

1977-06-24: [SAISINE] *Saisine* and the State as Creditor.

One grave consequence of *saisine* which ensues from the right of the successor to act at once in the name of the deceased is that he may well confound his own estate with that of the *de cuius* in the interval between the opening and closing of the succession. This caused trouble from the later middle ages onwards as far as creditors were concerned: the question of which heirs were bound and to what extent by the deceased's debts *ultra vires* bedeviled French customary juridical treatises enormously more than one might suppose, probably, because the pervasive system of *rentes* imposed a kind of perpetual burden upon estate transmissions which other systems of law would not know.

From the time of the Code Civil, which forbade perpetual *rentes*, creditors' rights were protected by mandatory registration of inventories of estates and by requiring that debts (*passif*) be deducted from assets before possession of the heritage was vouchsafed to the heirs. If the heirs discovered that the *de cuius'* estate was in fact in the red, their own fortune would inevitably be committed to resolving the debts unless they renounced their rights of succession. There was a moral, but not a legal, obligation to accept one's parent's obligations *ultra vires*.

Assuming the usual case in modern times where large estates would have little or no private creditor problem, there was one public creditor who appeared on all occasions: the state--and for quite obvious reasons the *saisine* of heirs became a problem because it confounded the deceased's and the living's estates in a way that was different: the state had to know the separate masses of each in order to fix the rate of taxation. There was no problem of creditworthiness in the traditional sense, but of the credibility of the inventory submitted by the heir who had by dint of *saisine* taken possession of the estate immediately upon demise of the *de cuius*.

Whether the state should be called a necessary heir in the sense of ancient Roman law, or a necessary creditor in the light of modern fiscal policy has been debated in France for over a century now. The state's claim upon an estate varies from a private creditor's in a significant way: the private creditor knows the extent of his claim before the demise of the debtor, but the state as "public creditor" does not know the extent of its claim until some time after the demise and the total estate can be tabulated. During this time, between death and inventory, the mixture of the deceased's estate with his or her successor's, according to the practice of *saisine*, cannot change the private creditor's claim (though it may compromise his ability to collect it), but it can totally preempt the state's claim.

The number of cases in ancient successions where the heirs' manipulation might compromise the creditor's claims have been small: it implies really vast debts, virtually hidden bankruptcy. Contrariwise, every manipulation of the

deceased's estate by the heir can save money against the state's claims, and, indeed, the very existence of a graduated tax based upon the declaration by the one who must pay that tax is an invitation to fraud.