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**Socialism and the Right of Inheritance:  
A Discussion on the Reform of the  
Soviet Civil Law in the Late 1930s**

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## Socialism and the Right of Inheritance: A Discussion on the Reform of the Soviet Civil Law in the Late 1930s

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### Introduction

The abolition of private property was one of the most important elements to end inequality and exploitation and to establish socialism and communism, according to Marxist ideas. Marx stated clearly that "the theory of the Communists may be summed up in the single sentence: Abolition of private property."<sup>1</sup> The abolition of private property naturally required the abolition of the right of inheritance because there would be no private property to pass down after the nationalization of the means of production and the socialization of the land. If the inheritance of private property were abolished, the capitalist family, which caused oppression to women and discrimination against children born out of wedlock, would wither away.

Following the success of the October Revolution, the Bolshevik government, determined to serve the socialist cause, issued decrees to socialize the land and to nationalize industry, banking, and commerce. Then, on 27 April 1918, the Decree on the Abolition of Inheritance was issued to abolish inheritance by law and by will. However, this did not mean that the government could entirely obtain the property of the deceased. For example, the decree provided that a small circle of relatives could still use an estate not exceeding 10,000 gold rubles. Therefore, the abolition of inheritance was incomplete and compromised from the very start. The government continued to compromise their

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<sup>1</sup> Karl Marx and Friedrich Engels, "Manifesto of the Communist Party," in Karl Marx and Friedrich Engels, *Collected Works*, vol. 6 (New York: International Publishers, 1976), p. 498.

goal after launch of the New Economic Policy by reintroducing the right of inheritance in the Russian Civil Code of 1922, although the government did not abandon the idea of the abolition of inheritance.

However, the government changed its attitude toward property and inheritance completely by the mid-1930s when the Communist Party leaders declared that a socialist society had been built. The 1936 Constitution reflected this assertion of accomplishment and recognized not only the right of personal property, distinguished from private property, but also the right of inheritance. Furthermore, some Party theorists and jurists began to insist on the need to reform the Civil Code to establish adequate inheritance institutions for a socialist state. How could the right of inheritance be understood consistent with socialism? What did theorists and jurists think was the appropriate system of inheritance under socialism? These are the main questions of this paper.

One of the keys to answer these questions is the change of the economic system in the Soviet Union under which earned property came to be recognized as legitimate so that it had to be protected. Also, it is important to point out that the need to limit the right of inheritance had ended after the declared establishment of socialism. Many writers wanted to enlarge the circle of heirs and give decedents more freedom over how to dispose their own property in order to ensure a more proper distribution of the estate among family members under the new economic conditions. These writers contributed, whether intentionally or otherwise, to strengthening family ties through inheritance and to terminating the earlier concept of the “withering away of the family,” of which the abolition of private property should have led.

## 1. Inheritance Rights in Soviet Law: 1917–1936

The Bolshevik government issued the Decree on the Abolition of Inheritance on

27 April 1918 to abolish inheritance by law and by will.<sup>2</sup> In Article 1 of the decree, it is clearly stated that “[p]roperty of an owner (movable as well as immovable) becomes after his death the domain of the Russian Socialist Soviet Federal Republic.” However, the abolition of inheritance was not completed, as Article 2 stated: "Until the issuance of a decree on universal social security, those who are in need (i.e., not having a living wage), disabled relatives in a direct descending and ascending line, full and half brothers and sisters and the spouse of the deceased receive maintenance from the remaining property." Then, the decree provided that a small circle of relatives could use an estate not exceeding 10,000 gold rubles and that the same close relatives who had no property as well as a disability could receive an amount for self-support from an estate exceeding 10,000 gold rubles when they were in need (Article 9). Furthermore, those who owned an estate exceeding 10,000 gold rubles were few in number, especially in rural areas where most of the population lived. According to Alesandr Goikhbarg, one of the most prominent civil law experts at the time, the amount of inheritable property “for the overwhelming mass, for 99 % of the whole peasantry” did not exceed 10,000 gold rubles.<sup>3</sup> By the time that the Decree on the Abolition of Inheritance was issued, private ownership of land was legally prohibited and the nationalization of banks and industries had already started. Therefore, inheritable property was limited to begin with. The government wanted to abolish the system of inheritance in order to realize Marx’s goals established *the Communist Manifesto*, although their policy intentionally fell short because the government lacked a social security system to provide the needy population with assistance.

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<sup>2</sup> *Sobranie Uzakonenii i Rasporiazhenii 1917–1918* (Moscow, 1942), Item. 456.

<sup>3</sup> Goikhbarg, A. G., *Osnovy Chastnogo Imushestvennogo Prava* (Moscow, 1924), p. 134.

The Bolshevik government continued to compromise their goal to abolish inheritance after the launch of the New Economic Policy, as they needed to revive the economy with the help of some capitalist elements, including promoting small scale private production and trade. The Bolsheviks especially wanted foreign capitalists to invest in the Soviet economy, so they were required to guarantee the property of foreign investors. The Commissar of Justice of the RSFSR Kurskii in 1922 remarked that the Prime Minister of the United Kingdom Lloyd George demanded the Soviet government to “establish a recognized system of legal norms” for other countries to have economic ties with the Soviet state when questions concerning the Genoa Conference were discussed.<sup>4</sup> Therefore, the Russian Civil Code of 1922 protected not only the ownership of productive goods but also the right of inheritance, although with a heavy progressive tax rate.<sup>5</sup> Stuchka, a leading Bolshevik legal theorist and the Chairman of the Supreme Court of the RSFSR from 1923 to his death in 1932, argued that the right of inheritance was reestablished to attract “major concessionaires” who would “not dare to come to us without such a law” because they cared about their descendants.<sup>6</sup> The NEP was, thus, a clear retreatment from the socialist policy line.

However, the Russian Civil Code of 1922 still had some socialist elements; one of them was a 10,000 gold ruble ceiling. Although the ceiling was abolished in 1926, the government increased the inheritance tax rate to up to 90%.<sup>7</sup> Another element was the narrow circle of heirs who could inherit with equal shares. Those who were eligible to share the estate were the spouse of the deceased, his or her direct descendants, and

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<sup>4</sup> Kurskii, D. I., “Rol' i Znachenie Sovetskoi Iustitsii v Sviazi s Novoi Ekonomicheskoi Polititikoii,” *Izbrannye Stat'i i Rechi* (Moscow, 1948), p. 71.

<sup>5</sup> *SU RSFSR*, 1922, No. 71, item. 904 and item. 905.

<sup>6</sup> Stučka, P. I., *Kurs Sovetskogo Grazhdanskogo Prava*, vol. 2 (Moscow, 1929), p. 142.

<sup>7</sup> Gsovski, Vladimir, “Soviet Inheritance Law I,” *Michigan Law Review*, vol. 45 (1947), p. 299. The inheritance tax was abandoned in 1943.

property-less relatives or strangers incapable of working and who had been dependent on the deceased for at least one year prior to the date of his or her death. This narrowness with equal shares preserved up until 1945, and it was characterized as socialist because the bourgeois inheritance law was thought to have opposite features.<sup>8</sup> In short, the Soviet government made concessions but did not rush to entirely abandon these socialist restrictions on inheritance law. Nevertheless, radical changes brought to the Soviet politico-economic system from the late 1920s to the mid-1930s denied the dominant theoretical framework of Bolshevik jurists of the era and created the basis to alter the inheritance law in the Soviet Union as I show in the next section.

## 2. Establishment of Socialism and Constitutional Change

The comprehensive transformation of the Soviet state and society began at the end of 1920s, when the government put an end to the NEP and launched its first five-year plan of radical industrialization and agricultural collectivization to realize socialism. Although the plan was too ambitious and many of the goals were not met, not to mention that collectivization caused the death of many peasants, the Soviet economy had become industrialized and collectivization had been achieved.

This transformation was followed by proposals of constitutional reform. First, A. S. Yenukidze, the secretary of the Central Executive Committee of the Soviet Union, suggested election reform in 1933 based on the success of collectivization and the “growth of proletarian elements in the countryside as a result of the introduction of machine-tractor stations (MTS) and state farms.”<sup>9</sup> Then, at the 17th Party Congress in

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<sup>8</sup> Stučka, *supra* note 6, p. 143.

<sup>9</sup> Velikanova, Olga, *Mass Political Culture under Stalinism: Popular Discussion of the Soviet Constitution of 1936* (Cham: Palgrave Macmillan, 2018), p. 29–30.

1934, Stalin declared that socialist system of economy had prevailed in the Soviet Union and that “the elimination of parasitic classes” had led to the disappearance of the exploitation of man. The results of the first five-year plan were also assessed as a major triumph,<sup>10</sup> and the proposal on an election reform eventually led to more fundamental constitutional reforms, which Stalin approved and instructed.<sup>11</sup> In February 1935, V. M. Molotov officially advocated the constitutional reform at the 7th Congress of Soviets of the Soviet Union, which decided on the details of the reform plan.<sup>12</sup>

The draft of the new constitution for the classless society was published in the *Pravda*, on June 14, 1936. It secured property rights in a unique way. The draft divided the idea of property into private property and personal property and distinguished them from each other: the former was the bourgeois right to the means of production by which capitalists exploited workers, whereas the latter was the right to wages and savings as well as to objects of daily use and consumption that had nothing to do with exploitation. Article 10 of the draft guaranteed the latter by law.

E. B. Pashukanis, one of the most famous Soviet legal scholars, justified the guarantee of personal property in relation to the end of the capitalist era and the establishment of the socialist state:

Socialism does not mean the destruction of individual ownership of the means of consumption, but, on the contrary, the growth of prosperity, the basis of which is collective labor and collective ownership of the means of production. The socialist mode of production means the growing possibility of satisfying diverse

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<sup>10</sup> Stalin, V. I., *Sochineniia*, vol. 13 (Moscow, 1951), pp. 295-399; quote from p. 334.

<sup>11</sup> Velikanova, *supra* note, 9, pp. 31–32.

<sup>12</sup> *Pravda*, February 7, 1935.

human needs.<sup>13</sup>

The point was that individual persons could live in more and more affluent circumstances under the socialist way of collective labor and collective ownership, if they worked hard enough to enrich the socialist society. It was not a coincidence that the Soviet government introduced the monetary and material incentive system in the early 1930s in the struggle to fulfil its plan.<sup>14</sup> An example the government used to promote the incentive system among workers was Alexei Stakhanov, who became a model of hard work and was awarded with high wages. As John N. Hazard noted, “[h]is ability to purchase the good things of life was emphasized in stories of his home and his family.”<sup>15</sup> Hard work would bring a better life not only to the worker but also to his or her family.

Popular discussion on the draft of the new constitution lasted for about five months. On November 25, 1936, at the 8th Congress of Soviets of the Soviet Union, Stalin proposed to set up a constitutional committee to amend the first draft by adopting proposals and opinions from the people, and made remarks about the necessary corrections the draft needed.<sup>16</sup> Although the right of inheritance was not included in Stalin’s speech, an article on the results of the popular discussion comprised the guarantee of the right of inheritance.<sup>17</sup> Then, when Stalin made the final report on the revised draft as the chairman of the editing committee of the new constitution on December 5, at the

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<sup>13</sup> Pashukanis, E., “Lichnaia Sobstvennost’ v Sotsialisticheskom Gosudarstve,” *Pravda*, June 14, 1936.

<sup>14</sup> Davies, R. W., *Crisis and progress in the Soviet economy, 1931–1933* (Basingstoke: Macmillan, 1996), pp. 44–64.

<sup>15</sup> Hazard, John N., “Soviet Property Law and Social Change,” *The British Journal of Sociology*, vol. 4, no. 1 (March, 1953), p.5.

<sup>16</sup> *Pravda*, November 26, 1936.

<sup>17</sup> Iodkovskii, “K Itogam Vsenarodnogo Obsuzhdeniia Proekta Konstitutsii SSSR,” *Sovetskaia Iustitsiia*, no. 33, 1936, p. 2.



Congress of the Soviets, he stated that the right of inheritance would be protected by law under Article 10: “This amendment is clear and, I believe, does not need special explanation.”<sup>18</sup> Later, Stalin was said to be the initiator of this amendment,<sup>19</sup> which shows that the protection of the right of inheritance by law enjoyed high legitimacy and importance among civil law specialists; it would need to be taken into consideration while making the new Civil Code.<sup>20</sup>

### 3. Reforming the Civil Code

Preparation for the enactment of the new Civil Code goes back to before the implementation of the first five-year plan, when the Commission to Draft the New Civil Code was organized under the Council of People's Commissars of the Soviet Union in February 1927.<sup>21</sup> In the beginning of 1930, some members of the Commission wanted to stop their work until the reforms accompanying the first five-year plan changed the economic system of the NEP period. However, the chairman of the Commission rejected their demand and decided to let the Institute of Soviet Building and Law of the Communist Academy continue to draft the new Civil Code.<sup>22</sup> Stuchka and G. N. Amfiteatrov began to work on the draft by the order of the Institute. The important feature of the draft was that it was based both on the contract-based free trade of the NEP on the one hand and the plan-based economy that newly emerged under the first five-year plan

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<sup>18</sup> *Pravda*, December 6, 1936.

<sup>19</sup> Cowley, Marcie, “The Right of Inheritance and the Stalin Revolution,” *Kritika*, vol. 15, no. 1 (Winter, 2014), p. 122.

<sup>20</sup> While Cowley argued that the introduction of the right of inheritance was “to be a deeply personalized social contract” (*supra* note 19), I would reserve the pros and cons of this argument because my article does not need more than legitimacy and importance of the right, which should bind the content of the new Civil Code.

<sup>21</sup> Stuchka, P. I. ed., *Osnovnye Nachala Grazhdanskogo Zakonodatel'stva Soiuzza SSR. Proekt* (Moscow, 1931), p. 3.

<sup>22</sup> *Ibid.*, pp. 4–5.

on the other.<sup>23</sup> In other words, draft authors tried to produce the Civil Code of the transition period from the NEP to socialism—that is, the Civil Code of the era of the first phase of socialism.

How jurists understood socialism for preparing the new Civil Code was crucial. Stuchka apparently did not believe that the state and law could survive under socialism after the end of the transition period. He stated the following in the late 1920s:

We are fundamentally against legal socialism because we have socialism, in the last stage of which communism is not presented as a victory of socialist law, but as a victory of socialism over law in general. For with the abolition of classes with their antagonistic interests, the law in general dies away.<sup>24</sup>

It was commonly accepted among legal experts that the NEP needed the Civil Code, which tolerated contract-based market relations, because “NEP economic and social relations were bourgeois.”<sup>25</sup> The radical socialist building in the age of the Revolution from Above made theorists expect the legal system to be replaced with simple rules in the near future. Pashukanis and his fellow scholars thought that “abolition of the market and introducing of planning was a step toward the abolition of class conflict and, with the end to the need for any apparatus of repression, toward the eventual withering away of the state.”<sup>26</sup>

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<sup>23</sup> *Ibid.*, pp. 6–7.

<sup>24</sup> “Legal Socialism,” in P. Stuchka ed., *Entsiklopediia Gosudarstva i Prava*, vol. 3 (Moscow, 1927), p. 1593.

<sup>25</sup> Armstrong, Jr., George M., *The Soviet Law of Property: The Right to Control Property and the Construction of Communism* (The Hague, Boston and Lancaster: Martinus Nijhoff Publishers, 1983), p. 31.

<sup>26</sup> *Ibid.*, p. 53.

However, Stalin did not support this understanding; rather, he pursued state control of the economy through the socialist state and its legal system. He asserted that the planned economy would not change economic relations to the extent, for example, that direct barter of commodities would exclude money, although there would never be free market exchange as in the NEP period.<sup>27</sup> He also dismissed the idea of withering away of the state on the grounds that class struggle would become more intense as the building of socialism progressed, so they would need a stronger state to suppress the capitalists.<sup>28</sup>

Legal experts loyal to the Stalin's line attacked Pashukanis and his followers. They claimed that contract-based exchange would continue to exist under the planned economy; they further argued that contracts must be socialist and that the socialist economy should be regulated by a socialist legal system.<sup>29</sup> In the end, Pashukanis was denounced as an enemy of the people in January, 1937, and was executed in the same year, although he tried to make his argument more acceptable to Stalin's line.<sup>30</sup>

A. Y. Vyshinskii, one of the major critics of Pashukanis and the Procurator General of the Soviet Union, formulated the new legitimate theory of socialist law in his work in 1938:

Soviet law is the law of the socialist state of workers and peasants. This is the socialist law, which is called to serve the tasks of the struggle against the enemies

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<sup>27</sup> Stalin, V. I., *supra* note 10, pp. 342–343.

<sup>28</sup> Stalin, V. I., *Sochineniia*, vol. 12 (Moscow, 1949), p. 34; Stalin, *supra* note 10, pp. 350–351.

<sup>29</sup> Armstrong, Jr., *supra* note 25, p. 80.

<sup>30</sup> Pashukanis, E., "Gosudarstvo i Pravo pri Sotsializme," *Sovetskoe Gosudarstvo*, no. 3 (1936), pp. 3-11; Pashukanis, E., "Sovetskoe Sotsialisticheskoe Pravo," *Bol'shevik*, no. 22 (1936), pp.20–32.

of socialism and the cause of building a socialist society. ... The law is a set of the rules of human behavior established by the state power, as the power of the ruling class in society, as well as the customs and rules of cohabitation, sanctioned by the state power and enforced by the state apparatus, in order to protect, consolidate and develop social relations and orders, to be profitable and pleasing to the ruling class.<sup>31</sup>

Furthermore, after many prominent legal experts including Pashukanis were killed as enemies of the people in the Great Terror, Stalin stated that the state would exist even under communism “unless the capitalist encirclement is liquidated, and unless the danger of a military attack from outside is destroyed” at the 18th Party Congress in 1939.<sup>32</sup> In this way, the existence of the socialist state and the law was consolidated.

The development of the theory on the socialist state and the law, as well as the new Constitution adopted in 1936, required new codes of the Soviet Union, including the Civil Code of the Soviet Union. The All-Union Institute of Legal Science set up a commission for making a draft of the Civil Code of the Soviet Union.<sup>33</sup> The commission started to work in October 1938 and published their second draft in 1940. At the same time, jurists began to discuss the contents of the Civil Code in law journals. In the next section, I analyze the expert discussion on the new regulations about the right of inheritance and compare it with the current law at the time and the two drafts of the Civil Code — namely, the draft of 1931 written by Stuchka and Anfiteatrov and the

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<sup>31</sup> Vyshinskii, A. Y., “Voprosy Prava i Gosudarstva u K. Marksa,” *Sovetskoe Gosudarstvo*, no. 3 (1938), p. 40.

<sup>32</sup> Stalin, V. I., *Sochineniia*, vol. 14 (Moscow, 1997), p. 336.

<sup>33</sup> *Proekt Grazhdanskogo Kodeksa Soiuza SSR (vtoroi predvaritel'nyi variant)* (Moscow, 1940), p. 1.

draft published in 1940 written by the commission set up by the All-Union Institute of Legal Science.

#### 4. Property, Inheritance, and the Family

Changes in the backgrounds of the two drafts of the Civil Code are now clear. The protection of personal the right of property and inheritance by law introduced in the Constitution of 1936 should be reflected in the new Civil Code, and the contents of the law must have exploitation-free characteristics of the socialist state and society. Civil law experts understood these prerequisites well. For example, M. Reikhel' pointed out that even if the Constitution of 1936 changed the circumstances of the right of inheritance in the Soviet Union, "it is wrong to conclude that it is no longer necessary to establish any restrictions in the field of inheritance and that the right of inheritance can now be built in any way." He further argued the following:

... the inheritance law should be linked in the new Civil Code primarily with the tasks and policies of the party and government in the area: a) fight against the remnants of capitalism in people's minds, b) protection of personal and property rights of citizens, c) security for children and other disabled people, d) stimulation the growth of labor productivity and, in particular, the development of the Stakhanov movement by methods of material interest and e) accumulating funds in the hands of the state.<sup>34</sup>

Out of these concerns came three main interrelated issues — namely, the circle of heirs,

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<sup>34</sup> Reikhel', M., "K Razrabotke GR i GPK SSSR," *Sovetskaia Iustitsiia*, no. 5 (1936), p. 15.

the order among heirs and their shares, and the range of the will — as the Soviet government had to determine how to distribute personal property of the deceased in a way that could be called socialist and in a way that took into account economic stimulus as well as the protection of the weak and vulnerable. I will show how discussions went about these three issues, and at the end of this section, I will discuss the meaning of the family in the socialist state through the system of inheritance.

### (1) Circle of Heirs

The experts demanded to enlarge the circle of heirs. The Civil Code at the time limited the circle very narrowly: direct descendants and property-less persons incapable of working who had been dependent on the deceased for at least one year prior to the date of his or her death (Article 418). The draft of 1931 enlarged the circle of heirs by adding property-less parents incapable of working and by dropping the condition of one or more than one year of support period (Clause 1 of Article 155). Many experts proposed to include not only parents but also brothers and sisters.

However, the conditions for adding parents as well as brothers and sisters differed among experts. B. Borisov simply advocated the enlargement of the circle of heirs because private ownership, which was the cause of limiting the circle of heirs, had been fully abolished.<sup>35</sup> V. Serebrovskii justified including parents who were capable of working into the circle of heirs with the economic development in the socialist society.<sup>36</sup> Some of the writers concerned the circle of family support. G. Gornshtein considered it unfair that parents who had a duty to support their children and raise them did not have

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<sup>35</sup> Borisov, B., *Okhrana Material'no-Pravovykh Interesov Trudiashchikhsia i Proekt Konstitutsii*," *Sotsialisticheskaia Zakonnost'*, no. 7 (1936), p. 55/

<sup>36</sup> Serebrovskii, V, "Nasledstvennoe Pravo," *Sovetskaia Iustitsiia*, no. 10-11 (1937), p. 28.

the right to their inherit property.<sup>37</sup> Orlovskii pointed out that there was a contradiction between the family law, which obliged parents to support their own children, and the Civil Code, which excluded parents from the circle of heirs.<sup>38</sup> M. Raevich criticized the exclusion of brothers and sisters from the circle of heirs, despite their mutual assistance in everyday life.<sup>39</sup> In contrast, Zhukov thought that the enlargement of the circle of heirs should be limited to parents as well as brothers and sisters who were property-less and incapable of working.<sup>40</sup> Their opinions depended on the economic development based on the socialist property ownership on the one hand, and on the circle of family support and the extent of protection for those who were in need on the other.

## (2) Order and Shares

The enlargement of the circle of heirs led to another issue: the order among heirs and their shares. The current Civil Code at the time and the 1931 draft provided for equal shares among the heirs in the case of inheritance by law (Article 420 and Article 157 respectively), so enlargement of the circle of heirs meant a decrease in shares for each heir.<sup>41</sup> Moreover, since the government nationalized industry and underwent collectivization to build socialism, the property that could be inherited had become smaller and thus the share of each heir. The fact that the 1940 draft included expanding the circle of inheritance and introducing an order among heirs may indicate that this concern was also shared by experts (Articles 774, 775, 776, and 777).

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<sup>37</sup> Gornshtein, G., "Pravo Nasledovaniia Roditelei," *Sotsialisticheskaia Zakonnost'*, no. 11 (1936), p. 43.

<sup>38</sup> Orlovskii, "Pravo Nasledovaniia Lichnoi Sobstvennosti," *Sovetskaia Iustitsiia*, no. 13 (1937), p. 10.

<sup>39</sup> Raevich, M., "Proekt Konstitutsii i Nasledstvennoe Pravo," *Sotsialisticheskaia Zakonnost'*, vol. 10 (1936), p. 54.

<sup>40</sup> Zhukov, "K Razrabotke GK i GPK SSSR," *Sovetskaia Iustitsiia*, no. 6 (1937), p. 8.

<sup>41</sup> Serebrovskii, *supra* note 36.

For example, Reikhel' was afraid that small shares might not be sufficient, especially for those who in need of protection.<sup>42</sup> Therefore, his proposal was to give more inheritance to the weak. He divided the heirs into two categories: 1. direct ascending relatives except for the parents capable of working, direct descending relatives, the surviving spouse, and dependents incapable of working; 2. brothers and sisters, and parents capable of working. Heirs of the second category would receive inheritance only when there were no heirs from the first category. Then he examined several variations of distribution of inheritance and proposed the following: "one half of the inheritance is divided between 'dependents', that is, minor children and adult heirs incapable work and in need, and the second half is divided between all heirs of the first stage, including the 'dependents', who thus participate in the section twice."<sup>43</sup> Serebrovskii was opposed to Reikhel's proposal and argued that it was too complicated and might seriously damage the heirs capable of working.<sup>44</sup> The difference between Reikhel' and Serebrovskii was based on who should be more favored in inheritance.

### (3) The Freedom of Will

For jurists like Reikhel', it was important that the system of inheritance was a substitute for social security in the early years of Soviet Russia. However, other jurists like Serebrovskii attached more importance to rights of heirs generally. A similar difference between the two tendencies also can be seen in the extent to which the decedent's freedom of will should be permitted.

The freedom of will had been gradually expanded through the 1920s. The Civil

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<sup>42</sup> Reikhel', *supra* note 34, p. 16.

<sup>43</sup> *Ibid.*

<sup>44</sup> Serebrovskii, *supra* note 36, p. 27.



Code of 1922 regulated the scope of the will to be limited to the scope of the inheritance by law. Then, the scope was expanded to include the Party and state organizations, although the deprivation of inheritance of minor heirs by law was prohibited, and the decedents could only reduce their shares by no more than 25% of the legitimate share of the necessary heir.<sup>45</sup>

In the discussions about the new Civil Code in the late 1930s, the experts favored expanding the freedom of will in general, although Reikhel' was more positive than other jurists in restricting the freedom of the will for the protection of the vulnerable, especially minor children.<sup>46</sup> In contrast, Orlovskii argued for the expansion of the freedom of will on the grounds of the right to personal property:

Every citizen must be firmly convinced that all property honestly earned by his personal work will be transferred by inheritance to close people of his family or to those individuals or organizations whom he wishes to transfer the property.<sup>47</sup>

Orlovskii's argument clearly shows that the realization of a socialist way of ownership and production was the critical condition to make personal property legitimate so that nothing, not even the death, could deprive people of the right to dispose their own personal property. Raevich also valued the right to personal property by mentioning the new regulation of 1935, which allowed decedents to give away their bank saving deposits to anyone regardless of the amount outside of the general inheritance system on their death; he argued that it was unreasonable for the decedent to be unable to dispose of assets

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<sup>45</sup> Antimonov, B. S. and K. A. Grave, *Sovetskoe Nasledstvennoe Pravo* (Moscow, 1955), p. 41, 43.

<sup>46</sup> Reikhel', *supra* note 34, p. 15.

<sup>47</sup> Orlovskii, *supra* note 38, p. 9.

other than deposits freely.<sup>48</sup> The greater emphasis on property rights shown here gained support among jurists, as Article 780 of the 1940 draft did not limit the range of beneficiaries, although Article 782 still did not allow the testator to deprive minor children of the right of inheritance and to leave them less than the share they should have received by inheritance by law.

#### (4) Family

The personal property of the deceased was inherited mainly by his or her family members. As already shown above, experts thought that parents as well as brothers and sisters in addition to direct descendants and the surviving spouse were legitimate heirs because of the support they provided. The relationship between parents and children is particularly important here. According to the theory of withering away of the family, children should be raised not by the family but by the society through the socialization of housework after the abolition of the private ownership system, which would liberate the family from the economic dominance of men over women and children. While praising the contributions of the Soviet state to childcare, V. Svetlov emphasized the importance of childrearing because it was not a private matter but a social obligation to bring up a child as a worthy person for the socialist state.<sup>49</sup>

The other category of heirs was those who were dependent on the deceased, the typical figure of which was the de facto wife. According to Orlovskii, “[o]ften, the courts recognized the right to the hereditary property of two wives at once, considering one of them to be his wife and the other to be his dependent.”<sup>50</sup> Although he did not refuse the

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<sup>48</sup> Raevich, *supra* note 39, p. 54.

<sup>49</sup> Svetlov, V., “Brak i Sem’ia pri Kapitalizme i Sotsializme,” *Bol’shevik*, no. 16 (1938), p. 56.

<sup>50</sup> Orlovskii, *supra* note 38, p. 10.

existence of the de facto wife, he clearly preferred the stable family based on legal marriage:

The right of inheritance in our conditions should be one of the additional conditions for the stability of family-marriage relations, and not reinforce randomly developing relationships or encourage unfounded suits for easy money.<sup>51</sup>

“[O]ur conditions” meant that the socialist economy operated with comprehensive nationalization and without exploitation. Svetlov argued that the new economic conditions had achieved de facto gender equality by eliminating the economic inequality of women under the private ownership system so that a new type of socialist family was realized, whereas de jure gender equality had been already established shortly after the October Revolution.<sup>52</sup>

For these experts, the family was no longer to wither away but was to be strengthened in the name of socialism. The system of inheritance was supposed to function as an economic incentive and encourage people to engage in “socially useful socialist labor” and to make personal property for their family.<sup>53</sup>

## Conclusion

One of the two main questions in this essay was how could the right of inheritance be understood as consistent with socialism? As the discussions among the

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<sup>51</sup> *Ibid.*

<sup>52</sup> Svetlov, *supra* note 49, pp. 47–49.

<sup>53</sup> Shteinberg, A., “Nasledovanie po Zakony v Sovetskom Prave,” *Sovetskaia Iustitsiia*, no. 23-24 (1940), p. 18.

experts show, the most important difference between the system of inheritance based on capitalism and the system of inheritance based on socialism in the Soviet Union was in the way of property ownership. Due to radical industrialization and collectivization, the Soviet economy was fully nationalized; what people could possess was limited to some sorts of property, such as wages, savings, and objects of daily use and consumption. Therefore, estates for inheritance were also limited so that the inheritance system did not become a threat to the socialist state and society; instead, the government could use it as an economic incentive for people to enrich their family even through inheritance.

The second main question was what did theorists and jurists think of the appropriate system of inheritance under socialism? The discussions by experts show that family members, especially among close relatives, should support each other not only through aliments but also inheritance. The vulnerable, such as minors and dependents, of the deceased were given priority in inheritance. The range of freedom to dispose personal property was emphasized based on the new socialist economic conditions, but it was compromised to some extent by consideration for the weak.

Providing support to the family, including dependents, and allowing the free disposal of personal property were two basic components that legitimized the inheritance system under socialism. The family was connected by property and inheritance as it was under capitalism, but the way of binding was now legitimized by socialism, under which the classless and a gender-equal society was expected to come true.