1975-00-00 [FAMILY SIZE & EXTENSION] Family Extension

From the point of view of legal principles, the change from *ancien régime* to Civil Code laws of succession narrowed the scope of blood relations' right but at the same time hardened the rights of those who were still included in succession. Most remarkable is the disappearance of the
ancestral determination of the line of transmission: Primogeniture (chiefly noble families), entails and *propres* among *roturiers*--all these things vanished.

Therewith that certain sense one gets when studying fortunes of any size during the ancien regime, that every generation was bound somehow by ancestral regulations--or else wanted to make itself the genearchal source of rules for wealth that it had created and was leaving to future generations--that the weight of the past was thrown off. In its place appear two things: first, the individualism so-called of every generation, whereby the current possessor could dispose of his property, inherited or acquired by himself, as he wished during his lifetime; second, the opposing right of his descendants to claim half or more of the inheritance according to the system known as forced heir-ship. One way to look at this difference is to imagine under the old regime that the inheritance had a kind of undying character over the generations, with a series of incumbent administrators of it, but since the Code the life-span of the inheritance at a given moment can be calculated as equal to two generations, either the living and his potential heirs or (at the moment of the succession) the just-deceased and his living descendants. [Must be noted that in French law there is a doctrine known as the "continuation of the person the defunct" which allows that the deceased's wishes can have the force of law for some thirty years after his demise. There is, therefore, an interplay between two generations, but no more.]

In my opinion, this limitation of the time conception of family relations is as important as the limitations of spatial connections usually referred to as the change from extended to nuclear or conjugal family. I do not want to say that these time and spatial notions are independent; indeed, I think they must go together. But they are both there, at least when you are dealing with any sizeable patrimony.

Whatever one may think of the time-constriction of the sense of family wrought from the *ancien regime* to *histoire contemporaine*, the constriction of the spatial sense of family, measured by degrees of relationship, certainly did shrink in the rules of successions as a result of Code legislation. If one compares on the chart the extent to which collateral heirs have rights in intestate successions, it would appear that the Code rules merely copy the old rules of the droit écrit (12 degrees limit). This is deceiving, however, since intestate succession was very rare in the Mid± in olden times. The comparison must be made between the coutumiers and the code, both of which are essentially systems of intestate succession but where the degree of collateral rights is markedly different: in the coutumiers it was infinite--any blood heir that could be found who belonged to the family whence a certain *propre* originated was the rightful heir to it; in the Code such right is limited to 12 degrees. Now, twelve degrees is beyond what anyone today is likely to know about his family relations, but the sixth degree, to which that limit was reduced in 1917, is normally within one's ken: all your brothers' & sisters' descendants down a far as the grandchildren of your first cousin, and the person (but not the descendants) of your first cousin once removed.

Even more telling is the limit of the *réserve héréditaire* established for testamentary successions--i. e., those to whom you must leave half or more of your estate no matter to whom you may choose to bequeath the rest. Only descendants and surviving ascendants count--even brothers and sisters are excluded. The legislator declares that the nuclear family must get most of

the estate. In juridical philosophy the *réserve héréditaire* is considered a principle of intestate succession, cut back to an irreducible minimum, which has been applied to testate succession. So, the state has defined the family in terms of reciprocal property rights among its members to the sixth degree if a person dies without a testament, and to the direct line exclusively (for half or more of the estate) if the deceased has made testamentary bequests. Here we have a social determination of the extent of the family, kept in tension with the will of the individual (which he may express by testament), determined by the law. Historians of the family would be very wise to understand these principles before speculating upon more evanescent ones. The debates at the time changes in collateral heir-ship were made must contain very keen evidence of contemporary sense of family.

Overlooked in the focusing of family inheritance rights upon the nuclear family is one person: the spouse. There are no provisions for the surviving spouse in the *réserve héréditaire* of testamentary succession and in intestate succession his or her rights--usually it was the wife, and so I'll use the feminine pronoun hereafter--in intestate succession her rights--mere usufructuary ones--come in only if there are no blood relatives within the 12th degree. She is then classified as an "irregular successor" along with the state.

Revolutionary legislation had been much more generous towards the suviving spouse, as also to illegitimate children, but the Code legislators returned to severe application of the rights of blood relatives (and only legitimate ones). The view of things from 1804, therefore, envisioned the wife taking care of herself by means of the dowry she brought to the marriage, which she would recover if her husband predeceased her. In. this case, however, practice ran ahead of the law, until the law caught up. Already by the mid-19th century over half of marriages were established on the basis of a community of goods between the spouses, so that the death of one left the other in full possession of one-half their goods. In 1901 the wife entered the list of intestate successors, getting usufructuary rights to one-fourth of the estate if there were children; this was less than most women would have had according to marriage contracts, but it is important that now all women are protected by the law. In the twentieth century the wife moved up, entering the ranks of the forced heirship in the *réserve testamentaire* in 1930, getting full ownership of one-half the estate (i.e., making absolutely necessary by law what had become usual by practice during the previous century), and [add the 1950's bit.]

All these changes in the direction of advantaging the nuclear family while excluding distant relations, in terms of who can or must get what portion of an inheritance. were matched by the development in another sphere of the laws of succession: the role of the state. It is somewhat enigmatic that the surviving spouse and the state are the two "irregular successors" in the provisions of the code, and that their rights are the ones that have grown the most. I leave it to the experts in the history of women to say whether this correlation is anomalous or causal.