralleled and differed from property ownership in other socialist countries. Different forms of private property emerged in other areas of the socialist bloc. For example, in 1952-54, a program in Hungary sponsored the building of private homes for miners and their families that

[65] Ibid., 160.

encouraged private ownership of homes for miners.[66] Desperate to reduce labor turnover, the regime created this program to keep workers from leaving to search for other jobs that provided better housing. A variation on this argument is made in the Czech context. After the end of the Prague Spring in 1968, the regime sought to strike a type of consensus with society and thus did not outlaw the ownership and use of weekend cottages in the Czech countryside. These *chaty* were primarily a Czech and not a Slovak phenomenon. The regime sought not only to have a more content population, but actually benefited from this mass phenomenon of emptying the cities every weekend to stay in a private country cottage because the cities were traditionally the centers of political resistance. In this respect, the "[e]nthusiasm for the *chata*...represented an unconcealed pleasure in the acquisition and use of otherwise 'forbidden' private property." Some owners went so far as to have very Western style luxuries at their *chaty* such as swimming pools and saunas.[67] Both the Hungarian private home-building program and the Czech *chaty* demonstrate the desire of individuals to have a private space and to engage in consumerist activities and complicate the view of socialist societies as defined by a lack of property rights.

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[66] Mark Pittaway, "Stalinism, Working-Class Housing and Individual Autonomy: The Encouragement of Private House Building in Hungary's Mining Areas, 1950-4," in *Style and Socialism: Modernity and Material Culture in Post-War Eastern Europe*, ed. Susan E. Reid and David Crowley (Oxford: Berg, 2000).

[67] Paulina Bren, "Weekend Getaways: The *Chata*, the *Tramp* and the Politics of Private Life in Post-1968 Czechoslovakia," in *Style and Socialism,* 125, 134.

Legal Issues[68]

My study draws extensively upon the literature of Soviet inheritance law, including articles in American law journals and works written on the subject by Soviet and non-Soviet authors. In addition, I examine course texts that were used to train future Soviet lawyers and contemporary debates that appeared in Soviet law journals. While this dissertation is comprised from many legal resources, it goes beyond the text of the laws and the decisions in court cases to examine the social dimensions of inheritance on the familial level using archival sources.

The laws pertaining to inheritance become less restrictive over the course of the Soviet era but analysis of why this happened is largely lacking in the legal literature. One émigré scholar, Vladimir Gsovski, argued in 1948 that the then present Soviet inheritance law attempted "to reconcile a social order which prohibits productive employment of private capital with the traditional concepts of succession rights, which protect accumulation of private wealth."[69] As the following overview highlights, Soviet legal literature surrounding inheritance focused on the distinction between inheritance in bourgeois societies as opposed to in a socialist society. This would remain true throughout the late Stalinist years but the ideological component of distinguishing bourgeois from socialist inheritance would disappear for the most part from the legal

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[68] These works which include both Soviet and US publications are the most relevant to the subject matter of my dissertation. The following is intended as an overview of this literature which is discussed more extensively in chapters 1-3 and 6 of my dissertation.

[69] Vladimir Gsovski, *Soviet Civil Law, Volume I* (Ann Arbor: University of Michigan Press, 1948), 658.

literature with the exception for in Cold War inheritance cases of persons who died in the United States and left property to Soviet citizens.

R.O. Khalfina argued in 1952 that the Stalin Constitution of 1936 connected inheritance of personal property to the personal well-being of citizens. Article 9 of the Constitution distinguished private enterprise allowed by peasants and handicraftsmen based on their own personal work (as opposed to hired labor) from private enterprise in a capitalist economy. The Stalin Constitution focused on a "socialist principle of distribution" which meant that everyone who contributed to work in the socialist economy received the opportunity to have the fruits of that labor in the form of income and saving for "satisfaction of their material and cultural needs."[70] In this treatise published shortly before Stalin's death, Khalfina highlighted the benefits of socialist society as constructed under comrade Stalin and how it differed from a capitalist or "exploiter state." Based upon statements by comrades Stalin and Molotov, Khalfina asserted that whereas formerly only the exploiter classes had personal property for the benefit of convenience and culture, the growth and development of personal property under the socialist economy made it accessible to the working class.[71] The right of succession in a socialist economy of personal property thus derived from contributions to the socialist economy also resulted in a strengthening of the Soviet family because it allowed a family to keep and take advantage of earned income and savings.

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[70] R.O. Khalfina, *Pravo nasledovanniia v SSSR*, 2nd Ed (Moscow: Gosudarstvennoe Izdatel'stvo Iuridicheskaia Literatura 1952), 3-4.

[71] Ibid., 4-5.

The argument that the benefits of personal property earned in a socialist society strengthened the Soviet family is reiterated in other Soviet legal works as well.[72] Furthermore, Soviet legal literature emphasized the moral degeneracy of inheritance in bourgeois society.[73] Soviet legal jurists observed that the evolution of inheritance law in the USSR reflected the evolution of the socialist state. The first phase of socialist development required little testamentary freedom and limits on the amount of inheritable property because of the fact that capitalist elements in the Soviet economy had not yet been eliminated. Once socialism had been "achieved," authorities allowed broader rights of succession.

In addition to the socialist versus bourgeois paradigm, Soviet legal theorists emphasized the personal versus private property dichotomy. This distinction between inheritance in a capitalist society versus a socialist society reflected the argument that in an "exploiter society" there is an indissoluble connection between inheritance and private property rights. However, in a socialist society, inheritance is connected only with the right of personal property consisting of consumer goods deriving from contributions to a socialist economy and personal property has consumer value, not industrial value.[74] Therefore, inheritance in a socialist society meant transition to the successor of personal

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[72] Ibid., 5; See also A. I. Baryshev, *Priobretenie nasledstva v SSSR i ego iuridicheskie posledstviia* (Moscow: Gosudarstvennoe Izdatel'stvo Iuridicheskaia Literatura, 1960), 5.

[73] Khalfina, *Pravo nasledovanniia* , 7.

[74] B. Antimonov and K. Grave, *Sovetskoe nasledstvennoe pravo: kurs sovetskogo grazhdanskogo prava* (Moscow: Gosudarstvennoe Izdatel'stvo Iuridicheskaia Literatura, 1955), 5-6.

or consumer property, and personal property was compatible with the public socialist property because it satisfied personal needs.[75]

By 1945, the liberalization of inheritance law reflected the official claim regarding the achievement of the final liquidation of capitalist elements in the USSR, and the destruction of antagonistic classes. The law promoted the increasing material well-being of Soviet citizens and the desire of the state to strengthen the Soviet family.[76] Jurists portrayed the expansion of inheritance rights as a result of the elimination of the exploiter elements with the result that there remained only two "friendly" classes: workers and peasants. Soviet legal scholars relied on Marx's writings that the property status of workers in an exploiter society meant that workers, as a rule, had nothing to inherit and thus, inheritance only served to reproduce wealth among the rich. In this respect, they concluded that Marx's words had not lost their meaning with reference to a bourgeois society.[77] In a socialist society, however, the growth of personal property on the basis of the public socialist property promoted an increase in the industrial and public activity of citizens. It led to growth of productivity with respect to their labor in socialist manufacturing, and thus to development and strengthening of the public socialist property. Therefore, the development of personal property of citizens in the USSR

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[75] Baryshev, *Priobreteniie nasledstva* , 3.

[76] Ibid., 9-10.

[77] Antimonov and Grave, *Sovetskoe nasledstvennoe pravo* , 15, 12.

proceeded on the basis of a "harmonious combination" of personal interests and public interests.[78]

There is some debate in the non-Soviet legal literature regarding the question of what the broadening of inheritance law actually meant for Soviet citizens. One position is that from a legal standpoint the trend toward expansion of inheritance rights continued throughout the Soviet period with the result that by 1985, it was "difficult to argue that a socialist inheritance law flourishes ....in the Soviet Union"[79] because with the 1961 Fundamental Principles of Civil Legislation, Soviet citizens now enjoyed "a freedom of testation rivaling that permitted in the capitalist civil and common law systems."[80]

This argument examines the laws but not the practical outcome and results of these laws. The property available to be inherited differed in many respects from that of capitalist societies. It is precisely this disjuncture between the expansiveness of the law and the reality of the personal property available in the Soviet Union that provoked a critical response to this argument. That is, Soviet inheritance law was "based on socialist principles in the sense that it ascribes a limited role to individual property."[81] The difference in the *substance* of what could be inherited distinguished inheritance in the Soviet Union from non-socialist states. Inheritance of these items of personal property

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[78] Baryshev, *Priobreteniie nasledstva* , 4.

[79] Frances Foster-Simons, "The Development of Inheritance Law in the Soviet Union and the People's Republic of China," *American Journal of Comparative Law* 33 (1985): 62.

[80] Ibid., 43.

[81] Shaheen Malik, "Inheritance Law in the Soviet Union and the People's Republic of China: An Unfriendly Comment," *American Journal of Comparative Law* 34 (1986): 144.

did not negate "socialist principles"[82] but rather conformed to "the objective of socialized ownership of the means of production (as opposed to the means of consumption) and of personal property not being used for extraction of surplus value, i.e., for profit."[83] My study takes this argument further by examining the actual court cases and what types of property were involved.

In summary, this dissertation draws upon, expands and integrates the themes highlighted in these various types of literature to explore the social dimensions of Soviet inheritance and provides a much needed contribution to the global history of inheritance that has largely ignored socialist systems. In doing so, it focuses on the conjuncture among property, civil law and the family. It links inheritance law and policy making with the individual family. It contributes to the historiography of inheritance by an examination of Soviet inheritance that broadens the scope of the legal literature with an analysis of archival sources and an integration of the law of inheritance with practice. The placement of inheritance within the wider umbrella of the family also makes it a contribution to the studies of family, private and everyday life in the USSR.[84]

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[82] Ibid., 140.

[83] Ibid., 142.

[84] There is also a parallel expansive legal literature on Soviet family law and policy. The overview above has focused on works on inheritance which, while emphasized as a means of strengthening the Soviet family in Russian language publications, has only been linked peripherally with family law and policy changes in the legal literature. One notable exception is Vladimir Gsovski, "Family and Inheritance in Soviet Law," *Russian Review* 7, no.1 (1947): 71-87. Changes to family law and policy and the representation of these changes in the media as well as the literature on family policy are discussed in more depth in chapters 1-3.

Chapter 1

The Abolition and Gradual Reinstatement of Inheritance Rights, 1918-1941

"...the impending social revolution....by transforming at least the far greater part of permanent inheritable wealth – the means of production – into social property, will reduce all this anxiety about inheritance to a minimum."[1]
Friedrich Engels

The institution of inheritance produced a contested ideological terrain for much of the Soviet period. *The Communist Manifesto* advocated abolition of private property and the Bolsheviks set out to make this theoretical proposition a reality soon after they came to power. Specifically, Marx and Engels opposed bourgeois property or that property concentrated in a few hands as a result of modern conditions of production and exchange. This type of property, they argued, was based "on class antagonisms, on the exploitation of the many by the few."[2] *The Communist Manifesto* specifically addressed the abolition of all right of inheritance.[3] Defining "bourgeois" property, however, especially with regard to the institution of inheritance, would be problematic and negotiated for much of the Soviet period.

The Bolsheviks' position on the role of the family in society was integral to inheritance. In "The Origin of Family, Private Property and the State" Friedrich Engels presented the transition from matrilineal to patrilineal inheritance as evolving from the accumulation of private property. According to Engels, the institution of inheritance

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[1] Friedrich Engels, "The Origins of the Family, Private Property, and the State," in *The Marx-Engels Reader,* 2nd ed., ed. Robert C. Tucker (New York: W.W. Norton, 1978), 745.

[2] Karl Marx and Friedrich Engels, "Manifesto of the Communist Party" in *The Marx-Engels Reader,* 2nd ed., 484.

[3] Ibid., 490.

resulted in the express oppression of women because the monogamy of women was required to ensure that an individual man's wealth passed to his blood children. However, Engels argued that "[w]e are now approaching a social evolution in which the hitherto economic foundations of monogamy will disappear...." and "the impending social revolution....by transforming at least the far greater part of permanent inheritable wealth – the means of production – into social property, will reduce all this anxiety about inheritance to a minimum."[4] The progressive expansion of inheritance and the justifications behind its ongoing validity in a socialist society illustrate the continuing importance of the family as an institution of primary identification and differentiation. Inheritance and private property, therefore, were seen as integral to the superstructure of the oppressive bourgeois family. Bolshevik assumptions, shaped by Engels, that they could redefine the role of the family in relation to society with some arguing for the eventual goal of its "withering away" resulted in tensions and an eventual reconciliation with the family as a permanent institution. Although Bolsheviks never uniformly advocated the goal of abolishing the family in the early post-revolutionary years, the goal of strengthening the Soviet family was a well publicized official effort beginning in the mid-1930s.[5] In addition, despite the official rhetoric about strengthening the Soviet family, the changes to inheritance laws undermined the idea of a new socialist family.

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[4] Engels, "The Origins of the Family, Private Property, and the State," in *The Marx-Engels Reader*, 745.

[5] The argument in the scholarship that the universal goal of the Bolsheviks was to disintegrate the family, perhaps most ardently articulated by Nicholas Timasheff (*The Great Retreat: The Growth and Decline of Communism in Russia,* New York: E.P. Dutton & Co, 1946, 197) has been challenged in more recent scholarship. For an expansive discussion of family policies and laws in the years 1917-1945, see Becky L. Glass and Margaret K. Stolee, "Family Law in Soviet Russia, 1917-1945," *Journal of Marriage and the Family* 49 (1987): 893-902.

For example, allowing de facto wives to inherit after 1926 created a plethora of practical issues in deciding what constituted a de facto marriage and sometimes resulted in court disputes between a registered spouse and an alleged de facto spouse.[6]

The attitudes of Soviet leaders towards property rights changed over time and resulted in an official accommodation that sanctioned (and even encouraged) ownership of consumer goods.[7] In addition, other types of property rights were recognized such as those to housing, dachas and private garden plots.[8] This chapter demonstrates that the Bolsheviks encountered many difficulties in attempting to abolish property rights legally and in practice, as well as in trying to convince Soviet citizens to embrace reconceptualized ideas about property ownership and about the role of the family in socialist society. The Bolsheviks had to accommodate ideological goals that were expressed in *The Communist Manifesto* to abolish all right of inheritance in order to negotiate everyday practical concerns and circumstances. While jurists presented the allowance of some continuance of inheritance rights as a means of social welfare for children and dependents, the contested court cases in the Supreme Court of the USSR in the mid 1930s involved substantial sums of money and property, and citizens and legal

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[6] In addition, the changes to inheritance law which broadened the circle of heirs in 1945 to potentially include parents and siblings also undermined attempts to strengthen the family. Expanding the circle of heirs served to create more opportunities for conflict between parents and siblings of the deceased as discussed further in Chapter 2. Mie Nakachi has argued that this undermining of the family was also true of the 1944 Edict on Marriages and the resulting new single mother with children who were born outside of registered marriage not entitled to any support, recognition or inheritance from their fathers. Nakachi, "Replacing the Dead: The Politics of Reproduction in the Postwar Soviet Union, 1944-1955," 316-392.

[7] Julie Hessler, "Cultured Trade: The Stalinist Turn Towards Consumerism," in *Stalinism: New Directions,* ed. Sheila Fitzpatrick (London: Routledge, 2000), 182-209.

[8] Hachten, "Property Relations and the Economic Organization of Soviet Russia," 2.

representatives sometimes employed a rhetoric of individual privileging of property rights in opposition to early radical socialist property theory favoring the collective.

Furthermore, the 1936 Stalin Constitution elevated the right of inheritance to a constitutional right, signifying a clear official break with the immediate post-revolutionary decree abolishing inheritance and embodying the reemerging idea of property rights that had been in practice since the years of the New Economic Policy. This correlated with changes in family policy that aimed at promotion of monogamous marriage, restricting divorce, and the strengthening of the family as an institution. There were also parallel efforts to control reproduction and sexual activity by outlawing divorce and sodomy, and aimed at combating the numbers of homeless children by institutionalizing them and making children from age twelve criminally liable as adults for some crimes.

Inheritance in the early Soviet period

Immediate post- revolution

On April 27, 1918 (New Style), a Russian Federated Republic issued a decree entitled "Concerning the Abolition of Inheritance." The main provisions of this decree declared that all property of a deceased individual would become the property of the Government of the Russian Socialist Soviet Federated Republic. However, the decree further stated that close relatives could receive an estate not exceeding 10,000 rubles consisting of property such as a farmhouse, domestic furniture and wages ("means of economic production by work, in either city or village"), and disabled close relatives

could receive an amount in excess of 10,000 rubles if necessary for self-support.[9] Jurist A.G. Goikhbarg, published in 1920, insisted that this language did not constitute "exceptions" to the general rule abolishing inheritance. Rather, "because of the extreme inconvenience for the state to take under its control the enormous mass of such small estates...the state freely sheds this burden, and so these small estates come into the immediate control and management of the husband or wife..."[10] Goikhbarg argued that with this decree private property became "for the most part a *lifelong possession:* property will remain attached to an individual person for the duration of his life and no longer,"[11] emphasizing that upon the death of the possessor, property would pass to the collective. Thus,

> [t]hanks to the abolition of the right to private inheritance, the sword of Damocles hangs over the institution of private property, marking it as short-lived and transient. Consequently, the repeal of the right to private inheritance has an extraordinarily important social and psychological effect for the cause of socialism; it assists, to a very significant degree, in the eradication of selfish, individualistic instincts.[12]

The decree further provided for no distinction between relationships arising within wedlock and those that did not[13] and proclaimed that any pending inheritance

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[9] *Dekrety sovetskoi vlasti, Vol. II* (Moscow: State Publishing House of Political Literature, 1959), 187-190.

[10] A.G. Goikhbarg, *Brachnoe, semeinoe i opekunskoe pravo sovetskoi respubliki* (Moscow: 1920) in *Ideas and Forces in Soviet Legal History: A Reader on the Soviet State and Law,* ed. Zigurds L. Zile (Oxford: Oxford University Press, 1992), 94.

[11] Ibid.

[12] Ibid.

[13] This would change in 1944 with allowing inheritance from fathers to their children only if the children were born within a registered marriage. See chapter 2.

cases were discontinued. The discontinuance of pending inheritance cases would raise issues several decades later. For example, Maria Vasileevna Khnykina wrote to the Ministry of Justice in 1952 requesting clarification of a question about inheritance. She wrote that she had already been to several lawyers who had interpreted the inheritance law differently. She claimed that she and her husband built a house in the village of Marazy in 1912 and he had then died unexpectedly. They had four children: one son who was killed in the Great Patriotic War, another who she wrote had not been to see her for many years but who showed up years later with a wife and two teenage children, a married daughter, and an invalid daughter. Maria hoped to protect her invalid daughter who had always lived with her. She asked for clarification of the rightful heir to her deceased husband's property. The Ministry of Justice responded that no civil disputes arising before November 17, 1917 could be admitted to court.[14]

The abolition of inheritance in 1918 reflected the broader Bolshevik experiment to remake the family. The 1918 Code on Marriage and Divorce secularized the marital ceremony and introduced divorce which could be granted by local courts.[15] The code also specified that children and parents had no rights to the property of the other. However, social welfare existed because parents were obligated to provide for their minor children. Children, also, were obligated to provide for their parents if they were unable to work unless the latter received government assistance. In addition, familial

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[14] *Gosudarstvennyi Arkhiv Rossiiskoi Federatsii* [State Archives of the Russian Federation] (hereafter GA RF), f. 9492, op. 1, d. 1939, ll. 271-219.

[15] Both were introduced by decree in late 1917. "Decree on Divorce December 16 (29) 1917" and "Marriage, Children, and Civil Registration December 18 (31) 1917," in *Documents of Soviet History, Volume I,* ed. Rex A. Wade (Gulf Breeze: Academic International Press, 1993), 69-72.

relationships were also intended to provide social security beyond direct descendants to indigent relatives and to full or half blood relatives unable to work who were "entitled to obtain maintenance from their wealthy relatives."[16] Aleksandra Kollontai was the most prominent Bolshevik to write about remaking of the relationships between man and woman and turning away from the private family. Kollontai argued that the bourgeois family "with its individual household" represented an "egotistically enclosed little world" and that a battle was "raging between communal forms of consumption and the private family household."[17] For Kollontai and at least some other Bolsheviks in the early post-revolutionary years, the abolition of inheritance, an institution which privileged the individual familial unit over the collective, closely intersected with the project of transforming the bourgeois institution of the family into socialist relationships. The social welfare provision in the 1918 decree on the abolition of inheritance was apparent but there would soon be a retreat. Whereas the Bolsheviks in the early post-revolutionary years viewed all private property as an element of a capitalist bourgeois society, with inheritance serving as a means of reproducing wealth in these societies, authorities also recognized that official control and disposition of items such as domestic furniture and household items was unrealistic and that disabled relatives should continue to be provided for by the family if possible.

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[16] "The Original Family Law of the Russian Soviet Republic" in *The Family in the USSR: Changing Attitudes in Soviet Russia, Documents and Readings*, ed. Rudolf Schlesinger (London: Routledge, 1949), 33-41.

[17] Aleksandra Kollantai, *Women's Labour in Economic Development* (1923) in *The Family in the USSR*, 45-48.

Retreat during the years of the New Economic Policy

During the years following the Civil War, the Soviet government adjusted some of the more draconian measures it had adopted immediately following the revolution relating to private enterprise. In the context of the New Economic Policy (NEP), on May 22, 1922, a decree of the Central Executive Committee concerning the right of property ownership allowed inheritance by will or under the law between spouses and from parents to their direct descendants (children, grandchildren and great grandchildren) in an amount not to exceed 10,000 gold rubles in total value.[18] The codified Civil Code of November 11, 1922 recognized a right of inheritance for this limited circle of heirs.[19] The law no longer required disability in order to receive property other than a farmhouse, domestic furniture and wages. A report by D. I. Kursky, People's Commissar for Justice, noted that previous decrees had limited inheritance "to articles of a domestic nature or forming part of a domestic industry" but that this important change "concedes in general terms the right to inheritance of property."[20]

The 1922 Civil Code of laws effective January 1, 1923 reflected this new view of inheritance. Vladimir Gsovski argued that the 1918 decree was "merely declaratory" and not enforced because the Soviet government had "no adequate apparatus to check upon

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[18] "Decree of the Third Session of the Ninth All-Russian Central Executive Committee, on the Right of Private Property, as Recognized by the R.S.F.S.R., Protected by its Laws and Maintained by its Courts, May 22, 1922," in *Documents of Soviet History, Volume II, Triumph and Retreat 1920-1922*, ed. Rex A. Wade (Gulf Breeze: Academic International Press, 1993), 384.

[19] "Civil Code of November 11, 1922," in *The Family in the USSR*, 43.

[20] "Report by Kursky, People's Commissar for Justice, May 13, 1922," in *Documents of Soviet History, Volume II,* 375-76.

all the estates in Russia"[21] and that there existed no records of seizures of estates in inheritance from 1918 through 1922.[22] Despite its ostensive ineffectiveness as a practical matter and the exceptions to the 1918 decree, Gsovski noted that the Russian Soviet Federated Socialist Republic (RSFSR) Commissariat for Justice as well as Soviet jurists insisted that inheritance had been abolished and only reintroduced pursuant to policies of NEP on January 1, 1923.[23] The arguments set forth to justify the exceptions to the 1918 decree contended that this differed from inheritance in capitalist societies because it only provided security for relatives as a means of social welfare. Yet the retreat under NEP represented a substantive change. Granted, the circle of heirs was still limited and the total value amount of property inherited could not exceed 10,000 rubles. In that sense, Soviet citizens enjoyed little testamentary freedom. However, this right of inheritance allowed for the institution to exist in a similar form as in capitalist societies whereby property is kept within the family as it passes from an older generation to a younger. The position that inheritance was allowed for social welfare reasons to provide for spouses and children after death does not erase the fact that it was allowed regardless of need.

With regard to this issue, the Bolsheviks had already retreated from the ideological framework outlined in *The Communist Manifesto* but this did not end the debate. Rather, Soviet jurists analyzed how the institution of inheritance operated and what it represented in a socialist society as opposed to a capitalist society for much of the

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[21] Vladimir Gsovski, *Soviet Civil Law, Volume I* (Ann Arbor: University of Michigan Press, 1948), 625.

[22] Vladimir Gsovski, "Soviet Law of Inheritance I," *Michigan Law Review* 45 (1946-47): 296-97.

[23] Gsovski, *Soviet Civil Law*, Volume I, 625.

Soviet period. With the recognition of a right of inheritance and a right to property, the "bourgeois" institution of inheritance remained viable throughout the Soviet period. Although it differed in degree from its counterpart in Western Europe and particularly the United States, in which wealth was (and is) reproduced among a small proportion of the population by being passed to heirs rather than allocated for the common good, the institution of inheritance was preserved in some substance and its form continued to expand during the Soviet period, granting more freedom to Soviet citizens over the dispersal of personal property upon their death.

In addressing the new view of inheritance in the mid 1920s, Soviet legal theorists stressed that the law limited succession and thus differed from bourgeois legal codes. V. I. Serebrovsky emphasized that limiting the circle of heirs and the amount that could be transferred (and thus, if there were no descending heirs the estate would pass to the state, or if the estate was valued above 10,000 gold rubles, the excess would pass to the state) were the pivotal features of the Soviet law of succession under NEP. Furthermore, he argued that the 1918 decree had carried out the goal of *The Communist Manifesto* to abolish inheritance and that all private property had become the property of all in the Workers' and Peasants' State.[24]

Two other substantial changes to inheritance law occurred in the 1920s. A February 15, 1926 decree abolished the limit to an inheritance not exceeding 10,000 rubles, but subjected estates above 1,000 rubles to a progressive tax on inheritance that could be as much as ninety percent of the estate. Additionally, a decree dated May 28,

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[24] V.I. Serebrovsky, *Naslestvennoe pravo, kommentarii k st. 416-435 grazhdanskogo kodeksa RSFSR*, ed. A.M. Vinaver and I.B. Novits (Moscow: Izdatel'stvo Pravo i zhizn', 1925), 4-6.

1928 mandated that a portion of the estate pass to children of the deceased under eighteen (regardless of whether they had been included in the will) and expanded the circle of allowable heirs to "the State, the Communist Party and public organizations."[25] Although allowing inheritance was outside the theoretical framework proposed in *The Communist Manifesto,* the imposition of a heavy progressive tax on transferred property and allowing the heirs to include the "public" was consistent with the ideological goal of spreading the wealth or at least trying to keep it from retaining its bourgeois character. This, then, represented a compromise between allowing inheritance to exist in form yet altering its structure to make it appear and function as less of a bourgeois institution. The requirement that minor children receive a portion of the estate reflected concerns about the number of homeless and abandoned children following the turbulent years of World War I, revolution and Civil War.[26]

These years also marked substantive changes to other family policies. The role of inheritance intersected with changing family policies and the practical difficulties officials encountered in attempts to provide State sponsored economic welfare for its citizens. During the mid 1920s, an extensive debate took place about changes to family law (codified in the 1926 Civil Code). *The New York Times* reported that the Central Executive Committee debates over changes to the family code concerned the rights of property. Commissar of Justice Kursky is reported as noting that:

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[25] Alice Erh-Soon Tay, "The Law of Inheritance in the New Russian Civil Code of 1964," *International and Comparative Law Quarterly* 17 (1968): 476.

[26] For a discussion of abandoned children during these years and authorities' attempts to deal with the disaster, see Ball, *And Now My Soul is Hardened.*

> a great difference exists between the proposed law and the old system regarding the matter of property rights in matrimony, due largely to the fact that in 1918 the Bolshevist enthusiasts thought that a 100 percent Communist society would soon be the order of the day all over the world and that consequently all children would be maintained and educated by the State and there would be no right of inheritance.[27]

The debates addressed other questions including the recognition of de facto marriages. The determination of what constituted such a marriage became an issue with regard to inheritance rights. The debates boiled down to property in other respects as well, including rights of alimony and child support. As Wendy Goldman has argued, Soviet jurists divided on issues of family policy in debates concerning the 1926 Family Code. A number, including "P.A. Krasikov, an Old Bolshevik and current procurator of the USSR Supreme Court, N.A. Semashko, the commissar of health, David Riazonov [Party member and director of the Marx-Engels Institute], [and] Aron Sol'ts [a member of the Party, the Supreme Court, and the Presidium of the Central Control Commission]...believed that the family would eventually wither away" but opposed de facto marriage because the conditions in the country did not yet support it. Production and consumption had not yet been fully socialized and the state could not yet assume the material responsibilities traditionally supplied by the family.[28] In this view, stable homes for children needed the legislative backing of stricter marriage and divorce laws, rather

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[27] "Soviet Proposes New Family Law: Drafts Code Extending Property Rights and Responsibility for Children-Protection for the So-called 'Seasonal Wives,'" *The New York Times,* December 27, 1925, XX9.

[28] Goldman, *Women, the State, and Revolution,* 226.

than relaxed policies.[29] The new law ultimately broadened the recognition of how a marriage could be contracted and what constituted a marriage. The Code recognized a religious marital ceremony as legally valid (rather than only civil registration) and defined the family as consisting of parents and children only.[30] De facto marriages could also now be recognized by the People's Courts.[31] The recognition of de facto marriages (which would remain in place until the 1944 Edict of Marriages) led to many disputed inheritance cases in the 1930s between a registered and unregistered spouse. Divorce proliferated with the "postcard" divorce whereupon a divorce could be obtained unilaterally by one spouse at the ZAGS office (local civil bureaus that registered births, deaths, marriages and divorces), and a few days later a postcard would be mailed to the other party notifying him or her of the divorce.[32]

Within this context of remaking the family inheritance cases demonstrate the extent to which laws did affect citizens on individual levels and, moreover, citizens demonstrated their agency in using the laws to their benefit. For example, men tried to avoid the laws prohibiting hiring of labor by marrying women during the harvest season

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[29] For excerpts from the debate in English translation, see *The Family in the U.S.S.R.*, 81-153. The debates surrounding the Code are also extensively analyzed in Goldman, *Women, the State, and Revolution,* 214-253.

[30] "New Soviet Marriage Law: Outstanding Reform is Legalizing of Religious Ceremony," *The New York Times,* September 13, 1925, 28.

[31] "Soviet to Change Divorce Statute," *The New York Times,* November 5, 1926, 8.

[32] "New Divorce Curb Ordered in Russia," *The New York Times,* September 23, 1935, 19.

and then promptly divorcing them[33] and women alleged de facto marriages with their deceased lovers despite the existence of a registered spouse. Far from operating outside the parameters of the law in civil cases, the evidence demonstrates that jurists tried to apply the law to the facts of cases that came before them, even when it resulted in an apparent incongruous result such as a ruling that a man had two legal wives in recognizing de facto marriage. At the same time, the Supreme Court favored rule of law without reference to a particular legal party's morality or socialist credentials. At this time a decedent's property could still only pass horizontally to a spouse or downward toward children and did not include parents. This limitation would result in many parents' petitions for the property of their deceased children during World War II (see chapter two).

The disputed cases in the Supreme Court of the USSR in the early 1930s were not those of everyday citizens and demonstrate that inheritance not only existed, but also included substantial estates.[34] They involved the elite of Soviet society: an engineer/inventor, a professor at the military academy, a professor urologist, and an artist and researcher, for example. One might even argue these cases are evidence of a continuing bourgeois character of inheritance in terms of reproduction of wealth, despite its purported transformation into a means of social welfare for needy citizens. However, it is important to realize that while some citizens could indeed acquire substantial

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[33] "Soviet Proposes New Family Law: Drafts Code Extending Property Rights and Responsibility for Children-Protection for the So-called 'Seasonal Wives,'" *The New York Times,* December 27, 1925, XX9.

[34] No inheritance cases are listed in the opis' for the Supreme Court before 1935 but there are nearly 30 from 1935-1939. GA RF f. 9474, op. 5.

personal assets, land, factories, and minerals remained exclusively under state ownership. Thus, the potential assets in estates of Soviet citizens in comparison with those in countries with little or no nationalization of such types of property differed substantively. These types of assets (land, oil and nickel, for example) provided the path to incredible wealth for a small number of persons in the post Soviet years. In addition, citizens apparently did not consider the idea of social welfare as something that needed to be stressed in the petitions to the court and judicial decisions. These cases also involved complicated questions of what constituted marriage and a family. Registered wives and alleged de facto wives were involved in many of the contested disputes.

Moreover, these inheritance cases provide evidence that family members of individuals privileged in Soviet society felt entitled to inherit the property. The petitions to the courts often mentioned the professional status of the deceased, not as a great everyday worker in the workers' and peasants' state but rather as a white collar educated professional. In fact, wives stressed this status: my husband the inventor, my husband the professor. Some cases also involved quite substantial amounts of property. In a 1935 case, one woman complained that her deceased husband's estate ("the inventor") had been overvalued at 112,714 rubles with the result that she was ordered to pay the sum of 16,000 rubles to each of six other heirs (including her husband's adult children). She claimed that the plaintiffs had invented "fairytales" including non-existing property in the amount of 25,000 rubles which the court had included in the total value of the estate. Thus, she concluded that in order to pay the plaintiffs in accordance with the court decision, she would have to give up her lawful share and all household possessions, including the necessaries such as the bed, the table, and the chair, and "I will have to

spend my whole life working for them." She used language indicating the contributions of her husband to Soviet society stating that her "husband/inventor [had] at one point stopped the import of very expensive equipment which saved the Soviet Union a lot of hard currency fuel."[35] This woman presented her claim for entitlement based not on her own contributions to Soviet society but based on the fact that she had been married to a man who had enhanced socialist society.

Another involved an unusual situation in which the heirs (spouse and adopted daughter of the artist Alexander Alekseevich Borisov) lived in Nazi Germany. Upon his death Borisov left an estate valued at approximately 2,500,000 rubles consisting of 345 paintings (some of which were displayed in the Tretyakov Gallery), his "scientific works devoted to research of the Great Northern Way," a two story house consisting of twenty-two rooms, a library and household furnishings. This case involved a complicated state of affairs in which the heirs' representative decidedly downplayed social welfare and, in fact, the relative was portrayed as an employee. The deceased's sister, Kopylova, claimed to be a dependent and entitled to be an heir at law. The People's Court denied Kopylova's claim and the regional court did not hear it. The heirs in Germany then "gifted almost the entire estate to the State in February 1935," namely 300 of the paintings and the scientific research of the Great Northern Way to be used as the basis for building a railroad in the north. The spouse and adopted daughter also gifted the house to a local resort. The procurator of the Russian Federation requested the case at that time and asked that the transfer of assets be stopped. The Supreme Court of the Russian Federation, then, according to the representative of the spouse and daughter, adjudged Kopylova sole heir

[35] GA RF f. 9474, op. 5, d. 24, ll. 1-4.

as a dependent. The representative for the spouse and daughter in Germany wrote a petition to the Supreme Court of the USSR in which he in very firm terms stated that the sister was not a dependent but rather an employee of the decedent. In fact, he claimed, even in this two-story house with twenty-two rooms, Kopylova lived in the kitchen with other household help and did menial tasks such as milking cows and cleaning. The representative stated bluntly, "if Borisov treated her as his sister and his dependent, than obviously having twenty-two rooms and other household help, he would have created better living conditions for her" and "Borisov's treatment of Kopylova was the relationship of an employer/worker."[36]

This complicated case highlighted the tensions between the social welfare provisions of inheritance versus allowing a transfer to heirs outside the Soviet Union (but who had gifted a substantial portion of the estate to the State). It demonstrated that substantial sums of property could be and were owned by Soviet citizens at the time, and illustrated the potential to accumulate wealth in personal property. The rhetoric of the decedent's spouse's representative further implied that the bourgeois character of the family persisted because a relative who claimed to be a dependent could be portrayed instead as an employee. Furthermore, the exchange of serious allegations evidenced the contentious relationship between family members over such a sum of money. The wife and daughter's representative alleged that the representative for Kopylova had accused Borisov's brother (who was the local representative for the wife and daughter) of murdering the decedent and stealing one hundred thousand rubles in gold, which resulted in an investigation and the brother's arrest but the court ultimately dismissed the case due

[36] GA RF f. 9474, op. 5, d. 100, ll. 1-4.

to lack of evidence.[37] Nationalizing most forms of property did not redefine property relations among family members. Family relations continued to be marred by inheritance disputes as they did in capitalist societies.

Issues of family and its meaning were contested in two cases involving more than one woman claiming to be decedent's spouse. These cases reveal a level of complexity in Soviet family life contrary to the view that the state had completely transformed personal lives. One woman (Olga Ivanovna) wrote that in 1933 her husband, "professor urologist" Nikolai Ivanov died in Moscow. She asserted that he had accumulated great personal assets due to his medical talents in treating his patients. However, they lived apart. She lived with her mother, a pensioner, and Ivanov lived with his former wife and a daughter where he had his own study and saw patients and, thus, privately saw patients for compensation. When Ivanov became ill, his former wife did not let Olga see him and, according to Olga, his former wife told Ivanov that Olga did not want to see him. She then summoned a ZAGS representative and with the help of his personal priest/religious advisor managed to get Ivanov to sign a divorce with Olga seven hours before he died in order to deprive Olga of inheritance rights. This case illustrates the complexity of family relationships and inheritance. On the one hand, there was a revolutionary style unilateral divorce but, on the other, it was in connection with a religious advisor. Also, this man was married to one woman but lived with his former wife and engaged in the private practice of medicine in his home for which he received compensation allowing him to accumulate personal wealth (but, to be sure, wealth based on his own labor and not hired wage labor). The contradictions between ideology and reality in everyday life are

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[37] Ibid.

apparent. The divorce was later ruled invalid but the former wife still received a portion on the basis of having a share to what had been acquired during her marriage to Ivanov. Olga disputed this stating that the items in Ivanov's apartment were acquired by him unilaterally before his first marriage and that the dacha had been built for her, only now Tsybushchenko (the former wife) "who has a wonderful apartment in Moscow is throwing me out from this dacha into the street..."[38]

Another case involved cohabitation with an alleged de facto spouse without the registered wife's knowledge by a professor of the military academy, Vladimir Skrylnikov. The wife's representative claimed that her client had lived with the deceased in a registered marriage since 1926. In addition, Skrylnikov (who died in March 1934) had a common household with his client (Sokolskaia) and his friends and co-workers knew her as his wife, and she took care of him. Sokolskaia was with him when he died, and after he died received a personal pension by order of the Deputy Defense Minister, Comrade Tuchachevsky. Skrylnikov apparently spent extended periods of time with another woman (Sokolova) in an apartment given to him by the Commission on Scientists' Cooperation to be used for his scientific research. He had also allowed Sokolova to move into this apartment. He explained his absences to his wife as "extended business trips." Apparently Sokolova started to act possessive and, according to the wife's representative, Skrylnikov avoided her after returning from a resort shortly before his death, because of her demands. After Skrylnikov's death, Sokolova went around to every office he had connections with and claimed to be his de facto wife based on personal correspondences between the two. The registered spouse's representative even claimed that "Skrylnikov

[38] GA RF f. 9474, op. 5, d. 39, ll. 1-4.

tired of his relationship with Sokolova, asked for his brother's help, hid from her, moved out of his scientific research study, suffered terribly, and died prematurely from paralysis of the heart. A whole range of witnesses are convinced that the main and only reason of his premature death was the profound suffering that Skrylnikov experienced and the abnormality created exclusively by Sokolova's defiant behavior." The point made by the wife's representative was that there simply could not be two wives and he was in fact married to Sokolskaia. The representative pointed out that recognition of more than one wife could create a situation "where not only the second but a third and fourth woman who were connected with the deceased in one way or another during certain periods of his life could claim to be his wife after death and demand a share of the estate."[39]

This problem was not uncommon, either when there was a registered wife and an alleged unregistered wife or more than one de facto wife. One Soviet jurist, P. Orlovsky, pointed out that the rights of a de facto spouse presented some of the most convoluted outcomes in inheritances cases. Using the Skrylnikov case above as an example, he noted that the Supreme Court of the Russian Federation ruled both the "wives" heirs even though Soviet law does not allow polygamy and thus, this ruling resulted in a legal impossibility.[40] The Court eventually overturned the ruling and stated that it was incorrect "because the social jurisprudence recognizing the rights and obligations of

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[39] GA RF f. 9474, op. 5, d. 28, ll. 1-3.

[40] P. Orlovsky, "Nekotorye voprosy zakonodatel'stva o nasledovanii," *Sovetskoe gosurdartsvo* 2 (1936): 66.

people who are in a de facto marital relationship does not allow the existence of several marriages simultaneously."[41]

On the other hand, unregistered spouses could be issued a certificate of notary without first being adjudicated the spouse before a court. The courts had to consider three factors to establish the evidence of a de facto marriage: "1) fact of cohabitation 2) common household economy 3) demonstrating their marital relationship to third parties. All these factors together prove the existence of a de facto marriage."[42] Orlovsky argued that the basis of an unregistered marriage included a long term family, labor and property relationship.[43] He noted that judicial practice did not always apply this consistently as in the case of Citizen B who a court adjudicated a de facto wife despite the fact that she had lived in the city of Gorki with her husband and children and one day before the death of citizen R (the decedent), she divorced her husband and went to Moscow for the inheritance. The people who had been living in the same apartment building as R all stated that they had only seen Citizen B occasionally and she had never spent more than a month at a time with Citizen R. Orlovsky was concerned with this adjudication of an unregistered spouse based upon only occasional relations between the parties. Thus, both occasional relationships constituting a marriage and the adjudication of more than one wife despite polygamy not being legal troubled Orlovsky.[44] As Orlovsky pointed out,

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[41] *Sovetskaia iustitsiia* 31 (1935): 24; See also Orlovsky, "Nekotorye voprosy," 66.

[42] Orlovsky, "Nekotorye voprosy," 66.

[43] Ibid.

[44] Ibid.

"law prohibits polygamy and therefore a transfer of estate to two wives because according to our laws nobody can have two wives at one time but the court divides the estates between two wives, sometimes adjudicating one as wife and other as a dependent."[45]

What is even more striking about these cases is that they occurred at a time when citizens could be denounced and disenfranchised for such things as hiring labor or having excessive housing.[46] Borisov had twenty-two rooms and still considered his sister an employee who had to live in the kitchen, Tsybushchenko had an apartment in Moscow but also claimed the dacha built by her former husband for his new wife, and Skrylnikov had two apartments in Moscow allowing him to keep a mistress. Private labor resulting in profit could also result in denunciation. Ivanov saw patients privately in his home, and apparently profited quite well from it but was a member of one of the excepted professions. As Golfo Alexopoulos has detailed, loss of rights did not apply to some types of citizens. "The 1926 Instructions on Elections to the Soviets excluded...groups of people from disenfranchisement" including "people of the free professions (such as doctors or lawyers) who engaged in socially useful labor."[47] These cases occurred at a time when Soviet legal scholars disagreed about what role inheritance should play, if any, in a socialist society. As late as 1935 (when the above cases were being decided by the courts), a textbook on Soviet economic law argued that there was no need for inheritance

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[45] Ibid.

[46] Golfo Alexopoulos, *Stalin's Outcasts: Aliens, Citizens, and the Soviet State, 1926-1936* (Ithaca and London: Cornell University Press, 2003), 56-7.

[47] Ibid., 106.

of property because the able-bodied would work, and the disabled would be taken care of by the state.[48]

By 1936, a shift occurred in how the Soviet leadership perceived of inheritance. Officials and jurists no longer presented it as only a means of social welfare to provide for children and dependents, but rather as a way to *enhance* socialist society upon a premise similar to what one would expect to hear in a capitalist society. They argued that the protection of personal property rights would raise the interest of workers in socialist manufacture and lift labor productivity. Thus, the nation as a whole could benefit from this institution. This shift occurred at the same time as official attitudes toward the role of family in Soviet society changed. While some scholars have portrayed this as a turn toward more conservative values and a "retreat" from the attack on the institution of the family in the early post-revolutionary years, other recent scholarship has emphasized that it represented a broader trend of state interference in family and reproductive matters across Europe.[49] The law tightened restrictions on divorce making it more expensive and requiring mutual consent and therefore, ended the era of unilateral divorce.[50] Abortion was prohibited unless "the continuation of pregnancy endangers life or threatens serious injury to the health of the pregnant woman and likewise when a serious disease of the

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[48] Vladimir Gsovski, "Soviet Law of Inheritance I," 291-92.

[49] David Hoffmann discusses Nicholas Timasheff's *The Great Retreat* as having highlighted the shift in family policy in the 1930s "as one prominent feature of what he called the Great Retreat." Hoffmann, however, does not characterize it as a retreat because, not only was this a part of a broader trend in Europe but also the use of the term "'retreat' implies a return to a previously existing type of family....[b]ut the Stalinist family had neither exclusive property and political rights for the patriarch nor protection from state interference." Hoffmann, *Stalinist Values*, 89.

[50] "New Divorce Curb Ordered in Russia," *The New York Times*, September 23, 1935, pg. 19.

parents may be inherited."[51] *Pravda* published the draft law on abortion in an article that asserted:

> [w]hen we speak of strengthening the Soviet family, we are speaking precisely of the struggle against the survivals of a bourgeois attitude towards marriage, women and children....The *elite* of our country, the best of the Soviet youth, are as a rule also excellent family men who dearly love their children. And *vice versa:* the man who does not take marriage seriously, and abandons his children to the whims of fate, is usually also a bad worker and a poor member of society.[52]

The official shift that was codified in late 1936 began in 1935 when Harold Denny observed in a *New York Times* article that "[f]amily life in Soviet Russia is fast becoming daringly respectable."[53] The law prosecuted a man for bigamy because he allegedly had at least four wives since 1926 and was suspected of having many more. Denny observed that the new official view advocated preservation of the family and honoring parents explaining that "[c]ommunist leaders are now emphasizing the thesis that higher purity is attainable in Soviet family life than in capitalistic family life because women here have neither dowries nor need to hunt fortunes but are economically and socially independent."[54] The practical effects of the lenient divorce laws, particularly from 1926 to 1936, were, of course, sometimes unintended. Journalists asserted that

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[51] See "Decree on the Prohibition of Abortions, the Improvement of Material Aid to Women in Childbirth, the Establishment of State Assistance to Parents of Large Families, and the Extension of the Network of Lying in Homes, Creches and Kindergartens, the Tightening of Criminal Punishment for the Nonpayment of Alimony, and on Certain Modifications in Divorce Legislation, June 27, 1936," in *The Family in the U.S.S.R.*, 269-79 or "Decree on the Prohibition of Abortions, June 27, 1936" www.soviethistory.org, website created by Lewis Siegelbaum and James von Geldern (last accessed October 12, 2009).

[52] *Pravda,* May 28, 1936 in *The Family in the U.S.S.R.*, 251-52.

[53] Harold Denny, "Russian on Trial for Easy Divorces," *The New York Times,* June 30, 1935, 21.

[54] Ibid.

marriages were often contracted for reasons other than love, such as a husband's superior position, to conceal family background or to obtain residency in an apartment.[55] One article asserted that according "to a survey carried out by the Commissariat for Health, the divorce evil is chiefly due to hasty marriages and marriages of convenience, the latter contracted by persons needing rooms or trying to hide their social origin."[56]

It is certainly the case that these types of legal restrictions on marriage, divorce, and abortion were not limited to the Soviet Union but did make the Soviet Union more in line with other European countries and the United States in terms of how it restricted divorce and abortion (which, in turn, promoted the institution of marriage). Still, Soviet policies, even in their "conservative turn," differed markedly from some other countries that restricted marriage and reproduction based upon race and ethnicity. The United States Supreme Court sanctioned involuntary sterilization, the media promoted eugenics, and several state laws restricted marriage between Caucasians and any other race.[57] Nazi

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[55] Harold Denny, "Soviet to Tighten Its Divorce Laws," *The New York Times,* July 5, 1935, 1. Denny refers to an article in *Izvestiia* but does not give further information. For a discussion of denunciation practices based on social origins, see Fitzpatrick, *Tear off the Masks,* 205-239.

[56] "Soviet Now Lays Stress on Family," *The New York Times,* September 29, 1935, E6.

[57] See, for example, the Supreme Court case of *Buck v. Bell*, 274 U.S. 200 (1927) which upheld the involuntary sterilization of a "mental defective" and Martin S. Pernick, *The Black Stork: Eugenics and the Death of 'Defective' Babies in American Medicine and Motion Pictures since 1915* (New York and Oxford: Oxford University Press, 1996). State laws restricting marriage based upon racial classifications were not struck down by the Supreme Court until *Loving v. Virginia*, 388 U.S. 1 (1967).

Germany restricted reproduction for those deemed ethnically or physically inferior and encouraged reproduction for others.[58]

David Hoffmann has argued that the shifts in the Soviet Union were part of a broader trend in which "[a]ll across Europe governments began to champion the family and motherhood, and to offer people incentives to have children" particularly in the wake of the demographic catastrophe following World War I. He claims that "Soviet policies resembled those of other European countries in both means and objectives" but points out the differences including that the "Soviet government encouraged reproduction among all members of the population, without distinction as to ethnicity or class."[59] Still, from the revolutionary Bolshevik perspective, these policies marked a retreat from the frontal attack on the traditional family (but not a return to a preexisting family type), toward a reconciliation and even promotion of the family as an institution. As Hoffmann points out, "[p]ro-marriage propaganda countered earlier attacks on the family as a bourgeois institution" and "Marxist theorists...who had earlier predicted the extinction of the family were made to recant their view, and new propaganda stressed that in the Soviet Union 'the family is a socialist organization.'"[60] A 1936 article in *Pravda* articulated the view that:

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[58] For a discussion of Nazi Germany's eugenic policies (apart from its genocidal policies), see, for example, Gisela Bock, "Antinatalism, Maternity and Paternity in National Socialist Racism," in *Nazism and Germany Society, 1933-1945,* ed. David F. Crew (London and New York, Routledge, 1994). See also David L. Hoffmann and Annette F. Timm, "Utopian Biopolitics: Reproductive Policies, Gender Roles, and Sexuality in Nazi Germany and the Soviet Union," in *Beyond Totalitarianism: Stalinism and Nazism Compared,* ed. Michael Geyer and Sheila Fitzpatrick (Cambridge: Cambridge University Press, 2009), 87-129.

[59] Hoffmann, *Stalinist Values*, 97, 101.

[60] Ibid., 104.

> So-called free love and loose sexual life are altogether bourgeois and have nothing in common either with Socialist principles and ethics or with the rules of behavior of a Soviet citizen. Marriage is the most serious affair in life....Fatherhood and motherhood become virtues in the Soviet land.[61]

Another article asserted that in "the eyes of bourgeois law the father is first of all custodian and embodiment of private property" in which he "is the owner of the family property, the sole master of the estate" including wife and children. In contrast, in the "Soviet land, 'father' is a respected calling. It does not mean 'master' in the old sense of the word. It designates a Soviet citizen, the builder of a new life, the raiser of a new generation."[62] Thus, the recognition and promotion of inheritance and *personal* (as opposed to private) property coincided with an official shift in attitude toward the family in socialist society.

Jurists criticized Aleksandra Kollontai and others who had advocated the withering away of the family under socialism as having misinterpreted Marx and Lenin, and highlighted the family as an institution that would become stronger under socialism.[63] Yet, the theoretical problem of how to distinguish the socialist family from the family in capitalist societies continued to be discussed and commentators found it necessary to highlight that property and economics was at the heart of the distinction (which was not a new theory), but that property in socialist society had changed in character because bourgeois property had been abolished. In a 1936 article, jurist S.

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[61] Vladimir Gsovski, "Family and Inheritance in Soviet Law,"76 quoting *Pravda,* May 28, 1936.

[62] *Pravda,* June 9, 1936 article in *TheFamily in the U.S.S.R.,* 266-67.

[63] See, for example: V. Svetlov, *Socialist Society and the Family* in *The Family in the U.S.S.R.,* 333-34.

Wolffson attempted to explain the difference between the Soviet family and the family in capitalist societies and argued that:

> [w]hen a bourgeois marries, he produces a symbiosis of capitals, an amalgamation of estates, banks and factories. The husband needs a family primarily in order to safeguard the preservation of capital and property through inheritance, to make sure of passing them on to a 'legal heir'; the wife regards the husband as the 'provider,' the guarantor of her economic well-being and as one who gives access to higher rungs in the social ladder. In the Soviet Union social conditions are such as to make it impossible for the family to arise on this 'cash down' basis on which the bourgeois family arises, rots and disintegrates.[64]

Soviet families, on the other hand, were about friendship, mutual respect, and, of course, constructing socialism. In Wolfsson's words:

> [i]n the Soviet family husband and wife are not the business agents who seek in marriage mutual economic advantages: they are united by personal affection, friendship, the bringing up of children and their common work in socialist construction. Such is the decisive difference, of historic significance, between the disintegrating family of capitalist society and the new-born family of socialist society.[65]

Therefore, legal theorists argued that the Soviet family was not constructed on an economic basis. Conversely, however, they argued that a Soviet citizen would naturally desire that his or her property would pass after death to a family member (rather than to be allocated for the collective). These two views highlighted the essential tension with regard to inheritance and the family. One presumed that there was no economic basis to the Soviet marriage, another presumed that it was only because bourgeois property had been abolished that the institution of inheritance had been transformed.

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[64] S. Wolffson, "Socialism and the Family," in *The Family in the USSR: Changing Attitudes in Soviet Russia, Documents and Readings*, 298-99.

[65] Ibid., 299.

Wolfsson argued that:

> [i]n socialist society the great emotion of love, which ennobles and enriches man, is freed from the fetters of private property and naked financial calculations: it is not mutilated, pursued and made contraband: it has a chance to develop and blossom. The interests of private property, the supreme dictator of capitalist society, hold love imprisoned and thus cut it short, mutilate and stunt it. Socialism sets the powerful emotion of love free from the captivity of the interests of private property.[66]

Thus, the "revolution of the proletariat, [and] the victory of socialism destroy the economic bases of the hypocritical monogamy of the bourgeois: the passing by inheritance of private property and of its core-the means of production" and "[w]ith the means of production becoming national instead of private property, the hypocritical monogamy of the bourgeois comes to an end; the end of that prostituted 'legal' form of family and marriage relations, saturated with bigotry and profligacy, which alone is recognized by the capitalist State."[67] Wolfsson himself earlier advocated the extinction of the family and after exalting its new and improved socialist form in this article disowns his prior assertions by writing "[i]n my book, *The Sociology of Marriage and the Family,* published in 1929, the entirely erroneous thesis is developed that socialism entails the extinction of the family. Considering these ideas harmful, I have completely disowned them."[68] In the spirit of the new official family policy he declared that "[t]he family does not become extinct under socialism: it grows stronger."[69] By 1938, this new

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[66] Ibid., 301.

[67] Ibid.

[68] Ibid., 315.

[69] Ibid.

view of the moral Soviet family led one Western journalist residing in the USSR to observe that the "[o]fficial disapproval of moral laxity now being voiced here is another reminder of the fact that bit by bit Soviet morals are swinging around to the old-fashioned standards of bourgeois society."[70]

In the attempts to promote and strengthen the Soviet family, the elevation of inheritance to a constitutional right in Stalin's constitution represented an important shift in the official view of what role inheritance should have in a socialist society. Whereas jurists and officials had previously stressed that inheritance remained a provisional institution in the years of transition to socialism in order to provide social welfare, the Constitution now elevated it to a "right" of Soviet citizens. The official view toward inheritance shifted in the mid 1930s to one in which the institution promoted and strengthened the family and socialist society.

Jurist V. Svetlov asserted that "[s]ome comrades writing think that the individual ownership of articles for personal use (furniture, clothing, motor-car, etc.) is the economic basis of the socialist family." On the contrary, argued Svetlov, "the economic basis of the new socialist family and its welfare is still social ownership of the means of production" and individual ownership of property "arises in socialism out of the prevalence of social ownership-it does not contradict it, it is conditioned by it, because socialist ownership is the source of the prosperous and civilized life of the socialist workers."[71] In an article about inheritance in early 1936, jurist P. Orlovsky proclaimed

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[70] Harold Denny, "Soviet Morals Less Revolutionary," *The New York Times,* November 27, 1938, 77.

[71] V. Svetlov, *Socialist Society and the Family* in *The Family in the U.S.S.R.,* 321.

that socialism had been achieved and the class attitudes and structure of the population had been changed and radically altered during the construction of socialism. Orlovsky asserted that the central figures who had built socialism were the workers and collective farmers and that the material and cultural level of the Soviet people continued to rise each year, resulting in a growing property base in both public socialist property and individual personal property. He concluded that this resulted in a correct combination of the common interests of the proletarian state. Orlovsky further argued that Marx linked inheritance laws in capitalist societies as being not the cause but the consequence of the existing economic structure, by appropriating the products of somebody else's labor. [72] In this manner, Orlovsky claimed that various petty bourgeois ideologists (that is, the early post-revolutionary radical view), who viewed inheritance as the main economic reason of the class organization of society and demanded liquidation of the right of inheritance as the main demand of the working class, were misinterpreting Marx.

Thus, inheritance constituted not the *cause* but rather the *consequence* of a society built on private property. With this reasoning, Soviet jurists and officials could state that the nationalization of industry and land had transformed the economic basis of property in the Soviet Union because this responded to Marx's claim that it was necessary to liquidate the institutions that allowed individuals to appropriate the fruits of other people's labor.[73] After all, Marx had asserted that:

> Inheritance does not *create* that power of transferring the produce of one man's labor into another man's pocket -- it only relates to the change in

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[72] Orlovsky, "Nekotorye voprosy," 61-62.

[73] Ibid., 62.

> individuals who yield that power. Like all other civil legislation, the laws of inheritance are not the cause, but the effect, the juridical consequence of the existing economical organization of society, based upon private property in the means of production; that is to say, in land, raw material, machinery, etc.[74]

Rather than portraying inheritance as a necessary evil to be maintained to provide for social welfare during the transitory period to socialism, Orlovsky now linked the protection of personal property rights with increased labor participation in socialist manufacturing and increased labor productivity. Inheritance created in the worker the firm confidence that the property earned by personal work would pass after his death to the person and organizations to which he would wish it to be transferred.[75] Thus, since the bourgeois character of property in the Soviet Union had been abolished, citizens should now have the right to decide who or what should receive the earnings from their contributions to socialist labor and the socialist project after their death. But despite this right of inheritance, the circle of heirs remained limited. Orlovsky was prescient in arguing that parents should be included within the circle of heirs[76] but officials did not actually reform the law until during World War II.[77]

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[74] Karl Marx, "The Right of Inheritance," in *Report of the Fourth Annual Congress of the International Working Men's Association, held at Basel, in Switzerland, 1869,* http://www.marxists.org/archive/marx/iwma/documents/1869/inheritance-report.htm (last accessed October 12, 2009).

[75] Ibid., 64.

[76] Ibid., 65.

[77] See Chapter two.

Constitutional right of inheritance

The elevation of the right of inheritance to a constitutional right in the Soviet Constitution of 1936 represented a significant legal change. Although the Civil Code of 1922 had already sanctioned inheritance, its inclusion in Stalin's Constitution marked the official change in attitudes about inheritance from that of it being a necessary transitory measure for social welfare purposes to it being a right that all citizens should enjoy. Article 10 provided that the law protected citizens' right to income savings, dwelling houses, domestic furniture and utensils and items (defined as personal property) and inheritance of personal property.[78]

Citizens had a right to property but only to personal property and property earned through labor but not a right to private property. One legal theorist asserted that inheritance was considered a private legal form of social security until recently. Now that a stage had been reached where private property no longer existed, the circle of heirs could even be broadened since the limitation of heirs at law had been intended to correspond with the restriction of private property. In fact, jurist G. Amfiteatrov argued, socialist society had placed before us a fascinating problem of how to open "socialist hostels" (*obshchezhitiia*) "where the interests of society and the person have received a harmonious expression" through constitutional articles and civil code sections.[79] The provision for inheritance in the Stalin constitution would be referred to by jurists

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[78] *Sbornik zakonov SSSR: 1938-1961* (Moscow: Gosudarstvennoe Izdatel'stvo Iuridicheskaia Literatura, 1961), 4, *Sovetskoe gosudarstvo* 6. (1936), 25. For an English translation of Article 10 of the 1936 Constitution, see *Soviet Statutes and Decisions* 4, no. 3 (1968): 5.

[79] G. Amfiteatrov, "Proekt konstitutsii SSSR," *Sovetskoe gosudarstvo* 4 (1936), 99.

throughout the Stalinist years as being directly linked to Stalin himself and his provision for personal rights.[80]

A civil law textbook from 1938 evidenced the shift from advocating inheritance with limited exceptions as a means for social welfare to promoting its socialist character by stating that "[u]nder the conditions established by the victory of socialism, the exploiting classes having already been liquidated and capitalist ownership abolished, the right of succession cannot become a source of exploitation."[81] Jurists now thoroughly attacked the earlier view advocated by jurist Goikhbarg that introducing a private right of inheritance conceded to private interests. Orlovsky argued that Goikhbarg and others were "unable to understand that the right of inheritance, being a form of working class policy, was one of the means of strengthening of new property relations under proletarian rule and not just the incentive 'for amassing private property allowed by law.'"[82] In fact, as Gsovski details, the 1938 textbook on civil law stated that "[t]hese wrongdoers attempted to impose the view that inheritance of property under Soviet law is merely a private form of, and substitute for, social insurance."[83] Furthermore, Orlovsky argued that the "descent of his property cannot be an irrelevant matter for a citizen of the

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[80] See, for example: B. Antimonov, S. Gerzon, B. Shlifer, *Nasledovanie i notariat* (Moscow: State Publishing House of Ministry of Justice of the USSR, 1946), 3 and Khalfina, *Pravo nasledovaniia*, 3-4; see also chapter three.

[81] Vladimir Gsovski, "Soviet Law of Inheritance I," 291-320, 292, quoting *Civil Law, Textbook for the Law Schools of Universities*, 450-51 (1938).

[82] Orlovsky, "Nekotorye voprosy," 63.

[83] Gsovski, "Soviet Law of Inheritance I," 292, quoting *Civil Law, Textbook for the Law Schools of Universities*, 450-51 (1938).

U.S.S.R. Establishment of succession appears to be one of the stimuli for development of personal ownership, for increase in the productivity of labor, and for fortifying the socialist family."[84]

Along with this distancing from earlier legal analyses came an emphasis on linking inheritance with the fruits of socialist labor and contributions to socialist society earned through the Stakhanovite movement.[85] As Lewis Siegelbaum has illustrated "Stakhanovite status did provide a number of advantages that were sufficient to make it desirable to many workers." The advantages could be both material and nonmaterial. Material advantages other than living quarters consisted in "a wide range of goods including radios, bicycles, material from which suits and dresses could be made, or in rural areas, firewood, a sow, or a calf."[86] While these types of advantages were not quantifiable as private capital, allowing inheritance of such items perpetuated the transfers of property within the family and allowed some to profit from what others had earned.

Conclusion

Inheritance, therefore, constituted a legal right that had been progressively expanded during the early Soviet years, despite its ideologically problematic nature. From its early abolition with minor restrictions for purposes of social welfare to its

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[84] Ibid.

[85] Orlovsky, "Nekotorye voprosy," 61; Rakhel', *Sovetskaia iustitsiia* 17 (1937): A Steinberg, "Voprosy nasledovania," *Sotsialisticheskaia zakonnost'* 1 (1936): 85.

[86] Lewis H. Siegelbaum, *Stakhanovism and the Politics of Productivity in the USSR, 1935-1941* (Cambridge: Cambridge University Press, 1988), 184, 188. See also Hachten, "Property Relations and the Economic Organization of Soviet Russia," 122-24.

elevation to a Constitutional right in 1936, Soviet policy leaders and theorists struggled with how to articulate the place of the institution in a socialist society. It was also central to the social restructuring of society and the family. The upheavals of World War I, Civil War and famine and the simple impossibility of the State to meet goals of collectivized child rearing, communal kitchens and so forth meant to liberate women from the traditional bourgeois family in which she was enslaved to her husband, children and household led to the early allowance of limited inheritance. Jurists justified and distinguished socialist inheritance from that in capitalist countries on two grounds. One held that it constituted a means of social welfare for providing for minors and dependents during the years of building socialism. Another held that since capital had been abolished by nationalization of land and industry, it did not allow for the reproduction of bourgeois wealth but rather the transfer of earned income and necessary material items accumulated from contributions to socialist society. By 1936, when the Stalin Constitution proclaimed that socialism had been achieved, jurists emphasized the second ground. That is, citizens had a right to transfer personal property accumulated in the building of socialism, and this would, in fact, strengthen the new Soviet family.

In 1945, a new inheritance law went into effect allowing parents of the deceased to inherit as well as sisters and brothers in some circumstances and property, in the case of there being no living heirs at law, could even be willed to anyone. These changes to inheritance law resulted directly from the effects of the Great Patriotic War, but it was not until 1961 that reforms to the law removed the restrictions on persons to whom property could be willed. After the enactment of the Fundamental Principles of Civil Legislation of the USSR and Union Republics (promulgated by the All-Union Supreme Soviet in

1961 and effective in 1964), testamentary freedom was limited now only "by socialist definitions of the scope of property capable of individual ownership."[87]

[87] John N. Hazard, William E. Butler and Peter B. Maggs, *The Soviet Legal System* Third Edition (New York: Oceana Publications, 1977), 391.

Chapter 2
Necessary Compromises: The Great Patriotic War

"The question of inheritance has a special acuteness when the average age of the dying is more often 18-20 year old young men, without wives and children, and whose family consisted of parents."[1]

The Great Patriotic War precipitated a turning point in the law of Soviet inheritance. The history of the reform to the Civil Code during World War II demonstrates that policy making officials were responsive to the demands of Soviet citizens, contrary to the view of an all encompassing totalitarian state that did not reflect public opinions or demands on any level. Governments in every country affect private life and family structure through public policy. Restrictions on marriage, divorce, and inheritance or criminalization of cohabitation and certain sexual acts, for example, clearly influence private life. The war time and immediate post war changes to Soviet inheritance law illustrate that the attitudes of Soviet leaders towards property rights continued to change over time and resulted in an official compromise which sanctioned (and even encouraged) ownership of consumer goods.

This chapter asserts that Soviet citizens provided a platform for changing conceptions of property ownership and the privileging of family, even if not necessary for social welfare purposes that the government adopted. While this process started in the mid 1930s as discussed in the previous chapter, the Great Patriotic War accelerated a privileging of family ties, even those of non-dependents in matters of inheritance. Citizens' voiced concerns about property, especially about the property of soldiers who died fighting in the war, in petitions to the courts and to the Ministry of Justice. The

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[1] GA RF f. 9492, op. 1, d. 1614, l. 72.

realities of war combined with a petition and letter-writing public initiated a project to reform Soviet inheritance law. This project culminated in a revised code of laws passed at the end of the war that expanded the categories for eligible heirs beyond a spouse, children and dependents. This chapter focuses on the circumstances and debates surrounding the legal reforms to inheritance during and immediately following World War II, arguing that these reforms cemented the break with the focus on limited inheritance as a means of social welfare only that had dominated in the early post-revolutionary years.

The Great Patriotic War resulted in the loss of over twenty-seven million Soviet lives. More than two-thirds were civilian deaths but at least eight million were Red Army losses. In comparison, British and American losses were fewer than a quarter million each, which, while certainly significant, were nowhere near the suffering endured by the Soviet population.[2] The millions of young men in the Red Army who died during the war and large-scale population dislocations and deaths of non-military persons transformed the issue of inheritance from persons who died without a spouse or children into a prime concern behind the debates over a new and expanded circle of heirs entitled to inherit. During wartime, the limited circle of heirs (spouse, children, and dependents incapable of working) presented a problem for officials because parents were emotionally invested in children dying as soldiers and felt the right to their children's personal property. Furthermore, scarcity of housing and goods, particularly in occupied areas, made property particularly desirable from a practical as well as an emotional standpoint.

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[2] Catherine Merridale, *Ivan's War: Life and Death in the Red Army, 1939-1945* (New York: Metropolitan Books, 2006), 4.

The language of petitions to courts which largely dealt with rights to living quarters after the death of a family member, and in the history of the project to reform inheritance law which discussed the property of young soldiers who died without a spouse or children and debated the reasons for the current exclusion of non-dependent parents from the eligible circle of heirs, evidenced this. This legal reform project took place during the war and resulted in various decrees modifying the existing inheritance law and the codification of a new inheritance law in 1945. The main issue addressed enlarging the permissible circle of heirs to include parents but the final law also expanded the possible circle of heirs to include siblings, and even allowed for testamentary freedom to dispose of personal property outside the enlarged circle of heirs if there were no living spouse, children, dependents, parents, or siblings of the deceased.

Wartime legal reform

Less than a year after the Soviet Union entered World War II in June 1941, officials issued a decree on April 10, 1942 addressing the disposal of property of servicemen who died while protecting the Fatherland.[3] Charles Hachten briefly addresses these changes, arguing that "lawmakers decided to satisfy soldiers' demands to increase the boundaries of the family circle" and that the legislation in practical terms "left the disposition of estates to households (except when conflicts arose between heirs)."[4] The war and concern over soldiers' belongings precipitated the changes to inheritance law. But the final legislation did not go into effect until the end of the war,

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[3] *Vedomosti verkhovnogo soveta SSSR* 4 (1942).

[4] Hachten, "Property Relations and the Economic Organization of Soviet Russia," 340-41.

and it continued the evolution of an expanded circle of heirs entitled to inherit as officials acknowledged Soviet citizens' primary identification with the family and desire to keep property within the family. In fact, the measures taken by state officials to ensure that deceased servicemen's families received their personal belongings were quite extraordinary, especially in the chaotic atmosphere of total war. While it would have been in theory much simpler to simply seize the belongings or do nothing unless contacted by a deceased soldier's family, officials instead mandated that every conceivable effort be made to return the deceased soldiers' belongings to family members before allowing any property to escheat to the state.

The history surrounding the circumstances of this decree and the subsequent project to reform the Civil Code gives insight into not only why these accommodations to an ideologically problematic (from a Marxist standpoint) institution were made, but also as to how the state justified the endorsement of transfers of property. The reform project and People's Commissar of Justice, N. Rychkov, in particular, emphasized that peacetime conditions were inapplicable to wartime conditions when death comes unexpectedly outside a soldier's place of residency. A deceased soldier's property should not escheat to the state until after three years in order for there to be sufficient time to search for heirs.[5] Despite these assertions about changes being about the war, reform did not cease with the war, but rather the concessions made during the war in terms of allowing more heirs at law were expanded in the inheritance law enacted in 1945.

Detailed instructions issued in April 1942 pertained to the transfer of money, securities, savings and deposit books and other valuables found on deceased soldiers.

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[5] GA RF f. 9492, op. 1, d. 1614, l. 15-16.

Money, securities, bonds and savings books of deceased soldiers should be sent to the family within the circle of heirs within three days of receipt by the finance manager. If the address of the deceased soldier's family was unknown but the military regiment knew of an address of his *relatives* (it is not defined who would constitute a "relative") who up until the date of death received part of the deceased's salary, then the military regiments should forward the above items to such relatives. The decree further specified how the items should be sent to the family: send money by wire transfer through the State Bank of the USSR; send government bonds, savings and deposit books through registered mail; and send valuables (such as watches and cigarette carriers) by regular mail.[6]

Unfortunately, those citizens presumably enduring the worst conditions, who had been evacuated from their homes or were living in areas under occupation by the enemy, were unlikely to receive their inheritance, at least immediately. The instructions specified that if the military regiment could not determine the last name and address of the deceased soldier, or if the military commission where the deceased had enlisted was "temporarily" occupied by the enemy and no address of the family was available, then after one month the military regiment must forward money, securities and precious objects to the State Bank for escheating into the union budget and other objects should be liquidated through a state trading organization in order for the proceeds to escheat into the union budget. Still, this did not necessarily result in a permanent loss of property for those in this situation because the decree allowed a three year redemption period during which an heir could file a claim for the return of the money and valuables (presumably, in

[6] GA RF f. 9492, op. 1, d. 1614, l. 19-24.

currency, since the actual valuables could be sold after one year if they were difficult to preserve).[7]

These instructions illuminate a degree of concern for the property of deceased servicemen and ensuring its return to family members, demonstrating an accommodation with citizens who lost family members fighting in the Great Patriotic War. They also show state officials assuming a duty to protect and transfer property to heirs, if at all possible, *before* the state could assume ownership of personal property. State officials were not only *responsive* to the concerns of heirs of deceased servicemen, but also *proactive* in assuming the burden of tracking down heirs and returning property in addition to allowing for heirs to claim property escheated to the union budget for up to three years. This is a significant shift from officials and jurists dealing with inheritance only when citizens approached notaries for a certificate of inheritance or the courts were petitioned to resolve a contested matter, to an official policy of encouraging the institution of inheritance in practice and protection of personal property by officials' active roles in the search for heirs and the transfer of property of deceased servicemen.

Locating heirs and transferring property found on deceased servicemen did not constitute the only issue and this is where the courts became involved in familial disputes involving who actually owned other property left behind (namely, a dwelling). One case pitted a war widow against her sisters-in-law for the home of the deceased. When Ignat Gurinovich's mother died in May 1944, his sisters opened an inheritance case for the house where Gurinovich's wife and three children lived. The court files show that the sisters claimed the house belonged to their mother and thus, they were entitled to inherit a

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[7] Ibid.

portion of the home (as opposed to the home devolving solely to Gurinovich's spouse and children). An additional complication to the case occurred after Gurinovich died at the front in August 1944. His wife appealed to the Supreme Court of the USSR to overturn the decisions of the Borisov People's Court, the Minsk Regional Court and the Byelorussian Supreme Court which had recognized the sisters-in-law's claims. Gurinovich's wife demonstrated that the building of the house started in 1927 as a joint project between her husband and his father. Furthermore, upon his father's death in 1930, Gurinovich and she completed the construction and had lived in the house as a family until the mobilization of her husband into the Soviet Army. Witnesses interrogated by the court supported these statements and Gurinovich also provided receipts for payment of construction costs and taxes from 1934 forward. The USSR Supreme Court remanded the case back to the Byelorussian Supreme Court to consider whether the house was in fact the property of Gurinovich (and not his mother), favoring plaintiff's claim.[8] Whereas the military regiments actively engaged in protecting property of deceased servicemen (or "movable" property such as cash), courts all over the country were dealing with the contested issues relating to "immovable" property such as a dwelling of servicemen who had died.[9]

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[8] GA RF, f. 9474, op. 5, d. 2441, see also *Sudebnaia praktika verkhovnogo suda SSSR* (hereafter *Sudebnaia praktika*) 5 (1950): 35-36.

[9] Note that in Western liberal law and practice the terms "immovable" and "movable" property generally denote the difference between "real" (land, buildings and fixtures) and "personal" (everything else) property. While the concept of "real" property is not applicable to the Soviet Union where all land was nationalized, it is still useful to conceptualize the difference between property that could be moved or was immovable. As addressed briefly in the introduction, property distinctions in the Soviet sense focused on the ideological differences between property and more on function rather than status as movable or immovable. The terms *chastnaia* or *lichnaia* were employed in this respect, with the former considered exploitative, capitalistic and unacceptable (using an automobile as a private taxi) and the other considered necessary and acceptable under socialism (using an automobile to get to and from employment).

The state furthered the privileging of deceased soldiers' families early the following year by making the transfers largely "tax free" in comparison with previous provisions for estate taxes. On January 9, 1943 a decree provided for the abolition of the heavy inheritance tax that could previously have amounted to up to ninety percent of the estate. The decree replaced the tax with a fee, not to exceed ten percent of the amount inherited, directly payable to the government in order to obtain a certificate of inheritance. This decree specifically stated that it constituted an addition to the previous decree concerning servicemen dying for protection of the Fatherland.[10] Theoretically, this allowed for a much larger estate to be transferred upon death because of the abolition of the taxes on the property that passed to deceased servicemen's heirs.

The broader project to reform the inheritance law to allow for a widened circle of heirs resulted in part from demands of Soviet citizens. Although, as discussed in the previous chapter, jurist P. Orlovsky had suggested prior to the war that the circle of heirs should include parents, the exigencies of war, massive loss of life and a petitioning Soviet public led to the reforms to inheritance law. The history of codification of the new provisions indicates that the parents of deceased servicemen persistently applied for the possessions of their children. A memorandum to Comrade Khitev, People's Commissariat for Justice of the USSR Codification Department from Kamensky, Chief of the Justice Department, dated April 1, 1944 stated that the overwhelming majority of cases were appeals from parents of victims with property and that applications from other relatives were few. The plight of these citizens came to the attention of lawmakers after applications were made to the State Bank to transfer savings. The State Bank would

[10] *Sbornik zakonov SSSR: 1938-1961*, 687-88.

answer these applications in the negative, stating that payment of contributions could only be made to those persons who were recognized as successors under decisions of national courts.[11]

In the history of the codification project for reform of the broader inheritance law, Professor M. Gordon offers insight into the disconnect between the text and actual practice of the law.[12] In his opinion, local officials did not observe the law that excluded parents as heirs [excepting, of course, those who complained to Kamensky] and local finance organizations generally transferred property to the parents rather than the union budget. However, Gordon asserted that such non-observance of the law did not eliminate the necessity of its revision. In this manner Gordon advocated the importance of rule of law. Gordon questioned whether there existed a basis to restrict the rights of parents to inherit from their sons who died without spouses, children or dependents during wartime.[13]

Gordon cited the necessity of expanding the circle of heirs permitted to inherit as a method of social security, rather than a way to transfer property rights, to justify the compatibility of the suggested revisions with socialist ideology and its disapproval of private property and the institution of inheritance as the ultimate example of the transfer of wealth in capitalist societies. He noted that the 1918 decree on the Abolition of

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[11]GA RF f. 9492, op. 1, d. 1615, l. 61.

[12]From what I have been able to determine, this is likely Mikhail Vladimirovich Gordon, author of *Nasledovanie po zakonu i po zaveshchaniiu* (Moscow, State Publishing House of Legal Literature, 1967).

[13]GA RF, f. 9492, op. 1, d. 1614, l. 72.

Inheritance left open some rights for succession when the property of the deceased would provide a degree of maintenance for dependents.[14] Moreover, Gordon emphasized that inheritance functions as a form of social security and that Soviet literature of that period strenuously emphasized this role.[15] As argued in the previous chapter, Soviet jurists had officially shifted to a view in the mid-1930s that bourgeois property had been abolished. They presented inheritance as a right in the Stalin Constitution meant to enhance socialist society because a Soviet citizen should be able to transfer property and wages earned from his or her contributions to socialist society. Yet, during the codification project, the social security argument still appeared as a reason for allowing the institution of inheritance. Lawmakers and legal advisors continued to deal with the ideologically problematic nature of the institution of inheritance by stressing its social security functions and its provisions for dependents. This argument was partially viable even with the reform in the law in 1945 (to be discussed further below) because it included (and indeed mandated inheritance for) minor children of the deceased who were presumed dependents as well as parents, siblings, or even other persons if they were dependent on the deceased. However, the social security argument was also problematic because the decree also allowed for able-bodied parents to inherit if the deceased had no living spouse or children (living or deceased), and for siblings to inherit if the deceased had no spouse, children (living or deceased), or parents. If the deceased had children who had

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[14]For the 1918 Decree, see *Dekrety sovetskoi vlasti Vol. II* (Moscow: State Publishing House of Political Literature, 1959), 187-190; see also "Decree Abolishing Inheritance," www.soviethistory.org, website created by Lewis Siegelbaum and James von Geldern (last accessed October 12, 2009).

[15]GA RF, f. 9492, op. 1, d. 1614, l. 72.

predeceased him or her, grandchildren and great grandchildren would stand in the place of the deceased child for a share of the inheritance.

Gordon's memorandum regarding the codification project outlined various other arguments for including parents. For example, it included arguments that parents and children were connected by mutual financial obligations, and that parents raised their children, and frequently supplied their material means. This argument is very different from a strictly social security standpoint of providing for dependents which would consider only a person's needs rather than mutual obligations due irrespective of need. Gordon also noted that in housing rights practice the Supreme Court of the USSR recognized that parents should be considered as members of the military man's family even if they did not live with him prior to his leaving for the front so that it would be natural enough to extend the right of inheritance to parents.[16] These arguments did not deal with the nature of the property (since bourgeois property allegedly no longer existed) but they did indicate an inability to articulate precisely why the circle of heirs should be broadened. That is, officials and jurists did not uniformly agree on the correct way to defend the institution of inheritance in a socialist society. In addition, the mutual obligations argument Gordon advanced with regard to parents would not apply to sisters and brothers, yet these were both included as potential heirs in the final 1945 reforms. Thus, Soviet jurists and policy makers continued to struggle with what role the institution of inheritance should have under socialism even after officials had agreed that bourgeois property no longer existed.

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[16] GA RF, f. 9492, op. 1, d. 1614, l. 73.

Other wartime reforms dealt with more practical issues. With regard to the mandate for opening an inheritance case within a period of six months after death, the Supreme Court of the USSR recognized the difficulties presented for those living in occupied territories or territories evacuated due to wartime circumstances. On September 15, 1942 the Plenum of the Supreme Court of the USSR issued instructions to the courts ordering a stay for the term of acceptance pending the discontinuance of the circumstances serving as the basis for the stay. These instructions pertained to the civilian population in war ravaged territories but also specifically included those serving in the Red Army or Navy fleet, thus recognizing the concern presented by People's Commissariat of Justice Rychkov that six months as a time limitation during which heirs must appear represented a reasonable limitation for peacetime conditions but did not take into consideration the exigencies of war. The instructions specified that a stay due to any of these circumstances did not prohibit other heirs from receiving a notary certificate regarding the right of succession but they were obligated to accept measures to safeguard the share of the absent heirs. Notaries were required to investigate whether any heirs were in the Red Army or Navy or living in occupied or evacuated territories prior to issuing a certificate.[17]

In fact, military service during the war could ultimately impose a personal duty upon other family members because disabled demobilized soldiers could not be disinherited by will. When two sisters protested a notary's certificate which included their brother as an heir despite their father's will, which specified the property pass to only the two daughters, the court upheld the notary's actions, noting that as an invalid of

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[17] *Sudebnaia praktika* 1 (1942): 5-6; GA RF, f. 9492, op. 1, d. 1614, l. 15-16.

the Great Patriotic War, B.P. Rudakov could not be disinherited. Officials interpreted the law regarding a duty to dependents differently. The public prosecutor had intervened on the sisters' behalf, claiming that Rudakov had not been supported by his father in the year prior to his death, and therefore could not be considered a dependent. However, the RSFSR Supreme Court rejected this argument, stating that although property could be willed to certain persons as well as state bodies and organizations, minor children and disabled heirs could not be disinherited. The Court ruled that the maintenance provision for within one year of the testator's death applied only to non-relative dependents.[18] In this manner, the Court served to further privilege the family under inheritance law by distinguishing between relative and non-relative dependents. A dependent provision made sense for purposes of social welfare and the requirement for dependence on the deceased for at least one year prior to death seemed reasonable. However, when the Court intervened to disallow relative dependents from being disinherited, it sent a message that citizens had more permanent duties to relatives and undermined a general social welfare policy towards the collective.

The war years also witnessed changes to family policies that affected inheritance rights. In 1938, one Western journalist residing in Moscow had argued that with regard to the communist aim of equality between the sexes, a great deal had been achieved, noting that: "No stigma attaches to the relationship of a man and a woman outside wedlock. No stigma of illegitimacy attaches to a child born of such a union and the

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[18] Baryshev, *Priobretenie nasledstva*, 83-84,

father must assist in its maintenance."[19] In the late 1930s, Soviet jurists also articulated a criticism of de facto marriages beyond the issues pertaining to inheritance as discussed in the previous chapter. V. Boshko argued in 1939 that the allowance of de facto marriages in the 1926 Code "concentrated on safeguarding the interests of mothers and children in the struggle against *kulaks*" because "at that time the rights of children born outside wedlock were not always acknowledged, particularly by the prosperous peasants."[20] While not advocating complete non-recognition of de facto marriages, Boshko stated that the "interests of the Soviet State" required a marriage law which would "impress in every way upon the citizens the important of the act of registration from the point of view of the State..."[21] Still, this emphasized protection of children. Others also addressed the concern about casual marriages and polygamy. Jurist A. Godes went further and argued for the legal recognition of only registered marriages because "... Soviet family and Marriage Law consistently and strictly adheres to the principle of monogamy and combats polygamy as a survival of the past in socialist life."[22] Godes insisted that only registered marriages should be allowed because:

> [d]espite all anti-Marxist assertions about the extinction of the family under socialism, the Soviet family continues to develop on the basis of the tempestuous growth of Communist construction. The Soviet state is

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[19] Harold Denny, "Soviet Morals Less Revolutionary," *The New York Times,* November 27, 1938, pg. 77.

[20] V. Boshko, "The Registration of Marriage and its Importance under Soviet Law," *Sovetskaia iustitsiia* 17-18 (1939) in *The Family in the U.S.S.R.,* 349.

[21] Ibid., 357.

[22] A. Godes, "The Conception of Legal and of De Facto Marriage According to Soviet Law," *Sovetskaia Iustitsiia* 19-20 (1939) in *The Family in the U.S.S.R.,* 357.

> strengthening the family in every way and creating all the necessary conditions for entering into marriage....The Soviet State is interested in rearing healthy, active builders of a Communist society....side by side with the great influence of Communist morality and culture on everyday relations, the legal form in which marriage is established plays an important part in fostering a serious Communist attitude towards marriage and the family. For the registration of a marriage with the public Registrar gives this marriage a certain publicity, and in this way people who have entered into marriage come to feel responsible not only before each other, but before the community as a whole. A compulsory registration of marriages also introduces some clarity into extra-marital relations. It cuts off any attempt to circumvent the principle of the Soviet monogamous family...We must therefore conclude that in the interests of strengthening marriage and family and of protecting personal and property rights of spouses and children, the new Civil Code should lay down that only a marriage registered with the public Registrar is legally binding.[23]

In 1944, there the law dramatically shifted away from the previous legal protection for children born out of wedlock. The earlier law had made no distinction between "legitimate" and "illegitimate" children but "under the amendment children born to unwed mothers after the Edict on Marriages of July 8, 1944, could not inherit from their father unless they had been legitimized by subsequent marriage and those born before the Edict could inherit only if the father had acknowledged paternity in the Civil Status Record or had been declared the parent by a court decision."[24] Mie Nakachi has recently argued that this law resulted from the anticipated problems of post-war reproduction, namely, "the significantly reduced number of citizens of reproductive age and the distorted male-female sex ratio."[25] Accordingly, state policy set out to encourage

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[23] Ibid., 361-62.

[24] Erh-Soon Tay, "The Law of Inheritance in the New Russian Civil Code of 1964," 479.

[25] Mie Nakachi, "Population, politics and reproduction: Late Stalinism and its legacy," in *Late Stalinist Russia*, 26.

men to reproduce without the fear of financial consequences of child support for children born out of wedlock as well as to destigmatize and encourage single motherhood. As Nakachi argues, post-war reproductive policies defined two sites of reproduction: an officially registered conjugal relationship and, now, the single mother, who, with state aid, would raise "fatherless" children.[26]

The decree included provisions for increasing state aid to single mothers and mothers of multiple children. The introduction stated that:

> Care for children and mothers and the strengthening of the family have always been among the most important tasks of the Soviet State. In safeguarding the interests of mother and child, the State is rendering great material aid to pregnant women and mothers for the support and upbringing of their children. During and after the War, when many families face more considerable material difficulties, a further extension of State aid measures is necessary.[27]

As a corollary, only a surviving spouse in a registered marriage with the deceased could inherit whereas before, the majority of republics had allowed inheritance between both registered and unregistered marriages.[28] Because the Edict on Marriages was issued during the war after many men in unregistered marriages had left for the front and never returned, a subsequent decree made provisions for couples who claimed to be married and considered themselves married but had never legally registered the marriage. A November 10, 1944 Decree of the Presidium of the Supreme Soviet of the USSR

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[26] Ibid., 31.

[27] "Decree of the Presidium of the Supreme Soviet of the U.S.S.R. on increase of State aid to pregnant women, mothers with many children and unmarried mothers; on strengthening measures for the protection of motherhood and childhood; on the establishment of the title 'Heroine Mother'; and on the institution of the order 'Motherhood Glory' and the 'Motherhood Medal,' July 8, 1944" in *The Family in the U.S.S.R.*, 367-377.

[28] Antimonov and Grave, *Sovetskoe nasledstvennoe pravo*, 123-124.

provided that in the case of death or loss at the front of one of the spouses, the surviving spouse could petition to have the marriage recognized in court on the basis that the marriage had existed (albeit not legally registered) prior to the July 8, 1944 Edict on Marriages.[29] Some jurists argued against this law because it prohibited a child born out of registered wedlock from receiving his or her father's name even if the father was known and volunteered support, and advocated a change that at least allowed for the children of parents married in all but name to have the name of their father and mother listed.[30]

Judicial decisions on inheritance provide glimpses of familial relationships and how this law affected families even many years after its enactment. Some children discovered that they were not born to a registered marriage (and thus were deprived of a right to inherit from the paternal line) only upon the death of their father years later. When I. Vasil'eva (born in 1947), the alleged illegitimate daughter of Vasil'ev, brought suit in 1966 against Vasil'ev's surviving wife requesting a portion of the proceeds from the sale of the house, the Supreme Court of the RSFSR denied her right to inherit. The Court found that Vasil'ev had been illegally recorded as her father on her birth certificate because the law required the mother of a child not in a registered marriage to record the name of her child under her own surname.[31] However, if the children had been born

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[29] Ibid., 124.

[30] "New Divorce Law for Soviet Urged," *The New York Times,* May 23, 1958, pg. 6.

[31] Vasil'eva v. Vasil'ev, *Builletin' verkhovogo suda RSFSR* (1966): 4 in *Soviet Statutes & Decisions: A Journal of Translations* 4, No. 3 (1968): 77-78.

prior to the 1944 Edict and had their father recorded on their birth certificate before it went into effect, they had the same rights as the children from a registered marriage.[32]

Moreover, a surviving spouse of a couple who had lived together in an unregistered marriage for years could find she needed not only to petition the court to recognize her as a spouse but that she also must engage in legal battles with surviving relatives, especially now that the potential circle of heirs had expanded to include parents and siblings. Olga Kaita claimed she had lived in an unregistered marriage with Alexander Lomakin from 1924 until his death in 1946. Lomakin was paralyzed and bedridden for the last two years of his life and the two never registered their marriage after the 1944 Edict. After Lomakin's death, his brother, Konstantin, sought to inherit the house and to evict Olga. Konstantin argued that because his brother had not been legally married to Olga, she had no rights. The People's Court in the city of Kryzhopol, Ukraine and subsequently the regional court and Supreme Court of the Ukrainian SSR ruled against Olga. Konstantin further argued that Olga was actually an employee of his brother who had given her money to buy groceries. He based this on the fact that in 1946 when the passport registration was introduced in Kryzhopol, Lomakin was registered as a single man and Kaita as a worker. By the time Olga's case was pending review by the Judicial College on Civil Matters of the Supreme Court of the USSR, she claimed she had no place to live and was half-starved.[33] Olga's case demonstrates the very serious consequences of living in an unregistered marriage that had not existed in the earlier

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[32] *Sbornik postanovlenii plenuma i opredelenii sudebnoi kollegii po granzhdanskim delam verkhovnogo suda SSSR, 1962-1978*, 226-27.

[33] GA RF f. 9474, op. 5, d. 2120, ll. 4-6.

years of Soviet power prior to 1944. It also illustrates that a citizen's unfamiliarity with the transforming policies in family and inheritance law could result in loss of a home and property.

The Edict on Marriages additionally imposed some restrictions on couples who wanted to marry. Couples had to file a declaration of intention to marry and wait a week in order to think the decision over.[34] The overall effect of the Edict served to clarify the relationships between parties based upon a legal rather than factual (such as the de facto marriages that had been recognized before) or blood (in the case of a relationship between a child born out of wedlock and his/her father) connection. This, of course, made the legal rights easier to determine but it also served to accomplish what early Bolshevik radicals had sought to avoid with family policy: privileging men by not protecting de facto relationships and enforcing paternal responsibilities (financial and otherwise) for children born out of wedlock.

The July 9, 1944 decree had several pro-natalist incentive provisions including a payment to mothers upon the birth of a third and each subsequent child (and the amount increased with the birth of each additional child), monthly assistance payments to single mothers for assistance in the upbringing of their children until the children reached age twelve, increased pregnancy and childbirth leaves from work and supplemental food rations for pregnant women. Beyond monetary assistance, it introduced honorary recognition with "Motherhood Medals" for five or six children, "Motherhood Glory" for seven through nine children and "Heroine Mother" for ten children. Mothers would

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[34] Jack Raymond, "Soviet Marriage Not so Easy Now: Couples Must 'Think it Over' Before Registration Ritual, but Many More Wed," *The New York Times,* April, 2, 1956, 10.

receive the award upon the youngest child obtaining one year of age, providing the other children were all still living. The Decree created an exception to the rule that the children must be living for mothers whose children had been killed or disappeared at the front. Further pro-natalist clauses included taxes for citizens (men between the ages of twenty and fifty and women between the ages of twenty and forty-five) with two or fewer children but exempted certain citizens including servicemen and their wives, women receiving state assistance for support of children, and invalids of the first and second categories.[35]

Thus, while the Decree limited the rights of children to inherit or receive any assistance from fathers to births within a registered marriage, it also provided other incentives to single mothers to encourage them to have children. The Decree further restricted the granting of divorce to the courts and obligated the People's Courts "to establish the motives for notice of dissolution of marriage and take measures to reconcile the husband and wife..."[36] This Decree changed the law from allowing a divorce to be "registered in the registry office on the request of either spouse alone without assigning reasons" to mandating "a judicial procedure for divorce, under which the grounds for the divorce must be stated, and the court is given a discretion to refuse a divorce." G.M. Sverdlov argued that this, along with the requirement for marriages to be registered in

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[35] "July 8, 1944 Decree," in *The Family in the U.S.S.R.*, 367-77.

[36] Ibid., 374.

order for the rights accorded to marrying parties to arise, evidenced "an indication that the Socialist State" was "striving to reinforce family ties..."[37]

Reform and the pan-European context of inheritance laws

Reform did not stop when the war ended, nor did the law of inheritance return to its prewar form. Although the war precipitated the discussion about expanding the circle of heirs who could inherit, the emergency measures applying to deceased servicemen did not end the discussion of inheritance. In fact, during the war period, the government launched a reform project for a new inheritance law, and the history of the codification project demonstrates that laws from non-socialist countries such as Great Britain, the United States, France, Germany, Switzerland, and pre-revolutionary Russia were consulted in this process. The emphasis of the project focused on inheritance under the law (that is, when the deceased had not left a will), the degree of testamentary freedom for inheritance under a will, inheritance from parents to children, and inheritance rights of children born out of wedlock from the paternal line and of adopted children from the adoptive relatives.

England, the United States, France, Germany, and Switzerland each allowed and, indeed, statutorily provided for, inheritance from children to parents in the event that the deceased did not leave a will and was not survived by a spouse or children of his own. As for inheritance under a will, the reports on England and the United States highlighted that the rule of testamentary freedom historically prevailed in these countries even in the case of making a will that disinherited spouses and children. In fact, only one U.S. state,

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[37] G.M. Sverdlov, "Modern Soviet Divorce Practice," *Sovetskoe gosudarstvo i pravo,* No. 7 (1946), 22 trans. Dudley Collard in *The Modern Law Review* 11, no. 2 (1948): 165.

Louisiana, provided for an obligatory share of inheritance for children. Each U.S. state's law, with the exception of Louisiana, was based on English common law and the historical tradition of testamentary freedom in England allowed for disinheriting a spouse or children under a will. In contrast, continental or civil law systems based upon Roman law provided for a minimum fixed portion of estates to go to a spouse and children. A statute enacted in England in 1938 slightly curtailed testamentary freedom by giving the Probate Courts the power to order a reasonable provision of an estate for a spouse, disabled children, minor sons, or unmarried daughters.[38] The reports pointed out that children could not be completely disinherited in the countries based on civil law systems that the project consulted (France, Germany and Switzerland).[39] For example, the report on France observed that inheritance under a will was limited because a testator had the freedom to bequeath only half of his property (to someone other than his child) if he had one child, one-third of his property if he had two children, and one-fourth of his property if he had three or more children.[40] The project also considered pre-revolutionary Russian intestacy law and noted that parents had no right to inherit absolute rights to property from their children, but if children died childless their property would remain in the lifelong possession of the father and mother without the right to sell it.[41]

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[38] GA RF, f. 9492, op. 1, d. 1615, 30. See also "Provision for Dependents: The English Inheritance Law of 1938," *Harvard Law Review* 53, no. 3 (1940): 466-67.

[39] GA RF, f. 9492, op. 1, d., 1615, l. 11, 58, 59.

[40] GA RF, f. 9492, op. 1, d., 1615, l. 11.

[41] GA RF, f. 9492, op. 1, d., 1615, l. 55.

Soviet inheritance law of 1945

The project for revising the law of inheritance took place during the war years and culminated, according to Western jurists Hazard, Butler, and Maggs, in a "comprehensive reform of inheritance law in 1945 [that] brought additional changes tending to liberalize the law of succession..."[42] Not only parents incapable of working but also brothers and sisters could inherit if no other relatives within the circle of heirs were eligible. In addition, dependent non-family members could inherit. The Decree ("Heirs under the law and by Will dated March 14, 1945") did not specifically state that the deceased had to have been the sole means of support for a dependent, but only that the dependent must have been receiving maintenance from the deceased for not less than a year prior to death.[43] According to Antimonov and Grave, this meant that if the dependent had another source of income, such as a pension, this would not deprive the dependent of his right of inheritance.[44] There was still little testamentary freedom if individuals who qualified as intestate heirs existed, but if the decedent did not have a spouse, children, parents, siblings or dependents, he or she could leave property to whomever he or she wished.[45]

It seems that the decree allowing (indeed mandating) invalid parents to inherit was retroactive and applied to cases still pending before the courts. In one case involving

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[42] Hazard, Butler and Maggs, *The Soviet Legal System*, 391.

[43] *Sbornik zakonov SSSR: 1938-1961*, 705-06; *Vedomosti verkhovnogo soveta SSSR* 38 (July 12, 1945).

[44] Antimonov and Grave, *Sovetskoe nasledstvennoe pravo*, 128.

[45] *Sbornik zakonov SSSR*, 705-06; *Vedomosti verkhovnogo soveta SSSR* 38 (July 12, 1945).

a substantial sum of money (52,150 rubles), a mother petitioned for the right to manage the property of her son (who was in the Red Army) and his wife after the death of his wife. The Supreme Court of the Udmurt Autonomous SSR upheld a lower court decision from 1944 allowing the soldier's mother to manage the hereditary property for her son who was the only heir of his deceased wife. However, the USSR Supreme Court, hearing the case after the March 14, 1945 decree, ruled that the deceased wife's mother, as an aged invalid, was a successor to her daughter under the 1945 decree and thus, the soldier's mother could only receive her son's personal property to manage until the appropriate division of the rest of the property had been made between the son and his mother-in-law.[46] Furthermore, the eligibility of a sibling to inherit in the absence of a spouse, children, and parents is illustrated in other cases following the decree even when the property owner's death had occurred prior to the decree.[47]

One might wonder what the different between inheritance under the law as opposed to by will was in practice given such a limited permissible circle of heirs and the rules prohibiting disinheritance of certain persons. The heirs would largely be the same if the deceased had minor children or others that could be classified as dependants but not in all cases. According to the decree, when a person died without a will (triggering the provisions for heirs under the law), the circle of heirs would include a (current) spouse, children, invalid parents and other dependents sharing equally in the deceased's property. Under a will, minor children and other dependents could not be disinherited. However,

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[46] *Sudebnaia praktika* 8 (1945): 27-8.

[47] See for example GA RF, f. 9474, op. 5, d. 1916 and *Sudebnaia praktika* 7 (1947): 13-14.

children of majority age and spouses (except for in regard to household goods if they were living with the deceased at the time of death) could be disinherited unless they had been dependent on the deceased for maintenance, which reinforced the social security aspects of Soviet inheritance law. Even more surprisingly, the 1945 law "also provided that in the absence of surviving heirs by operation of law, property could be bequeathed to anyone, including someone not included in the statutory circle of intestate takers."[48] This served to actually privilege individual relatives over the general public by requiring distribution to those heirs within the family first under the law.[49] In addition to emphasizing the familial obligations of a deceased, the decree further illustrated that the Soviet state no longer adhered to a policy of disallowing inheritance if not between close relatives or to the Communist Party or a state organization. By allowing a citizen to bequeath his property to whomever he wished if he did not have surviving relatives within the circle of heirs, Soviet inheritance law shifted to a policy of individual choice in disposition of property.

This was a major reform to Soviet inheritance law because a general right of inheritance was reiterated and it was also no longer limited to dependents or disabled close relatives. The reforms precipitated by World War II reshaped both the form and substance of inheritance law in the Soviet Union. While the codification project and legal literature attempted to distinguish between inheritance in a capitalist versus a socialist society and emphasized social security provisions, the reality was that Soviet

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[48] Hazard, Butler, and Maggs, *The Soviet Legal System*, 391.

[49] For the 1945 decree see: *Sbornik zakonov SSSR: 1938-1961*, 705-06; *Vedomosti verkhovnogo soveta SSSR* 38 (July 12, 1945).

inheritance law was continuing to expand so that in form, at least, it was not substantially different from inheritance laws in capitalist societies. This was due to a number of factors, not the least of which was the realities of deaths during World War II.

Yet, property rights had in some form been recognized since the Civil Code of 1922 first retreated from the strict provisions of the 1918 anti-inheritance decree. Inheritance was allowed under statute and elevated to a constitutional right in 1936, and no amount of term splitting could obscure the recognition of property rights. Not only had Soviet policy makers reached a compromise with Soviet citizens by progressively allowing greater rights to property (and by responding to the demands of parents of deceased soldiers during World War II), and by privileging the family over the collective in inheritance law, but they continued to significantly reshape the ideological basis of the "first socialist society" by creating the legal fiction of personal versus private property, a distinction which was reiterated time and again in legal journals, newspapers articles and civil law course books as a justification for certain property rights. As discussed below, the contested court cases were often about living space and thus, did differ in substance from the kinds of private property based on unearned income that concerned Marx and Engels. Still, by preserving the institution and enlarging the circle of heirs and by privileging the family and some form of individual testamentary freedom instead of requiring distribution to organizations for the benefit of the collective, Soviet inheritance policy altered in practice the ideals of a collective society.

Beyond chaos and victory: living with the reality of war-time devastation

Beyond policy making decrees and the codification project to reform inheritance law, the courts dealt with matters directly affecting individual citizens on various

inheritance matters that involved the war on an intimate familial level, including the predicament of demobilized soldiers in their search for shelter, absent heirs, loss of documentation, and the issue of how to inherit from the missing and presumed dead. The effect of the war and the questions it raised about inheritance in the context of frequent deaths affecting vast numbers of families can be seen in the sheer number of inheritance cases that came before the USSR Supreme Court. Between 1946 and 1950, fifty-six cases specifically dealing with inheritance were heard. In comparison, the 1950s saw forty-six cases and, after the 1961 law, a mere three cases were heard between 1960 and 1964.[50]

The inheritance court cases following the war illustrate the central importance of the lack of adequate housing, especially in areas which had been occupied by the Germans. Rebecca Manley has argued that privilege was central to contested housing after World War II. She outlined the reproduction of hierarchy in a culture of severe housing shortages, and also provided insight into the disjuncture between legal theory and practice on the ground, which in large part was determined by corruption and bribery. With so much of the housing stock destroyed during the war, Manley asserts that access to housing (in a society already suffering from a housing shortage before the war), saw a hierarchy of entitlement. She observes that the party and state elites "saw their privileges ensconced and strengthened in legislation that secured their return to their previous apartments."[51] Army personnel and their families were also privileged. In contrast,

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[50] GA RF, f. 9474, op. 5.

[51] Rebecca Manley, "'Where should we resettle the comrades next?' The adjudication of housing claims and the construction of the post-war order" in *Late Stalinist Russia*, 237.

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disadvantaged groups included Jews and those who had voluntarily departed with the Germans.[52]

While service in the war was certainly a plus for the family of a deceased soldier (in terms of an active search for heirs and the abolition of the heavy inheritance tax) or disabled soldiers (who, if dependent on a family member, could not be disinherited), it did not result in any outright favorable treatment for the servicemen who survived uninjured after they were demobilized. Demobilized soldier Victor Tsherkasov's petition to the Supreme Court in 1948 regarding property in Chernigov, Ukraine, emphasized that he and his family including three minor children had suffered for the past three years in musty and dark housing, in which they were exposed to multiple diseases, because the second wife of his uncle (Anna Tsherkasova) had illegally seized his one-third of the house inherited from his father. He even claimed that Anna had made illegal payoffs to influence the lower court's decision which refused to recognize Victor's right to inherit his father's third of the house because children had no rights to their parent's property during their lifetime, and there was no proof that his father had died. He pled for the court's prompt consideration of his petition, stating that, with winter approaching, he was positive that he and his family would die in their current awful housing condition.[53] Victor, it seems, had not had an easy decade. The court's summary indicated that he had been sentenced to imprisonment on November 7, 1938 and released on November 3,

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[52] Ibid., 236-37.

[53] GA RF f. 9474, op. 5, d. 2882, l. 1, 15.

1942, after which he was in the army until the end of the war.[54] In fact, the Supreme Court's decision mandating reconsideration of Victor's claim noted that despite no official documentation relating to his parents death, witnesses stated that his parents had been arrested in 1937 and died, and that the Ukrainian Supreme Court should have taken the initiative to ask the Ministry of Affairs of the USSR to send the court information on Victor's parents' deaths.[55] Victor's case illustrates the plight of demobilized soldiers who returned home to find they no longer had a dwelling.

It could also be difficult to determine all of the eligible heirs when some were at the front at the time of death and other heirs decided to not volunteer this information. For example, Melvin Zholnirkovich left a house in Minsk as inheritable property after his death in 1943. Anna, Ludmila and Maria, the daughters of the deceased, opened a Probate case, and did not tell the notary that there were two other heirs, Ivan and Vladimir, at the front. Ivan subsequently died at the front and the interests of his four children, Vladimir, Ivan, Valentina and Raisa were brought before the court by their mother, who wanted an inheritance for their children.[56] This act of dishonesty and the attempt to exclude other family members in matters of inheritance was not unique. Victor Mikhailovich Roshkov's petition to the Supreme Court of the USSR from a case decided in northern Ukraine details a troubled family history. He asserted that he and his brothers had lived with his grandmother for nineteen years and that they were at the front

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[54] GA RF f. 9474, op. 5, d. 2882, l. 2.

[55] GA RF f. 9474, op. 5, d. 2882, l. 27.

[56] GA RF, f. 9474, op. 5, d. 2827.

at the time a Probate case was opened after his grandmother's death. Apparently his father was married to someone other than his mother, as indicated by Roshkov's repeated use of quotation marks around his father's wife's last name-"Roshkova." His father and Roshkova had deceived the People's Court, argued Victor Mikhailovich, with false testimony about the heirs to their grandmother's house. When he and his brother were demobilized from the army, they were left without shelter while his father and "Roshkova" received the house. The Supreme Court recognized the grandsons' claims as legitimate and rescinded the People's Court's decision that had designated their father and "Roshkova" as sole heirs, ordering that the Sumy Oblast Court review the case again.[57] The plights of Tsherkasov and Roshkov to find adequate housing after being demobilized and of family members trying to exclude other heirs illuminate the difficulties faced not only due to the upheavals of the war but also within families. At stake was access to housing in a society with severe housing shortages as well as the emotional repercussions of such protracted battles. The inheritance of a home or even part of a home was clearly crucial in the years following the war and it resulted in discord among family members.

A practical issue revolved around the loss of documentary evidence in areas devastated by the war. In a 1948 case, S.V. Gendel wrote of her attempts to legally inherit her sister's home. When she returned to her home city of Orsha (Byelorussian SSR) after the war, she discovered that the Germans had killed her sister, brother-in-law, and their children while the city was under occupation. Gendel encountered numerous bureaucratic frustrations when both the People's Court and the Regional Court denied her petition because she could not provide any death certificates (the petitioner claimed all

[57]GA RF f. 9474, op. 5, d. 1414.

evidence was destroyed during the German occupation). Finally, the Supreme Court of the USSR recognized the dilemma this presented and remanded the case to the People's Court for further investigation.[58]

Other issues concerned the discrepancies between actual date of death and the date on which someone was declared deceased, which was often different given the chaos of the war. This could potentially affect the outcome of inheritance cases. I.R. Sherman attempted to inherit from his deceased sister beginning in 1950. Both government officials and Sherman agreed that his sister had been arrested and executed in 1942 by the Germans during the period of occupation of Rostov-on-Don. Sherman asserted it was because of her Jewish nationality. However, she was not declared dead until December 31, 1949 and, in January 1951, Sherman obtained a one-third interest in her home from the notary. However, is sister's husband, Ivan Pavlovich Pykhov, had continued to live in the marital home until his death in 1943. The Procurator challenged the notary's decision, asserting that because his sister (C.R. Pykhova) had died before her husband, her property thus passed to him at that time. Upon his death, the property escheated to the state because Ivan Pavlovich had no heirs. This case illustrates the difference between the deaths of servicemen and of the civilian population, even when both were at the hands of the enemy. Whereas the military was proactive in trying to find heirs and prevent property of deceased servicemen from escheating into the union budget, this Procurator argued for escheat. The Procurator had a viable argument because Sherman's sister did predecease her husband but it seems that it was a rather rigid interpretation of the law that did not allow for the exigencies of locating missing relatives after the war

[58] GA RF, f. 9474, op. 5, d. 1916.

and the effort involved in having the missing declared dead. The Regional Court was satisfied with the Procurator's argument on behalf of the government and declared that the interest given to Sherman by the notary was invalid. Sherman's argument to the Supreme Court of the USSR was that since his sister had not been declared dead until December 31, 1949, her death should be ruled subsequent to her husband's in 1943, making him her sole heir. The USSR Supreme Court did not agree with Sherman and ruled that the decision of the Regional Court should stand.

This case not only illustrates the complications arising from wartime deaths and the issues surrounding documentary proofs, but also highlights several other issues. Apparently, Sherman was upset to find someone by the name of A.I. Sokolov living in his sister's home (a "former patriotic worker of the City of Rostov-on-Don" in Sherman's words who had no doubt been settled in the home by the government). According to Sherman, Sokolov was living there together with "pigs, poultry, etc." acting as if it were his own home. Such a scenario gives insight into the tensions that existed when property was divided up between different owners (a frequent occurrence) such as the case was here with a one-third interest to Sherman and a non-relative also settled in the home by the government. Another issue that cannot be ignored is that Sherman was presumably Jewish, and specifically had stated that his sister was Jewish, and the government had settled a "former great worker" in the house. Whether Sherman was disadvantaged because he was at least presumably assumed to be Jewish cannot be said for sure but, as detailed above, Rebecca Manley has argued that Jews were losers in the privileged hierarchy of housing allocation following the war.[59]

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[59] GA RF f. 9474, op. 5, d. 3047.

Conclusion

Housing, especially in areas that had been occupied by the Germans or heavily destroyed, was the concern behind many of the inheritance battles following the war, reinforcing Rebecca Manley's arguments surrounding housing shortages following the war. Money, though, was also at issue and did not necessarily involve small sums, demonstrating a substantial level of economic disparity, although not at the level that was highlighted in the 1930s cases. In addition, with the expansion of the circle of heirs, the potential for conflict among family members also increased. Property was clearly valued by citizens who sometimes spent years pursuing their case before various court levels.

As Laurie Bernstein has argued with respect to Soviet adoption law, "Supreme Court decisions afford us an unusual glimpse into the private lives of Soviet citizens. Not only do we see their (often messy) domestic situations, but we also see human actors who are surprisingly familiar-deadbeat fathers, infertile couples, neglected children, broken families, and litigious individuals."[60] The same can be said for cases pertaining to inheritance. Greed, deception, familial hardships, and rivalries are revealed in these cases, illustrating the complexity of the Soviet family and the belief, at least by some as demonstrated by their willingness to petition the courts, that the courts could help them resolve their private affairs. Most petitions to the Court were conceived in terms of personal struggles and ideas of justice rather than in terms of communist morals or citizenship. Of course, petitioners brought up their service during the war and employed terms such as "German fascist aggressors" but this is not something that would appear to

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[60] Laurie Bernstein, "Communist Custodial Contests: Adoption Rulings in the USSR after the Second World War," *Journal of Social History* 34, no. 4 (2001): 855.

be particularly "Soviet." Thus, while the official legislative discourse involved a struggle to define the role of inheritance in a socialist society, Soviet citizens were preoccupied with personal notions of ownership and deservedness.

In the official discourse of jurists and civil law code reformers, the Great Patriotic War precipitated a change in Soviet inheritance law that would ultimately co-mingle the public and private spheres in the debate. Issues such as whether the goal of inheritance was social security or to reward mutual obligations between parents and children were raised as well as personal issues connected to the "legality" of a marriage and the rights of children of unwed mothers to inherit from the paternal line. Ultimately, the social security provisions prevailed in the revised civil code in 1945 in terms of mandated inheritance for minor children and dependents. However, the expansion of the possible circle of heirs to able-bodied parents and siblings is where the social security argument fails. A mutual obligations argument also fails because siblings clearly did not raise one another as parents raised children, purportedly setting up an obligation for children to support aged parents. The justifications for the revisions to the law were problematic in this regard and were further complicated by the continued insistence of lawmakers on a distinction between personal and private property as the underlying basis for allowing the bourgeois institution of inheritance to be redefined in a socialist society.

Chapter three discusses the ideological quandary that Soviet jurists encountered in trying to "redefine" the institution of socialist inheritance now that the circle of heirs had expanded to include the possibility of non-dependent heirs. In the late Stalinist years, Soviet legal scholars devoted numerous treatises and law journals to inheritance practice under the 1945 law. In these, they linked the more liberal inheritance law with a personal

guarantee of property rights by Stalin and with the achievement of socialism. They moved away from a social welfare argument but still situated inheritance within a paradigm of socialist versus bourgeois inheritance. They premised this distinction on a declaration that private property had been abolished and thus, a focus on increasing personal property of a consumerist nature reflected the successes of Soviet socialism. In addition, jurists focused on inheritance as an institution which enhanced family ties and strengthened the Soviet family because citizens would be motivated to work in socialist society knowing that their property after death would be passed to their loved ones. Yet the court cases demonstrate that a wider circle of possible heirs enhanced the potential for familial conflict, reflecting the problems with such a broad categorization.

Chapter 3

Redefining a 'Bourgeois' Institution in the Late Stalinist Period

"The right of succession in the USSR promotes the strengthening and protection of personal property of citizens and strengthening of the Soviet family."[1]

R.O. Khalfina's 1952 treatise, *Inheritance Law in the USSR*, begins with the distinctions between socialist inheritance and the "savage morals of a capitalistic society" (*zverinuiu "moral'" kapitaliticheskogo obshchestva*) in which "children impatiently wait for the death of parents, wives await the death of husbands [and] brothers hate each other [because they are] competitive heirs."[2] As an example of the "disgusting actions" (*otvratitel'nye deistvie*) that inheritance in a bourgeois society produced, Khalfina pointed to the "great Russian satirist" Saltykov-Shchedrin's literary sarcastic portrayal of Iudushka Golovlyov tormenting his dying brother in The Golovlyov Family (published in 1886).[3] In the novel, Iudushka visits his dying brother not to comfort him, for Pavel hated Iudushka, but rather to make sure that Pavel had not made a will in favor of someone else or given away the capital of his estate during his lifetime, so Iudushka could assure himself that he was the sole heir-at-law. Indeed, this novel sarcastically portrays the state of the family as an institution, one in which children must conform to their parents' wishes in the hopes of receiving property after their parents' deaths and of the emotional turmoil caused by a ruble-counting son/sibling obsessed with material

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[1] Khalfina, *Pravo nasledovaniia v SSSR*, 5.

[2] Ibid., 6-7.

[3] Ibid., 7.

wealth. The rich Iudushka is so obsessed with property and accumulation of wealth that his only two sons die because of his stinginess. One son commits suicide after his father refuses to continue sending him an allowance and the other dies en route to Siberia following a conviction for theft and his father's refusal to give him the money to satisfy the debt.[4] Khalfina's use of this novel in her introduction and the reliance on a nineteenth century fictional account rather than concrete examples of "bourgeois" inheritance cases and how they differed from those in the Soviet Union reveals the extent to which jurists struggled to articulate what was unique about Soviet inheritance. Khalfina also focused on the morals in a capitalist society reflecting the conclusion that had been made in official Soviet legal literature since the mid 1930s that bourgeois property no longer existed but revealing that despite this shift in the basis of property, Soviet jurists still felt the need to justify the institution of inheritance in a socialist society. The emphasis on distinguishing bourgeois from socialist inheritance had shifted to the moral character of family members in these matters. This is where the goals to redefine the institution become more problematic. Despite the lack of assets beyond housing, savings, and personal items of consumption (or perhaps precisely because of these limitations on property), the inheritance court cases demonstrate that the battles over these types of property between family members were no less "savage" than those in capitalist societies.

Historians have recently devoted attention to the late Stalinist period and examined previously unexplored themes including post-war reproduction policies and

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[4] Mikhail Saltykov-Shchedrin, *The Golovlyov Family* (1876), trans. Natalie Duddington (New York Review Books: New York, 2001).

homeless and vagrant children.[5] While these works provide insight into family policy and everyday and family life in the postwar period, there is no examination of the interaction of citizens with the civil court system and Ministry of Justice in inheritance matters. In terms of the legal historiography, some scholars have devoted attention to criminal law and practice. Peter Solomon traces the development of rule of law under Stalin and James Heinzen examines criminal cases of corruption among jurists.[6] Regarding personal property, Charles Hachten has detailed property relations on a broader scale in the 1940s,[7] and Mark Smith explores new housing ownership incentives.[8] A recent study by Steven Harris about the post-war building of separate housing and the attachment of Soviet citizens to their homes is instructive.[9] But there is not an analysis of the civil courts and ownership disputes, namely in matters of inheritance, which were central in this period for a variety of reasons. Not only had the

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[5] See for example: Articles in issue devoted to the "The Relaunch of the Soviet Project, 1945-1964," *Slavonic and East European Review* 86, no. 2 (2008); *Late Stalinist Russia; Borders of Socialism*; Elena Zubkova, *Russia After the War: Hopes, Illusions, and Disappointments, 1945-1957,* trans. and ed. Hugh Ragsdale (Armonk: M.E. Sharpe, 1998); Nakachi, "Replacing the Dead: The Politics of Reproduction in the Postwar Soviet Union, 1944-1955"; Benjamin Tromly, "Re-Imagining the Soviet Intelligentsia: Student Politics and University Life, 1948-1964" (PhD diss., Harvard University, 2007).

[6] Peter H. Solomon, Jr. *Criminal Justice under Stalin* (Cambridge: Cambridge University Press, 1996) James Heinzen, "The Art of the Bribe: Corruption and Everyday Practice in the late Stalinist USSR," *Slavic Review* 66, no. 3 (2007): 389-412.

[7] Hachten, "Property Relations and the Economic Organization of Soviet Russia, 1941-48."

[8] Smith, "Individual Forms of Ownership in the Urban Housing Fund of the USSR, 1944-1964," 283-305.

[9] Steven Harris, "Moving to the Separate Apartment: Building, Distributing, Furnishing and Living in Urban Housing in Soviet Russia, 1950s-1960s." For the idea of home as a private space in the Khrushchev era, see Susan Reid, "The Meaning of Home: 'The Only Bit of the World You Can Have to Yourself,'" and Steven E. Harris, "'I Know All the Secrets of My Neighbors': The Quest for Privacy in the Era of the Separate Apartment," in *Borders of Socialism.*

Great Patriotic War resulted in decimation of a large portion of the Soviet Union's already inadequate housing stock which made housing and basic shelter more important than ever to citizens, but the huge losses during the war resulted in many disputes over what housing remained by family members of the deceased. Furthermore, the possibility for heirs at law to include parents and siblings exacerbated the potential for conflict among family members.

The identification of this period as being "between reconstruction and reinvention"[10] in recent scholarship remains true when it comes to inheritance. The institution of inheritance is particularly important because many of the inheritance cases in the postwar years resulted from the traumas of World War II. Additionally, it was in the postwar period that the courts dealt with the effects of the mass arrests in the 1930s because heirs of those who died in the camps were finally receiving notices of the deaths of their loved ones. Yet, this was also a time for reinventing the institution of inheritance, or more precisely, for redefining it. The institution had already been reinvented in the juridical literature in the 1930s with the argument that bourgeois property or non-labor income no longer existed and thus inheritance was transformed from its potential to reproduce extreme wealth based on the exploitation of others.[11] In 1945, the circle of heirs had been expanded beyond what could reasonably be considered

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[10] Juliane Furst, "Introduction-Late Stalinist Society: history, policies and people," in *Late Stalinist Russia,* 2.

[11] A concern with non-labor income earned from personal property emerged in the years following Stalin's death and a campaign was waged in the press against these "parasitical" capitalist elements. See chapter six.

social welfare provisions and, especially in light of the emerging Cold War,[12] it became even more important for Soviet legal scholars to define what type of inheritance existed in the Soviet Union and how it differed from the institution in bourgeois countries.

Chapter two argued that the 1945 law represented the most significant break with the early radical Bolshevik view of inheritance as a bourgeois institution that needed to be abolished. With the privileging of parents and brothers and sisters as heirs in the absence of a spouse or children under intestate provisions, a social welfare platform for allowing inheritance in a socialist society in order to provide only for the dependents of the deceased was dispensed with.[13] The 1945 law "also provided that in the absence of surviving heirs by operation of law, property could be bequeathed to anyone, including someone not included in the statutory circle of intestate takers"[14] with the result that in a 1947 case, the Supreme Court of the USSR recognized as valid a will made for the benefit of an "extraneous person" because the deceased did not have any successors under the law. The court decided this despite the fact that the decedent had died in 1944 because the estate (consisting of a house in Tashkent) had not yet escheated to the state.[15] This chapter examines the further redefinition of inheritance in the late Stalinist years.

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[12] See chapter five for an analysis of the effect of the Cold War on individual inheritance cases.

[13] For the 1945 decree, see *Sbornik zakonov SSSR: 1938-1961*, 705-06; *Vedomosti verkhovnogo soveta SSSR* 38 (July 12, 1945). Citizens could also leave property to state bodies which would include both official bodies and state enterprises. Public organizations with legal status such as party, professional and cooperative (collective farms, for example) organizations were also allowed to be successors. See V.I. Serebrovsky, "Osnovnie poniatia sovetskogo nasledstvennogo prava," *Sovetskoe gosudarstvo i pravo* 7 (1946): 12.

[14] Hazard, Butler, and Maggs, *The Soviet Legal System*, 391.

[15] K.A. Grave, *Voprosy nasledstvennogo prava v praktike verkhovnogo suda SSSR* (Moscow: Gosudarstvennoe Izdate'stvo Iuridicheskaia Literatura, 1949), 7.

The family in socialist society

From 1945-1953, the judicial literature continued to focus on the theme of developing a new socialist family. Private property, again, was important to this new conception of the family, primarily because of its alleged nonexistence. In an extensive article using literature to examine the conceptions of morality in the forms of the bourgeois and proletarian family, Z. Guseva asked rhetorically: "Indeed, how can one speak of a greed or calculation in a marriage where there is no property except a pair of hands for hire in the labor market?"[16] In keeping with the new official view of the family, Guseva argued that "the question is not one of disappearance of the family under socialism, as bourgeois-anarchist 'theoreticians' prophesied, but of its further strengthening and perfection, in none other than its monogamous form."[17]

Moreover, an article appearing in *Konsomolskaia Pravda* claimed that every "Soviet person tries to construct his life in accordance with the requirements of communist morality."[18] The article emphasized that it was the relations between men and women, as determined by the economic system of the society in which they lived, that marked the difference between the socialist and bourgeois family. Marriage was about "accumulating wealth" in bourgeois countries in which people married "without knowing the character or interests of their mates" but knew well what "economic

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[16] Z. Guseva, "Two Forms of the Family and Two Conceptions of Morality," *Oktyabr,* No. 7, July 1949, 158-176 in *Current Digest of the Soviet Press* 1, no. 33 (September 13, 1949): 3-10, 5.

[17] Ibid.

[18] A. Kharchev, "Marriage and the Family in Socialist Society," *Komsomolskaia Pravda,* April 23, 1952, 2-3 in *Current Digest of the Soviet Press* 4, no. 16 (May 31, 1952): 3-5.

advantages that the marriage offers them." This was a result of a "bourgeois upbringing and bourgeois wolf morality." The author cited the "champion of 'the American way of life' and of all capitalism," Upton Sinclair, as being unable to conceal this in his writings where he reveals "scandalous happenings in the chronicle of a bourgeois family." In contrast, "in the proletarian milieu," the "proletariat is free of property prejudices" but a capitalist society makes "the creation of a family more and more difficult for the proletarian, since it constantly worsens the material position of the working people." With the elimination of women's inequality after the Bolshevik revolution, the author asserts, a "new, socialist, Soviet family, of a kind unheard of in history," was established.[19] Yet, while the author stressed that property is the basis of the problem in capitalist societies, he also pointed out that the growth in prosperity of the Soviet people had contributed to a socialist family.

> As distinct from the bourgeois family, the socialist family is a voluntary union of man and woman with equal rights; it is void of antagonistic contradictions and therefore possesses incomparably greater strength. It is welded together not by necessity, not by the chase after profits, not by crude material considerations, but by a feeling of mutual love and respect.[20]

Kharchev used examples from Soviet literature to illustrate this principle: Pavel was not able to develop a love for Tanya in *How the Steel was Tempered* because she tried to "lock him in a tight shell of philistine happiness" when "the interests of the Party, the motherland and the group came first." Similarly, Oleg dismissed his friend Lina in *Young Guard* because, as he told his mother, "she gets along quite well with the

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[19] Ibid., 3.

[20] Ibid.

Germans." Kharchev concluded that "Oleg could not love a girl who did not have interests in common with him, who tried to adapt herself to the fascist occupation at a time when all Soviet people were conducting an implacable struggle against the invaders." Thus, Kharchev argued:

> the love which joins Soviet people is linked indissolubly with their common love of the motherland, is inseparable from the feeling of Soviet patriotism, from the urge to devote all one's energies to the great cause of Lenin and Stalin.[21]

Moreover, Kharchev criticized those who advocated "free love" in the early years of the revolution and emphasized that these theories were used by enemies of the Party and of the people.

> Attempting to corrupt our youth morally, enemies hoped thereby to corrupt it politically, to undermine its political stability. All this shows the indissoluble link between everyday life and politics, shows the enormous political significance of questions of one's own personal life. Unfortunately, even today we have among us people who do not understand this and who consider that their personal life 'is nobody's business.'[22]

Kharchev stated that "[o]ur family is a part of Soviet society, a small Soviet group, welded together by the ties of kinship" creating a unanimity which "in performing a sacred duty to the motherland, to the people, provides a vivid expression of the relationship of mutual aid and cooperation that underlies our institution of the family." Furthermore, a "strong and united family is a reliable guarantee that the children brought up in such a family will be true Soviet patriots, active builders of communism" and this "is why all Soviet people are, together with their state, vitally interested in further

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[21] Ibid., 4.

[22] Ibid.

strengthening the family, in developing and consolidating in all our life the lofty and noble principles of communist morality."[23] In tandem with emphasizing the sanctity and seriousness of marriage, the press reported that the USSR Supreme Court stressed in a plenary session that "the legal decisions in cases of divorce are of great importance. They must contribute to a correct understanding of the importance of the family and marriage in the Soviet state and instill in the population respect for the family and marriage based on the high principles of communist morality, and protected by Soviet law."[24]

The family was the subject of published letters and responses in *Komsomolskaia Pravda* on subjects such as the role of a father, the persistence of feudal customs of bride abduction,[25] and feuilletons and responses which stressed that a "man's moral character and his behavior at work, among his comrades and with his family, are not his private affair,"[26] and that marrying in order to obtain a comfortable apartment would provide no pleasure: friends would cease to be friends and he would lose his honor and

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[23] Ibid., 5.

[24] "In the U.S.S.R. Supreme Court," *Pravda,* October 3, 1949 and *Izvestiia,* October 4, 1949, 4 in *Current Digest of the Soviet Press* 1, no. 41 (November, 8, 1949): 38.

[25] G. Alexeyev, "Unworthy to be Called Father," *Komsomolskaia Pravda,* April 18, 1952, 3 in *Current Digest of the Soviet Press,* 4, no. 16 (May 31, 1952): 7; Ye Kotelnikov and G. Alexeyev, "Stolen Bride," *Komsomolskaia Pravda,* April 35, 1952, 3 in *Current Digest of the Soviet Press* 4, no. 16 (May 31, 1952):7 and 38.

[26] "Thus does Soviet Morality Triumph: Review of Readers' Letters on the Feuilleton 'Heart of Wood,' *Komsomolskaia Pravda,* July 26, 1949, 2 in *Current Digest of the Soviet Press* 2, no. 31 (August 11, 1949): 49-50, 49.

respectability.[27] It was bourgeois society, of course, which educated "people to a spirit of bestial individualism, unsociability, distrust and hostility" with the ideas that "My home is my castle," whereas "Soviet society rears all its members on principles of collectivism" and "the group takes an interest in the life and fate of each individual; thus the desire to sustain one's comrade in difficult moments, to help put him on the right path."[28] One feuilleton raised the issue of official interference into a situation of child abuse. However, instead of presenting the matter as one of moral duty in any society where such abuses unfortunately inevitably occur, the author represented an official's belief that he could interfere in the private affairs of a family as an incredible holdover from the past. When the teacher discovered that the child was being beaten by her father, he demanded the intervention of the chairman of the village Soviet who "strange as it may sound...refused to interfere in private family affairs." The teacher found it "incredible that such things could go on in our days, in a Soviet village with two schools, a club, a library and a great number of intellectuals, where labor and life itself have become truly joyful and free" and, where according to the author, there "is no room for such disgusting vestiges of the past in our Soviet life."[29]

The role of the family in relationship to education was also emphasized. Schools urged parents to participate in the educational process and to encourage other parents to

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[27] Sem. Narinyani, "Emulating a Gogol Character," *Komsomolskaia Pravda,* March 3, 1951, 3 in *Current Digest of the Soviet Press* 3, no. 13 (May 12, 1951): 4-5.

[28] Yu. Filonovich, "This is Not a Private Matter-Answer to Young Communists A. Bekhterev and M. Alexandrov," *Komsomolskaia Pravda,* September 20, 1950, 3 in *Current Digest of the Soviet Press* 2, no. 30 (September 9, 1950): 38-39, 39.

[29] M. Semyonov, "A Family Affair," *Izvestiia,* June 17, 3 in *Current Digest of the Soviet Press* 3, no. 24 (July 18, 1951): 37.

be "rational" in their family lives. One article about a parents' committee in a Moscow school stated that:

> Sometimes the parents' committee has to interfere in the family affairs of individual students. Thus, when fourth-grade student N. stopped coming to school, it was learned that the boy was not sleeping at home, but hiding out somewhere. The parents' committee learned that N.'s mother had decided to marry a man who, in character and moral make-up, was unable to take the place of the boy's father, fallen at the front. The boy had run away from home for this reason. The parents' committee had to work hard to convince the mother to approach the problem of the boy's future rationally and not to burden him with an unworthy father. Through the efforts of the school and the parents' committee this delicate matter was at last ironed out and the boy came back to his family and to school.[30]

Similar to Khalfina's remarks which opened this chapter, one article proclaimed that "[i]n the capitalist family the strong scoff at the weak; parents tyrannize their children, children nag their parties to death to take possession of their inheritance." The article went on to argue that "[t]he Soviet family lives amicably and knows no strife....Fathers and children are united by one great common aim in life: to create a Communist society as swiftly as possible."[31] While this claim was obviously an exaggerated one, the court cases in inheritance disputes demonstrate just how much the Soviet family struggled in this regard. In fact, the very nature of Soviet society with the shortages (particularly of housing) served to exacerbate the internal family conflicts.

The changing nature of inheritance in theory and practice on the domestic front

It was in the late Stalinist years that inheritance court cases transformed due to the expansion of the circle of possible heirs which widened the potential for family rivalries

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[30] T. Panfilova, "Friends of the School," *Semia i shkola,* No. 10, October 1949, 19-21 in *Current Digest of the Soviet Press* 1, no. 47 (December 20, 1949): 3-4, 3.

[31] Ibid.

to include parents and siblings and to the supreme loss of life during the Great Patriotic War. In this manner, the court cases were also more reflective of a broader segment of society. The number of cases that came before the Supreme Court of the USSR was far greater than in the prewar period. It was also in this period and later in the 1950s that the effects of the Terror in the 1930s were apparent in inheritance cases. Petitioners received official notices that their loved ones had died while under arrest in the camps, or, alternatively, tried to have them adjudicated deceased in order to receive an heirship certificate. The themes of the cases also differed from the prewar period. Family rivalries were more apparent and the expanded circle of heirs created a new type of case involving sibling rivalry. Another theme that appeared in more than one case was that of corruption on the local level, that is, the other party was friends with the notary or the judge and this was the reason, the petitioner was sure, that things had gone so badly for him or her in the lower courts.

While Khalfina's argument regarding the role of inheritance within a socialist society reflected a tension that had existed since the October Revolution, the postwar years saw numerous legal treatises and articles in law journals devoted to inheritance. Yet, in light of the 1945 reforms, the institution needed to be *defined* or *redefined* for it simply could not be conceived of within the same framework as that which existed in capitalist societies. Rather, it needed to properly reflect the values of a socialist society and economy. In a treatise published in 1946 on inheritance and notary practice, Soviet legal scholars explicitly linked the changes in inheritance law and practice with the victory of the USSR in the Great Patriotic War, emphasizing that the changes in the law were carried out while the country was under the greatest pressure from fascist

Germany.[32] In the postwar years, leaders and jurists struggled to articulate an argument of increased consumer wealth which in turn would inspire more work and wealth. In 1946, M.I. Kalinin, Chairman of the Presidium of the Supreme Soviet, addressed voters of the Leningrad city constituency and emphasized the continuous strengthening of the socialist state and the growth of its material and cultural riches which increased the well-being of each Soviet person. A.I. Baryshev's 1960 treatise on inheritance linked Kalinin's statement to the "growth of personal property on the basis of public socialist property" as leading "to the growth of productivity in labor and further development and strengthening of the public socialist property."[33] In this view, personal property was a reflection of the success of socialist labor.

B. Antimonov, S. Gerzon, and B. Shlifer emphasized that the 1945 reforms were based on the principles of the Stalin's Constitution guaranteeing a right to personal property and to succession of personal property. These jurists commended Stalin himself for being the explicit proponent of the guarantee to rights of succession stating: "As it is known, the special mention of a guarantee of right of inheritance was absent in the project of the Constitution; it has been entered by the VIII Council of the USSR under the personal offer of Comrade I.V. Stalin."[34] V.I. Serebrovsky began a 1950 article on inheritance in a legal journal with a quote from Stalin about the socialist revolution providing not only freedom from capitalism but also material conditions for prosperity

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[32] B. Antimonov, S. Gerzon, B. Shlifer, *Nasledovanie*, 3.

[33] Baryshev, *Priobretenie nasledstva*, 4.

[34] Antimonov, Gerzon and Shlifer, *Nasledovanie*, 3.

and went on to highlight that the Stalin constitution "comprehensively protects the rights of personal property of citizens."[35] With these statements, jurists linked the success of socialism to Stalin and to the *increase* in personal property and rights to personal property. Inheritance was therefore not an institution that merely reproduced wealth among a small stratum of society as in bourgeois countries; rather it represented the means by which to define socialism because Soviet citizens were able to pass on the material results of their contribution to the building of socialist society after death.

As discussed in chapter one, by the 1930s, the emphasis no longer centered on the withering away of the family but rather on the *strengthening* of the Soviet family, and in the late Stalinist years, jurists again emphatically presented inheritance of personal property as one means of accomplishing this goal. Khalfina argued that "[t]he right of succession in the USSR promotes...the strengthening and protection of personal property of citizens and strengthening of the Soviet family," and that the current inheritance law in the Soviet Union reflected the "growth in material well-being and cultural standards of living of Soviet citizens" as well as "the socialist state guarding the interests of family."[36] Khalfina observed that the July 8, 1944 decree allowing only children of registered marriages the right to inherit from their fathers "directed a strengthening of the Soviet family and fastening of norms of socialist morals"[37] and by preventing thoughtless relations, socialist morals of the Soviet state thus connected a legal right to inheritance

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[35] V.I. Serebrovsky,"Priniatie nasledstva," *Sovetskoe gosudarstvo i pravo* 6 (1950): 35-50.

[36] Khalfina, *Pravo Nasledovaniia v SSSR,* 5.

[37] Ibid., 14.

only with a registered marriage.[38] The idea of the new inheritance law strengthening family ties was even expressed in the Western press. *The New York Times* reported that the new inheritance law was "designed to protect personal property owner's rights and at the same time to strengthen family ties."[39]

In the realm of family law, it was not just inheritance that was significantly affected by the war. Vladimir Gsovski argued that Soviet divorce proceedings after 1945 became stricter and "the Soviets have rediscovered the value of family life and strong family ties for the maintenance of sound public morals and the increase of population of a country which went through the calamity of a devastating war."[40] While lawmakers changed policies that sought to weaken family ties to those seeking to strengthen them, as Gsovski notes, the consistency lies in the general policy of interference of the state with the family life of the citizen.[41] The Soviet state did indeed interfere in family life through policy making, but this is, of course, not a particularly Soviet phenomenon. A reversal of family policy is also not unheard of. However, what is particular to the situation in the Soviet Union is that the reversal took place not after a change in leadership but while still under the leadership of Stalin and that it was never represented as a reversal of policy. Rather, jurists defined the changes to family and inheritance law as part and parcel of the achievement of socialism in one country. They contended that an "exploiter" capitalist

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[38] Ibid., 19-20.

[39] "Soviet Inheritance Law Strengthens Family Tie," *New York Times,* March 22, 1945, 2.

[40] Vladimir Gsovski, "Family and Inheritance in Soviet Law," 78.

[41] Ibid., 78-79.

society connected inheritance with *private* property rights. In contrast, they argued, in a socialist society, inheritance was connected only with the right of personal property (as opposed to private) consisting of consumer goods derived from contributions to a socialist economy. Thus, personal property was not bourgeois in character because it retained only consumer value, not industrial value.[42] Since personal property was not for manufacture but rather to satisfy personal needs, it was compatible with the public socialist property.[43] In this manner, jurists redefined this bourgeois institution as one that complemented, indeed even enhanced, the socialist family and economy.

Soviet legal scholars went further and emphasized the *equality* involved in Soviet succession laws. V.I. Serebrovsky stated in a 1946 article that both citizens of the USSR and foreigners living in the USSR had equal rights. He also argued that legislation of some foreign countries excluded heirs living at birth but who died shortly thereafter whereas the Soviet right of succession allowed the child to be an heir even if it lived only a few minutes beyond birth. Furthermore, incapacity of a citizen did not affect his or her rights of inheritance and Soviet legislation did not contain rules about so-called "unworthy" successors. This was in contrast to, for example, the French Civil Code that disallowed inheritance to someone convicted of causing the death of the decedent.[44] Therefore, Soviet succession law was further redefined in opposition to bourgeois legislation in terms of its equality and protection of even those who died innocently

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[42] Antimonov and Grave, *Sovetskoe nasledstvennoe pravo*, 5-6.

[43] Baryshev, *Priobretenie nasledstva*, 3.

[44] Serebrovksy, "Osnovnie poniatia," 11-12.

shortly after birth or those convicted of murdering the deceased (legislation that was, of course, premised on the idea that an individual should not profit from his or her crime).

In practice, the laws concerning Soviet inheritance could be difficult for the courts to enforce when dealing with real individuals and situations. As legal scholar K.A. Grave pointed out, the 1945 decree created a number of substantial changes to Soviet succession law and "[t]herefore, it is quite natural that the questions connected to the application of the Decree...occupy a significant place in the practice of the Supreme Court of the USSR."[45] Date of death presented an issue for some potential heirs. Here the Supreme Court seemed to favor practicality over fairness. Thus, if the date of actual death could be determined, the law in place at that time would govern, regardless of whether potential heirs *knew* of the decedent's death. For those receiving notices of prisoners who died in the camps years earlier, or those affected by the chaos of war in the occupied zones during the war, this rule could effectively eliminate their inheritance rights. One 96 year old mother received a notice in 1947 that her son, who had been serving a sentence in a labor camp, died on June 25, 1942. The mother petitioned the people's court to have her son adjudicated dead so she could receive a certificate of heirship. She received the certificate stating that her son died on May 30, 1947 which would make her an eligible heir. The procurator of the city of Kislovodsk filed a petition with the court seeking to have the certificate invalidated and the regional court ruled that the date of death was the actual date of death in 1942 and thus, parents were not eligible heirs under the law as it existed at that time. The Procurator of the USSR filed a protest with the Supreme Court of the USSR arguing that the date of death should be the date the court adjudicated the

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[45] K.A. Grave, *Voprosy nasledstvennogo prava,* 3.

death. The Supreme Court denied the protest and Citizen Sarkisyants was not able to inherit after her son even though she had not known of her son's death until 1947.

This case also raises issues about individual perception of corruption on the local level. Citizen Sarkisyants believed she had been evicted from her house so that the local Procurator's friends could move in. In her petition to the Supreme Court, she detailed her tragic current circumstances:

> I hereby request to expedite the hearing of the case because I have spent the last five months in Moscow. I live in train stations, I'm half starved. I don't live, I just suffer, so that's why I ask that you expedite the hearing of my case. I'm 96 yrs old. I don't have long to live and I would like to spend the last minutes of my life in my own house where I have been living since 1929 to this day. I'm an Armenian, I'm 96 yrs old. I have difficult financial circumstances and that's why I beg you to expedite the hearing of my case and make a just ruling and reverse the ruling of the Regional Court of June 24, 1952 and adjudicate me the heir at law and also evict from my house the procurator's friends. Please, I beg you again, to expedite my case. I have faith in the socialist jurisprudence and hope that a just ruling will be made.[46]

A similar result about how to determine date of death was reached in the Litvak case from 1948. The court ruled that it could be determined that A. Litvak and her family died in August 1942 after being "seized" and "exterminated" by agents of the Gestapo and thus the estate had properly escheated to the state because heirs had not opened the estate within the six months after death prescribed by law.[47]

While jurists argued that the developing inheritance scheme in the Soviet Union strengthened the Soviet family, the court disputes demonstrate a great deal of animosity within families and the same types of disputes over inheritable property that presumably

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[46] GA RF f. 9474, op. 5, d. 4591, ll. 2, 3, 7.

[47] K.A. Grave, *Voprosy nasledstvennogo prava,* 31.

were only supposed to occur in capitalist "exploiter" societies in which citizens privately owned the means of production. Therefore, rather than building and cementing family bonds, the retention of the institution of inheritance created the potential for increased familial tensions and conflict among family members. The court cases demonstrate that Soviet citizens also participated in redefining the institution of inheritance by using their knowledge of the laws to try to manipulate them to their benefit. This was particularly evident in cases of alleged adoption in which potential heirs struggled to assert superior claims to other heirs. Under the law, adopted children had equal rights with biological children. However, adoptees must have been legally adopted and not merely raised or fostered by the decedent. In this manner, the biological or state sanctioned family (through registered adoption or marriage) was privileged over ideas of fairness. This is also demonstrative of the rule of law that existed in civil court cases. The Supreme Court routinely enforced rule of law even when it may have been contrary to ideas of fairness. One woman, Rosieva, sued in 1947 (there was a three year statute of limitations allowing for a potential heir to dispute the inheritance of other heirs) for a portion of her sister's house in Stalingrad. Her sister (E.S. Makarova) had died in 1943 and her sister's husband (N.S. Makarov) was recognized as the sole heir in 1944. However, Rosieva asserted that her sister had raised and adopted her. As a result, she claimed that she was considered a dependent heir and a child. The court ruled that evidence of adoption had not been presented and that, even though Rosieva had in fact been raised by her sister, Rosieva's dependence on her sister had ended in 1906, well before her sister's death.[48]

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[48] GA RF, f. 9474, op. 5, f. 2167, ll. 1-9; *Sudebnaia praktika* 10 (1949): 30-31.

Other cases involved an individual who was not biologically related attempting to claim an adoption had taken place in order to displace biological family members. Hopeful heirs claimed they had been adopted by the deceased but the court only recognized official adoption. For example, when A.F. Belousovoi died in 1951, three siblings, U.F. Abramova, E.F. Kuznetsova and I.F. Sorokina petitioned to inherit a home in the region of Saratov. The respondent, I.D. Novikov, claimed he had been adopted by A. F. Belousovoi. Although the lower courts had recognized rights for Novikov, the USSR Supreme Court pointed out that the question of whether Novikov had been adopted by Belousovoi had already been addressed by the courts and it had been established that, in 1926, when Novikov was twelve years old, he came from a village to live with Belousovoi. Yet, he had never officially been adopted by Belousovoi and in fact had continued to communicate with his biological father and mother. Thus, Belousovoi's only heirs were siblings.[49] This case demonstrates the importance that the law and the courts attached to rule of law in privileging blood relatives and relationships codified by the state through official adoption or registration of marriage. Rather than emphasizing what could be considered the noble socialist actions of Belousovoi in taking a non-related individual into the home, the Court instead relied upon the primacy of blood ties. This also demonstrates the break with the early post-revolutionary years where de facto spouses and children born outside of registered marriages had retained rights of inheritance.

In another case, a woman's inheritance claim was denied based upon the fact that she had been fostered by the decedent under a contract signed with the state for which the

[49] Baryshev, *Priobretenie nasledstva,* 80.

decedent had received monetary compensation. Since she had never been officially adopted by the decedent, Olga Bazyeva's claim to inherit from the deceased was ultimately denied.[50]

As jurists struggled with the ideological implications of inheritance within a socialist society and the defining of legal relationships among family members, Soviet citizens struggled to preserve shelter and belongings in an economy of shortage further exacerbated by the war. With severe housing shortages, even a few square meters within a home could be at issue. In one 1947 case from the Byelorussian SSR, the daughter of the decedent claimed that the deceased's wife (presumably not her mother) occupied a space of 50 square meters in the home whereas she (the spouse) had only the right to 36 square meters.[51]

While rule of law (even when it was creatively interpreted as discussed in the Chikadze case below) predominated, there were notable exceptions as the following case illustrates. Second spouses often presented a problem, especially when the first marriage was registered and never officially dissolved and the second marriage was a de facto marriage. In a case from the Armenian SSR, the Court established that Vasily Kordzadze entered into a registered marriage with Pupliia Saladze 1926 and they had one child, Avtandil Kordzadze, born in 1928, but they had stopped a "joint life" in 1936. Vasily subsequently lived in an unregistered marriage with Maria Nevzarova from 1936 until he died and they had three children together, Tamara in 1937, Teresa in 1938 and Eteri in

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[50] GA RF f. 9474, op. 5, d. 4034, ll. 6-7.

[51] *Sudebnaia praktika* 1 (1949): 34.

1945. The lower courts had eliminated the first wife, Pupliia, as an heir but the USSR Supreme Court stated that was incorrect and that Pupliia remained an heir because the marriage had never been officially dissolved. The court also recognized an interest for Maria after determining that the house had been constructed in 1940 by her and Vasily in common. The court ruled that the remaining half of the house be allocated in equal shares to Pupliia as a surviving spouse and the four children for whom Vasily was listed as the father on their birth certificate. The Supreme Court of the Armenian SSR had previously ruled that only the son from the first marriage and two daughters from the de facto marriage born prior to the issuance of the 1944 Edict on Marriages were considered eligible to inherit because the "marriage" between Vasily and Maria had not been legally registered. However, the USSR Supreme Court included all four children as eligible heirs, which is a deviation from following the letter of the law.[52] Although rule of law predominated in inheritance cases, it is worthwhile to note that the USSR Supreme Court was not bound by case precedents as for example, in common law countries including Britain and the United States. Thus, there was potential for deviation from prior decisions on the same issue.

The court cases reveal not only the fault lines between "second" families but also rivalries within an "intact" family. In a 1952 case from the Moldavian SSR, a grandmother (Maria Barabash) willed a house to her son Vasily and his wife Olga, and, after their deaths, to their three children: Evdokia, Anastasia and Mikhail. After Maria's death, Vasily and Olga had two more children: Grigory and Elizaveta. It seems one of their children, Mikhail, was not satisfied with dividing the property five ways and

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[52] *Sudebnaia praktika* 10 (1949): 29-30.

protested for an inheritance of one-third in accordance with his grandmother's will. The People's Court decided the inheritance should be split equally between all five children but the Moldavian Supreme Court disagreed. The USSR Supreme Court ruled that the People's Court had been correct and Mikhail was unsuccessful in his efforts to disinherit his two youngest siblings.[53]

Soviet citizens could be very persistent and well-informed as they argued various aspects of the law in their inheritance disputes. When a member of a collective farm died, the property passed according to the Land Code and not the Civil Code. The significance of this meant that the property passed to the other members of the collective rather than to heirs under the Civil Code. Successors under the Civil Code could not inherit unless the existence of the collective farm ceased because of lack of other members.[54] In the case of Zachary Chikadze, who died in November, 1947, the courts examined several issues related to family, inheritance and property. Nina Chikadze and her daughter Tamara Chikadze sued for the inheritance of rural property after the death of Zachary Chikadze (Nina's husband and Tamara's father). There was no question that Nina and Zachary had married in 1922 and Tamara was born in 1924. However, Nina apparently left the village to live in Tbilisi with her daughter (Nina claimed this was so that her daughter could obtain an education) twelve years prior to Zachary's death. Nina and Tamara claimed that they returned every summer to the village and that the marriage had never been dissolved. Although Nina's marriage to Zachary had never been officially

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[53] GA RF f. 9474, op. 5, d. 4313, l. 5.

[54] Baryshev, *Priobretenie nasledstva*, 95.

dissolved, he apparently entered into a de facto marriage with a woman named Olga. Olga moved in with Zachary in January 1947, and claimed to be his second wife.

What is striking about this case is the persistence of Nina and Tamara's claims to the house, domestic belongings and personal plot in the countryside. Nina and Tamara argued the law of inheritance under the Civil Code. They asserted that they were the lawful successors as wife and daughter of the deceased and that Olga was not a second wife because Zachary and Nina's marriage was never dissolved, and Zachary and Olga had never registered their marriage. Thus, under the July 1944 Edict on Marriages, Olga could not be considered legally married to Zachary.

While the People's Court recognized Nina and Tamara's claim, successive opinions turned on a different issue and the courts seemed to almost struggle to find a reason to favor Olga's claim. The Supreme Court determined that the property in the village was actually part of a collective farm and under the Land Code, this property could not be passed on to non-members. Olga was a member of the collective and thus entitled to keep the property. Nina and Tamara objected vehemently in petitions for the next eight years, stating that Zachary had been a teacher by profession and had retired in 1936 and his primary means of subsistence after that time was his pension, not agriculture. Nina and Tamara stressed that the agricultural property consisted of a personal plot and was not part of a collective farm. Therefore, the property should pass according to general laws of inheritance, rather than the Land Code. Nina and Tamara did not shy away from calling the decisions of the various courts wrong and continuing to protest their right to inheritance. Olga, on the other hand, claimed that she was Zachary's lawful wife, despite the marriage not being registered, and that Zachary had been old and

sick and she took care of him. Nina claimed that Olga refused to return her things or allow her to return to the house in the village after Zachary's death.

Clearly, this case involved many aspects of a troubled family. A wife and child who lived in a different household from the husband/father, a husband who started living with another woman, and witnesses who either supported Olga because they said Nina had severed ties with the village or Nina, stating that she did indeed return to the village in the summers. Moreover, it also involves some redefining along socialist principles. The Chairman of the Village Soviet clearly did not want the property to go to a person who did not live in the village and the courts also creatively embraced the theory that Zachary's labor had been primarily agricultural, despite the fact that he had been a teacher until 1936 and received a pension, allowing for the decision to be premised on rule of law and inheritance under the Land Code.[55]

Conclusion

The redefining of inheritance and its relationship to Soviet socialism gained increasing importance in the post World War II period. Soviet legal scholars devoted numerous treatises and law journals to the practice of inheritance under the 1945 law and nearly always premised the introduction on distinguishing socialist inheritance from inheritance in bourgeois countries. Various scholars linked the increasingly liberal inheritance law with a personal guarantee of rights by Stalin and with the achievement of socialism in one country. With the focus on strengthening the family, Soviet legal scholars redefined the institution of inheritance as one which enhanced family ties. Scholars declared that private property as it existed in bourgeois countries had been

[55] GA RF f. 9474, op. 5, d. 4072, ll. 21-35, 40, 43-44, 50-53.

abolished. Thus, the focus on consumer goods and material well being signified an increase in personal property that was rationalized as being complementary to Soviet socialism.

The court cases from the late Stalinist years demonstrate that the reconciliation with the family as an institution ultimately revealed many of the same problems regarding inheritance disputes that existed in capitalist societies. Family members and other hopeful heirs engaged in protracted court battles over property, no matter the monetary value. While jurists reconciled the nature of inheritance in terms of an ever more prosperous consumer society born of socialist labor and the strengthening of the Soviet family, the reality was that Soviet citizens were clearly not always interested in socialist principles of collectivity. Rather, citizens pursued their private interests based on notions of individual ownership and deservedness. Officials' redefinition of the role of bourgeois institutions such as the family, marriage, and inheritance in Soviet society began in the 1930s but was cemented by the upheavals caused by World War II and continued to be a topic jurists returned to time and again in the late Stalinist years, evidence of the continuing concern for reconciling the ideologically problematic nature of these institutions with Soviet socialism.

Chapter four discusses the relationship between civil law and citizen through an analysis of petitions and letters to judicial authorities in the late Stalinist period. It illustrates the importance of property to Soviet citizens on an individual level. These letters evidence the struggle over housing resources and interfamilial strife. In addition, they reflect the aftereffects of terror in the 1930s and World War II on many citizens' lives. The themes of self-narration focus on victimization by corrupt local Soviet

officials, enemy Germans, or within the intimate sphere of the private family. Citizens appealed to the Supreme Court of the USSR and the Ministry of Justice to assist them in inheritance disputes and transfers emphasizing familial sacrifice during the war or individual hardships and suffering. Through these letters, it is possible to gain insight into the familial and private lives of citizens and the importance of property.

Chapter 4
Self Narration to the Ministry of Justice and Supreme Court: Broken Families and Tragic Circumstances

"Minister, I wish you long years to live and fruitful work for our blossoming motherland."[1]

One avenue used by Soviet citizens to communicate their frustrations and appeal to authorities for relief was letters to the Ministry of Justice. The responses from the Ministry often simply recited the law about who was within the potential circle of heirs and instructed the letter-writers to appeal to the People's Court in their area or to the Procurator to open a case. Still, the letters from citizens were numerous and offer a glimpse into families torn apart by arrests, war, death and rivalries. Most of the disputes, as in the court case files, were over that rarest of commodities: living space. Citizens employed various themes in self-narration of their circumstances and appealing for help including service in the war, victimization by the Nazis, disability, and old age. The language of these letters is often more descriptive and intimate than the petitions in inheritance court cases of the Supreme Court of the USSR, although this chapter also utilizes particularly revealing individual petitions to the Supreme Court. The majority of the letters are handwritten and few demonstrate a particular knowledge of the specifics of the law. These letter-writing citizens employed various notions of sacrifice, patriotism, fairness, and justice in their desperate attempts to resolve issues of inheritance. An examination of the language and themes of these letters and individual petitions to the Supreme Court offers insight into the relationship between Soviet officials and citizens. This chapter argues that Soviet citizens appealed to the Ministry of Justice and to the

[1] GA RF f. 9492, op. 1, d. 1744, ll. 78-9

Supreme Court to resolve inheritance issues between family members, neighbors, and strangers using a language of justice, patriotism, deservedness and rights. Yet both the Ministry of Justice and the Supreme Court observed rule of law in their advice to citizens and did not reference the ideology behind the law nor respond to the narrations of patriotism put forth by citizens.

Historians using letters written to Soviet officials have noted the obvious limitations with such "public" sources. As Sheila Fitzpatrick observes:

> When people write letters to authority...they usually write in the authorities' language, and what they write is not necessarily what they think....Such letters may sometimes express private emotions like grief, but there are a range of topics that are rarely or ever mentioned of which love, friendship, sex, and religious belief and practices are the most notable. Nevertheless, the variety of what *is* in the letters is remarkable.[2]

Despite the limitations on public letters, the letters written to the Ministry of Justice and hand-written petitions to the courts reveal how the relationship between state and citizen operated in Soviet society. Furthermore, they reveal how citizens, even those who may have had little knowledge of the law, employed particular narratives that they hoped would win them official favor. While these sometimes contained ideological rhetoric about collectivity and Soviet morality, they also heavily relied on what they as *individuals* deserved. Citizens combined the official collective ideal with their individual plights by highlighting their personal sacrifices which they believed entitled them to privileged treatment. Lewis Siegelbaum argues that "as with other epistolary forms, the ways in which these letter-writers represented themselves is an important dimension of

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[2] Sheila Fitzpatrick, *Tear off the Masks: Identity and Imposture in Twentieth-Century Russia* (Princeton: Princeton University Press, 2005), 156.

the culture of which they were a part."[3] This chapter offers insight into a hitherto unexplored correspondence between Soviet citizens and state officials by examining the relationship between the civil law system and individuals.

Appealing to Soviet justice and morality for victims of the war

Citizens often employed the language of fallen heroes or participation in the war as a marker of morality, patriotism and a plea for favorable intervention in the years following the war. In narrating their circumstances, citizens referred to relatives killed by the Germans while fighting for the motherland as a claim for deservedness or, in the alternative, collaborating with Germans during occupation as a signifier of not being entitled to inherited property.

Maria Dedulit was one such citizen and her case from the Byelorussian SSR was one of disappointments brought on by war and family rivalries. She and her young son arrived at her mother's house in 1948 after her husband had been killed during the war. Her mother had died in 1941. She appealed to the Ministry of Justice about inheritance of her mother's house, stating that her mother had been induced to sign a will leaving her house to only two of her five children (Vasily and Vera) by her brother, Vasily, and Vasily's friend, a notary, both of whom Maria claimed had been collaborators with the Germans during the war. Maria stated that her brother Vasily died during the war and German occupation and that because of his collaboration with the enemy, the Burgermeister visited his widow and paid for the funeral. Vasily's widow, Liuba, then married Stepanov and proceeded to live in the "best" half of the house. In addition, she

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[3] Lewis Siegelbaum, "'Dear Comrade, You Ask What we Need'" in *Stalinism: New Directions*, 232.

claimed that Vasily had "forced" his sister, Vera, to let "some old woman" live in the other half of the house and this old woman never did a day of honest labor but rather engaged in the crime of speculation with Vasily's widow. This case of household discontent resulted in a depressing situation in which, Maria alleged, she and nine others, including her brother Ivan and his family and she and her young son, lived in the kitchen and a corridor (*prokhodnaia*) while the "old woman" had a room of her own and Vasily's widow and her new husband, Stepanov, occupied the remainder of the house. The rivalries in the household intensified when Ivan's family returned in 1947 and Vera tried to evict the old woman. Maria claimed that Liuba and her husband would not allow it. Then Maria and her young son arrived and Vera wanted to give them the old lady's room since the old lady apparently was rarely there and actually lived in a village only showing up intermittently to engage in her speculating activities with Liuba and Stepanov.

Maria Dedulit appealed to ideas of justice and morality, even while denigrating a family member (her brother, Vasily). She noted that her husband had died defending the motherland while Vasily had collaborated with the enemy and his widow was a speculator who never worked in her life. She stressed that Ivan's wife was a good woman who was raised in an orphanage and now taught in orphanages, being useful to the motherland in raising the younger generation. Maria emphasized that she believed that there existed a difference between those who helped their motherland and those who worked for the enemy and if "we are really the country of law and order" she should be advised on how to appeal the will, or, in the alternative, how to go about having the house divided in a just way.[4]

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[4] GA RF f. 9492, op. 1, d. 1742, l. 4-9

Maria's case highlights several of the particularities of the struggle over property and inheritance in the Soviet Union. Despite the initial post-revolutionary calls for social welfare provisions only and the debate during the war about whether there should be mandatory shares for each child, her mother was able to disinherit three of her five children by will because presumably they were of majority and had not been dependent on her at the time of her death. This case also sheds light on the prime asset in contention in nearly all inheritance cases which was simply adequate housing as well as on the unique circumstances that arose when families and strangers were forced to share only portions of a dwelling. Maria employed both the language of "supplicant" and "citizen," to use Sheila Fitzpatrick's terms.[5] She was a supplicant asking for justice based on both notions of individual entitlement for her and her "moral" family members who had remained loyal to Soviet power and, conversely, disentitlement of an "old lady" who engaged in speculation together with her brother's widow and new husband. At the same time, she was a citizen denouncing the alleged corruption of the notary who "collaborated" with her brother to disinherit her.

The Ministry's response simply stated in neutral terms that a will cannot be found invalid due to the immoral life of a beneficiary. Rather, she could appeal to the People's Court to have the will declared invalid if the testator (her mother) had been incompetent upon the signing of the will.[6] The Ministry's response is illuminating in its very briefness. It acknowledges an understanding of Dedulit's claim regarding immorality and

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[5] Fitzpatrick, *Tear Off the Masks,* 155.

[6] GA RF f. 9492, op. 1, d. 1742, l. 3

non-patriotic behavior but prevails upon the "neutral" face of the law and the idea of rule of law. It also demonstrates that "morality" was not a marker of entitlement when it came to civil law inheritance cases, a clear divergence from the notion of morality and criminal law and punishment as well as Communist morality and Party discipline.

Another woman also appealed in patriotic terms for help with her dispute with her daughter-in-law. She addressed her letter to the "minister" and began with "I wish you long years to live and fruitful work for our blossoming motherland." She recounted how one son who had supported her was killed in the war with the "German fascist invaders" and, after his death, her other son, who returned from the war a decorated war hero, took her in but he, too, was now deceased. Her problems only magnified when her daughter-in-law (wife of the deceased war hero) "threw me out the door" and she, an "old lady and mother" who had "survived two sons" was now homeless. She continued to narrate her belief in the morality and justice of the Soviet state stating that "thanks to Soviet power I receive a pension of 77 rubles for the son that died in the war" that pays for food but not a place to live. She went on to write "Comrade Minister, I beg you if possible to give me the house" because "I'm old and sick and nobody wants me." If you do that, she stated, "I will spend my whole life being grateful to you and wish you long happy years." The response to her appeal informed her that the decedent's mother who is unable to work is within the first circle of heirs along with a spouse so, under the inheritance laws, the house should be divided equally between her and the wife. Still, of course, the Ministry of Justice could only explain the law but had no power to actually resolve the practical

dispute, and she was advised that disputes involving property needed to be addressed to the People's Court.[7]

This woman's appeal illustrates the manner in which citizens constructed a claim of inheritance based upon appeals to Soviet morality and justice for those who had sacrificed for the Soviet motherland and, furthermore, how an appeal could narrate along several different but intersecting themes including gender, motherhood and old age. She was an old woman who had raised two good patriots who, in turn, both fought for their country, and she was being ill treated by a young daughter-in-law, that is, not even a blood relative. Further, it illustrates, as Maria Dedulit's case did, the tensions existing over the shortage of housing in the Soviet Union following the Great Patriotic War. The use of terms such as "Soviet power," "blossoming motherland" and "German fascist invaders" were clearly calculated for a particular result based on a hierarchy of patriotism and good citizenship. This idea of a hierarchy was constructed as much by official policy as among everyday citizens. After all, officials had privileged deceased soldiers' families during the war in inheritance matters. Propaganda in many forms was used to motivate the defense of the motherland. Perhaps it was not unreasonable that citizens would expect this hierarchy of sacrifice and patriotism to be reflected in their intimate familial disputes over inheritance matters. Just as in Maria Dedulit's case, this woman felt that being the mother of one son killed by the enemy and one who returned a decorated war hero should count for something when it came to assessing her claim. Rather than using a language expressing a goal of social welfare and equality for all, these women clearly felt that support for their country during a horrific war was an essential marker of

[7] GA RF f. 9492, op. 1, d. 1744, ll. 78-9.

favorable treatment in resolving private civil law matters. The Ministry's responses are revealing in their own way in that they are not ideologically constructed but rather follow the premise of rule of law. While it is clear that such a concept did not prevail in criminal matters, particularly when it came to "politicals" the Ministry of Justice's replies rely on the law for advising its letter-writing public and do not contain any sort of congratulatory message regarding patriotic sacrifice for those who sought it.

In another instance, it was a daughter-in-law who was suing her mother-in-law for inheritance and using the language of being the widow, rather than the mother, of the absent war hero. Anna Niadagashvili-Tsiklauri directed her handwritten petition to the Supreme Court to its Chairman, Comrade Volin, and stated that she lived in an uninhabitable shed with her minor daughter pleading "I am the widow of a fallen soldier. I ask that you, Comrade Volin, expedite the final resolution of this matter by filing a protest."[8] The court file reveals that she and her daughter had moved out of the main house due to a strained relationship with her mother-in-law. Her husband (defendant's son) went missing during the war (as did another son of defendant). When she left the one room house, she moved into the yard shed and wanted to take her husband's bed, ottoman, bedding, blanket and two pillows but her mother-in-law refused to surrender these items because she still hoped that her son would return home (this was in 1950-51). The court file indicates that Anna and her daughter had lived in the defendant's house until January of 1950 and that the shed was unfit for human habitation.[9] Anna advocated

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[8] GA RF f. 9474, op. 5, d. 2992, l. 13.

[9] Ibid., ll. 5-9.

on behalf of both her and her daughter's individual needs, clearly calculating her letter to emphasize her status as widow of a "fallen soldier" in asking for his personal belongings. The case centered on the inheritance of her minor daughter after the death of her father-in-law. Various lower courts awarded a one-sixth of one-half (the other half being the spouse's intestate inheritance share) to her daughter, the granddaughter of her father-in-law, with the remaining portions awarded to the surviving children of her father-in-law. The Supreme Court later remanded the case because at least two of the heirs had not complied with the requirements under the law for claiming their share and, thus, if their entitlement was not properly documented, Anna's daughter should receive a larger share. This case illustrates the tensions that could arise in familial in-law relationships when the common source of their bond, the son/husband, disappeared. Anna's mother-in-law allowed her granddaughter to live in a shed unfit for that purpose, refusing even to release basic household items to her daughter-in-law.

Another twist on the theme of patriotic service during the war employed the "wicked stepmother" as demonstrated in Vasily Marchenko's case from Poltavsky region. He claimed he had already addressed his question to the local authorities who could not or would not resolve it. After his father's death, his stepmother assumed ownership of his house. Marchenko said he had lived with them while his father was alive but after his death "mother" found another man and together they took him to Moscow and abandoned him there. He related that an orphanage took him in and he grew up there. He volunteered to go to the front in 1941, suffered four wounds, and received the order of bravery of the third degree. When he returned in 1949 he discovered his stepmother had sold the house for forty-five thousand rubles of which she paid him nothing. He moved

into the house where she currently lived and then she attempted to evict him, his wife and child from of the house.[10] Marchenko's appeal highlights the private tensions in a society where the male-female ratio was highly distorted after many years of revolution and two world wars producing many "second" families. Some of the more frequent familial divisions involved battles between second wives and stepchildren. Marchenko not only appealed to patriotism in a time of war but also to the conceptualization of family and duties and obligations existing between family members. Even as officials struggled with defining the family and its role in a socialist society, citizens continued to use the family as a primary marker of identification and mutual obligations. In using this language, Marchenko appealed not to a collective sense of responsibility and social welfare but to the perceived intimate rights, duties and obligations of family members toward one another.

Citizen Tkachenko's situation raised issues related to the revolutionary period as well as the Great Patriotic War. He sought answers as to whether he could inherit his mother's share of the house after his father's death because when his father died in 1949 he left a will giving everything to his daughter from his second marriage. However, his mother had died in 1908 and the house had apparently been nationalized shortly after the revolution. Tkachenko stated that his father had registered the house in his name after it was denationalized in 1922. Tkachenko visited one people's judge and law consultant office who told him he had the right to his mother's share but then another law consultant and a member of the regional court, Comrade Zhigonev, told him the will remained valid and he had no rights of inheritance from his mother because she had died before the 1926

[10] GA RF f. 9492, op. 1, d. 1841, ll. 9-11.

inheritance law came into effect. He inserted his appeal to patriotism as a claim for justice when he stated at the end of the letter that he served in the army from 1922-25 and he and his brother both took part in the Great Patriotic War from 1941-45 and his brother was now a war invalid. The Ministry of Justice did not have much advice to give in this type of ambiguous situation, stating that all disputes among owners of the estate needed to be addressed to the People's Court and that, while the statue of limitations was three years (from the date of death of the decedent), it could be extended by the court for compelling reasons.[11] This dispute was different from an inheritance matter already in existence at the time of the revolution as demonstrated by the Ministry's response in another matter that no civil disputes arising before November 7, 1917 can be admitted to court.[12] This is consistent with the 1918 decree abolishing inheritance that stated that the decree was retroactive regarding all inheritance disputes discovered prior to its issuance.[13] Of course, Tkachenko's unique situation was that the dispute was not discovered prior to the decree since his father was still living at the time and the house was subsequently nationalized and only later denationalized. However, his mother had died prior to the revolution and thus it could be argued that any inheritance rights surrounding her death were abolished. Judges and law consultants were also apparently divided on this legal dilemma and Tkachenko's letter clearly intended to garner some

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[11] GA RF f. 9492, op. 1, d. 1744, ll. 70-1.

[12] GA RF f. 9492, op. 1, d. 1839, l. 217.

[13] See *Dekrety sovetskoi vlasti, Vol. II*, 187-190; see also "Decree Abolishing Inheritance," www.soviethistory.org, website created by Lewis Siegelbaum and James von Geldern (last accessed October 12, 2009).

sympathy for his situation by using the language of patriotic service in the army in the early post-revolutionary years as well as during the Great Patriotic War and his brother's resulting status as an invalid.

Each of these citizens employed a language of patriotism and self-sacrifice. Official propaganda had operated since the revolution within a language of ideology theoretically aimed at collective social responsibility. Still, privilege was evident in everyday life whether in housing allocations or the special stores available to elite Party members, and these letters demonstrate citizens' self-narration techniques aimed at cultivation and insertion of favored status. The letters were clearly within the context of the Soviet system of rule and reveal various twists on the themes of conceptions of property ownership rights and responsibilities. In this respect, some appeals focused on justice and morality in framing an argument that the government should not take over their property without compensation. They protested municipalization or nationalization of a dwelling or takeover by local factories. The theme of war and sacrifice on behalf of the motherland persisted in these appeals.

Citizen Efroim Feigin wrote that the Soviet Army mobilized him to service on June 23, 1941, and he served in the army until November 6, 1941 at which time he was transferred to a military construction regiment. Feigin stated that he was then mobilized for work at the railroad and subsequently transferred to another city to work in a factory. The Germans killed his mother, three sisters and brother, leaving only a house as an asset. The house had been registered in the name of his unmarried older sister. Feigin asked for clarification about whether he had the right to inherit the house after it had been nationalized by the Council of Ministers of the Moldavian SSR on September 5, 1949.

The response was unequivocal: a nationalized building is considered state property and cannot be inherited by the relatives of the former owner of the building.[14] Feigin's appeal and the Ministry's response reveal the ambiguity surrounding the Soviet government's attitude to personal property. Though restrictions on inheritance were progressively relaxed, it is clear from Feigin's case that the state still had priority in such disputes and that once a property had been nationalized; the former owners had no rights to the property. Feigin's language of appeal was again constructed with the goal of demonstrating loyalty and sacrifice on behalf of his country as a means of garnering support for his claim despite its obvious conflict between personal rights and the rights of the government. This case also illuminates the differences between movable and immovable property. As discussed in chapter two, deceased servicemen's families were privileged with respect to inheritance of the property found on their bodies ("movable" property), even allowing a three year redemption period after property had escheated to the union budget in some cases. A building (or "immovable" property) was clearly different in that, as the Ministry responded, once nationalized, it could not be returned. This was not necessarily an unreasonable stance because officials would presumably take measures to settle other families into a nationalized or municipalized building and the housing shortages would deter efforts to keep moving people around in the event someone tried to reclaim a building after it had been nationalized or municipalized.

Evdokia Samokhvalova similarly appealed to ideas of justice and morality in her conflict with government officials and in her attempt to avoid the municipalization of property. She also presented the war as a marker of familial sacrifice when she narrated

[14] GA RF f. 9492, op. 1, d. 1742, ll. 114-15.

that she was raising her granddaughter whose father was killed in the war. In her situation, after her husband's death she wanted to reregister the house she lived in (which had been registered in her husband's name) to herself so that it would not be municipalized after her death. She objected to the notary asking for a fee of eleven hundred rubles as a percentage of the assessed value of the house because she was not selling or buying the property but rather reregistering it into her name. She asked that the Ministry take into account that she was elderly and raising the daughter of a fallen war hero. The Ministry's response was rather disheartening. Once again, there was no response to the language of her appeal but rather reliance upon the law concerning estate taxes on inherited assets. Thus, if the house had been accumulated prior to her marriage, then it belonged solely to her husband and she would have to pay the full inheritance tax of ten percent on any value over one thousand rubles. If the property was joint between the spouses, she still would have to pay the inheritance tax on half, that is, the half considered her husband's property.[15] Presumably, in order to have this determined as joint property, Samokhvalovna would have to file with the People's Court since the property was registered in her deceased husband's name. Either way, she would have to pay a tax and satisfy the notary's demands if she wanted to claim the inheritance rather than have it escheat to the state and be municipalized. Her appeal is illuminating because she is concerned about preserving property *after her death* and with keeping it from being municipalized. The implication, of course, is that she wanted to preserve this asset for her granddaughter, the daughter of a fallen war hero. The intersecting themes of patriotism in raising a son who made the ultimate sacrifice on behalf of his country and

[15] GA RF f. 9492, op. 1, d. 1741, l. 85-6

her continued self-sacrifice by raising the daughter of this fallen war hero in addition to her elderly status are all employed in an effort to receive a favorable response.

In a similar situation, one woman wrote that her mother was never compensated for a house that had belonged to her that a local concrete factory now used as a hostel for its workers. She asserted that the workers had moved in (in 1936), partitioned the rooms further, and now the house belonged to the concrete factory. However, she observed that only two of the workers living there currently were from the concrete factory. She said that she was taking care of three children as guardian for her niece and nephews whose parents and grandmother died during the war.[16] Although it is not clearly outlined, the assumption is that the house was given to the concrete factory in 1936, because the letter stated that her mother owned the house until 1936 but her mother did not die until 1949. This appeal highlights the persistent view of attachment to property and a sense of justice. While she carefully avoided criticizing the government directly for allowing the house to be taken over by a concrete factory to house the workers, who were the supposed golden elite of the Soviet system, she pointed out that the workers living there at the time of writing were not even from the factory. She narrated in a similar manner as others about her sacrifice in taking care of relatives orphaned by the war and seemed to believe that even after the passage of one and half decades, the government might compensate her or force the concrete factory to compensate her for her mother's house and the inheritance she never received. The response from the Ministry did not even address her essential point. Rather, it simply recited that it did not have jurisdiction over civil disputes. She needed to address disputes concerning property to the People's Court

[16] GA RF f. 9492, op. 1, d. 1742, l. 34.

and the response further stated the law regarding the timeframe of accepting inheritance. The issue of whether a property that had been taken by a factory in order to house workers without compensation to the prior owner presented a valid cause of action was not even mentioned.[17]

Another situation involved children writing from Leningrad to inquire about how to inherit a house in Odessa that the Odessa housing committee had been taken over during or after the war. The Nemirsky children asserted that their father had owned the house and had built it himself. During the war, he did not evacuate from Odessa and "was sent to a ghetto and murdered by German fascist occupiers." The three heirs had been living in Leningrad (it is not clear when they moved to Leningrad). They had sent multiple inquiries to the city council and city housing committee to inquire about the condition and status of their father's house but never received a response. The Ministry's response was that the rule regarding the timeframe during which absent heirs could file a claim of inheritance (which was six months) had been suspended on September 15, 1942 for the duration of the war and advised them to consult legal counsel.[18] Using the language of "German fascist occupiers" and appealing for justice for the children of a man murdered by the Germans did not produce any reaction in the Ministry's written response. Once again, the law as written was the standard used for advising these potential claimants.

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[17] GA RF f. 9492, op. 1, d. 1742, l. 33.

[18] GA RF f. 9492, op. 1, d. 1741, ll. 13-4.

Each of these cases presented a conflict between the public and the private and between the initial goals of the Soviet state with respect to property (and the Marxist ideal) and individual personal property rights. Citizens employed a language in self-narration calculated to win favor based upon their loyalty to their country. They persisted in their inquiries about the rights of individual property owners in relation to the rights of state officials to appropriate housing and resettle occupants.

Corruption on the local level

Another tool of self-narration concerned the idea of corruption on the local level. The common strand here was appealing to higher authorities to remedy local official abuses. These might concern official administrators, legal personnel, or law enforcement including notaries, governance committee members, judges, or policemen. Citizens, who wrote to the Ministry of Justice and petitioned the Supreme Court, affirmed their belief in the justice and morality of Soviet power while also revealing its corruption on the local level. For example, Ivan Kashin's letter claimed that in 1947 he had bought a house together with Lapochkin and his wife and then, because the Lapochkins were elderly, Kashin took care of them until 1949. Kashin then asserted that at that point relations between the parties deteriorated and the parties legally fought over the house. The People's Court awarded the house to Lapochkin and his wife and ordered them to pay Kashin ten thousand rubles (half of what the house had cost in 1947). Kashin claimed that Lapochkin enlisted the help of the deputy chair of the regional executive committee and that "I am powerless against him so I am asking for help." Kashin stated that he was a second group invalid because he lost a leg in the war, his wife was a third group invalid, and they had a fifteen year old son and, if forced to leave the house, they would be

homeless, because the Lapochkins did not have ten thousand rubles to give him, but rather the house was their only asset.[19] Although appealing to the higher authorities for help, a theme of injustice and corruption on the local level runs through the appeals of some citizens as seen in Kashin's case.

In Maria Dedulit's case (detailed earlier in this chapter), she claimed the *militsiia* had come to the house after Stepanov had attacked her physically and, when Ivan's wife intervened and started to fight for fairness, telling the officer that Maria's husband died defending the motherland, the police officer apparently responded "I guess they didn't beat you enough" and proceeded to threaten her with the criminal offense of insulting a police officer. The officer subsequently had a drink with Stepanov. Ivan's wife, seeing them drinking together, called the police station that was three to five minutes' walk from the house but the police never came.[20]

In a petition to the Supreme Court, Anna Trukhanova claimed that the People's Court judge who heard her case had ruled in a non-objective manner due to connections with the plaintiff (her stepson, Mikhail, and his two siblings) and adjudged that one-half of the house (the deceased father's share) that she had lived in with Mikhail's father from 1937 until his death in 1948 belonged to Mikhail and he was to pay her a monetary compensation for her one-fourth interest. Trukhanova claimed that subsequently Mikhail, under the patronage of the judge, filed a suit to evict her and her family from his one-half of the house, which the court granted. In addition to the claims of local

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[19] GA RF f. 9492, op. 1, d. 1741, l. 93

[20] GA RF f. 9492, op. 1, d. 1742, l. 8.

corruption, Trukhanova asserted that Mikhail lived in a nice apartment and desired the apartment she lived in only so that he could "speculate" with (that is, rent) it. Trukhanova lived in the apartment with her married daughter and a newborn baby. The ruling of the Supreme Court found these lower court decisions erroneous because the Court should not have ruled that she be obligated to take a monetary share for her inheritance when she lived in the disputed apartment and had no other place to live.[21] Despite these claims of corruption from public officials, Kashin, Dedulit and Trukhanova all appealed to the Soviet system to address their unjust situation. This evidences both the practical effects of inheritance as it played out on the local level and the perception that, despite acts of patronage and injustice by local representatives of Soviet power, Soviet jurisprudence remained just and these injustices would be rectified at the Union level.

Anna Yastrevova joined the themes of familial service in the war with local corruption in her appeal to the Supreme Court of the USSR to inherit, after her sister's death, a small wooden house in Moscow. Since her sister died in 1942 (before siblings were considered to be within the potential circle of heirs with the 1945 law), Yastrevova could not inherit at that time but she claimed that the house was too old and frail for even the City Executive Council to want so she maintained it and repaired in and, in 1948, obtained a certificate of heirship. In any case, city officials intervened and asked that the certificate be invalidated based upon the fact that the house should have escheated to the state. Yastrevova claimed:

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[21] GA RF f. 9474, op. 5, d. 2864, ll. 5-7, 18-20.

> I am 63 years old. My son is a patriotic war invalid. I live together with my son, his wife and their children in a small room which is 12 square meters that we rent in somebody else's house and I would really like to have my own place in my old years.....The real reason for [the city's] interference is that I refused to sell a room to one of the tenants. She told me after that that she has connections with [the city]....and will make sure that the house is taken away from me. Unfortunately, this is the way it happened. But I believe that the Supreme Court of the USSR will protect me and my son, who is a patriotic war invalid.[22]

Another mother's despair was connected to both loss and allegations of local corruption. Marfa Smirnova wrote several letters to the Army commanding officer of her deceased son, Valentin Smirnov. A mother of five who lost two sons in the war (and son Valentin died in 1949) and had an invalid daughter, she protested that Valentin's bank account balance was awarded to his wife, who, she alleged, demanded a divorce when her son was really ill and found a new husband even before her son got sick. It is not clear what caused Valentin's death. Apparently, he had married Antonina Gracheva in 1946 but they never lived together because he was immediately sent to post-war occupied Germany and they never met again. He died in 1949. Smirnova's letter to the commanding officer evidenced the depth of despair that loss of a son and his financial support produced.

> Now they want to take my last treasure –the memory of my son, my last hope, and the last resource for raising my last son, Valentin's brother. How can you not realize what you are doing to me? Do you not understand what it's like to lose a son, my only support? I am totally illiterate and uneducated, and totally helpless, and she is friends with the notary. I am begging you again, please help me, even by moral support, because my heart is breaking and there is no one else to help me. Please write a letter to the Supreme Court in Moscow. I have no more strength to bear this injustice. Goodbye. Sorry for being rude.[23]

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[22] GA RF f. 9474, op. 5, d. 2984, l. 2-5.

[23] GA RF f. 9474, op. 5, d. 2569, ll. 4-5.

As it turns out, Smirnova did receive some measure of legal justice when the Supreme Court ordered that the proceeds of the bank account be divided evenly between Gracheva and Valentin's younger brother, Yuri (born in 1933), because Yuri was a dependent of Valentin who had been supporting his mother and younger brother fully since his father's death in 1947. However, the court found that his mother could not be considered a dependent because she was still able to work and thus, not within the first circle of heirs. Smirnova's case illustrates that the effects of familial losses during the war carried on long into the postwar years. This mother lost three sons within a ten year period, in addition to her husband. Her suffering was evident in her pleas to Valentin's commanding officer but she also alleged injustice on the part of the notary as a "friend" of her son's ex-wife. This case also illustrates that the law is a fixed concept which does not often account for the complexities of real lives. Thus, a wife who had never lived with her husband and had been separated from him since shortly after their marriage still had legal priority to his assets over the mother who had raised and received financial support from her son.

The problem of bureaucracy

Many Soviet citizens faced the hurdles of navigating a bureaucracy against them at every turn. Whether it was documentation that was lost during the chaos of the war or the inability to secure proof of a relative's death in the labor camps in order to inherit property, notaries refused to transfer property without the proper documentation, furthering the tragic circumstances of some families.

Maria Seber's (from Poltava, Ukraine) was one such heartbreaking story. She wrote to the Ministry of Justice and explained that her husband, Ivan, was arrested in

1937 and sentenced to ten years without correspondence rights and that to this day (writing in 1950) she had no idea was his fate was. She had appealed to various channels and received the same answer: that her husband was missing. Yet her problem was that her husband had an apartment and she wanted to reregister it to herself. She claimed her problem was "solved" after she filed an inquiry with the Ministry of State Security in Poltava. Presumably, she was told her husband was dead. Yet State Security also apparently told her to write to the Ministry of Justice and she requested a document that would expedite the registration of her husband's property to her. The response was short and unhelpful: The property belonging to a person declared missing can be inherited by heirs, including a spouse, only after he is adjudicated deceased. Thus, she was told to file with the People's Court having jurisdiction and her odyssey presumably continued.[24] Seber's was more of an appeal to justice for all because presumably her husband had been declared in some fashion to be an enemy of the state, a problem which generally stigmatized family members as well. She had no war hero's record to call upon yet was writing officials associated with the very government that had victimized her family with the hope of some relief.

Ksenia Kapushtina's tale of terror and arrest in the 1930s and how it affected family members trying to inherit was another example of a complicated bureaucratic situation and its practical consequences on citizens' lives. First, her husband's father had been arrested by the NKVD in 1937, leaving a house. She later found out that her husband's father died in custody on April 4, 1941 so the house should have passed to his descendants but she was unable to receive the inheritance because her husband was also

[24] GA RF f. 9492, op. 1, d. 1741, l. 94-95.

arrested on August 3, 1938. She claimed he was arrested for reasons unknown to them, and she had been searching for information about him for the last decade and a half but his fate was still unknown at the time of writing her letter on October 30, 1952. Kapushtina diligently searched for her husband stating that in 1939 she had filed an inquiry with the Procurator of Khabarovsk who redirected it to the Procurator of Amur region but did not receive a reply from either. In 1939, she also filed an inquiry with the Chief Military Procurator who advised her he would inquire into the case. She received no further response and when she followed up in 1940 she was advised that all materials had been forwarded to the Amur region procurator. Unfortunately, in September of 1940 the Chief Procurator of the Amur region advised her that there were no reasons to set aside her husband's verdict but failed to tell her what the verdict was and what kind of sentence he received! Kapushtina continued to search for her husband by going to the chief labor camp managers of Khabarovsk region and Vladivostok who both informed her they had no records of her husband. Thus, she stated that "I still have no idea what, if anything, he was convicted of, what his sentence was, and whether he is alive because since 1938 I have received no news of him."[25]

After relating this tale of woe, she presented her affirmative reasons for wanting to inherit the house, observing that for the past fourteen years she kept up the house. Apparently, there had been no other claimants during this period so presumably her family was still able to live there. However, the limbo status relating to the house was complicated when her husband's father's girlfriend (Korneeva), who had recently reentered the picture in 1952, had somehow been adjudicated the surviving spouse of her

[25] GA RF f. 9492, op. 1, d. 1839, ll. 19-22.

father-in-law despite having entered into a registered marriage with another man following her husband's father's arrest (and prior to the official date of his death). Kapushtina and her four children were paralyzed by bureaucracy. They could not get a power of attorney from her husband whose fate and whereabouts were unknown but could not obtain a death certificate for him for the same reasons. Now Kapushtina and her four children were in the unenviable position of having to pay rent to her father-in-law's former girlfriend. Kapushtina concluded with an appeal to investigate whether her husband as rightful heir to his father was alive or dead so that if he was alive she could get in contact with him regarding obtaining a power of attorney for estate administration and if he was dead she could obtain a death certificate. She concluded with the statement that the People's Court refused to adjudicate dead arrestees of 1937-38. After all of her efforts to resolve her bureaucratic nightmare, the Ministry of Justice simply responded that she did not have the necessary proof of her husband's death and that if she wanted to get the decision regarding Korneeva's adjudication as lawful wife to her father-in-law set aside, she should address her complaint to the Chairman of the Supreme Court of the RSFSR or USSR or the Chief Procurator of the RSFSR or USSR.[26]

This was a tragic case situated directly within the context of the purges of the 1930s and the bureaucratic hurdles and emotional struggles resulting from disappearances after arrest. Kapushtina did not overtly criticize the Soviet system but her language reflects her frustration with not knowing why her husband was arrested, what his sentence was, and what happened to him and the unwillingness or inability of everyone from procurators to camp managers to the People's Court to give her any type of

[26] Ibid.

resolution to a nightmare that began a decade and a half earlier. Despite all of the hurdles, she continued to appeal to various government officials. Her complaint had been sent to the Chairman of the Supreme Court of the USSR and indicated that copies were sent to the Minister of Justice, the General Procurator of the USSR, and the Minister of State Security. Kapushtina and her family were the victims of state violence and official neglect. Her persistence demonstrates both the importance of housing as an inheritable asset and her belief that officials would realize her plight and help her. She did not have any sacrifice in fighting the Nazis to call upon and was careful to not make any proclamations about state victimization of her father-in-law and husband. She did, however, emphasize that she had been denied basic information about her husband's alleged crime and whereabouts and that this continued to affect her not only emotionally but in a very real physical way because she could not provide a secure housing situation for her children. Her numerous appeals evidence both a desire that someone in authority would help her and an acknowledgment that she could not resolve the situation outside the framework of written appeals between state and citizen.

Zavadsky had a documentation problem of a different nature when he wrote to the Ministry of Justice. He claimed that in 1941 he inherited property from his father and paid the notary fee for the certificate of inheritance. However, the receipt was lost during the occupation of Pinsk (Byelorussian SSR). Upon trying to obtain another certificate, the notary was demanding ten percent of the assessed value of the dwelling but Zavadsky wrote that he was sixty years old, unable to work anymore and unable to pay this fee. Again, the response presented a dilemma stating that: "If you lost your certificate of inheritance from the notary and the notary does not have any archives, you can petition

the People's Court to get an adjudicated copy of the certificate. However, the People's Court can only satisfy your petition if you can prove the fact that the notary issued the certificate."[27] Zavadsky was in the unenviable position of having to prove the existence of a lost document, just as Maria Seber and Ksenia Kapushtina needed to prove their husbands were dead despite the fact that they had been arrested by officials working for organs of the state and these women had never heard from their husbands again. These appeals to the Ministry of Justice reveal the complicated realities that some Soviet families faced in their relationship with the state. These narratives also differ from the citizens who emphasized the service of family members on behalf of the motherland. In addition, they do not openly accuse local officials of corruption. Seber and Kapushtina could not claim familial sacrifice for Soviet power and argue the "morality" of their families because of the alleged crimes of their husbands. Each of these citizens was operating in a context in which they felt both victimized by officials but realized that they also needed authorities to help them.

Appealing to Soviet justice in handling disputes-broken families and private victims

Not all of the letters represent these types of conflicts and the devastating consequences of the Great Patriotic War. Many were about war within the family, and citizens wrote with the expectation that the state could and would intervene on their behalf. Citizens appealed to the state for help with private family problems and portrayed the struggles between parents and children and stepparents and stepsiblings.

One woman wrote that after her husband's death she remained living together with two children. She wanted advice about how to legally divide the house among the

[27] GA RF f. 9492, op. 1, d. 1741, l. 97-98.

three of them, and, one assumes, erect physical barriers because she wanted to give a share to her son who, she claimed was abusing her and burning everything. Thus, she wanted to divide up the house before he destroyed the entire house and separate his share.[28] Another recounted her hardship during the war and victimization by her father. She claimed that when the war started, she and her family had been evacuated to the outskirts of the city of Priluki, Ukraine and subsequently moved in with her mother's sister in September 1941. Then, she stated, the fascists started bombing the city and one corner of the house in which they were living was hit and her mother, grandmother and aunt were killed. She herself had several injuries: a contusion on the right side of her head, a broken left leg, and broken right leg and arm. After the war she and her sister left to work in western Ukraine and her father, stepmother, and younger brother remained home (it is not clear when her father married her stepmother). She recounts that her father was abusing his family before the war and it became worse after the war. She said that he decided to sell the house and move to western Ukraine. He tried repeatedly to sell it through notarial offices but the signature of his children was required. She alleged that he had his sister sign to approve the sale due to the fact that his children were not in the area. Subsequently, her father took her brother and left town whereupon he and her brother were discovered sleeping in a railway station in the Moscow region and were sent back to Priluki. She received word of this and went to pick up her brother who now lived with her. Finally, she stated the point of her inquiry which was whether the sale of the house was legal and whether there any way she could now obtain a room in the house for

[28] GA RF f. 9492, op. 1, d. 1742, l. 23.

herself and her brother.[29] This raises a number of questions including when her father married her stepmother, what happened to her stepmother after her father sold the house, and why were her father and brother sleeping in a railway station if her father had just sold his house. Despite all of the unanswered issues this letter raises, it illustrates the confusion existing about property ownership, yet the very real desire to preserve property and once again, the particular stresses placed upon Soviet citizens by severe housing shortages, particularly in areas occupied during the war.

Another dispute erupted between the children of a man who had sold two rooms in his apartment to an unrelated couple. The purchasers paid approximately two-thirds of the purchase price before their father's death in 1948. After his death, a suit was filed that continued for the next five years and involved complex issues such as the right to enforce the contract made before his death, the valuation of property and the amount still owed after the 1947 money reforms and, centrally, the conflicts among the children of the deceased and the couple who lived in this apartment. One heir, in particular, Tina Tsagareli, testified in a hearing before the Supreme Court of Georgia nearly four years after the case had first been filed that:

> My father sold this apartment to Bakhtadze for 145,000 rubles. They paid 120,000 with 25,000 remaining....I demand that Bakhtadze be evicted from the house because for the last 4 years, she has not paid the 25,000 rubles she still owes. Even if she does pay, it is not possible for me to live with her in the same house. I currently have no place to live and am no longer registered at the disputed house.....Even if Bakhtadze paid me 25,000 rubles now, I would still like to live alone. There is only one room in the house not occupied by tenants and my sister Elena lives there....My sister Elena and I do not get along and therefore it is impossible for us to

[29] GA RF f. 9492, op. 1, d. 1741, l. 30-1.

live together. I want to live alone in order to be able to live and work normally.[30]

While Tina was frank about wanting to live alone and not being able to stand to live in the same house as Bakhtadze or in the same room as her sister, Bakhtadze presented her side of the dispute as one of violation of her "rights and interests" which are "protected by the Stalin Constitution," emphasizing that "I am a working person" and "I have a manufacturing job."[31] Whether it was an abusive son who was impossible to live with, a father who defrauded his children of their inheritance selling a house without their approval, or a woman who did not get along with her sister and just wanted to live alone, each of these cases portrayed tensions within the intimate sphere of the family and appealed to the idea of a paternalistic state for relief of private sufferings.

The elderly were particularly vulnerable and conflicts between parents and their sons and daughters-in-law were not isolated incidents. One father, Mikhail Korshunov, wrote that he had conveyed his dwelling to his son, Sergei, for no monetary consideration on the condition that Sergei provide support for him until his death because he was elderly and could no longer work. However, soon after the conveyance, Sergei left the area for work and Sergei's wife, children and father remained in the house. Sergei stopped supporting Mikhail as well as his own wife and children and married another woman. Mikhail filed a petition with the People's Court to dissolve the agreement with his son and in December 1949, the People's Court granted his petition. The family

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[30] GA RF f. 9474, op. 5, d. 2701, ll. 34-35.

[31] Ibid., l. 39-41.

tragedy deepened because Sergei's ex-wife sill lived there and refused to leave, and, according to Mikhail, prevented him from entering his own house. The petition to evict her was rejected and Mikhail thought it was because she was considered his heir. The Ministry of Justice replied that property can only be inherited after the death of the owner. Thus, inheritance was not the issue and, in any case, his son's ex-spouse would not be considered an heir at law. However, people who have the right to live in a house included not only the owner of the house but other people who moved into the house with the consent of the owner and as family members and this was the likely reason for the rejection of Mikhail's petition for eviction.[32]

One stepmother asked if she could make her stepsons pay her some kind of support after her husband's death because the sons had been paying their father support according to court order and she was seventy-three years old and no longer able to work. It appears that children could be forced to support their parents who raised them. The response from the Ministry of Justice informed her that stepchildren were obligated to support a stepmother who cannot work if she had taken care of them for at least ten years. Unfortunately, that was not the case because the stepsons were aged twenty and twenty-two at the time of her marriage to their father and had only lived with the couple for a few years.[33] This woman's situation and that of Korshunov reflect the tenuous ties that sometimes existed between step-relatives. When the relative who had related by blood died or disappeared, these ties were broken. While early radical Bolsheviks had

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[32] GA RF f. 9492, op. 1, d. 1742, ll. 88-9.

[33] GA RF f. 9492, op. 1, d. 1741, ll. 75-6.

emphasized the collective family in society, the reality was that social tradition continued to privilege blood relations. Furthermore, Soviet inheritance law also emphasized blood relations and did not include step-relatives within the circles of heirs. Unless they were dependents or legal adoptees, they had no legal protection. The irony between the results in these two cases is that Korshunov was forced to allow his stepdaughter to reside in his house, despite her alleged abuse of him, because she had originally moved in with his permission but the stepmother who had raised stepchildren for less than ten years was not entitled to the stepsons' continued financial support after the death of her husband.

A recurrent theme in these private disputes occurred with second wives neglecting their stepchildren after the father died. This conflict was apparent in Marchenko's dispute discussed earlier in this chapter. His stepmother had abandoned him in Moscow to be raised in an orphanage. Other less drastic abuses involved a stepmother privileging her blood children over her stepchildren. One woman claimed that her mother died in 1933 and in 1938 her father married a woman who had a daughter from a previous marriage. After his death, the household consisted of a house, a cow, a calf, five sheep and household and personal items. The stepmother gave everything to her own daughter and nothing to the deceased's biological daughter. Once again, the official response to her plea for help related that all inheritance disputes should be filed with the People's Court and that the Ministry of Justice could not get involved in disputes of private citizens. However, the writer was advised that the heirs at law included spouse and children but not stepchildren.[34] Thus, the written word of law, as in many societies, was inadequate for dealing with complicated personal relationships and individual situations.

[34] GA RF f. 9492, op. 1, d. 1741, ll. 32-3.

It was up to judges to decide these disputes. What is striking is that citizens often felt that appealing to centralized state authority was essential. In this sense, the letters to the Ministry of Justice and handwritten detailed petitions to the Supreme Court are revealing in what they tell us about the relationship between Soviet citizens and the state and about relations within the family.

Conclusion

Letters written by Soviet citizens to judicial authorities about inheritance in the late Stalinist period illuminate the struggles between family members and neighbors over scarce housing resources. They reveal the complicated relationships between blood family members and step-relatives in a society where housing was the major asset and was often overcrowded. Furthermore, inheritance contests are situated within major episodes in Soviet history. The mass arrests of the 1930s and the Great Patriotic War are both integral to the fact patterns and circumstances of many of these individuals. Citizens employed various narratives of victimization by either Soviet officials, enemy Germans, or within the intimate sphere of the private family. However, even when narrating incidents of corruption or injustice on the local level such as with nationalization of a dwelling, citizens were appealing to higher authorities in a fashion calculated to reaffirm their belief in Soviet justice and morality despite its perversion by some officials. Languages of familial sacrifice during the war, gender, motherhood, disability, old age, and private suffering at the hands of other family members were all calculated to achieve a favorable resolution of their claims. Those who were outside the circle of patriotic sacrifice such as the wives of arrestees from the 1930s asked for only the information that would solve their bureaucratic woes. They were not critical of

Soviet power but neither did they praise the justice and morality of the Soviet system. The self-narration of these individuals operated within a context of public letter writing between citizens and state officials that always had a clear individualistic objective. They reveal the manner in which Soviet citizens interacted with civil law authorities and provide evidence for a relationship between law and society wherein citizens actively petitioned officials to solve property disputes.

The following chapter internationalizes inheritance conflicts in the context of the Cold War. Authorities in the United States invalidated the wills of testators' who left property to heirs in the Soviet Union or East-bloc countries, violating the premise of freedom of testation that was an essential premise of American property law. Officials and judges asserted that property did not exist in the Soviet Union and thus, the funds would only go into government coffers and could potentially be used against the United States. The rhetoric and policies concerned both Soviet and American legal scholars who argued that reciprocity between the two countries should be honored and cited to cases where individuals living in the United States had received funds in estates from persons who had died in the Soviet Union. The inheritance cases and debates about observing rule of law in private civil matters, thus, illustrate a largely unexplored dimension of the Cold War.

Chapter 5
The Politics of Personal Property: Inheritance and the Cold War

"If you want to say that I'm prejudiced, you can, because when it comes to Communism I'm a bigoted anti-Communist." [1]

An American legal scholar, Harold Berman, overheard this statement made by a judge in a Philadelphia court case involving an estate leaving property to heirs in the Soviet Union.[2] In theory, the laws of the various states of the United States concerning inheritance provide for freedom of testamentary will. Under this principle, a person who executes a valid will can designate to whom his or her property will pass upon death. These laws are grounded in the reverence for and protection of property rights that date back to ancient Rome and developed in Western Europe and many of the areas colonized by Western European countries. Yet this simplified view fails to account for how international relations affect the private rights of individuals to *receive* these bequests and the rights of the testators who made them. A discussion of the literature and court cases surrounding attempts to leave property of a person who died in the United States to a citizen of the Soviet Union or other "Iron Curtain" countries clearly demonstrates the extent to which private individuals could be caught up in Cold War politics. This chapter focuses on inheritance practice on the world stage as it existed between the U.S. and USSR in light of Cold War tensions and explores how the political and legal conflicts of the Cold War played out on the level of the individual in an investigation of American

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[1] Harold J. Berman, "Soviet Heirs in American Courts," *Columbia Law Review* 62 (1962): 257.

[2] Ibid.

and Soviet legal debates and court cases concerning personal property and inheritance rights. It is important to juxtapose what was going on domestically in the post-war years as discussed in previous chapters with the emergence of the Cold War and the institution of inheritance provides insight into a heretofore unexplored aspect of the Cold War. The existing legal literature in U.S. law journals about inheritance and the Cold War, written during the 1950s-1970s, is useful for illustrating that the attitudes of lawmakers and judges in the United States did not go unchallenged by scholars despite the hostile political environment in which they found themselves. However, these scholars did not have access to archival sources and most did not examine the works of contemporary Soviet legal scholars on the issue.[3]

Inheritance cases demonstrate that the rights of individuals in the United States to transfer their property upon death to residents of the Soviet Union or East bloc countries were challenged by the political climate of the Cold War. In the court cases regarding bequests lefts by persons living in the United States to persons living in the Soviet Union, hostility against the USSR or East bloc countries was rarely concealed. State and local officials as well as judges refused to honor the testator's wishes in many disputed cases. Some court cases illustrate the political significance of personal property

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[3] For articles published in U.S. law journals from the 1950s-1970s which discuss inheritance law and the Cold War from a primarily legal perspective, see, for example: Berman, "Soviet Heirs in American Courts;" Austin Heyman, "The Nonresident Alien's Right to Succession Under the 'Iron Curtain Rule,'" *Northwestern University Law Review* 52 (1958): 221-240; George Ginsburgs, "Inheritance by Foreigners under Soviet Law," *Iowa Law Review* 51 (1966): 16-74; W. Reece Bader, Peter O. Brown, Kazimierz Grzybowski, "Soviet Inheritance Cases in American Courts and the Soviet Property Regime," *Duke Law Review* (1966): 98-116; Claudia Brooks, "Trust & Estate Planning: The Effect of Soviet Policies on Legacies from Abroad," *Hastings International & Comparative Law Review* 1 (1978): 195-213. However, none of these authors used archival files or provided a comprehensive study of the domestic inheritance laws, policies and practices and ideals and few discussed the view of Soviet legal scholars about inheritance in the late Stalinist period and the emergence of the Cold War.

with opinions in which judges argued that sending money to heirs in the Soviet Union was in reality sending money to the Soviet government to use against the United States.[4] In other cases, judges applied clear legal principles by examining the law of the Soviet Union with respect to transferring property to foreign heirs and concluded that a reciprocal legal rule applied to transfers of inherited property and the testator's desires should be respected.[5] This chapter additionally focuses on one particularly well documented case from the Russian archives, that of the estate of Henry von der Heid, in order to illustrate the politics of personal property and how the Cold War affected testamentary freedom.

Published in 1962, American legal scholar Harold Berman's basic argument was that emotional patriotism rather than logic and justice clouded the decisions of many judges in deciding whether to honor the will of a decedent or to follow the laws regarding transfer of assets upon the death of someone who did not leave a will (intestate succession). His argument is persuasive given some of the inflammatory rhetoric he cites from court opinions. In 1948, one judge refused to hear any argument on the issue stating: "No, I won't send any money to Russia" and taking "judicial notice that Russia kicks the United States in the teeth all the time."[6] The use of the term "judicial notice" is

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[4] See for example *Belemich Estate*, 411 Pa. 506, 511 (1963) and *Choma Estate*, 30 Pa. D. & C.2d 157, 161 (1963).

[5] See for example: *Larkin Estate*, 65 Cal. 2d 60 (1966). California's reputation of having a liberal legal tradition was certainly validated in respect to inheritance and the Cold War. It was one of the few states that recognized reciprocity with the Soviet Union in inheritance matters. Yet it should be noted that even this came late because reciprocity was not recognized in an earlier case. See *Estate of Gogabashvele,* 195 Cal. App. 2d. 503 (1961).

[6] Berman, "Soviet Heirs in American Courts," 257.

particularly questionable because it is a concept that is only intended to apply to well-known and indisputable facts. A Pennsylvania judge articulated the fear that the funds could be used against the United States stating that:

> Even to allow small remittances of money or merchandise would not, in the court's opinion, prove feasible...Many tiny rivulets of remittances directed to a common outlet could result in a turbulent stream of benefits flowing to the national economy of the Iron Curtain country, to the detriment of those who might be entitled to the benevolence of their kin in the United States, and even to the disadvantage of the United States itself, whose philosophy of government is diametrically opposed to that of the country wherein reside the beneficiaries of the bounty of their kin in the United States.[7]

Even "American" fairytales (as appropriated from Charles Perrault and the Grimm brothers) were invoked in the rhetoric of the "Iron Curtain Rule" when one judge remarked:

> All the known facts of a Sovietized state lead to the irresistible conclusion that sending American money to a person within the borders of an Iron Curtain country is like sending a basket of food to Little Red Ridinghood in care of her 'grandmother.'[8]

In this case, which dealt with a bequest to a citizen of Yugoslavia, the judge further argued that:

> It could be that the greedy, gluttonous grasp of the government collector in Yugoslavia does not clutch as rapaciously as his brother confiscators in Russia, but it is abundantly clear that there is no assurance upon which an American court can depend that a named Yugoslavian individual beneficiary of American dollars will have anything left to shelter, clothe

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[7] *Choma Estate*, 30 Pa. D. & C.2d 157, 161 (1963), 6-7.

[8] Bader, Brown, and Grzybowski, "Soviet Inheritance Cases in American Courts and the Soviet Property Regime," 98; *Belemich Estate*, 411 Pa. 506, 511 (1963).

and feed himself once he has paid financial involuntary tribute to the tyranny of a totalitarian regime.[9]

As the latter case demonstrates, it was not only the fear of American dollars being used against the United States but there were also many court cases that denied transfers of inheritance bequests to heirs in the USSR or East European countries based on the "use or benefit" principle. This principle asserted that the heirs would not actually receive the use or benefit of the bequest and that it was the Soviet or "Soviet satellite" government that would actually benefit from any transfer of cash.[10]

Restrictions on transfers of private property of United States' citizens based upon international relations were not unprecedented. Treasury regulations enacted in 1941 during a period of economic war prohibited transferring funds to persons living in Nazi occupied territories. As Cold War tensions escalated in the post-war years, the focus shifted. In 1951, the regulations were expanded and prohibited transferring funds to the USSR, Albania, Bulgaria, Communist China, Czechoslovakia, Hungary, Poland, Romania, the Russian zone of occupation of Germany and the Russian sector of Berlin on the basis that there was not a reasonable assurance that a payee would actually receive checks or warrants drawn against funds of the United States and be able to negotiate the

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[9] *Belemich Estate*, 411 Pa. 506, 511 (1963). Furthermore, the court stated that: "To argue that Yugoslavia is not behind the Iron Curtain is to argue that it is not on the eastern side of the Atlantic Ocean. There are certain well-known, indisputable geographical and historical facts which require no substantive proof in Court, and one of those irrefutable, if unfortunate, realities, is that Yugoslavia...is a satellite state where the residents have no individualistic control over their destiny, fate or pocketbooks, and where their politico-economic horizon is raised or lowered according to the will, wish or whim of a self-made dictator," 509.

[10] States that employed this theory of "benefit, use and control" included New York, Florida, Maryland, Massachusetts, New Jersey, Oregon, Pennsylvania, Rhode Island (by statute), Michigan, Missouri, Vermont (local court rule) and Maine (judicial decision). Bader, Brown and Grzybowski, "Soviet Inheritance Cases in American Courts and the Soviet Property Regime," 100.

same for full value.[11] The justifications offered for such measures essentially relied on two theories. One was a defensive theory that expressed the fear that the Soviet government would use "American" funds against the United States in some manner. This attitude was present on the level of local officials as well. A county treasurer in New York stated that he would not release the names of heirs to one man's estate because if "this money were turned over to the Russian authorities, it would be used to kill our boys and innocent people in Southeast Asia."[12] The court denied the Soviet Embassy's application for an accounting in this case.[13] Another was a paternalistic attitude whereby US Courts were "protecting" these assets by not releasing them until American judges or officials were satisfied that the heirs would be able to get the use and benefit of them. These attitudes contributed to the invalidation of many bequests left to heirs in the USSR.

Many Soviet legal scholars were understandably perturbed by rulings and rhetoric of U.S. officials and judges who asserted either that the funds would be used by the Soviet government against the United States or Soviet citizens would never receive the funds. The Foreign Jurists College (Iniurkollegia) was formed in 1937 in the Soviet Union with one of its primary tasks being the "handling of Soviet citizens' and organizations' cases abroad and also handling the cases of foreigners living in the USSR,

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[11] Bader, Brown and Grzybowski, "Soviet Inheritance Cases in American Courts and the Soviet Property Regime," 103; See also Section 211.3(a) of the Treasury Department's Circular No. 655, dated March 21, 1941 and February 19, 1951 (31 Code of Federal Regulations 211.3(a); Martin Domke, "Assets of East Europeans Impounded in the United States," *American Slavic and East European Review* 18 No. 3 (October 1959): 351-360.

[12] "Soviet Rebuffed on $45,000 Estate: Rockland Man's Heirs are in Russia, but County Official Won't Tell who they are," *The New York Times,* May 14, 1954, 25.

[13] "Russia Loses Suit Here: Accounting of $47,000 Estate of Mill Worker Denied," *The New York Times,* June 20, 1954, 7.

in particular: inheritance cases."[14] Among the case files preserved in the Inuirkollegia archives are "cases considering property claims of Soviet citizens in capitalist countries, cases showcasing the means and methods of overcoming the discrimination against the Soviet citizens' cases; [and] cases about property claims of Soviet citizens in which capitalist countries apply discriminatory judicial, administrative or legislative measures."[15] This signifies Iniurkollegia's concern that Soviet heirs were disadvantaged based on political grounds. Soviet scholars encountered a challenge in the continued use of the problematic dichotomy distinguishing inheritance in a socialist society from that in bourgeois societies with the increasingly broad circle of allowable heirs in the post war years that allowed an estate to be willed to anyone provided there were no persons related to the decedent within the statutory circle of heirs. This was a problem that was exacerbated with the emergence of the Cold War and the seemingly contraindicative positions adopted by the United States and the Soviet Union when it came to inheritance between citizens of these countries. Whereas the laws of the various states of the United States had always relied on broad powers of testamentary freedom, these were circumscribed when trying to leave property to heirs in the Soviet Union and other East European countries. Soviet scholars, on the other hand, argued for the promotion of cooperation between the countries in inheritance cases, asserting that reciprocity existed and bequests should be honored.

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[14] GARF f. 9562, op. 2.

[15] Ibid.

The *New York Times* reported that an article in a Soviet legal journal (*Sovetskoe gosudarstvo i pravo*) criticized American court rulings that refused to transfer inheritances left by decedents in the United States to heirs in the Soviet Union. The article further asserted that the Soviet Union had allowed funds left by persons who died in the USSR to be transferred to persons in the United States.[16] Harold Berman agreed with this argument that "a considerable number of American citizens have received funds in Soviet estates"[17] and noted that:

> the United States is apparently the only country in the world that presents obstacles to the distribution of funds in estates to Soviet citizens. In recent years Soviet citizens have received funds in estates from Canada, England, France, India, Italy, Western Germany (including West Berlin), Israel, and other countries.[18]

The shadow of foreign policy over the personal testamentary wishes of individuals persisted for many years. However, in 1968:

> ....the Supreme Court held invalid an Oregon statute prohibiting the transfer of estate funds to nonresident heirs. That same year, the Treasury Department removed a longstanding prohibition against sending Federal checks to the Soviet Union.[19]

In this case, involving heirs in East Germany to a decedent's estate in Oregon, the court determined that the "practice of state courts in withholding

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[16] Harry Schwartz, "Soviet Asks U.S. to Act on Claims: Says Ruble Gives Heirs Full Value Against Dollar," *New York Times,* July 17, 1961; A.F. Volchkov and A.A. Rubanov, "Property Rights of Soviet Citizens in the United States of America," *Sovetskoe gosudarstvo i pravo* 6 (1961): 83-93.

[17] Berman, "Soviet Heirs in American Courts," 268-69 citing Volchkov and Rubanov, "Property Rights of Soviet Citizens in the United States of America," 91-92. The use of the word "considerable" may be an overstatement considering that Berman relied upon Volchkov and Rubanov's article with a list of five cases. Yet Berman asserted that he had seen files of several cases as well.

[18] Ibid., 258.

[19] "Doubt Voiced on Bequest to Heirs in Moscow," *The New York Times,* September 25, 1983, 13.

remittances to legatees residing in Communist countries or in preventing them from assigning them is notorious" but that a "state's policy may disturb foreign relations" and that if "there are to be such restraints, they must be provided by the Federal Government."[20] Thus, the Court did not rule that these types of restrictions on the transfer of private property violated substantive property rights of individuals but rather concluded that it was the federal government that must provide the impetus for such restraints.

These problems of lack of cooperation between the U.S. and the USSR in inheritance matters did not ease until the Brezhnev years and this only as a result of, according to A.A. Rybanov, the "easing of international tension achieved due to basic foreign policy of the USSR and the brotherly socialist countries."[21] In general Soviet jurists criticized the "bourgeois" American courts for their "discrimination" against Soviet heirs of persons who died in the United States.[22] Rubanov linked imperialism in international affairs to conducting a "politics of dictatorship and aggression, a policy of struggle against socialism" carried out "in questions of inheritance" and asserted that the "hostile policy of some of the bourgeois countries" in matters of inheritance was a result of the Cold War.[23] D. Golskaia argued that "socialist states steadily follow a policy of

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[20] *Zchernig v. Miller,* 389 U.S. 429, 440-41 (1968).

[21] A.A. Rubanov, *Zagranichnye nasledstva*, (Moscow: Academy of Science of the USSR Institute of Government and Law, 1975), 7.

[22] D. Kh. Golskaia, *Pravovye problemy sotrudnicheschtvo sotsialisticheskikh i kapitalisticheskikh stran v delakh o nasledovanii*, (Moscow, 1980), 5-6.

[23] Rubanov, *Zagranichnye nasledstva,* 7.

development of equal rights and business cooperation in questions of inheritance"[24] in opposition to, in particular, the United States. As discussed above, the laws of the various states of the United States restricting transfers to citizens of the Soviet Union and other socialist countries originated during World War II with prohibitions on transfers of funds or property to Nazi Germany.[25] Rubanov seemed particularly disturbed that the socialist states were placed in the same category as Nazi Germany observing that these laws were "politically motivated propaganda myths" which violated conventional norms of international law and served "to slander the socialist countries and put them on the same level with the fascist states."[26]

From the Soviet perspective, reciprocity existed and should be honored. Granted, there were likely fewer cases of Soviet citizens leaving property to heirs in the United States than vice versa given the limitations on to whom property could be willed and the scope of property that could be owned by Soviet citizens. As discussed in previous chapters, Soviet inheritance law was not premised on testamentary freedom and it is likely that the monetary amounts involved were less substantial, at least from the cases surveyed, but there is evidence supporting the assertion that Iniurkollegia served as an intermediary for facilitating transfers from persons who died in the USSR to persons living in the United States and advocated on behalf of Soviet citizens and institutions willed property by persons dying in the United States. In one case handled by

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[24] Golskaia, *Pravovye problemy*, 4.

[25] Section 211.3(a) of the Treasury Department's Circular No. 655, dated March 21, 1941 and February 19, 1951.

[26] Rubanov, *Zagranichnye nasledstva,* 52.

Iniurkollegia, it was, in fact, the American attorneys who claimed that an heir living in the United States could not receive the bequest from a Soviet citizen. The Soviet intermediary, Inuirkollegia, responded that the value of the property could be transferred, and it was subsequently done.[27]

In determining that reciprocity did exist in the California case of *Estate of Larkin*, the trial court heard the testimony of several scholars, including Harold Berman (Harvard Law School and the Harvard Russian Research Center), John Hazard (Columbia Law School and Columbia's Russian Institute) and even Judge Alexander Volchkov (President of Iniurkollegia) who testified that he had handled at least twenty cases on behalf of American heirs. The trial courts also had deposition testimony from several individuals living in the United States who had received inheritances after the death of a Soviet citizen.[28] Soviet legal scholars even pointed out that when an heir in the United States had *not yet* received her bequest from a Soviet citizen, it created a problematic situation. The case involved a Soviet citizen in Latvia who had died ten years previously and her sister, living in the United States, had still not received the inheritance. The results in this case, argued Golskaia, were undesirable because they could be used "by foreign reactionary circles" to distort the position of foreigners to inherit from citizens of the USSR. Despite this example of a delayed inheritance from a person in the USSR to a person in the United States, Golskaia found that "bourgeois" legislation and practices of "bourgeois courts" placed heirs residing in socialist countries in a worse position than

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[27] GA RF f. 9562, op. 2, d. 21.

[28] *Larkin Estate*, 65 Cal. 2d 60 (1966).

successors living in "bourgeois" countries.[29] Furthermore, Golskaia asserted that some U.S. judges' claims that proofs submitted by Soviet heirs were fraudulent in nature were simply "anti-communistic slander on the population of socialist countries."[30]

The focus on inheritance matters by Soviet legal scholars also came under criticism from within. As the Cold War intensified, seemingly so too did the demand to distinguish socialist jurisprudence from bourgeois jurisprudence but there was no uniform agreement as to what this meant. The legal journal *Sovetskoe gosudarstvo i pravo* was taken to task in a letter to the editor published in *Kultura i zhizn'* from A. Lunev and D. Kudriatsov in 1951 that criticized US intervention in Korea as violating The Hague convention on rules of warfare. Lunev and Kudriatsov stated that the tasks of *Sovetskoe gosudarstvo i pravo* "are, first of all, to work out major questions of the theory of the state and law, to generalize the experience of state construction of the U.S.S.R., and at the same time to unmask unremittingly contemporary bourgeois jurisprudence, which is in the service of the imperialists...." and "[i]t is known that the American imperialists cover over their bloodthirsty aggressive deeds with the pseudoscientific arguments of bourgeois jurists....."[31] The authors went on to argue that "[t]he magazine gives insufficient attention to elaborating topical problems of the theory of the state and law posed by the further development of communist construction in the U.S.S.R. It frequently illumines such insignificant subjects as 'The Receipt of Inheritance'....at the same time that it does

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[29] Golskaia, *Pravovye problemi,* 19.

[30] Ibid., 52.

[31] A. Lunev and D. Kudryatsov, *Kultura i zhizn'*, (November 21, 1950): 4 in *The Current Digest of the Soviet Press* 2, no. 45 (December 23, 1950): 33-34.

not adequately reflect a number of militant questions."[32] The response to this critique was also published in *Kultura i zhizn'* and stated that "[t]he editors of *Sovetskoe gosudarstvo i pravo* have been instructed to play a more active role in exposing the international policy and government and law of the U.S. imperialists and their satellites, to intensify the struggle against manifestations of bourgeois influences in Soviet jurisprudence, and to enlist young scientific cadres more widely in the work of the magazine."[33]

The virulence of anti-communism, exacerbated by the Cold War, acted to create U.S. exceptionalism. The sanctity of private property and the right to transfer that property freely are bedrocks of American ideology but were overshadowed by the political situation between the USSR and the United States. The post World War II years precipitated another Red Scare[34] (of which the late 1940s and early 1950s were the heyday) on the federal level. The House of Representatives approved the Committee on

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[32] Ibid.

[33] *Kultura i zhizn'* (January 21, 1951): 4 in *The Current Digest of the Soviet Press* 3, no, 4 (March 10, 1951): 41.

[34] See Marcie K. Cowley, "Red Scare," in *Encyclopedia of the First Amendment,* ed. John R. Vile, David L. Hudson, David A. Schultz (Washington DC: Congressional Quarterly Press, 2009), 912-13. The first Red Scare of the twentieth century occurred in 1919-1920. Legislative statutes criminalized many forms of speech including uttering or printing any disloyal language about the form of government of the United States. Convictions under these statutes were upheld in Supreme Court cases including *Schenck v. United States*, 249 U.S. 47 (1919) (in which Justice Holmes first outlined his "clear and present danger" test), *Debs v. United States*, 249 U.S. 211 (1919) and *Abrams v. United States*, 250 U.S. 616 (1919). "The executive branch also played a part. Most notably, Attorney General Palmer authorized the arrests of several thousand suspected radicals (commonly known as the 'Palmer Raids') and many were deported to the Soviet Union. Although First Amendment limitations continued to be imposed on persons with Communist Party affiliation throughout the interwar years in state prosecutions under criminal syndicalism statutes (See for example: *Whitney v. California*, 274 U.S. 357 (1927), *Fiske v. Kansas*, 274 U.S. 380 (1927), *De Jonge v. Oregon,* 299 U.S. 353 (1937), *Herndon v. Lowry*, 301 U.S. 242 (1937)), these years were relatively quiet on the federal level." Ibid., 912.

Un-American Activities (HUAC) as a permanent committee and Congress enacted the Subversive Activities Control Act (McCarran Act) of 1950 and the Communist Control Act of 1954. Senator McCarthy's position as chair of the Senate Committee on Government Operations resulted in his demand for persons to appear before his committee to prove their loyalty to the United States and in an (unsuccessful) investigation of the armed services for Communist influences. President Truman issued an Executive Order that provided for a Federal Loyalty and Security Program and the FBI under J. Edgar Hoover compiled detailed information on suspected Communists.[35] In addition, "[t]he judiciary sustained the administration's prosecutions under the earlier Smith Act of 1940 which criminalized teaching or advocating the overthrow of government by force or being a member of an organization that engaged in such activity."[36] The "Supreme Court endorsement of the broad power of the legislature to curtail first amendment rights was subsequently limited in the late 1950s."[37] However, "a registration requirement contained in the McCarran Act mandating that Communists register with the Attorney General was sustained" by the Supreme Court in 1967 but a "blanket prohibition against communists working in defense industries was declared to violate the First Amendment right of association" in that same year.[38]

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[35] See Cowley, "Red Scare," 912.

[36] Cowley, "Red Scare," 912; See also *Dennis v. U.S*, 341 U.S. 494 (1951).

[37] Cowley, "Red Scare," 912; See also *Yates v. U.S*, 354 U.S. 298 (1957); *Scales v. U.S,* 367 U.S. 203 (1961).

[38] Cowley, "Red Scare," 912; See also *Communist Party v. Subversive Activities Control Board,* 361 U.S. 1 (1967); *United States v. Robel,* 389 U.S. 258 (1967).

The battle over the Estate of Henry Von Der Heid provides a telling example of the effect of the Cold War on an individual's testamentary wishes and illustrates the defensive theory (that is, that the Soviets would use "American" funds against the United States in some manner). Henry von Der Heid died in Kings County, New York on June 26, 1948, and left a Last Will and Testament which named as its sole beneficiary the State Bank of the USSR for purposes of contributing to the development of arts and sciences in the USSR. The total value of the estate was approximately $63,000.[39] The day after his death, *The New York Times* referred to him as a "Brooklyn recluse" who, however, according to other roomers in his brownstone was known to have "pro-Communist feelings." The article noted that attorney Joseph Tauber was listed as the executor of the will and that "a man by that name has appeared in the past as attorney for the International Labor Defense and other left-wing groups."[40] The New York courts ultimately disregarded Mr. von der Heid's testamentary wishes and implied that he must have been mentally unstable to have made the bequest in the first place.

Although this case is one where a bequest was made to a Soviet *institution,* the State Bank of the USSR, rather than an individual (and thus presumably a less "sympathetic" beneficiary), the results were the same as in many cases throughout the United States during the Cold War in which an individual's testamentary wishes regarding disposition of his or her property after death were subverted by the contemporary political climate. In fact, in another case, where a bequest was made to a

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[39] GARF f. 9562, op. 2, d. 69.

[40] "Fortune Willed to Soviet Bank by 'Destitute' Brooklyn Recluse," *The New York Times,* June 29, 1948, 25.

nephew in Lithuania by the Reverend Anthony Brisko, who died in Chicago, the executors of the will obtained a court decision approving distribution to the alternate beneficiary, an institution (and, being the Roman Catholic Church, one which was more politically palatable than the State Bank of the USSR). According to a letter from an attorney in the United States retained by Inuirkollegia in this case (Benedict Wolf of Wolf, Pepper, Ross, Wolf & Sons), the funds were supposed "to be distributed two years after the decedent's death in 1953 with a provision that, if the nephew could not be located, or, if due to political conditions, the nephew in Lithuania could not get the benefit of the funds, they were to be held for another 10 years before being turned over to the Catholic College in Rome."[41] Also, "if the trustee was satisfied that the nephew had died before the expiration of the 12 years, he could pay the money over to the said Catholic College"[42] and it was on this basis that the executors obtained the court decision and the money was paid to the Catholic College in Rome in 1956. However, the nephew was not, in fact, deceased. Still, Iniurkollegia's legal counsel (this time through William Palitz from the firm of Wolf, Pepper) informed Iniurkollegia that "while it is probably true that the investigation made by the executors was not as full as it should have been, and this is confirmed by the fact that the nephew is alive, it would undoubtedly be difficult to upset what has occurred." The attorney went on to say that "if we were to litigate this matter this would take place in the Probate court where we would face not only a generally hostile judge but one who would be particularly hostile in a situation

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[41] GA RF F. 9562, op. 2, d. 94, l. 11.

[42] Ibid.

where the alternate beneficiary is the Roman Catholic Church. (The Probate Judge is a good Catholic.)"[43] Thus, it is not the distinction of individual versus institutional beneficiary that is crucial; it is the political situation in the context of the Cold War that proscribed the testamentary freedom of individuals who died in the United States to leave property to individuals (or institutions) in East bloc countries.

In the case of the Estate of Henry von der Heid, Charles Recht, an attorney in New York, represented the State Bank of the USSR (Gosbank). He wrote to his client with a summary of the case and its status six years later in 1954.[44] Recht detailed the many objections that state officials raised to this bequest stating that:

> The executor named in the Will petitioned the Court on August 26, 1948 to admit the Will to probate. The Public Administrator of Kings County objected to the Probate of the Will on the grounds that decedent was not of sound mind and memory; that the Will was not the free and voluntary act of decedent; the Will was procured by the fraud and undue influence of other persons; that the Will was not executed in accordance with the laws of the State of New York; and that the bequest to the State Bank of the USSR is invalid and void under New York law.[45]

As if this list of all the reasons why the will should be declared invalid was not enough, Recht noted that in 1950 a Special Guardian was appointed "who

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[43] Ibid., 69.

[44] Charles Recht was the subject of much controversy throughout his career having been the official legal representative of the Soviet government since at least 1921. "Recht's Appointment Not Secret," *New York Times*, Feb 20, 1921, 3. He was even named by a witness to the House Un-American Activities Committee in 1939 as being the means by which the Soviet government deprived heirs in the USSR of their inheritance. D.H. Dubrowsky testified before the Dies committee that heirs in the USSR were forced to sign powers of attorney over to Charles Recht for their rights to inheritances of estates of persons who died in the United States. Dubrowsky asserted that Recht than deposited the money with the Soviet government which could then do as it pleased with it. "Says Soviet Pays Propaganda Costs with our Dollars: Dubrowsky Tells Dies Group Total Raised from 'Rackets' Here Runs into Millions," *New York Times*, Sept 24, 1939, 1.

[45] GARF f. 9562, op. 2, d. 69, ll. 6-7.

employed every means to attempt to set aside decedent's Will."[46] Part of the Special Guardian's report stated: "The contents of the Will are such that many of us, here in the United States of America, would have grave doubts with respect to the mental capacity and testamentary capacity of the testator."[47] Thus, Mr. von der Heid's mental capacity was questioned solely because he made a bequest to an institution within a country which was at political odds with the United States.

Not only did state officials want to have the will declared invalid and, perhaps wanting to avoid appearing self-serving if the estate was to escheat (or revert) back to the state, they also took it upon themselves to determine to whom Mr. von der Heid *should* have left his estate. In regard to the Will not being executed in accordance with New York law, Recht noted that under New York law a person could not leave more than one-half of his estate to charity if he was survived by next of kin. An investigation was then conducted to see if Mr. Von Der Heid, who was originally from Germany, had next of kin living in Germany. Later, three nieces in Germany were discovered who received $41,000 of the $63,000 estate.[48] Clearly, Mr. von der Heid either did not know of the nieces or purposely disinherited them. In either case, the state was amazingly proactive in seeking out anyone who could possibly trump the claim made by the State Bank of the USSR to his estate.

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[46] Ibid.

[47] Ibid., 70.

[48] GARF f. 9562, op. 2, d. 69, l. 179

This, however, still did not satisfy state and local officials. In 1953, the Public Administrator of Kings County objected to Gosbank receiving *any amount* on a number of grounds. In particular the Public Administrator declared that the legacy was contrary to public policy of the State of New York in a modified version of the defensive theory. Furthermore, the Public Administrator employed the use and benefit principle by declaring that Treasury Regulations of the United States government prohibited payment to the State Bank and the ultimate beneficiaries would not have the benefit, use and control of the legacy.[49] The Attorney General of New York also objected to Gosbank's receipt of any portion of the estate. It was even less subtle in its theory of where the money would really go stating "that 'confiscation' of the legacy to the State Bank would occur if paid, and that the ultimate beneficiaries of the charitable bequests are uncertain."[50] Recht bluntly stated to Iniurkollegia that it was Cold War tensions and fear that the funds would be used somehow against the United States in this present state of American-Soviet conflict when he observed:

> It has been intimated by the attorneys for the opposing parties that....the word "science" is rather dangerous as it would be against public policy of the United States during the present tension bordering on hysteria. It was intimated that the only science existing in the USSR is the science of nuclear fission. If this contention is presented to the Attorney General or

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[49] Specifically, the grounds were that "the State Bank of the USSR, hereinafter referred to as the State Bank, is an unincorporated association, unqualified to receive a legacy; if the State Bank is a corporation, then its Charter and Soviet laws make it unqualified to receive the Charitable legacy; it is not within the scope of the State Bank to receive the legacy for the advancement of art and science within the USSR, under the terms of the Will; Treasury Regulations of the United States' government prohibit payment to the State Bank; the State Bank and the ultimate beneficiaries would not have the benefit, use and control of the legacy; special circumstances made it advisable to withhold any payment to the State Bank; section 269 of the Surrogate's Court act precluded any payment to the State Bank; and that the legacy to the State Bank is contrary to the public policy of the State of New York." GARF f. 9562, op. 2, d. 69, ll. 8-9

[50] Ibid.

> intimated to the Court, we would submit the names of some institutions, whose research could not, even by a long stretch of the imagination, be construed to have military or strategic value. Therefore, we are preparing to submit to the court the name of the Moscow Art Theatre for Arts; and, for sciences, the Medical department of Moscow University. Or, if that be considered to be still under suspicion, we shall submit the name of the Moscow Zoo.[51]

However, even these reasonable alternatives could not reassure state officials and the Office of the Attorney General of the State of New York responded that it absolutely would not permit anything of value to be transferred to the USSR and "implied that sending anything to the USSR was the equivalent of 'giving aid and comfort to a common enemy,' which is the definition of treason in the United States Constitution. The Judge then made the statement that Congressional Investigating Committees would undoubtedly investigate him and his court, were it heard in Washington that this court sent assets to the USSR."[52] By 1954, only $13,000 of the $63,000 remained. The nieces had been awarded $41,000 and $9,000 was allocated to Charles Recht, the State Bank's attorney and to Frederick Keck, the Special Guardian who had been appointed.[53]

In December 1955, Recht advised Iniurkollegia that:

> As you know we have until December 1956 to try and withdraw the approximately $13,000.00 deposited with the City Treasurer by proving benefit, use and control. The manner in which this court is behaving is such as to make us believe that if we were to move to withdraw at this time, then we will surely get a decision against us. Such a decision, in this particular case, cannot be appealed from. Therefore, in view of this, it is suggested that we do not attempt to make the withdrawal at this time, but,

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[51] Ibid., 59-60

[52] Ibid., 8-9.

[53] Ibid., 179.

> instead we should wait for about eight months, or preferably, until after November 1956 when general elections will take place in this country.[54]

In the end, even waiting until after an election cycle could not help Recht in his attempt to have the State Bank of the USSR receive even a portion of the estate of Henry von der Heid as Dwight D. Eisenhower was reelected for a second term in November 1956. A different administration may not have shifted policies despite Recht's perception that a change in leadership could have been beneficial. In 1956, the court ruled that "conditions in the Soviet Union are such that the Court had no guarantee that the money would be used for the purpose stipulated in the Will" and further that "if conditions within Russia changed in the next two years, Mr. Recht could apply for the money."[55] In 1958, the court ruled that the remaining $13,000 be given to two institutions in New York.

An article in the *New York Law Journal* from Tuesday, Nov 25, 1958 noted that at the trial on October 1, 1958 "not a scintilla of proof was offered by the State Bank of the Union of Soviet Socialist Republics to support its claim that present circumstances within the Soviet Union warrant the transfer of fund to the Soviet Union" and "the policy of the Surrogate's Court to prohibit the sending of bequests or money behind the Iron Curtain is confirmed."[56] Accordingly, the Court designated "the Brooklyn Institute of Arts and Sciences for the use and benefit of the Brooklyn Academy of Music, and New York

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[54] Ibid., 131.

[55] GARF f. 9562, op. 2, d. 69, l. 179, 205 and 242.

[56] Ibid.

University to be the recipients of said fund in equal shares."[57] These institutions were then praised for their service to the United States noting that "[t]he Brooklyn Academy of Music is about to commence its second century of service to the City of New York with deep roots in American ideology" and that "it deserves the full support of the people of this city and no less this court."[58] New York University was praised for having "students of each of the three major faiths matriculate there annually in greater numbers, respectively, than in any of the country's other private universities or sectarian seminaries, with active encouragement for each to practice his or her own religion."[59]

This case and its ten year odyssey through the courts demonstrate the politics of personal property on the individual level. Mr. von der Heid's wishes were denied and even the many alternatives explored by the attorney for the State Bank of the USSR to ensure that the funds would not be used to develop nuclear science ultimately failed. Charles Recht, of his own accord, it appears, contacted the schools to propose some monies should be set aside to create scholarships for Soviet students to study at these institutions in the United States.[60] Iniurkollegia's closing statement in the file stated that Attorney Recht had suggested this option without consulting the embassy and that the Soviet ambassador in the United States, Comrade Menchikov, did not believe it was necessary to create a foundation for Soviet students using the money because "our"

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[57] Ibid.

[58] Ibid.

[59] Ibid.

[60] Ibid., 219-20.

consent could be construed as approval of the improper and discriminatory ruling of the court in the case. Inuirkollegia agreed with the embassy's opinion, and directed Recht to stop negotiations and close the case.[61]

On the flip side, transfers of Soviet citizens' property to heirs living in the United States were not always honored but the refusals were more subtle, citing bureaucratic obstacles or lack of a proper claim rather than any political reasons. In one case, a woman who was living in Portland, Oregon (Emilija Liepa) contacted Iniurkollegia for help in receiving an inheritance after the death of her husband in Lithuania. Unfortunately for Emilija, her husband had subsequently married another woman in Lithuania (without divorcing her or even telling her) and it was this second "wife" who received the inheritance. Emilija wrote to Iniurkollegia that "Edvards Liepa, my late husband, shortly before his death in December 1957 married another woman in Kaunas, but have [sic] not lived with her. He told her he was single, but he was not divorced from me. Never asked [for] it. He wrote letters to me as to his wife. I answered him. If you need them I can send them to you."[62] However, Emilija was unable to produce her marriage certificate. She stated that they were married in Rummelsburg, Poland in December 1944 but due to the war the documents and marriage books had been destroyed.[63] The court denied her appeal because she "failed to prove" she was in a

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[61] Ibid., 1.

[62] GA RF f. 9562, op. 2, d. 95, l. 16.

[63] Ibid., 24.

registered marriage with citizen Liepa and the Supreme Court of Lithuania affirmed the People's Court decision.[64]

In another case, a man (Vadim Lisitsin Yurenev), who had gone to America as a student in 1916 and then stayed tried unsuccessfully to receive his inheritance from his mother. His case was complicated by several historical upheavals. He lost contact with his mother until after World War I had ended and the Bolsheviks came to power. His mother died in 1940 and named a friend of hers living in Leningrad as her representative (executor). Her property consisted of a house which was not liquidated until during World War II and during this time Vadim lost contact with the executor (not surprising given the extended siege of Leningrad) but was able to renew contact with the executor after the war through Iniurkollegia. Vadim had been trying to get what he stated was 5,300 rubles held by the executor as the proceeds from the sale of the house transferred to him since 1945, and his letter of 1950 to Iniurkollegia stated that he had recently found out he had cancer of the lower jaw and was very ill. He also asked that in the event of his death, the money be transferred to his friend with whom he was living and who had been helping him for over a year and who was his sole heir.[65] The file also includes Vadim's letter addressed to "Esteemed Josef Vissiorionovich" requesting help with his request. His letter to Stalin was humble stating "[e]ven though I understand that this request is nothing on the scale of this huge responsibility lying on your shoulders, I still dare to disturb you because I believe in your love for humanity [*chelovek o liube*]" and that the

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[64] Ibid., 31.

[65] GA RF f. 9562, op. 2, d. 17, l. 42.

history of his case "will hopefully interest you as an example of what can happen to a person who found himself away from his motherland by fate and who spent all his life doing honest labor." Vadim hinted that transfers of this kind were not always granted stating that he had attached

> my petition to transfer my money here to America in dollars or if that is not possible, in goods. I hear that such permission takes a long time to receive and that this type of request is not always honored. That is why I dare to address you directly due to the extraordinary circumstances and ask your assistance in granting this permission before it is too late. Please forgive me my audacity but at this point of my life, your help is my only chance. I hope that you and my former motherland where I was born sympathize with me.[66]

Notwithstanding all of his efforts, the case was closed without any indication of a transfer of funds. The closing statement notes that Iniurkollegia possessed 864 rubles and a state bond (titled "the third state borrowing to restore and develop the people's economy of the USSR") in the amount of 1000 rubles which had been intended for Vadim. However, he died on April 5, 1952 and that there had subsequently been no claim to this property even though it was known that Vadim had willed all of his property to his friend living in the U.S. Thus, it is clear that transfer of property from Soviet citizens to heirs in the United States did not always take place. Yet, Soviet courts did not openly present the political climate of the time as an obstacle. Rather, Soviet jurists and Iniurkollegia representatives apparently wanted to avoid politicizing these types of situations because it only undermined their arguments about the (openly) discriminatory policies and court practices employed against their citizens.

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[66] Ibid., 51.

Conclusion

The politics of personal property during the Cold War prevailed over a history of promoting testamentary freedom in the United States. Federal, state, and local officials and judges intervened in personal estate matters to prohibit anything of value being transferred to the USSR. Soviet legal scholars argued that reciprocity between the two countries should be honored and cited to cases where individuals living in the United States had received funds in estates transferred through Iniurkollegia. While there were cases in which the transfers were denied, it was presented as a defective claim and not couched in openly ideological or political terms. Soviet scholars criticized the hypocrisy of U.S. officials in Cold War inheritance transfers on the basis that they violated laws protecting property rights because of allegations that the funds would either be used by the Soviet government against them or that Soviet citizens would not actually receive the funds. American legal scholars, for the most part, agreed that reciprocity existed and also criticized U.S. judges and officials for bringing politics into individual inheritance matters. To return to Mr. von der Heid's case, the court noted in its justification of awarding the funds to educational institutions in New York that "fulfilling this large clamor for education from such large numbers strengthens the concept of human dignity so necessary to defeat the foreign ideology of supremacy of the state over the individual."[67] It is ironic that the results in this and many other cases were precisely the opposite of what the court asserted. Rather than privileging the individual over the state, the court employed what it had termed was a "foreign ideology" by denying Mr. Von Der

[67] GARF f. 9562, op. 2, d. 69, 205, 242.

Heid's individual testamentary wishes and sacrificing the wishes of the individual to the perceived needs of the American body politic.

In the 1960s, Soviet inheritance law was broadened to remove restrictions on testators other than preserving mandatory shares for minors and dependents. After this, the debate on the form of the law was moot because the law now conceptually closely resembled those in Western Europe and the United States. Yet, as I argue in the following chapter, Soviet inheritance law still differed because of its practical effects. The limits to types of property held individually largely vindicated the claims of Soviet officials and jurists that "bourgeois" property had been abolished. Still, the inherent conflict in property relations remained and the new concern of officials was the widespread abuse of personal property rights. Soviet citizens' used their automobiles as taxis and rented rooms in dachas. This behavior undermined the goals of Soviet leaders because it effectively transformed consumerist items into profit-making property. Thus, the tension over inheritance law may have been resolved but the concern over property relations and use continued to preoccupy officials.

Chapter 6

Full Circle: The Debate on Inheritance Law Becomes Moot

"One reader asks: 'What will happen to inheritance [under Communism]?' Judge for yourself....who needs a full inheritance when each new generation through its own labor wins the right to all things the previous generations have used, only on a still broader scale and in still more perfect forms?"[1]

As previous chapters have argued, the institution of inheritance, and its role within a socialist society and to the family occupied Marxist theorists, Bolshevik revolutionaries, and Soviet jurists as the first socialist society experimented with implementation of radical and comprehensive policies meant to remake the family and property relations. Moreover, the role of personal property was at first advocated on social welfare premises, then beginning in the mid 1930s lauded as a sign of the contributions to and prosperity of sociality society. In the immediate post-Stalinist and Khrushchev years, a new concern emerged about personal property-that it was being used to derive unearned income. Despite the lauded official abolition of private property, some individuals had derived means of using what property remained in an individualist manner. A campaign was launched in the media to condemn such "parasites" who used personal property for profit seeking means. Inheritance continued to remain a much discussed topic in tandem with the family and the role of personal property. It remained an anomaly in many respects. For example, acquiring a second dwelling by inheritance was the sole exception to the one dwelling (or part thereof) per family rule. Furthermore, testamentary freedom was broadened again during the Civil Code enacted under Khrushchev. Aside from mandatory provisions for minors and dependents, an individual

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[1] "Answers to Readers' Questions: For All, in the Interests of Each," *Izvestiia,* August 30, 1961, p. 3 in *Current Digest of the Soviet Press* 13, no. 35 (September, 27, 1961): 24.

had complete testamentary freedom. The paradoxes inherent in allowing inheritance and, indeed, personal property, were legally resolved in favor of broad testamentary freedom, despite the official concerns about the ways in which some citizens were abusing the rights to personal property by using it to derive unearned income. The debate had come full circle and the form of inheritance laws, at least, indicated an acknowledgement that Soviet officials had resigned themselves to the presence of personal property in Soviet society (at least until the complete construction of communism had been achieved), although abuses were targeted under criminal law. However, I argue that, despite the form of the law resembling Western legal codes and the abuse by some individuals of personal property, Soviet authorities had, in fact, achieved much in their quest for the abolition of capital as the basis for property. Large scale reproduction of wealth through inheritance was not on a scale equivalent to that, in particular, in the United States. Still, despite this success, notions of individualism persisted and thrived as citizens used what property they had to benefit themselves. In addition, family members continued to fight over inheritable property and thus, the attempts to remake society so that collectivism would prevail were only further hindered by the expansion of rights to personal property and inheritance.

Soviet families, communist morality and profit seeking parasites

The strengthening of the Soviet family and its distinction from the bourgeois family, which allegedly only served to exploit and prostitute women, continued to remain important in the years following Stalin's death and under Khrushchev. The theories expressed by Soviet jurists for promotion of inheritance in a socialist society were mirrored in the legal literature on family law which stressed that laws pertaining to the

family were aimed at "the further strengthening of the Soviet family based on principles of communist morals" and educating all Soviet citizens to feel highly responsible for the family.[2] One periodical responded to letters from Soviet citizens about affairs of the heart musing about one person's failure to create a "real, strong Soviet family" because of problems identified as "persistent survivals of capitalism" that included "[p]eople who are property-grabbers, shallow and callous egoists, and self-lovers [who] generally are not capable of so noble and selfless a feeling as love..." Consequently, those entering into marriage and the creation of a family needed "a feeling of great responsibility for Soviet society and for the future creation of a family..."[3]

While responsibility on the individual level was stressed, "Soviet power" was praised for "resolutely carrying out actions for the liberation of women" and for "clearing the influence of religious, racial, and national prejudices" of which the legislation on marriage was an important factor.[4] Far from a withering away of family, inheritance and a personal property scheme, these institutions only increased in visibility and viability, yet they were reinvented and then subsequently redefined along socialist ideals. Jurists asserted that the family no longer existed in its exploitative capitalist form because women had the legal right to work and to exit an abusive marriage through divorce. In fact, one Soviet jurist argued that "bourgeois legislation concerning women in capitalist

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[2] E.M. Borozheinkin, *Pravovie osnovi braka i sem'i* (Moscow: Iuridicheskaia Literatura, 1969), 4-5.

[3] Harrison Salisbury, "Dear Comrade Lonelyhearts: Advice to the lovelorn, Soviet style, warns that man-woman relations are indeed complex," *The New York Times,* June 27, 1954, pg. SM11. In this article, Salisbury translated and excerpted passages from an article in *Iunyi Kommunist* by A. Kharchev, a Leningrad candidate for a doctorate in philosophy.

[4] Borozheinkin, *Pravovie osnovi braka i sem'i,* 23.

countries provides directly for inequality of women in marriage" because the husband was recognized as the head of the family with greater rights and women were paid less for the same work and were underrepresented in elective and ruling bodies.[5] Jurists argued that inheritance was now socialist in content because the economic bases of exploitative profit from another's labor and reproduction of wealth in this form no longer existed. Personal property was, therefore, encouraged because it represented the success of socialism. Citizens were able to increase their material well being through purchase of consumer goods earned by contribution to socialist labor.

Yet, thorny issues still plagued the family and engendered media debate. One of them was ongoing effects of the 1944 Edict on Marriages (discussed in chapter two) that resulted in "blank spaces" on birth certificates for children born outside of registered marriages. Articles in 1960 presented both sides of the debate. V. Kaverin argued that the law should be changed, using the case of Larisa P. to illustrate that young women who were deceived by men who already had a wife or who just did not intend to marry them ended up with the responsibility of raising the children while the fathers moved on to their next girlfriend.[6] Vadim Belyaev responded to this article by stating that women such as Larisa P. were guilty of dissoluteness and moral slovenliness and argued that "the law demands registration of marriage, both for durable ties between the partners and

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[5] Ibid., 57. Furthermore, Borozheinkin emphasized the restrictions on marriage in the United States based on race stating that many states at this time still prevented marriage between Caucasians and African Americans. This was, in fact, inaccurate because these state laws restricting marriage based upon racial classifications were struck down in a Supreme Court decision in 1967, two years prior to the publication of Borozheinkin's treatise. See Loving v. Virginia, 388 U.S. 1 (1967).

[6] V. Kaverin, "Witnesses for the Prosecution," *Literaturnaya Gazeta* (April, 2, 1960), 2 in *Current Digest of the Soviet Press* 12, no. 21 (June 22, 1960):13-14.

particularly for protection of future children" and blamed her for being stupid and naive, for not investigating his background and insisting on a registered marriage.[7] While these two debated the relative morals and responsibility of father and mother, one respondent, a teacher, argued for the child. N. Dolinina observed that on average about one-fifth of her class consisted of children for whom there was a blank after the word "father" on their birth certificates. She pointed out that these children were insulted by other children, called "fatherless" and concluded that "[c]hildren must be protected against unnecessary suffering. It is enough that the child grows up without a father. Should he also suffer affront, insult, shame, seeing his documents differ from those of others?" Thus, she observed that it was not really about the mothers or even about the fathers and their relative moral failings but about the stigma that children born of unregistered marriages faced because of the "blanks" in their documents.

Another focus of media attention in the early 1960s was the role of the family under socialism and, at the same time, the parasitic elements of property ownership. These articles continued to stress the bourgeois versus socialist paradigm and to take issue with the representations in bourgeois societies of the "failure" of the Soviets to remake the family. One article lamented that "[b]ourgeois sociologists, writing about the Soviet family, like to describe the situation as though the family had maintained its existence against 'all attempts by the Bolsheviks' to abolish it."[8] Another editorial expressed that "[t]hose who use their personal property-dachas and individual

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[7] Vadim Belyayev, "The Third Person," *Literaturnaya Gazeta,* (May 14, 1960), 2 in *Current Digest of the Soviet Press* 12, no. 21 (June 22, 1960): 14-15.

[8] A. Kharchev , "The Family and Communism," *Kommunist,* No. 7 (May, 1960), 53-63 in *Current Digest of the Soviet Press* 12, no. 21 (June 22, 1960): 9-12, 9.

automobiles-as well as state resources, such as public transportation and even land, to derive unearned income have...taken the path of parasitism."[9] The problem of unearned income, of course, would be ongoing and under Brezhnev would result in authorities making what James Millar has termed, a "Little Deal" with the population by allowing petty trade and private enterprise to proliferate because the services often filled a gap in state services or made "the system more flexible and more responsive to household demand." Thus, private repairmen and even those who stood in long lines for scarce goods on behalf of others for profit represented a large sector of private enterprise.[10]

Policy makers engaged in an active struggle under Khrushchev to limit the property acquired by such "parasitical" means. The Supreme Soviet of the RSFSR issued an Edict on May 4, 1961 "on the struggle against persons who avoid socially useful work and lead an antisocial, parasitic way of life" targeting individuals who derived "nonlabor income from the use of personal automobiles" employed "hired labor and obtain[ed] nonlabor income from a summer house [dacha] and auxiliary land plots" and built "dwelling houses and summer houses with money obtained by nonlabor means and with illegally acquired building materials."[11] The Edict provided that such individuals could be banished to "specially designated localities for a period from two to five years," that

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[9] "He Who Does Not Work, Neither Shall He Eat," *Kommunist,* No. 14 (September, 1960), 13-21, "Private Dachas, Gardens and Cars Breed 'Parasitism,'" in *Current Digest of the Soviet Press* 12, no. 43 (November 23, 1960): 3-5, 3.

[10] James R. Millar, "The Little Deal: Brezhnev's Contribution to Acquisitive Socialism," *Slavic Review* 44, no. 4 (1985): 700. See also Siegelbaum, "Cars, Cars and More Cars: The Faustian Bargain of the Brezhnev Era," in *Borders of Socialism.*

[11] Edict of the Presidium of the Supreme Soviet of the RSFSR, May 4, 1961, "On Intensifying the Struggle Against Persons Who Avoid Socially Useful Work and Lead an Antisocial, Parasitic Way of Life," *Sovetskaia iustitsiia* 10 (1961): 25 in *Ideas and Forces in Soviet Legal History,* 286.

the property acquired by such antisocial means would be confiscated and they would be subject "to mandatory assignment to work at the place of deportation."[12] In this regard, there was a subtle shift in the official attitudes toward property in the years following Stalin's death and under Khrushchev's leadership. Instead of lauding the abolition of private property and the distinction of the presumed non-capital basis of personal property in the Soviet Union, a public campaign acknowledged that personal property could be used (and indeed was being used by quite a few individuals) to derive unearned income which undermined the entire conceptual basis for allowing personal property. Personal property and consumer items were still encouraged for the material and cultural needs of individuals. As one jurist argued "Communism, as a social system based on *collectivist* principles, does not oppose the *personal, individual* needs of the citizens..." but "it is also necessary to have stricter regulation of those articles of consumption that may be used for purposes of deriving nonlabor income (dwelling houses, summer houses, automobiles, etc)...."[13] Yet authorities struggled with how to curb the individualist tendencies of citizens to use their property for profit.

Academician S.G. Strumilin was asked to respond to questions posed by readers to *Izvestiia* about the role of personal property in contemporary Soviet society and about its future under communism. In addressing an inquiry about individual land plots, and personal cars and dachas, Strumilin argued that:

> generally speaking, these articles of personal property have no future. The people themselves will throw away personal cars and dachas and

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[12] Ibid.

[13] S.S. Alekseev, *Grazhdanskoe pravo v period razvernutogo stroitel'stva kommunizma* (Moscow, 1962), 185-215 in *Ideas and Forces in Soviet Legal History,* 290.

> individual plots like so much excess baggage when modern boarding houses with all the conveniences spring up in the best and most picturesque locations, offering separate rooms, yachts, motor scooters for pleasure rides, helicopters for excursions, etc., and when excellent cars of all models and colors (just pick one to suit your taste!) are lined up in the public garages, just waiting for passengers. Only when one man draws abundantly from the 'ours' will he gladly give up the 'mine.'[14]

Strumilin, thus, retreated from an argument for collective sacrifice until the construction of communism had been completed and acknowledged that personal property such as cars and dachas would not be willingly sacrificed for the benefit of the collective until there was something even better to replace it such as yachts and helicopters for everyone's use. Strumilin echoed the concerns of others that "[s]ome persons become owners of dachas and villas through illegal and dishonest means, and the old definition of property as theft is fully applicable to them." Moreover, "...dachas with land plots are often turned into a source of speculation and profit. This means that even personal property, if used for money-grubbing and personal enrichment, may become private property and capital" and that "[c]ases are known in which owners of four-wheeled movable property—cars—extract incomes from them."[15] This attack on "parasites" who used personal property to derive unearned income and who were preoccupied with seeking personal profit, thus, produced both a media campaign and concern in the legal literature. P. Orlovsky emphasized in a legal journal that "[t]he right of personal ownership of housing has a purely consumer nature: A citizen may build or acquire a dwelling as a personal owner only for purposes of occupancy by himself and his family"

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[14] "Answers to Readers' Questions: For All, in the Interests of Each," *Izvestiia,* August 30, 1961, 3 in *Current Digest of the Soviet Press* 13, no. 35 (September, 27, 1961): 24.

[15] Ibid.

and that "[t]he law entirely rules out the use or disposition of housing for the purpose of deriving unearned income."[16] However, the allowance of inheritance of a dwelling or partial dwelling complicated even the principle that each family was only entitled to one dwelling. Orlovsky notes that the sole exception to the single family-one dwelling rule "is the acquisition of a second dwelling by inheritance."[17]

Furthermore, there was not unanimous agreement among economic specialists about whether personal property should cease under communism. Some thought, for example, that the "proposals of certain economists and philosophers for the centralization of personal automobiles, the cooperative ownership of dachas, etc." have not "been thoroughly thought out." Ye. Manevich argued, "[t]here is no doubt whatever that during the period of full-scale building of communism, full use must be made of the principle of personal material interest, and accordingly personal property must be retained. Any attempt to skip over stages, to speed the extinction of personal property, can bring nothing but harm."[18] Moreover, scholars could not seem to agree on whether personal property should be retained once communism had been achieved. Some economists thought it would remain and consist only of items for individual use. Others opined that because under communism workers would "receive all material and spiritual benefits according to their needs" the "economic law of distribution according to work [that is,

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[16] P.Orlovsky, "On the Right of Personal Ownership of Housing," *Sovetskoe gosudarstvo i pravo,* No. 7, (July, 1961): 58-66 in *Current Digest of the Soviet Press* 13, no. 39 (October 25, 1961): 3-6, 3.

[17] Ibid., 4.

[18] Ye Manevich, "Economic Labor Incentives and the Forms of Transition to Communist Distribution," *Voprosy Ekonomiki,* No. 5 (May, 1961): 76-85 in *Current Digest of the Soviet Press* 13, no. 33 (September 13, 1961): 10-14, 14.

providing material incentives] becomes totally inoperative."[19] Thus, the problem of personal property was never fully resolved in the Soviet Union. Property and property relations, of which inheritance was seen as an integral component, were reinvented and redefined from the early post-revolutionary years through the broad civil code under Khrushchev but there was never unanimity of opinion regarding whether personal property would be extinguished once communism was fully achieved.

Inheritance in practice: A break from the late Stalinist years or continuity?

The court cases following Stalin's death until the new Civil Code in late 1961 (discussed further below) and even after its enactment follow much of the same pattern as those in the last Stalinist years. Moreover, the disputed court cases were decided based upon rule of law rather than on ideological terms. In one case in which G. Makarenkova sued a Dacha-Construction cooperative that had refused her membership after the death of her husband (who had accumulated shares worth 9,128 rubles), the court noted that the allegations that Makarenkova had acted "inconsistent with the norms of communist morality" were not confirmed and, furthermore, had "no legal significance for the resolution of the case."[20] In another case, the Procurator General of the USSR protested a decision based upon an approximate equal division of a house among five heirs and argued for a more needs based division of the property. His appeal for favoring one heir who needed the living space and who was an invalid was denied based upon the fact that the law provided for equal division among all heirs. P.V. Yurina died in 1960 in

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[19] Ibid.

[20] Makarenkova v. The Dacha-Construction Cooperative of the Workers of the Maly Theater et al, *Sotsialisticheskaia zakonnost'*, 6 (1967): 89 in *Soviet Statutes & Decisions* 4, No. 3 (1968): 91-92.

Armenia. She left five children as heirs to a house. The Procurator General of the USSR claimed that the interests of one of her children, Stepinida, had been harmed and that Stepinida should receive a larger portion of the house based upon the fact that she was a first class invalid, had been living in the house until the death of her mother, and that three of the other heirs had other living spaces. The Procurator argued that according to the appraisal report it was not possible to physically divide the house equally among the five heirs but that it was possible to give the property to those heirs who needed living space and provide a monetary compensation to the other heirs. Furthermore, he asserted that one of the heirs, Anna, owned a two story house together with her husband and they rented out some of these rooms, making their house a source of laborless income. In 1968, the Supreme Court ruled to deny the protest because under the Civil Code of Armenia, each heir at law has an equal right to the estate.[21] As these cases illustrate, the law and not notions of fairness or social equality prevailed in these decisions.

The mark of the Stalinist years was still, however, present in cases in which a family member had been rehabilitated after Stalin's death and the family sought compensation for the property of the deceased loved one. For example, in a 1962 case, Savitsky sought to be compensated for a summer residence belonging to his father as part of a cooperative society. His father was condemned in 1937 and in that same summer residences in the Lianozovo settlement were liquidated and transferred to the local Soviet. In 1958 his father was posthumously rehabilitated. Savitsky claimed that he should be an heir to the property of this father. The Moscow City Court refused his claim and the Supreme Court of the RSFSR upheld the decision declaring that the father had

[21] GA RF f. 9474, op. 5, d. 4997, ll. 1-4.

been a member of a cooperative society and, as such, only had the right to use the summer residence and other structures but did not own such property. Thus, Savitsky's only option was to demand return of payments for the structure. Savitsky's problem was that he had no proof for his claim that his father had paid to erect the structure (not surprising given that twenty-five years had passed). In this manner, the families of the victims of the Stalin years continued to be victimized. While their loved one may have been posthumously rehabilitated, the chances of recovering any property that had been confiscated were daunting at best.[22]

Furthermore, the cases continued to be complicated by external factors which made applying the laws of inheritance difficult. In one case, a man filed to inherit a one-quarter interest in a house after the death of his registered spouse in 1948. He had never registered a divorce from her but had ceased marital relations with her in 1933 and had been living with another woman since that time. Since the law in 1933 allowed unregistered marriages and provided that a prior marriage was dissolved by marrying someone else, the marriage to the first wife should have been dissolved by ZAGS. He and his first wife had one son who had been convicted in 1949 for armed robbery, was sentenced to ten years in a labor camp and owed restitution to the victim, Pankova, in the amount of 8,220 rubles. Pankova was also living in the house in question. Initially, the father was granted the certificate of heirship in 1950 and then sold the interest in the house and the purchaser evicted Pankova, complicating the case even more. The Procurator filed a petition to invalidate the father's certificate of heirship and have a certificate of heirship issued in favor of the son, which was granted in 1951. As the case

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[22] *Bulletin' verkhovnogo suda RSFSR* 6 (1962): 6.

wound through multiple courts, the interest in the house was sold to different parties and the various decisions were overturned. Pankova expressed frustration to the court in the following terms:

> Dear comrades, I lost my son in the war, so I live with his three daughters, I went to Moscow again, I spent all this money, the case was heard [several] times, so many protests from the procurators, so much money and effort wasted, this case has been going on for six years, so how much more can I tolerate....six years later we're back to the same decisions and I'm being evicted again. So, again, I'm back to where do I get my 8220 rubles and who do I charge my incidentals due, court costs and trips to Moscow and I believe the truth is on my side and the case should have been decided in 1948/1949 and shouldn't have lasted for six years.[23]

Finally, in 1955, the Supreme Court of the USSR reinstated a 1951 decision that had awarded the son the one-quarter interest which presumably was then used to pay restitution to Pankova.[24] This case demonstrates the practical difficulties in applying the law. Many competing claims were in place including those of Pankova, a victim of a crime committed by the son and heir to his mother's interest in the house and the purchasers of the father's interests of the house before the Supreme Court ultimately ruled that the father had no interest. Clearly, the courts struggled with how to apply the law when the facts were so complicated. However, in the end, the Supreme Court applied clear legal principles in determining that the father had no interest because, under the marriage and divorce laws as they existed in 1933, his marriage to the deceased had ceased and he was married to someone else and therefore, not a spouse within the circle of heirs under the law.

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[23] GA RF f. 9474, op. 4, d. 4669, ll. 17-19.

[24] Ibid., 22.

When a former collective farm household was involved, the courts struggled with whether to apply the Land Code or the Civil Code. M. N. Rudenko sued her stepmother for inheritance to her deceased father's property (who died in March of 1960). The property had been part of a collective farm (with her father and stepmother as members) until the beginning of 1960, shortly before her father's death. Rudenko claimed that the collective farm had ceased to exist and she was therefore an heir under the Civil Code to her father. After several lower court decisions, the Supreme Court of the Moldavian SSR ruled in 1963 to deny Rudenko's claim on the basis that she had lost her right to a share in the collective farm household property because she had left the collective farm household many years previously. The Court reasoned that since she had lost her right to a share, the fact that the property was no longer part of a collective farm household did not matter. The Supreme Court of the USSR vacated this decision as not being made according to law and ruled that once the collective farm household ceased to exist, inheritance under the Civil Code applied to all heirs "regardless of whether or not they were members of the former household and whether or not they received at one time a share of the property of the household by right of membership in it."[25] The Supreme Court's ruling reasoned that under the Land Code, Rudenko's right to the property would have been lost since she severed ties with the kolkhoz in 1949 and, in accordance with the Land Code, lost her right to her share of the kolkhoz property six years after that. However, since the legal status of the property changed prior to her father's death and it

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[25] Rudenko v. Rudenko *Bulletin' verkhovnogo suda USSR* 4 (1964): 30 in *Soviet Statutes and Decisions* 4, No. 3 (1968): 97-101. See also *Sbornik postanovlenii plenuma i opredelenii sudebnoi kollegii po granzhdanskim delam verkhovnogo suda SSSR, 1962-1978* (Moscow: Gosudarstvennoe Izdatel'stvo Iuridicheskaia Literatura, 1980), 227-29.

was no longer kolkhoz property, it was now subject to the civil code.[26] In this case, the courts were at pains to determine which rule of law should apply. In the meantime, these lengthy legal battles had very real everyday consequences for the parties involved, as Pankova's case discussed above illustrated. In the present case, M. N. Rudenko's letter to USSR Procurator Nikulin evidences a distraught individual who perceived herself as having been discriminated against on many levels. Whether her mental and emotional distress preceded the legal battle (which is likely given her own account of her life while away from the village) or was merely exacerbated by it, she claimed that:

> I systematically receive complaints and threats from the court. All this paperwork creates an unbearable atmosphere for my life and they refuse to pay me my disability and refuse to find me a job and they call me PARASITE [*TU-NE-YAD-KA*]! How long is this bloodsucking [*krovopitiye*] and bowel-churning [*kishkomotaniye*] going to last? My nervous system is completely destroyed with all these battles with authorities and I have been called a psychopath. I wish they were put in my shoes, like for example, my pigs were, they almost tore each apart, they were all bloody and injured while I was held in a mental facility for a week but the hospital personnel are not idiots [*duraki*] like they are and did not admit me. If their psyche was traumatized like mine, they would long since have the nervous breakdown like my pigs did within a week or two and I, since 1961, without medical help, obviously, received so many sickening agents and I received them in this house that is in unsafe condition and burglarized.... Every minute I have to be nervous because of this gangster way of life which was organized by the landlords. But my goal is to...sue the falsificators and make them pay me for all the damages that I sustained over a three year period and return to me everything that my stepmother unlawfully keeps.[27]

Rudenko's letter to the court continued much in this fashion, disjointed and largely incoherent, accusing her stepmother of stealing corn, stashing money from stolen

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[26] GA RF f. 9474, op. 5, d. 5002, l. 2.

[27] Ibid., 5-11.

goods, of forcing local authorities to find "laws" allowing them to evict her and leaving her livestock to die from starvation, cold, and lack of care. She detailed all her complaints not only about local officials and judges relating to this case, but for all her grievances throughout her life against former employers and coworkers (and these are numerous indeed). This case demonstrates the complexities involved when dealing with inheritance in the Soviet Union. Most cases involved housing which was in much demand and the consequences for those involved in court battles that lasted for several years included emotional and physical distress as potential heirs engaged in legal and psychological battles. The situations described by many individuals of sharing living space with "enemy" family members are intolerable but the scarcity of housing and the significance of even small inheritances exacerbated the strife within these families. The disputed cases evidence the breakdown of fragile familial relationships, not just among step-relatives but also blood relatives.

The 1961changes codified in the 1964 Code

In 1961, the restrictions on persons to whom property could be willed were removed. Thus, after the enactment of the Fundamental Principles of Civil Legislation of the USSR and Union Republics (that was promulgated by the All-Union Supreme Soviet in 1961 and codified in the 1964 code), testamentary freedom was limited now only "by socialist definitions of the scope of property capable of individual ownership."[28] From 1945 until the promulgation of this law, even when there were surviving heirs at law, the decedent could make a will in favor of someone within the circle of heirs that disinherited other heirs at law as long as they were not minors or dependents. In a 1960 case, the will

[28] Hazard, Butler and Maggs, *The Soviet Legal System,* 391.

of a decedent who had bequeathed his property to his granddaughter and excluded his children (of majority age) was held valid. In 1957, S.I. Tatarashvili died and in 1959, his son sued to invalidate the will. While the will was initially invalidated by the Tbilisi People's Court and the Supreme Court of the Georgian SSR, the USSR Supreme Court overturned the decision ruling that even though grandchildren could only become heirs at law under a right of representation (that is, if their parent did not survive them), they were still considered within the circle of heirs at law and thus a will could be made in favor of a grandchild and exclude children of majority age.[29] There were still, however, limitations to testamentary freedom and it would not be until late 1961 that these would be removed. For example, a will could not be made in favor of a person or entity outside the circle of heirs at law if there were surviving heirs. Thus, for instance, in a case in which a lieutenant who died in July 1955 had willed his property to the Moldavian Academy of Sciences of the USSR, a son living in Romania who claimed he had lost touch with his father since 1944 but had just learned of his death in December 1955 was eventually declared the heir. The case centered around whether the amounts held in a savings account could be willed to anyone regardless of the inheritance law, but the Supreme Court of the USSR held that the law took precedent over the statement that one could made to a savings bank to distribute the proceeds of the account to someone upon death of the account holder.[30] This changed with the 1964 Code as indicated in a 1966

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[29] *Bulletin' verkhovnogo suda SSSR* 5 (1960): 4-6.

[30] *Bulletin' verkhovnogo suda SSSR* 2 (1961): 13-16. Note that the procedure for designating an heir to a savings account was apparently to fill out a card naming the heir upon death. This, however, as this case declared, did not trump the law that provided that property could only be willed outside the permissible circle of heirs if there were no surviving heirs.

decree which stated that funds in a state savings bank or in the State Bank of the USSR were not part of the hereditary property if the account holder had designated to whom to deliver the accounts funds in case of death.[31] Spouses could generally not be excluded, though. In one 1970 case, a decedent specified his wife and niece as recipients of the funds upon his death. After the funds were divided equally, his wife sued the niece to recover the other half of the funds (three hundred and three rubles). The Supreme Court ruled in favor of his wife, noting that funds held by citizens in credit institutions are presumed to be the joint property of spouses (and thus, the wife did not need to submit proof that this was, indeed, the case).[32]

The law as approved by the Supreme Soviet of the USSR on December 8, 1961, reflected a shift in thinking about Soviet society. Whereas Stalin had declared socialism had been achieved in 1936, this code now read that "the complete and final victory of socialism" had been attained and the USSR had now "entered the period of the expanded construction of communist society."[33] The Code went on to declare that "[p]ersonal ownership is derived from socialist ownership and serves as one of the means of satisfying the needs of citizens."[34] In order to illustrate what remained socialist about the

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[31] "O sudebnoi praktike po delam o nasledovanii, postanovlenie plenuma ot 1 iiulia 1966," *Sbornik postanovlenii plenuma i opredelenii sudebnoi kollegii po granzhdanskim delam verkhovnogo suda SSSR, 1962-1978*, 223.

[32] *Sbornik postanovlenii plenuma i opredelenii sudebnoi kollegii po granzhdanskim delam verkhovnogo suda SSSR, 1962-1978*, 227-28.

[33] "Constitution of the USSR, December 5, 1936, Article 10" in *Soviet Statutes and Decisions* 4, No. 3 (1968): 5.

[34] "Fundamental Principles of Civil Legislation of the USSR and Union Republics, Approved by the Supreme Soviet of the USSR, December 8, 1961" in *Soviet Statutes and Decisions* 4, No. 3 (1968): 6.

property system, it is important to note that many resources, in particular, land could not be owned privately. Article 21 provided that:

> [u]nder state ownership shall be land, minerals, waters, forests, industrial plants, factories, mines, quarries, and electric power stations; rail, water, air, and motor transport; banks and the means of communication; agricultural, trade, communal, and other types of enterprises organized by the state; and the basic housing funds of cities and urban-type communities. Land, minerals, waters, and forests, beings exclusively under state ownership, may be allocated only for use.[35]

In terms of personal ownership, Article 25 allowed that:

> which is intended for the satisfaction of...material and cultural needs. Each citizen may have under his personal ownership income and savings from labor, a dwelling house (or part of a house) and subsidiary household economy, household articles and utensils, and articles of personal use and convenience. Property which is under the personal ownership of citizens may not be used to derive non-labor income. A citizen may have one dwelling house under his personal ownership. Cohabiting spouses and their minor children may have only one dwelling house...under their common ownership.[36]

With regard to inheritance (for all but members of a collective farm or individual peasant household), Article 535 of the Code allowed for a citizen to leave all of his or her property by will to any person, whether or not within the circle of heirs for intestate succession or to the state, individual state cooperatives and social organizations. However, minor children and children unable to work were entitled to a mandatory share equaling at least two-thirds of what they would have received if there had been no will and the estate passed by operation of law. A decedent's spouse, parents and dependents

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[35] Ibid., 11.

[36] Ibid., 13.

were entitled to a mandatory share only if they were unable to work.[37] N. Gusev, member of the Supreme Court of the USSR, noted in early 1962 that the new law reflected "the further strengthening of protection of the rights of citizens and development of Soviet democracy" and that it was a "means of strengthening our economic system" and it would promote the development of socialist property.[38] A decree issued by the Plenum of the Supreme Court of the USSR in 1966 clarified the term "incapable of working" as including

> women of the age of 55, men of the age of 60, invalids of groups I, II, and III regardless of whether the said persons have been assigned pensions for old age or disability, as well as persons under sixteen (or students under eighteen). Persons not capable of working must be considered to be dependents of a decedent if they were fully supported by the decedent or if they received from the decedent assistance which was the basic and constant source of their means of subsistence.[39]

Article 531 prohibited heirs under the will from receiving an inheritance if "they facilitated their inheritance by their illegal actions directed either against the decedent or any of his heirs or against the exercise of the last wishes of the decedent as expressed in

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[37] "Civil Code of the RSFSR (1964)" in *Soviet Statutes and Decisions* 4, No. 3 (1968): 63-64.

[38] N. Gusev, "Osnovy grazhdanskogo zakonodatel'stva soiuza SSR i soiuznikh respublik i nekotorie voprosi sudebnoi praktiki," *Bulletin' verkhovnogo suda SSSR* 1 (1962): 23-32, 32.

[39] "Decree No. 6 of the Plenum of the Supreme Court of the USSR, July 1, 1966," *Builletin' verkhovnogo suda SSSR* 4 (1966): 20 in *Soviet Statutes and Decisions* 4, No. 3 (1968): 73. See also "O sudebnoi praktike po delam o nasledovanii, postanovlenie plenuma ot 1 iiulia 1966," 222-223. As Mark Edele explains, "Group I invalids were those with the most severe defects who could not work 'under any conditions.' Group II invalids were also severely handicapped....but could work if special work conditions were provided. Group III invalids were those who had 'suffered loss or impairment of one limb or organ.' They were considered able to work in a regular work environment..." Mark Edele, "A 'Generation of Victors?' Soviet Second World War Veterans from Demobilization to Organization, 1941-1956" (PhD diss., University of Chicago, 2004), 364-65.

his will, provided that such circumstances are confirmed in a judicial proceeding."[40] This would prevent someone who murdered the decedent, for example, from benefitting from his actions. The need to insert a legal restriction preventing an heir from benefitting from harming the decedent or another heir and the cases describing husbands and wives murdering each other and being banned from inheriting also demonstrate that the family remained just as complicated an institution as it did in capitalist societies. This was a change from the opinion held by Serebrovsky (discussed earlier) that Soviet inheritance law was superior because of its equality in that it did not exclude so called "unworthy" heirs. Yet, intentionality or at least mental capacity to appreciate the consequences of one's actions was important. For instance, one woman "who killed her husband, was not deprived of her right to inherit from the husband because she had been found insane at the time of the murder and therefore incapable of intending the act." However, in another case a man "was deprived of the right to inherit from his wife after the Moscow City Court found that she died as the result of a beating he had given her to punish her from coming home drunk and sentenced him to homicide" and, in another case, a women was not allowed to inherit after she "had been convicted by a Moscow People's Court of a fatal assault on her husband, who died as a result of a wound he received when she threw a knife at him during a quarrel."[41]

The distinction between urban households and collective farm households was preserved. Article 560 disallowed any inheritance of the household in the event of the

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[40] "Civil Code of the RSFSR (1964)," *Soviet Statutes and Decisions* 4, No. 3 (1968): 62.

[41] Erh-Soon Tay, "The Law of Inheritance in the New Russian Civil Code of 1964," 482-83 fn. 21, citing O.S. Ioffe, *Sovetskoe grazhdanskoe pravo,* Vol. III (Leningrad, 1965), 290.

death of the member of a collective farm or individual peasant household unless there were not any other members of the household remaining.[42] In addition, ordinary household furnishings and utensils were distributed to those who had lived with the decedent for at least one year prior to his death without counting as part of the inheritance share.[43] The RSFSR Supreme court issued a further decree in 1977 building upon the 1966 decree that expressed concern with some courts committing errors in applying the law of inheritance resulting in an "infringement of property rights and rights of citizens." This decree specified that the date of opening of the inheritance would govern which law applied (either that in effect from March 14, 1945 to October 1, 1964 or that from October 1, 1964 forward) unless the inheritance had not yet been accepted and the property had not escheated to the estate in which case the 1964 code would be applied. Thus, it was the date of a will or even the date of death that determined which law would apply.[44]

Although adopted children were accorded equal rights of succession with biological children, stepchildren were not within the circle of heirs (unless dependent on the deceased for not less than a year prior to death).[45] In 1963 two stepsons sued a woman to whom their stepfather had willed one-third of his property. Their mother had

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[42] "Civil Code of the RSFSR (1964)," *Soviet Statutes and Decisions* 4, No. 3(1968): 71.

[43] Ibid., 72.

[44] "O prikmenenii sudami RSFSR granzhdanskogo kodeksa o nasledovanii i vipolnenii postanovlenii plenuma verkhovnogo suda SSSR ot 1 iiuilia 1966 r. 'O sudebnoi praktike po delam o nasledovanii,' postanovlenie plenuma ot 26 marta 1974," *Sbornik postanovlenii plenuma verkhovnogo suda RSFSR, 1961-1983* (Moscow: Izdatel'stvo Iuridicheskoi Literaturii), 1984, 97-101.

[45] "O sudebnoi praktike po delam o nasledovanii, postanovlenie plenuma ot 1 iiulia 1966," 222.

died in 1961 and Kislov, who was ill, was admitted to a hospital. The stepsons claimed that Mirtova had fraudulently induced an incapacitated Kislov to name her in the will. The will was drawn up in the hospital in front of a notary and doctors and the notary and other witnesses stated that Kislov was not mentally incapacitated. Thus, the suit was dismissed.[46]

Rule of law also prevailed in enforcing the provisions regarding who could not be disinherited. In a 1963 case in which a woman left all of her property to one daughter, excluding four others, the court found that three of the four who had been excluded were invalids and thus were entitled to an obligatory share of not less than two-thirds of what they would have been entitled to if their mother had died intestate (without a will).[47] Finally, somewhat surprisingly, even this late into the Soviet years, a religious marriage conducted according to pre-1917 Shari'a in Dagestan was held to still be a valid marriage in 1963. The issue concerned whether a man could sell a part of his house to a woman whom he also "married" despite having never dissolved a prior marriage. The court found that his religious marriage in 1917 was the same as a post 1917 registered marriage and thus, it could not be dissolved unless formally. Since Abudullaev had not obtained a formal divorce, his marriage to the defendant was not valid and he had not had the authority to sell his wife's portion of the house and his portion of the house would pass to her via inheritance.[48] These cases illustrate a concerted effort of jurists to apply clear

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[46] *Bulletin' verkhovnogo suda RSFSR* 8 (1963): 3.

[47] *Bulletin' verkhovnogo suda RFSFR,* 11 (1963): 1.

[48] Ibid, 4-5.

legal principles to the difficult factual patterns they encountered. The law as it existed at the time of the marriage, for example, was applied. Thus, while in Abudullaev's case, his marriage was a formal pre-1917 marriage and needed to be dissolved formally, the marriage at issue in the Pankova case discussed above had automatically dissolved under the law at that time upon entering a second marriage.

Soviet legal theorists continued to stress the socialist character of inheritance as constituting "the objects of consumption accumulated by him through his work in socialist society."[49] Khalfina argued that a "citizen who has acquired his property by honest work in the socialist economy naturally wishes to make sure how and by whom his property will be used after his death."[50] Soviet inheritance laws were presented both as a right for citizens that still provided "safeguards for the interests of the family, especially minors and disabled members..." which therefore "harmonise[d] the interests of citizens making a disposition of their personal property with those of the family and persons materially dependent on them."[51] M. V. Gordon noted that each citizen had rights to property not only for his or her personal needs but also for those of his family and that the property was usually created by efforts of the family. Thus, family members were interested in possession of the property after the death of its owner. Yet, he emphasized that the property of citizens was of a consumer character and should not be

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[49] R.O. Khalfina, *Personal Property in the USSR,* trans. Yuri Sdobnikov (Moscow, Progress Publishers, 1966), 83.

[50] Ibid.

[51] Ibid., 84.

used to produce unearned income.[52] B. K. Komarov reiterated the bourgeois versus socialist inheritance paradigm and the positions of the XXII CPSU party Congress when he stated that bourgeois civil law created and protects property relations between generations of proprietors in order to provide continuity of the existence and development of private-capitalist property. This resulted in inheritance laws in bourgeois countries effectively protecting domination by the bourgeoisie. Komarov argued that the natural result of Marx and Engels' advocating the destruction of the domination of private-capitalist property was its replacement with socialist property. However, domination of the socialist system of economy and socialist property of means and manufacture products in the USSR did not exclude personal property in the form of consumer goods. Thus, Komarov asserted, while the program accepted by XXII congress of the CPSU planned concrete ways to advance the developed building of communism, this did not exclude inheritance of personal property of citizens as one means of promoting the construction of communism. Komarov reiterated that the types of personal property allowed under the constitution included material benefits (such as labor income and savings, housing and domestic household items and items used for personal consumption and convenience) which had vital value for satisfying the personal needs and interests of workers.[53] Jurists, therefore, continued to generally promote the institution of inheritance based on personal property acquired by citizens.

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[52] M. V. Gordon, *Nasledovanie po zakonu i po zaveshchaniiu* (Moscow, Gosudarstvennoe Izdatel'stvo Iuridicheskaia Literatura, 1967), 6.

[53] B.K. Komarov, *Zakonodatel'stvo o nasledovanii* (Moscow: Gosudarstvennoe Izdatel'stvo Iuridicheskoi Literaturii, 1963), 3.

Komarov stressed the bourgeois versus socialist paradigm as late as 1963. By 1967, M.V. Gordon still discussed the bourgeois versus socialist distinction noting that that Soviet legislation in contrast to the bourgeois right of inheritance had from the first steps of development of inheritance legislation included the number of possible heirs as well as dependents even if unrelated. [54] This was just one mention, however, and, in general, the shift with the 1964 code in terms of the legal literature was to no longer bring up the bourgeois versus socialist paradigm, the immorality of inheritance in capitalist countries, or to stress the works of Lenin, Marx and Engels.

The 1977 Constitution and the 1981 Fundamental Principles of Civil Legislation did not produce fundamental changes in the laws of inheritance. Yet there continued to be questions of how to apply the laws and an "appreciable portion of reported civil cases since 1978 in the USSR and the RSFSR concern[ed] questions of inheritance."[55] By 1978, there was no longer an effort to distinguish bourgeois from socialist inheritance in a treatise by A. Rubanov on Soviet inheritance law, although he did devote another book to the problems created in inheritance matters between bourgeois and socialist states due to the Cold War.[56] The emphasis remained on the state's protection of personal property and pointed out that the XXV Congress of the CPSU (1976) once again emphasized the "growth of labor productivity in every possible way to raise the standard of well-being

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[54] Gordon, *Nasledovanie po zakonu i po zaveshchaniiu,* 23.

[55] John N. Hazard, William E. Butler and Peter B. Maggs, *The Soviet Legal System: The Law in the 1980's* (New York: Oceana Publications, 1984), 251.

[56] See Chapter five.

for the people" which develops "not only socialist property, but also personal property."[57] Rubanov claimed that the exploiter classes and private property had been eliminated from the USSR a long time ago, a developed socialist society had been constructed and the basis of personal property of Soviet citizens was their labor income.[58] Thus, by the 1970s, the emphasis in Soviet legal literature was on the positive nature of inheritance. The Soviet constitution was further lauded for protecting citizens and their rights.[59]

Soviet civil law gradually moved towards a system of inheritance that more and more resembled civil inheritance patterns in Western Europe or the United States. However, what was available to inherit was much more restricted. Soviet case law demonstrates that inheritance litigation primarily dealt with money in bank accounts (although an individual could designate a beneficiary to a bank account and thus leave the account outside of the estate),[60] cars, and houses. Jurist Olimpiad Ioffe asserted that the disputes over the inheritance of cars and houses "constitute[d] typically Soviet sources of conflict" in the later years of the Soviet Union given that cars and housing were in short supply.[61]

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[57] A. Rubanov, *Pravo Nasledovaniia* (Moskovskii Rabochii, 1978), 3.

[58] Ibid.

[59] Ibid. See also N.I. Bondarov and E.B. Eidinova, *Pravo na nasledstvo i ego oformlenie* (Moscow: Gosudarstvennoe Izdatel'stvo Iuridicheskaia Literatura, 1971).

[60] W.E. Butler, *Soviet Law* (London: Butterworths, 1988), 202.

[61] Olimpiad S. Ioffe, *Soviet Civil Law* (Dordrecht: M. Nijhoff, 1988), 364-365.

The reconciliation and promotion of the family was balanced with the rights of citizens to their personal property. In addition, one family law jurist emphasized the state was not a substitute for the family and that the education of children according to communist principles was carried out with the constant help from the state to families.[62] The institution of inheritance had come full circle from one which was abolished with limited exceptions for social welfare purposes only until the state could theoretically assume this responsibility to one which privileged family members only and was thought to contribute to the strengthening of the Soviet family to, finally, an institution that "harmonized" individual rights with familial responsibility.

Some Western legal commentators on the 1964 Code generally marked it as a retreat from Marxist ideals. Alice Erh-Soon Tay argued that:

> In the field of inheritance, it is no exaggeration to say that the provisions of the new Civil Code mark the end of any specifically Marxist view of the form of inheritance law and signal the creation of a Soviet law of inheritance that in no way stands outside the concepts and arrangements common to 'bourgeois' inheritance law generally.[63]

But she acknowledged that:

> various economic decrees and economic arrangements in the Soviet Union make impossible private ownership of land, shops and factories and severely restrict the commercial uses that can be made of property or capital, and to that extent limit the type of property that can come up for inheritance.[64]

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[62] Borzheinkin, *Pravovie osnovi braka i sem'i,* 82.

[63] Erh-Soon Tay, "The Law of Inheritance in the New Russian Civil Code of 1964," 480.

[64] Ibid.

Conclusion

In 1985, Frances Foster-Simons argued that from a legal standpoint the trend toward expansion of inheritance rights continued throughout the Soviet period and that it was "difficult to argue that a socialist inheritance law flourishes ....in the Soviet Union." She concluded that with the 1961 Fundamental Principles of Civil Legislation, Soviet inheritance law now allowed "a freedom of testation rivaling that permitted in the capitalist civil and common law systems."[65] This argument examines the law in form but not the practical outcome and results of these laws. It is precisely this disjuncture between the expansiveness of the law and the reality of the personal property available in the Soviet Union that provoked a critical response to Foster-Simons. Shaheen Malik advocated a careful analysis of the distinction between substance and form stating that "what distinguishes inheritance law is neither the proportions of shares of heirs, nor the modes affecting inheritance but the object of inheritance, i.e., the sphere of application of the inheritance law." Soviet personal property had at its core a principle of ownership limited to consumption or serving individual needs. Under this principle, the justification existed for ownership of dwellings, furniture and domestic items for personal use and comfort (even automobiles). What was not a component of this principle was ownership for profit such as business interests.[66] Thus, while it may be the case that the *form* of the law followed closely with inheritance laws in Western Europe and the United States, it is significant that the *substance* of what could be inherited differed greatly. I argue that this

[65] Foster-Simons, "The Development of Inheritance Law in the Soviet Union and the People's Republic of China," 43.

[66] Malik, "Inheritance Law in the Soviet Union and the People's Republic of China: An Unfriendly Comment," 144, 140, 142.

substance did make the law socialist in content. Soviet officials and jurists claimed that the bourgeois character of property that had so concerned Marx and Engels had been abolished, and to a large extent, this was true. However, despite the nature of property having been transformed, jurists and policy makers were preoccupied with formulating a new theory of socialist inheritance that was aimed at strengthening the family and, paradoxically, by allowing and promoting the institution and ultimately complete testamentary freedom, the Soviet family was undermined by infighting over what property did exist and the collective ideal of personal relations was further weakened.

Conclusion

Private property, accumulated through the exploitation of others, was a major concern of Marx and Engels. The abolition of inheritance, as the means by which this private property could be transferred and kept within a small proportion of the population, and thus, continue to exploit the majority was a major goal for Marxists. When the Bolsheviks attained power in 1917, they were faced with the issue of how to implement theory into practice, an undertaking that would entail attempts to remake property relations and an entire social and familial hierarchy in order to abolish private property and convince Soviet citizens that the collective should be privileged over the individual. In this context, they targeted private property and the institution of inheritance as being incompatible with communism. They issued decrees purported to nationalize land and factories and abolish inheritance. Putting theory into practice to design and reinvent the system of property relations, though, was a challenge that would occupy Soviet leaders and officials for most of the Soviet period.

In the initial post-revolutionary years, Soviet officials focused on "reinventing" the institution of inheritance in socialist form. Thus, the initial decree abolishing inheritance specified that small estates could be passed to a spouse, children, and dependents. However, Soviet legal scholars portrayed this not as an "exception" to the abolition of inheritance but rather as a means of providing social welfare for dependents and for the disposition of minor household items and small estates that would prove difficult to centrally administer, especially during the period of transition to socialism.

Soviet officials were also preoccupied with reinventing a socialist family wherein

the collective good would be privileged over the traditional nuclear family. In this respect, the initial decree was already contradictory because, while it included dependents (an argument for collective social welfare), it also clearly favored the nuclear family. While some radical Bolsheviks advocated a withering away of the family, most did not, but there was not a consensus on what role the family and inheritance should occupy in a socialist society. Ultimately, Soviet officials wanted to destroy capital as the basis for private property and remake familial relations to produce harmony within the family as well as respect for Soviet power. They were successful in destroying capital as the basis large amounts of private property in these early years. While relatively substantial estates could be (and were) sometimes amassed and transferred through inheritance, the types and values of the property differed markedly from great estates in capitalist countries. The allowance of some types of property which Soviet authorities and jurists would define as personal property for consumer use would continue to complicate inheritance and familial relations for most of the period. Years of war and famine exacerbated housing shortages and the centrally planned economy was not able to fulfill the demands for consumer goods. All property, therefore, was considered valuable to Soviet citizens and the inheritance court cases demonstrate that the potential for conflict within the family only increased as the circle of potential allowable heirs was broadened.

By the mid 1930s, the institution of inheritance continued to generate extensive commentary by Soviet jurists. In particular, they struggled to articulate a legal theory of inheritance that distinguished the institution of inheritance in the Soviet Union from that which existed in bourgeois countries. This was particularly important because Stalin himself was credited with proposing an article specifically protecting certain types of

property and the right to inheritance in the 1936 Constitution. Jurists relied on a theory that distinguished private property (allowed in bourgeois countries) from personal property (allowed in the Soviet Union). According to this theory, personal property consisted of living space (but not ownership of the land), household goods and goods of a consumer nature that Soviet citizens accumulated as a result of their wage labor and contributions to socialist society. Thus, while private property in its exploitative form had been abolished (as indeed, it had for the most part), citizens were still able to own property purchased from their hard earned wages. Soviet legal scholars asserted that naturally citizens would have an interest in what happened to such property after their death and thus inheritance, as it existed in the Soviet Union, not only encouraged citizens to work productively in order to gain the purchase power to enhance their standard of living which contributed to the Soviet economy as a whole, but it also strengthened the family as an institution because it provided the additional incentive that what was earned would be passed on to loved ones within the family after death. In tandem with this "redefinition" of inheritance as an institution, the nuclear family was also now definitely lauded as the moral Soviet ideal. Jurists and the articles in state and Communist Party-owned media disparaged alimony dodgers and frowned upon frequent divorce. The laws regulating divorce were tightened and the "liberal" era of divorce and "free love" (advocated by some radical Bolsheviks in the early post-revolutionary years but by no means a majority) was officially over.

While this accommodation was reached between the institution of inheritance, personal property and the family in the 1930s, it was challenged by the years of war that followed. The Great Patriotic War was the catalyst for further reform to inheritance law.

At the beginning of the war, the law continued to provide that only a spouse, children, or dependents could inherit property. It was parents of deceased soldiers who provided the impetus for broadening the circle of heirs. Their young sons often had no spouse or children, and parents felt entitled to inherit the personal belongings belonging to these men who died fighting for the motherland. While the legal literature prior to the war had mentioned that parents should be allowed as potential heirs, it was not until the realities of war combined with the numerous petitions from parents of deceased soldiers prompted a reform of the law. This broadening of allowable heirs, however, was a theoretically problematic concept. It necessitated the articulation of a new theory of inheritance that justified it on grounds other than social welfare. One possibility was to allow exceptions for only during wartime or for war-related deaths. However, jurists proposed to review the law permanently. Parents who were able to work were not considered dependents but jurists advocated the broadening of the law on other grounds including mutual obligations between parent and child. The law enacted at the end of the war in 1945 was even more expansive allowing not only for able-bodied parents to inherit if the deceased had no spouse, children or dependents, but also for siblings if there were no surviving parents. It further allowed for a testator to designate an heir if there were no surviving heirs at law. This was a considerable reform to Soviet inheritance law which evidenced an accommodation with and privileging of the family and a response to the petitions of Soviet citizens. Paradoxically, broadening the potential eligible heirs only served to undermine the goal of Soviet authorities to strengthen the family. The potential for conflicts among family members increased in conjunction with the number of potential disputed cases due to the enormous loss of life during the war.

The late-Stalinist years were a period of further redefinition of the institution of inheritance. Now that the law allowed for able bodied parents, siblings, and even non-relatives as potential heirs, jurists struggled to articulate what made Soviet inheritance socialist. They continued to emphasize that the basis of property had been transformed and thus, personal property in the Soviet Union was socialist in content, earned by contributions to socialist society. They emphasized a bourgeois versus socialist dichotomy on this premise. More problematic, though, was advocating transfers of estates in inheritance when it came to transfers between the United States and the USSR during the Cold War. On the one hand, jurists understandably argued that inheritance was allowed in the Soviet Union and that Soviet estates had been transferred to heirs living in the United States. On the other hand, Soviet jurists could not equate inheritance as a similar institution in both countries since they had for years taken such pains to distinguish between what constituted socialist inheritance as opposed to bourgeois inheritance. Thus, they needed to focus on precepts of international law and the recognition of reciprocity between countries lest they devolve into an explicit promotion of inheritance. One could argue, for example, that if the estates earned in bourgeois countries were from morally bankrupt exploitative means, then the Soviet Union should not be interested in promoting the institution by encouraging its citizens to receive the inheritance. The Cold War challenged not only Soviet official ideals when it came to promoting the exchange of inheritance between its citizens and those who had died in the United States. American ideals were similarly challenged when authorities prohibited such exchanges. Legislators, judges, and other officials in the United States openly

violated cherished individual property and testamentary rights by subverting testators' designations of heirs in the Soviet Union and East European countries.

It was in the late Stalinist and early post-Stalinist years that the particularities of Soviet history complicated inheritance cases on a practical level. Relatives of victims of the purges in the 1930s struggled to inherit after their missing or deceased family members, and family members struggled over the assets of those killed in the war. Family members started to get notices that their spouse or child had died in the camps which led to petitioning the Ministry of Justice for assistance in transferring of assets. In addition, far from harmonizing with and strengthening of the Soviet family, the broadening of the circle of heirs only increased the visibility of the institution and potential for conflict among family members as evidenced by the great increase in number of inheritance disputes involving parents, siblings, and step-relatives that came before the Supreme Court of the USSR in the late Stalinist and post-Stalinist years. In a sense, this liberalization of the institution exacerbated conflict among some families.

The letters written to Ministry of Justice officials in the post-war years reveal these conflicts but also afford an analysis of the relationship between state and citizen. Citizens' letters reveal both the extent of their determination and desire for what usually amounted to housing space and what languages of entitlement they felt would receive preferential assistance. They employed narratives of sacrifice in the defense of the motherland-either as a soldier or the parent or spouse of a deceased soldier. Individuals highlighted their age, gender, victimization by the Nazis, or unfair treatment by local Soviet officials as the bases of their claims for justice. In doing so, they appealed to Soviet central authorities, sometimes using explicitly complementary and fawning

language. Moreover, these letters reveal much about how citizens interacted with the central authorities (handwritten letters to the Ministry of Justice and the Supreme Court). They must have had at least some expectation of relief or they would not have persisted as they did.

What is apparent through the inheritance cases adjudicated by the Supreme Court between the 1930s and 1960s is that rule of law prevailed. While sometimes it was creatively interpreted, it was not openly ideological. In fact, favoritism (of an invalid or the more allegedly "moral" person) was explicitly rejected in more than one case when judges ruled that the law provided for equal division among heirs and any of the other circumstances were irrelevant to the application of the law.

When inheritance law was further reformed during the Khrushchev years, the debate on the form of the law, at least, had ended. The new code allowed broad testamentary freedom providing only for mandatory shares for minor children and dependents. The law as it was written now resembled Western European legal codes. Still, as I have argued throughout this dissertation, the transformation of capital as the basis of private property into consumer items as the basis of personal property in the early post-revolutionary years was largely successful, and inheritance in the Soviet Union did not serve to reproduce extreme wealth as it did in capitalist countries. However, inheritance and property relations were still a thorny legal issue, and now the attention shifted from the debate over the form of the law to what to do with those who abused their rights to personal property. Soviet citizens found ways to transform their personal property to allow them to earn a profit from it, and this perturbed and preoccupied the state and Party-controlled media and jurists during this period. Using property to turn a

profit undermined the very basis of personal property as defined under Soviet law and by jurists and officials. Thus, while officials largely succeeded in efforts to prevent enormous estates from passing through inheritance by limiting what could be owned, they had failed to constitute a collective mentality of property relations. Soviet citizens ingeniously created ways to earn income "on the side" by illegally renting rooms in their apartments or houses, using their private automobiles as taxis and a variety of other activities despite the legal measures taken to curb these "parasitical" outgrowths of personal property and a media attack on the degenerates who engaged in such pursuits.

An analysis of inheritance in the Soviet Union from 1917-1965 demonstrates how important this institution was to the creation and maintenance of a socialist economy and identity. Legal and political authorities struggled first to reinvent and then to redefine the institution in socialist form and content. Finally, the debate on the form of the law was abandoned because they asserted that private property in its exploitative form had been completely abolished, socialism had been resolutely attained, and the period of the full construction of Communism had begun. Soviet inheritance differed from that practiced in capitalist countries in terms of the limitations to certain types of property which effectively kept the estates from being comparatively great in value. However, Soviet authorities reached an accommodation with Soviet citizens and, to a certain extent, admitted the inability of the state to provide what property Soviet citizens desired by the retention of the institution and a system of ownership of property in any form. It was this compromise that exacerbated conflicts within the family, much in the way that Soviet jurists lamented were a product of inheritance in bourgeois countries. The recent decision in the Brooke Astor case in New York is an example of that which Soviet

authorities and jurists would have highlighted as the end product of bourgeois inheritance. Her son was convicted of taking advantage of his mentally incapacitated mother in a greedy effort to appropriate millions for himself that were intended to go to charity.[1] The ideals that Soviet authorities and jurists expressed regarding inheritance during these years disappeared, of course, with the end of the Soviet Union, and the massive accumulation of wealth in the hands of a few in the 1990s.

[1] "NY socialite heir guilty of theft," October 8, 2009, http://news.bbc.co.uk/go/pr/fr/-/2/hi/in_depth/8298056.stm (last accessed October 11, 2009).

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