

1976-04-07: [FAMILY SECRETS] Notaries, Inheritance, and Family Secrets

The guild of notaries of France holds a major congress every five years, and the rules of succession and procedures the notaries have to follow are always part of their deliberations, if not even their major concern. For in France the notaries have a virtual monopoly of the business in the intramural sense, that of handling family wealth—that is, of its transfer *causa mortis*. In England the solicitor has most of this business, and in America banks are to a lesser extent lawyers.

The notaries must know to some extent the rules of succession in foreign countries, since French citizens can succeed to property abroad, and likewise they are interested in how their counterparts in other countries-- solicitors, lawyers, or bank executors--carry out their duties in these matters.

Main line: English is authoritarian or *dirigiste* in that the judicial system, the judge, lays heavy hand on the estate and says who & how it must be divided, whereas in France the seizin of heirs is the rule. In England, therefore, the solicitor is the agent of the state more than of the family, whereas in France the notary is the agent of the family purely. This accounts for the secrecy of notarial records, the hereditary character of the office (in order to maintain confidentiality) and the extremely intimate relations over generations between a certain set of families and the succession of notaries that handle their accounts. In England and America it should make no difference who is appointed executor --the anonymity of a bank executive is as good as any--but in France, where the division of the estate is the work of the heirs themselves, the notary is the indispensable counselor on the law whom all the heirs must trust to do the best for them before the state even gets into the act.

Now if there happened to be an annual gathering of British solicitors--and there may be such, for all I know--and the matter of French vs Anglo-American succession laws were to be discussed (solicitors being the element of the legal profession most concerned with that matter in England), I can imagine almost the opposite conclusions being drawn about which was authoritarian and which autonomous. If, instead of concentrating upon the question of who had possession of the estate at the moment of demise, one focused upon the power of the deceased to dispose of his estate, the French system of forced heirship, whereby half or more of the estate must go in equal shares to specific heirs according to rigid rules of the Code Civil, reveals a sense of authoritarianism and *dirigisme* which no Britisher or American, who enjoy nigh-unlimited testamentary freedoms, could abide. For the Britisher and the American, the state's "authority" in matters of succession is chiefly the state's duty to see that the last will and testament of the citizen is enforced.