

1976-01-22: [SUCCESSION, HEREDITARY] Individualism & Morcellization

Whenever legal historians use only one word to characterize the change in the laws of succession during the Revolution and the Civil Code, it is "*individualism*". If two, the second is "*partage forcé*"—forced division of goods among descendants. Under these two terms, then, I shall summarize the juridical view of the Civil Code's main innovations.

Individualism in this context means the freedom of every generation to dispose of property uninhibited by laws concerning lineage property or family property which should not be alienated. The legal forms of entail in old regime law, which applied chiefly to noble property, and some fictions of the law which had the effect of entailing family property in commoner successions, were all swept away. It started as a political move, in the repudiation of feudal seigniorial privileges in August 1789, but soon led to an attack upon primogenitary succession, by which the hereditary transmission intact of great estates had been rooted in the law.

Noble successions were made subject to commoner rules, which quickly led to criticism of commoner rules which had encouraged maintenance of estates intact in the fashion of noble families. By a kind of chain reaction, therefore, the entire range of succession laws came into question. It was evident, in any event, that a standard system for the entire country would have to be formulated. Commissions were at work on this already in 1791, but it took until 1804 to complete it.

The study of the development of the new laws, seen *évenémentuellement*, could be done with all the drama, rhetoric, hopes and frustrations, that many another aspect of revolutionary history. Since succession involves the interplay of family and property, the main elements of social and economic history are necessarily involved, and whenever single families hold on to large blocks of property over several generations, one is inevitably dealing with the main unit of political power within the nation.

When the revolutionaries framed their new laws, they were explicitly aiming at the destruction of great landed estates by insisting upon equal division of the inheritance among children, or among all heirs of the same degree in collateral successions; morcellization of great estates by means of inheritance rules fixed by the state seemed to be the fair legal way to accomplish this end over time without touching the basic notion of family right to the patrimony. Napoleon shared this opinion, believing that old family estates that were perpetuated constituted a greater danger to him than new ones that might develop; indeed, while he endorsed the principle of forced division in the Civil Code in 1804, already in by permitting entails of fortunes in new families that were specifically loyal to him. His letters to Joseph, in Italy, advising a similar procedure in order to consolidate Bonaparte control there, are models of the thought of those times that entailed real property was the source of social strength in a country. Castelreagh's statement in 1815, that France had done such damage to her future strength by calling for the forced division of inheritances among descendants, that England needn't worry much about that country in the future, reveals some measure of the European-wide adherence to this concept.

But they were wrong. Real property, i.e., land, would become relatively less dominant in the calculation of family fortune during the course of the 19th century, and by the end of the century it might be said to have become absolutely secondary in such calculations. There are those who, like Le Play, argued that forced division was morcellizing viable agricultural units, but the sound empirical study of the problem by De Brandt at the end of the century showed that small peasant properties were kept intact despite the laws, by the mutual consent of the heirs--fraud if you will, but among the consenting adults who between them were the legal heirs in any

even. So, we can say that forced division of real property did not have either the social consequences that the legislators of 1789-1804 thought it would, nor the economic effects which they did not intend but which we have to consider *a posteriori*.

What, on the other hand, were the economic consequences of equal division as far as non-landed property? Might not equal division have hurt keeping family companies intact? Again, the curious workings of economic realities, unknowable to the revolutionary & code legislators, made it so that the worth of companies came to consist in intangibles such as reputation, etc., which were not evaluated as part of the estate for inheritance purposes until very late in the 19th century. It would seem that the land, building and stock-in-hand value of a business had to be divided up for inheritance law reasons, but that the real worth of the business beyond that was untouched, passing intact to whichever of the heirs finally ended up running the business, (What would have to be investigated here is the willingness of the other heirs to accept the devolution of the business upon one person; whether they would accept the proper portion of the tangible assets as their full share if they knew full well that the intangible assets were very large. If true, then the bourgeois would match De Brandt's peasants who practiced succession so as to keep the patrimony intact & viable, no matter how unequal the division was.) FIN