

**IS THE THEORY COMPATIBLE WITH PRACTICE: COMPARING
THE EXERCISE OF INHERITANCE LAWS IN THE PEOPLE'S
REPUBLIC OF CHINA AND RUSSIAN SOVIET FEDERATIVE
SOCIALIST REPUBLIC**

by
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ABSTRACT

IS THE THEORY COMPATIBLE WITH PRACTICE: COMPARING THE EXERCISE OF INHERITANCE LAWS IN THE PEOPLE'S REPUBLIC OF CHINA AND RUSSIAN SOVIET FEDERATIVE SOCIALIST REPUBLIC

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Keywords: Socialism, Inheritance Laws, China, USSR

This paper compares the inheritance rights of citizens of the People's Republic of China (PRC) and the Russian Soviet Federative Socialist Republic (RSFSR) of the Union of Soviet Socialist Republics (USSR) focusing on the consolidation period of the socialist regime, exploring what the Marxist concept of 'abolishment of private property' meant for these two prominent practices of transition to communism. By doing so, it aims to answer the following question: can analysis of passed laws during a period itself be a good indicator of the congruence of a party to its declared ideology? The thesis adopts the comparative-historical method integrated with the legal comparative method and demonstrates how the pre-communist period affected the implementation of inheritance laws in both cases. The interpretive findings gathered from the study show that in both of the cases: 1) what is meant by the abolition of private property is the abolition of the private ownership of means of production, 2) the scope of the right of inheritance widened to include more people and more property to bequeath, which means historically, the socialist policies in the PRC and RSFSR, mark an objective extension of the right of inheritance, and 3) laws and regulations regarding inheritance were in line with theoretical premises of Marxism and the goal of transforming into a communist state. I claim that laws are not quite telling because ideology, is profoundly irreducible to its indicators this phenomenon becomes even more apparent in a theory that is becoming, instead of complete.

ÖZET

TEORİ PRATİKLE UYUMLU MU? ÇİN HALK CUMHURİYETİ VE RUSYA SOVYETİ'NDE MİRAS YASALARININ UYGULANMASININ KARŞILAŞTIRILMASI

DICLE KIZILKAN

SİYASET BİLİMİ YÜKSEK LİSANS TEZİ, EYLÜL 2023

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Anahtar Kelimeler: Sosyalizm, Miras Hukuku, Çin, SSCB

Bu makale, sosyalist rejimin konsolidasyon dönemine odaklanarak Çin Halk Cumhuriyeti (ÇHC) ve Sovyet Sosyalist Cumhuriyetler Birliği'ne (SSCB) bağlı Rusya Sovyet Federatif Sosyalist Cumhuriyeti (RSFSC) vatandaşlarının miras haklarını karşılaştırmakta ve Marksist 'özel mülkiyetin kaldırılması' kavramının komünizme geçişin bu iki önemli uygulaması için ne anlama geldiğini araştırmaktadır. Bunu yaparak şu soruya cevap vermeyi amaçlamaktadır: Bir dönem boyunca çıkarılan yasaların analizi, bir partinin ilan ettiği ideolojiye uygunluğunun iyi bir göstergesi olabilir mi? Tez, karşılaştırmalı hukuk yöntemiyle bütünleştirilmiş karşılaştırmalı-tarihsel yöntemi benimsemekte ve komünizm öncesi dönemin her iki durumda da miras yasalarının uygulanmasını nasıl etkilediğini göstermektedir. Çalışmadan elde edilen yorumsal bulguların gösterdiği kadarıyla, her iki durumda da 1) özel mülkiyetin kaldırılmasıyla kastedilen, üretim araçlarının özel mülkiyetinin kaldırılmasıdır, 2) miras hakkının kapsamı daha fazla insanı ve miras bırakılacak daha fazla mülkü içerecek şekilde genişlemiştir, bu da tarihsel olarak ÇHC ve RSFSC'deki sosyalist politikaların miras hakkının nesnel bir genişlemesine işaret ettiği anlamına gelir ve 3) mirasla ilgili yasa ve düzenlemeler Marksizmin teorik öncülleri ve komünist bir devlete dönüşme hedefiyle uyumludur. Yine de yasaların tam olarak bir şey ifade etmediğini iddia ediyorum çünkü Althusseryen tanımıyla ideoloji, göstergelerine derinlemesine indirgenemez ve bu olgu, tamamlanmak yerine oluşmakta olan bir teoride daha da belirgin hale gelir.

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Perhaps more interesting than anything, this master's degree helped me to know myself, as advised in the centuries-old maxim on the Temple of Apollo, in unintelligible levels. What more could a person expect from a master's degree?

To my dear mother and family,

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LIST OF ABBREVIATIONS

CCP - Chinese Communist Party

USSR - Union of Soviet Socialist Republics

RSFSR - Russian Soviet Federative Socialist Republic

Comintern - The Communist International, The Third International

GMD / KMT (Guomindang/Kuomintang) - Nationalist Party of China/Chinese Nationalist Party

NEP - New Economic Policy

1. INTRODUCTION

How do we assess whether a government that has long been in power is acting in line with its declared ideology or not? Let me visit a modern example, such as Türkiye's Justice and Development Party (AK Parti, with its formal Turkish acronym, AKP as we shall continue using here for the purposes of flow). The ideology, Political Islam in this case, ascribed to the AKP is assigned by its counterparts or academicians who study the topic. Therefore, whenever the AKP itself implements a policy or the AKP-dominated Turkish Parliament passes a law, the policy can be said to be either in line with Political Islam or deviating from it. However, this monolithic characteristic is exogenously assigned. The party representatives and leaders may call themselves conservatives, or in some cases even religious, yet these adjectives do not dictate a long-term political agenda, necessarily, since they do not point out a theory to follow. A similar argument could be made regarding liberal democracies: they might indeed have core values, indicated in their constitutions or in the discourses of their leaders. Is it, though, the same thing as having a long-term agenda rooted in a specific political theory? Iran is a state that ties itself to Islamic values and oversees its citizens as adopting certain values and daily etiquette. Yet, it did not declare a systematized transformation to a certain type of society; it was occupied with the *now* and *today* of its society. What I mean by that is; that even though the state and the politicians had a certain kind of ideal way of living and society in mind, they did not have an explicit plan to execute to achieve such a goal. However, communism has a long-term agenda. European Union and its member states commit themselves to values such as democracy, equality, freedom of speech, and so forth and there is an underlying ideology pushing these values to be prioritized and seen as the most ideal values to be lived by, yet, the theory and theoreticians of liberal ideology, albeit setting an agenda for the future, do not propose a grand theory in the way Marx did it, referring also to the past societies -whereas Karl Marx created a theory, a holistic unity of information and knowledge derived from the observation of the world, also encompassing its past, present and future. How can one decide, then, if a communist/socialist state complies with the

pre-determined arena of the Marxist theory or not?

The problem of criterion arising from the self-declared communist or socialist debates is a long-existing one within Marxist literature. Karl Kautsky's warnings and objections to Lenin on the nature of the possibility of a revolution in Russia are well-known in the Marxist literature. Kautsky warned Lenin that he is forcing premature birth of a Marxist Revolution in Russia but the Marxian conception of revolution rejects the possibility of a revolution in backward societies. Likewise, the possibility of a communist revolution in China was rejected, since it is a highly agrarian community, and workers, not the peasants are seen as the agents of the upcoming communist revolution by several Marxist theoreticians. The discussions to categorize or diagnose a social movement or the shape of government as socialist or communist are not frivolous. However, for the sake of conducting a study that employs the scientific method, one should refrain from short-cut decisions such as "this isn't real communism", "this isn't real Islam" or "this isn't real capitalism", for that would be an easy way out of discussing reality. So, the question remains: assuming -and to a certain degree accepting- that the People's Republic of China and Russian Soviet Federative Socialist Republic are two prominent examples of communism, can we actually find laws that can be defined as characteristically Marxist or communist (or reflecting characteristically Marxist or communist values), and that can be observed at least during the period in which we know for sure the two cases stuck to their socialist¹ characteristic?

To find an answer to the question above, one must find a policy area that is distinguishably socialist/communist/Marxist. What distinguishes socialism/communism from other egalitarian government forms or state theories such as the welfare state? Tracing the story of the word "communism", Jean Luc-Nancy says "We are sure that it existed already in the 14th century, with the meaning of 'people having in common a property belonging to the category of *main morte* – that is, not being submitted to the law of heritage': to which, a monastery could be a good example since it belongs to the community of the Monks, which is independent of the individuals'" (Nancy 2010). This etymological answer, therefore, is in line with the political answer since the approach to the intergenerational transfer of capital is a litmus paper assisting us in the process of defining the characteristics of communism. One of the general promises of the communist revolution is the abolishment of private property. Manifesto of the Communist Party, perhaps the first source to come to mind when the word communism is uttered, already wraps up the idea:

¹I occasionally use these terms interchangeably but in the upcoming moments where their distinction becomes important, I stop doing so.

“The distinguishing feature of communism is not the abolition of property generally, but the abolition of bourgeois property. But modern bourgeois private property is the final and most complete expression of the system of producing and appropriating products that is based on class antagonisms, on the exploitation of the many by the few. In this sense, the theory of the Communists may be summed up in the single sentence: Abolition of private property. We Communists have been reproached with the desire of abolishing the right of personally acquiring property as the fruit of a man’s own labor, which property is alleged to be the groundwork of all personal freedom, activity and independence. Hard-won, self-acquired, self-earned property! Do you mean the property of petty artisan and of the small peasant, a form of property that preceded the bourgeois form? There is no need to abolish that; the development of industry has to a great extent already destroyed it, and is still destroying it daily. Or do you mean the modern bourgeois private property?” (Marx and Engels 1848). ²

At least in theory, then, it is orderly to expect the abolishment of private property to take place in every socialist revolutionary attempt that has succeeded in obtaining political power and establishing the government. After all, the premise of the revolution is that the government will provide all the needs of the people to such a superior degree that people will not feel the need for the security to inherit goods or land from their ancestors. However, just like many other political issues, the topic of inheritance, even that of the private property we might consider as bourgeois private property in the framework described in the aforementioned excerpt from Manifesto of the Communist Party, becomes quite peculiarly exercised in communist countries, exposing an important juxtaposition between theory and political practice that stems from social reality. The central question of this thesis is inspired by several questions: if communism/socialism promises the abolishment of private property, why did the leaders and theoreticians of the RSFSR and PRC keep or even, introduce and expand the right to inheritance for larger masses and does this indicate a discrepancy between the state ideology and Marxist theory? Have the infamous communist countries confiscated everything we had from the needle in our drawer to the chair we are sitting on., validating the economically liberal sentiment? If not, is it because the government did not yet have the chance to do so? Overall, can we claim that laws are a good indicator of the ideological congruence of a government? The exploration of inheritance laws in the Russian Soviet Federative Socialist Republic (RSFSR) of the Union of Soviet Socialist Republics (USSR) and the People’s Republic of China (PRC) is a solid ground to answer the ques-

²Manifesto of the Communist Party (ie. Communist Manifesto) was published in numerous editions and languages. The referenced excerpt dating 1888, is not present in the first edition of 1848 when Karl Marx was still alive. Observing the debates and discussions created by the concept of ‘the abolishment of private property’, Friedrich Engels added the excerpt clarifying what the abolishment of private property was referring to, in the 1888 Chicago edition.

tions above because in both cases ideological congruence of a state to a seemingly complete theory persisted for long periods of time.

In the remainder of this chapter, I will first devote a short chapter to methodology and case selection, aiming to justify my choices for the purposes of this thesis. The following section will provide the theoretical background for two purposes: 1- setting the ground for a debate regarding policy-ideology consistency debate, and 2- reasonably explaining the shifts and variations in the inheritance practices of the PRC and the RSFSR. Once the theoretical framework is set, imperial pasts, jurisprudence systems, and inheritance regimes of PRC and RSFSR will be elaborated on. The literature on the inheritance laws in the PRC and the RSFSR and how the scholars interpret these laws in relation to communist/socialist regimes in which the laws were produced will be addressed under the chapters devoted to cases as well. The concluding section will provide an overall evaluation including the main results, contributions, and limitations of this thesis.

2. LITERATURE REVIEW

2.1 Method

This thesis adopts a qualitative approach to the research question it proposes; specifically, the comparative-historical method and, legal comparative method (to a limited degree). The need to study the up-front texts of Russian and Chinese inheritance legislation of the socialist era in comparison with each other requires the use of a comparative legal method whereas the comparative historical approach helps contextualize critical junctures and *esprit du temps*.

Comparative Legal Method evaluates human experience occurring in legal systems of different jurisdictions, essentially via comparing the law of one country to that of another (Eberle 2011). Among its limitations could be an inadequate understanding of the social background of other jurisdictions, therefore it tends to produce more comprehensive results when immersed in cross-cultural discourse and provide insights into history along with sociology(Bhat 2019).

Comparative Historical Analysis, on the other hand, refers to the works of a wide range of scholars investigating macro-historical questions. Asking macro-historical questions redirects the focus of the social inquiry to *time* aspect of social phenomena, using systematic and case-based research and thus placing the time at the center of their social inquiry.

I will review secondary literature on the communist project and how it shaped constitutions, laws, and regulations and rely on specific inheritance laws.

2.2 Case Selection

Several considerations were at play for the case selection. I am aiming to explain whether the analysis of passed laws during a period itself is a good indicator of the congruence of a party to its declared ideology. As mentioned in the introduction of this thesis, I see an especially fruitful ground to test this aim in communist countries, since the communist ideology has a clear understanding of social dynamics and derives a future-oriented plan to change the society for the better. Also, inheritance laws are of particular importance due to the focus on property relations in communist ideology.

Why not other communist countries but the PRC and RSFSR, then? Both PRC and RSFSR share common historical and societal characteristics such as being technologically backward compared to European countries of the same era or having a highly agrarian society on a massive land with slow industrial development. Additionally, and perhaps more importantly, both cases mark the employment of state apparatus to a large degree. Other examples of states which may be considered socialist/communist and came into being at similar points in history such as Yugoslavia, Cuba, and socialist state periods in South America remain as rather weak in the employment of state apparatus or short-lived. A further note should be made about the political unit that we are interested in. Among 17 soviets which are the federal units of the U.S.S.R., we are mainly interested in the RSFSR, since it is the largest federal unit, and some of the other Soviets with more Muslim population (referred to as Mohammedan back in the day) showed much variance in inheritance laws, and the aim of this thesis is not to offer an exploration of inheritance practices in each and every Soviet. Additionally, the majority of the smaller Soviets adopted somewhat similar inheritance laws to RSFSR's¹.

Time-span-wise, even though I am briefly touching upon the late provisions of inheritance laws in the USSR and contemporary inheritance practices in the People's Republic of China, I am predominantly focusing on the inheritance laws from the regime consolidation eras of both the PRC and the USSR. Borrowing from Wolfgang Merkel's *Systemtransformation, Eine Einführung in die Theorie und Empirie der Transformationsforschung*, Anja Mihr describes regime consolidation as the period following the period of change and transition, which is a long-term process that can be divided into different phases or levels. According to Merkel's conceptualization, the first level is 'constitutional consolidation' in which there are institutions

¹Therefore, unless I am giving historical information and facts, I am generally using USSR and RSFSR interchangeably.

in place and norms that have been agreed on. The second level of representative consolidation of the regime happens when political parties and civil society adhere to the regime type and its rules. When private actors such as financial elites or the military adhere to the regime type it is classified as the third level of the consolidation. The fourth and highest level of consolidation is marked by civil society and citizen support towards the regime type (Mihir 2018). Adding to this conceptualization, Merkel underlines the difficulty of reaching the last level and how some regimes take a turn towards authoritarianism after the third level, censoring the opposition among citizens and in civil society. We might observe that it was indeed the case in the USSR and the PRC that the regimes were stuck at the third level of consolidation, following a period of authoritarianism in the Stalin and Mao eras respectively. Taking the consolidation eras as the main locus of interest is a deliberate choice. States' integration into the global economic scheme might take away from its internal agenda, such has happened in the Khrushchev era which ended in him being accused of being a revisionist (by Mao and many others). Exogenous practical factors introduced to the system might disrupt our observations regarding the theoretical tie of consistency between the communist practices at hand and their ideologies. The consolidation era in the USSR is until Stalin's death(1917-1953), whereas in the PRC it is until the end of Deng Xiaoping's death(1949-1997).

Our primary object of interest is not what the bourgeoisie lost by means of inheritance rights but instead, what the ordinary people, that is, subjects of the tsar and the emperor (in Imperial Russia and Imperial China respectively, or their short-lived successors) who were the peasants, workers, or artisans affected by the new regulations and approach to the concept of inheritance since essentially, the marginal change in the objective conditions of these people will illustrate how their lives changed with being a citizen.

3. THEORETICAL FRAMEWORK

3.1 Base-Superstructure Concept in Marxism and Althusser's Contribution

In his renowned work *The Origin of the Family, Private Property and the State: in the Light of the Researches of Lewis H. Morgan*, Friedrich Engels refers to the role of the family as the level of analysis since it is an essential part of a large and seemingly unitary structure, namely the society, yet it is understood poorly. Theorizing based on Morgan's empirical anthropological observations, Engels states that material life accommodates two elements: structures of production and structures of reproduction, the latter being synonymous with family. The bipartite relationship here can be elaborated by the base-superstructure concept, a vital concept for historical materialism developed by Marx & Engels. In *The German Ideology*, Marx states that in the course of their daily activity, humans produce ideas and conceptions that are conditioned by a definite development of productive forces and relations (Ceplair 2008, p. 321). The base is characterized by the means of production and production relations. Institutions such as religion, family, state, or law are the components of the superstructure, which mainly reproduce (and maintain) but also produce (ie. shape) the base. The relationship between the two is a dynamic one; just as the base sets the playing ground and is a determinant of how relations between people are, superstructure (media, for instance) justifies the ways things operate as a result of the base, reflecting the ruling class' interests. The role of inheritance and the transfer of wealth to following generations is telling because of the base-superstructure dynamic. Engels sees history as having progressive stages and according to him, both the structure and the importance of the family changes as societies move through this linear history projection. In the early stages of history family and blood ties have more significance compared to the latter stages of history (Engels 1884).

Political philosopher Louis Althusser is a vital stop to assess the theory-practice consistency in communist states. Althusser's reading of Marx is considered groundbreaking by both Marxian and Marxist scholars for several reasons. He is among the first ones to distinguish between the periods of Marx, suggesting that his concerns changed over the course of his life therefore we can break his works into two one being early Marx, the other being late Marx. He also emphasizes the importance of reading texts through a *problematique*. However, perhaps the most important contribution he made is the way he conceptualizes ideology, a central concept in understanding superstructure.

There are key points posited by Althusser to clarify the way he conceptualizes ideology in contrast to the classical Marxist approach to it. In the classical approach, ideology causes subjects to see the real world from a certain biased framework, covering reality. For Althusser, (or in his understanding of reality) reality is already only expressed through the terms, concepts, and language created within a particular ideology, therefore the simple hiding and covering mission assigned to it is simplistic: "Individuals are already subjects to ideology". Ideology, under these circumstances, can only "represent the imaginary relationship of individuals to their real conditions of existence" (Brewster and Althusser 2001). However, we cannot claim that ideology is an intangible idea we can crystallize into certain principles: one cannot simply deduce it to a formula and it "has a material existence" since it always manifests itself through practices such as behaviors in line with the social norms and so forth. Two core points that Althusser seems to be stressing repeatedly are the irreducibility of ideology and its immanence in daily practices.

When reading Althusser, the main concern of philosophers and political scientists is to figure out whether Althusser simply proposed abandoning structural determination in lieu of an approach that heavily focuses on the casual relationships conjunctural social reality. As Sotiris underscores, Althusser instead advocates a more intellectually informed approach to politics that ensures some sort of smartness and does not take refuge in the comfortable and unaccountable territory of pure theory when confronted with the tricky decisions of real political life (Sotiris 2020, p. 200). Althusser reminds his readers of the sometimes unintelligible levels of embeddedness of structure in daily life.

3.2 A Clarification: The Distinction Between Communism vs Socialism

For the most part, communism and socialism were used interchangeably by Marx. However, regardless of the nomenclature and terminology he employs, we know that there is a huge difference between the last stage of the socialist revolution from the earlier stages. The last stage of the socialist revolution is described as “classless” which also refers to statelessness: a sort of statelessness in which a central authority, if at all exists and could be called an authority, could only have administrative duties and responsibilities to such a degree. The distinction between socialism and communism is especially vital for our discussion, since in both PRC and RSFSR, what does ‘road to communism’ meant or what is acceptable in the dictatorship of the proletariat or what is not acceptable has been heavily discussed to justify or deny a policy’s or a law’s compatibility with the ideological path followed by the subject matter states.

In the Critique of the Gotha Programme, Marx attacked the Gotha program put together by the Social Democratic Party of Germany (SPD) and was calling for human rights and progressive workers’ rights such as limited work days, freedom of association, universal suffrage, etc. According to him, this rights-based approach could and would indeed provide individuals with certain rights and an increase in living conditions, but the state and capitalists would still have all the power to extract these rights at any given time, especially during crisis periods. Not challenging the core issue and the fundamentals of the system to build an unprecedented system that would not even allow let alone pay inequalities, but wage labor in the first place, is what is appropriate for anyone who wants justice and equality once and for all. Marx criticized the Gotha program for leaning heavily on the role and future of the state. Also in this text, he identified what we now call socialist in distinction to communist in Marxian terms: “the period of the revolutionary transformation of the one into the other. Corresponding to this is also a political transition period in which the state can be nothing but the revolutionary dictatorship of the proletariat.” (Marx 1875).

Situating PRC and RSFSR in the transition period to communism is of key vitality to interpreting the ways in which inheritance practices were adopted in. The well-known leaders of the socialist revolution, in these contexts such as Lenin, Stalin, or Mao never claimed their mission was accomplished and it had its benefits. For one thing, they were simultaneously theoreticians and politicians: their opus in profectus, communism, introduced them to new phenomena to situate and make sense of within their theory on a daily basis, which in change shifted the theory as

well. Not to mention the room for maneuver in this understanding of stages provided them with, which could come in handy in times when state intervention (by force) was needed but they did not want to be seen betraying communist principles (or their comrades, for that matter) either.

Marx made it clear that in the last stage of communism, all rights of inheritance would be abolished due to being obsolete. The extent and coverage of inheritance of personal or emotional items would again be decided within the practice. However, neither the Bolshevik Revolution of 1917 nor the Chinese Communists' Revolution of 1949 ushered in a communist form of society as envisaged by Marx, therefore they could make use of inheritance laws and practices (Malik 1986, p. 139).

4. USSR - PCR RELATIONS AND IDEOLOGICAL INTERRELATION

“The Communist Party of China was formally (and secretly) established in July 1921 in Shanghai” (Dirlik 1989, p. 246). Its first congress saw the party’s future in establishing a Soviet system of management and joining the Third International. There were two tendencies in the party from the beginning, being visible as early as the first congress: “right” wing, represented mainly by Li Hanjun, and this wing advocated stances such as but not limited to; a certain amount of independence from Comintern(the Third International, also known as the Communist International)¹, objected to the immediate adoption of a Bolshevik constitution as well as having an overly centralized party. The “left” wing on the other hand, represented mainly by Liu Renjing, opted for the immediate adoption of the policies of class struggle, further proposing that the party should not get involved with intellectuals but instead, be solely the party of the proletariat (Dirlik 1989, p. 247). It is more than enlightening to read the standard work on the origins of the Chinese Communist Party, *The Origins of Chinese Communism*, by Arif Dirlik.

One thing we can agree on without going into the details beyond the interest of the thesis is that Chinese communist thought, at least in its formation period, is heavily influenced by the Soviet example. On 14 February 1950, USSR and PRC signed the "Sino-Soviet Treaty of Friendship, Alliance and Mutual Assistance" and later agreements. The Foreign Ministers of the two countries declared the agreements which were signed by the Soviet Government and the Kuomintang Government of China null and void. One reason could be geographical proximity. Another could be certain striking similarities such as the high percentage of the agrarian population. Independent of the reason, China followed its neighboring precursor for a good amount of time, until Mao started to customize the communist uniform to its society. Stalin’s death and Krushchev’s policies played a part in the separation of

¹Comintern followed the two previous international socialist organizations of workers, thus the name Third International. Bolsheviks played a dominant role in this international organization

this ideological and political alliance.

Power struggles dominated the USSR politics in the post-Stalin era for several years. In the last two days of the Twentieth Congress of the Communist Party of the Soviet Union in February 1956, Nikita Khrushchev delivered a highly controversial and shocking speech condemning the Stalin-era policies and purges, which signaled the de-Stalinization process. Khrushchev's "secret speech" is also referred to as "Stalin's second funeral" since it marked a break from earlier policies (Parry 1956, p. 463). Shortly after Khrushchev's February 1956 de-Stalinization speech, People's Daily, the official newspaper of the Central Committee of the Chinese Communist Party, published a lengthy, unsigned theoretical article that defended Stalin as an 'outstanding Marxist-Leninist fighter' and refuted Khrushchev's verbal attack on Stalin (Baum 2021). Characterized by central planning, agricultural collectivization, and rapid urban industrial growth, the Soviet model of incorporating industrialization with socialist reform was not speaking to the needs of the Chinese communists anymore and the ongoing tensions with the Khrushchev-led USSR torn the two former allies' ways even further apart (*Ibid*).

Mao learned from the Bolsheviks' experiences and history. Faced with the peasant insurrections which led him to adopt NEP in the end (which will be further explored in the upcoming section), Lenin recognized the private property of the beneficiaries of land distribution. Unlike the case of the USSR, in the PRC the distributed land was not privatized; it remained the property of the nation represented by village communes and only the use was given to rural families. The strategic alliances made by are noteworthy. He based the expanding presence of the Communist Party on an alliance with the majority of peasants who were poor and landless while still maintaining friendly relations with the middle peasants. Yet another tactic he pursued was to isolate the rich peasants at all stages of the war, pacifying them, without creating hostility. As a result of this line, the majority of rural inhabitants considered and accepted a solution to their problems that did not require private property in plots of land acquired through distribution. In Russia, the peasant insurrection of the summer of 1917 eliminated later opportunities for an alliance with the poor and middle peasants against the rich ones (the *kulaks*) because the former were anxious to defend their acquired private property and, consequently, preferred to follow the *kulaks* rather than the Bolsheviks (Amin 2013).

5. THE RUSSIAN SOVIET OF THE UNION OF SOVIET SOCIALIST REPUBLICS

5.1 The Imperial Background: Tsarist Era

With a retrospective reading of history, it can be said that already before the October Revolution, social unrest was the precursor of the upcoming social changes, at least to some extent. Russia was an empire from 1721 until the Bolshevik/October Revolution of 1917. The defeat in the three years long (1853-1856) Crimean War triggered Tzar Alexander II and the authorities, intellectuals, and officers under him to self-reflect on the backwardness of the empire compared to the European Powers and the U.S.A., manifesting itself in the production processes, technology, and political institutions (Bushkovitch 186). In a public speech addressing the top aristocracy in 1856, Tzar Alexander II underlined the urgency of solving the peasant question (*i.e.* Serfdom) to prevent peasant revolt and reform the empire's institutions. The memory of Springtime of Nations was still fresh.¹

In 1861, Serfdom was abolished with the Emancipation Manifesto, which was the first step in solving the peasant question by granting personal freedom to all serfs. The scope and meaning of being a serf vary between locations, yet, as widely perceived, a serf is a person who cannot be freely traded as a slave would be, but who is still not free to leave the feudal landlord's land to whom she is tied. The second step in solving the peasant question was more challenging since it foresaw defining the communal land property rights of the emancipated peasants with a land reform that must satisfy the aristocracy's interests as well (Markevich and Zhuravskaya). The land reform took a long time to be implemented, therefore *de facto* economic conditions for the former serfs have not changed much instantly. The crucial question is, what were the defined inheritance laws for serfs if they had any?

¹The Revolutions of 1848 (also known as Springtime of Nations or Springtime of the Peoples) is the most widespread revolutionary wave in European history and is a series of revolutions throughout Europe over the course of more than one year, from 1848 to 1849.

It would be erroneous to assume that non-noble people did not have any property rights. Inheritance, on the other hand, was mainly introduced to the non-noble people with the emancipation manifesto. The close family of the deceased could keep personal belongings such as clothes, yet they could not keep anything else such as a shovel or axe. Some of the serfs² had the right to own land even before the emancipation, however, their land and personal property were transferred to the *knyaz*(prince) after their death. Which means they could not enjoy full rights but instead had partial rights.

The Revolution of 1905, which is also referred to as the First Russian Revolution, was caused by the Russian defeat in the Japanese-Russian War (1904-1905) and social unrest. In 1906, Tsar Nicholas II issued a Manifesto of Fundamental Rights, “created a parliament (the Russian Duma, 1906-1917), swept away most civil distinctions based on *sosloviia*(estates), and founded a new system of justice, with expanded rights of property ownership and new *zemstvo curiae* (provincial courts)” (Leonard 2010, p. 2). Pyotr Stolypin who served as the third prime minister of the Russian Empire from 1906 until his assassination in 1911, introduced an agrarian reform that granted titles to producers’ allotment land and allowed their removal from communal holdings(*Ibid*). The state’s political structure is defined as “a constitutional monarchy under an autocratic Tsar” in the Almanath de Gotha of both 1910 and 1914.

Prerevolutionary Russia had two coexisting bodies of inheritance law for the two different strata of the society: first is the official civil law rules governing testate and intestate succession and the second is the specific local customs pertaining to peasant succession. The official civil law was patterned after European codes of the time, nevertheless having peculiarly Russian provisions. For instance, the testator’s right to dispose of the "patrimonial estate" (*rodovoye imushchestvo*) was restricted. Furthermore, the issue, spouse, and parents of the decedent were not guaranteed any portion of the estate (Gsovski 1948, 625).

As mentioned earlier, civil law inheritance regulations did not extend to peasants or peasant households; succession was carried out instead according to local customary law. The legal institution of the peasant household, *dvor*, has not only survived under the Soviets but has also been utilized as the standard basic membership unit for the collective farms (plural *kolkhozy*, singular *kolkhoz*) (Osofsky 1974, p. 574). In *dvors*, all movable and immovable property was jointly owned by participating members. Therefore when one individual died, even if he was the head of the

²Several words can be used to signify serfs in Imperial Russia. For instance, *smerd* could be another word meaning means a free peasant and later a feudal-dependent serf in the medieval Slavic states of East Europe.

household a significant division or reallocation of peasant holdings was not the case. Under the mostly implemented scheme, the decedent's share in household property would devolve upon other members of the collective, including in-laws, adopted and foster children (Gsovski 1948, p. 625). This possibility of bequeathing also to the people who do not have blood ties with the deceased is yet another peculiarity carried to the RSFSR's inheritance law. As Foster-Simmons underscores, the participation in the peasant household was prioritized over the blood relationship in determining the succession (Foster-Simmons 1985, p. 37).

5.2 Jurisprudence and Legal Thought in the Union of Soviet Socialist Republics

As Marxists, the Bolsheviks understood *the law* as an instrument through which the bourgeois ruling class defined and defended its hegemony. They were simply reading history through a historical materialist perspective of base and superstructure, the approach we spoke of earlier. The inheritance law of the USSR is part of a more comprehensive picture of the Soviet ideology, that is, it serves a higher purpose than it is understood in the liberal law doctrine. Once the base-superstructure model of society and the fact that elements of superstructure feed and shape the elements of the base too is accepted, utilization of the superstructure's elements becomes an obvious and justified way to create societal change. Thus the judicial system in the U.S.S.R. was arranged vastly differently from that of today's, attempting to establish a communist jurisprudence.

Modeling and creating a Marxist communist judicial system was not easy for the revolutionists and brought out many, some unsolvable, questions and puzzles. A prominent and perhaps most well-known Soviet legalist Evgeny B. Pashukanis recognizes the unique merits of law that exist independent of the production relations creating it while expressing the impossibility to give a general definition of law without knowing subject phenomena (Pashukanis et al. 1980, p. 283). Additionally, Pashukanis takes the idea of withering away of law in a classless society with a pinch of salt and denies that we will be dealing only with purely technical rules. Still, being an early Soviet legalist, he insisted on the futility of having a proletarian law or socialist rights, which made him the center of attacks from Stalinists in the 1930s. The institutions of the Tsarist era were seen as obsolete, leftovers of the authoritarian past, or too heavily laced with bourgeoisie influences. The communist revolution, it was assumed, would destroy the capitalist state and its laws, leav-

ing workers free to administer themselves without legal restraint. But the October Revolution ushered in not communism but rather the beginning of a transitional period of undetermined length and character. At an early stage, Lenin realized that the new regime needed a legal structure capable of combating crimes against the workers' state, the law may be essentially a bourgeois thing yet, it was required for a time until the new Soviet state could firmly establish itself. In line with this theory, the Soviet jurists drafted a Civil Code which was bourgeois in form but socialist in substance which was enacted in 1922 (Hazard 1944, p. 479).

Nevertheless, among the Bolsheviks, this instrumentalist conception of the law continued to be challenged beyond the civil war by an "eliminationist," anti-law view as well as by the extraordinary powers of the Cheka's successors. Tensions between these different approaches and the blurring of the distinction between a formal legal structure embodied in the Commissariat of Justice (Narkomiust) and the court system on the one hand and the extra-judicial powers of the political police on the other would persist throughout the 1920s (Siegelbaum N.d.).

"On February 6, 1922 the All-Russian Executive Committee (TsIK) decreed the abolition of the Cheka and its replacement by a State Political Administration (GPU). Unlike its predecessor, the GPU did not have the authority to adjudicate and punish political offenders through administrative sentencing. However, supplementary legislation in August 1922 restored to the new political police agency the power to exile abroad and inside the country participants in "counterrevolutionary activity," and these powers were further extended in the decree of TsIK's Presidium of November 15, 1923 (ratified by TsIK on October 24, 1924) which established a Unified State Political Administration (OGPU). In the meantime, the TsIK also promulgated a Criminal Code for the RSFSR. The Code delineated crimes against the person (theft, robbery, assault, etc.) that were quite traditional in their conceptualization, but also what were defined as counterrevolutionary crimes, economic crimes (including speculation, that is, the "artificial raising of prices of products"), and crimes by officials of the state. These and the stipulated punishments were based on the three principles of analogy, judicial discretion, and class favoritism."(*Ibid*)

The debates on the nature of law became even more heated with the Constitution of the USSR of 1936 (*i.e.* Stalin Constitution). The previously never-heard-off legal theorists dug into the Marxist theory to find nuances that would help themselves with the heavy utilization of formal rules and legal codification. In the end, they stated that "law was not a creation and servant of the bourgeoisie, but of each ruling class in society, and it would continue to exist with the proletariat as its political tool until the economy of communism should be achieved" (Hazard 1944, p. 480).

One important deviation from today's (21st century) predominant practices of criminal law was that the Soviet legal approach adopted the rule of analogy. Reasoning by analogy involves referring to a case that concerns unrelated subject matter but is governed by the same general principles and then applying those principles to the case at hand. In today's criminal justice practices, it is commonly abandoned, at least in European Law. The reason why the Soviets adopted it, was because the law was still necessary for the masses yet, it could not be left to the hands of an attorney *cadre* or elites who would be the only people understanding the ornate phrases and concepts that ultimately cover the reflection of proletariat justice and turn it into an exercise from which the 'basic masses' are excluded. The use of analogous reasoning in Soviet Law has lasted until the early 1950s at which time Stalin began a process of legal codification. Stalin's goal was to make the system more formalistic, building on the 1936 Constitution which he had implemented. The Soviet system was proclaimed a just system that would ensure an orderly transition to Communism. Along with this for the first time, the constitutional principles of organization of the work of the courts were also being established.

There were different kinds of courts in the USSR. The majority of the civil cases were dealt with in People's Courts. The judges of these People's Courts courts were lay magistrates in rural areas whereas there were professional magistrates with legal training in many urban centers (Hulicka 1961, p. 162). Comrades Courts, which are essentially nonprofessional tribunals, were introduced with the 1959 law reform aiming to try petty offenses in enterprises, apartment houses, collective farms, universities, and elsewhere (Berman and Spindler 1963, p. 842). Hearings and sessions in these courts were intentionally nonceremonial, manifesting a rupture from the highly ceremonial procedural practices of the bourgeoisie practice of trial (Huskey 1987, p. 420).

5.3 The Law of Inheritance in the RSSFR

Arguably, more studies focus on the regulations regarding property laws and the law of inheritance in the USSR, compared to those concerned with China. Several speculations and claims could be made regarding this. First of all, the USSR was an *avant-garde* practice of socialism in the 20th century, which was also looked upon by the Chinese communists. Secondly, it was more of a common practice for the intellectuals and academics born in the USSR to flee to Western academia and produce work regarding the unknown and uncharted territory of the USSR's

daily life and political system. Thirdly, since the socialist way of life was alien to the people, more interest was directed towards the USSR. On the other hand, as pointed out by acclaimed scholars such as Joseph Berliner and Robert Tucker in a 19 October 2000 lecture at the Kennan Institute, one must be aware that the rush on the Soviet Studies in the United States of America (USA) was a product of the Cold War rather than an expression of purely scholarly interest in Soviet society (Dresen 2000).

If not first, the most comprehensive work on the inheritance laws in the USSR is written by Vladimir Gsovski. His article named *Family and Inheritance in Soviet Law*, derived from a chapter in his at the time forthcoming book was published in 1947, and then the book (*The Soviet Private Law*) followed in 1948. The article sheds light on the historical development of the right of inheritance in the USSR for different sections of society, while the book chapter also includes translations of the major codes, laws, and documents -primary sources- of Soviet civil law.

Marx and Engel's stance on the abolition of private property had been differently interpreted by different academics. Referring to the Communist Manifesto, Griffin (1961, p. 431) claimed that for them the edict is clear, there is no place for inheritance in the new order.

Dvor and Kolkhoz are integral parts of the economic structure. As previously stated, dvor was the "pre-revolutionary legal institution of the peasant household" (Osofsky 1974, p. 541). It "is an association of persons mainly (but not necessarily exclusively) members of a family combining for farming purposes, that the "head of the household" (*khoziain*) is its representative and that its property cannot be attached for debts contracted by its members for their individual purposes." (Szirmai 1961, p. 25). Kolkhoz, on the other hand, is the collective farm under the Soviets. Dvors were integrated into the kolkhozes.

The the decree of October 28, 1917, annulled the rights to large landed property without indemnification, and placed the land at the disposal of regional agricultural committees and district Soviets until the Constituent Assembly acts upon it (Hazard 1944, p. 468). The Constitution of 1918 defines its objective as constituting "a single fundamental law of the Russian Socialist Federated Soviet Republic." in the preamble. With the decree of 1918, inheritance was abolished. However, the close relatives of the deceased could claim maintenance from the state under certain circumstances, which corresponds to widows' and orphans' pensions which are delivered to the beneficiaries in the aggregate, reaching 10,000 rubles maximum (Szirmai 1961, p. 19).³

³To comprehend the purchasing power of 10,000 rubles is not so easy to decide. According to a website article, 100 rubles was equal to 45 U.S. dollars back in 1924, which was able to purchase 26 pairs of galoshes

The early Soviet approach to family was quite anti-family and the inheritance law being one of the important ties in which the intergenerational wealth is transferred or the family is strengthened, the inheritance law of years between 1917 and 1924 differ radically from the latest eras of the Soviet legal practices(Ibid 41-42). It would be accurate to depict the early years of the U.S.S.R. as years of experimenting and being at peace with (enjoying very much, actually) the profound difference of the values and political system of the U.S.S.R. from the rest of the world. With also Lenin being alive and revolution being fresh in the memories, the wish to create a new, egalitarian life manifested itself in laws that are deviant from the mainstream inclinations in the world. The Code of 1918 prescribed that "only a civil (Soviet) marriage registered in the Civil Status Record, should produce the rights and duties of spouses"; it denied any legal status to the religious marriage.

In 1921, Lenin decided it was necessary to resort to the New Economic Policy(which will be remembered by its acronym, NEP) and to utilize private enterprise in a limited form. The NEP was vital if the gains of the revolution were not to be lost, it was necessary to restore the economy which had been ruined by war and the long period of intervention by foreign armies. To implement a smooth transition to this new economic order, civil law stood out as a tool to regulate the property relationships anticipated under the new program(Hazard 1944, p. 478). Therefore came to existence the 1922 Civil Code, the first official recognition of inheritance rights right after the introduction of NEP(Griffin 1961, p. 433). In the Code of 1926, a more than terminological significance was attached to the word "registration." The provisions of the Code suggested that such registration was not, equivalent to the celebration of a marriage. It exposed only the best proof that a marriage existed until the contrary was established in court. "Thus, on the one hand, any informal cohabitation had the effect of marriage with respect to marital property rights and succession rights of the spouses and children, if duly proved. On the other hand, a religious marriage had no legal effect in itself, but if it was followed by factual marital relations, it assumed the status of a *de facto* marriage with all the legal consequences thereof. The rights of children to maintenance and succession did not depend on their being born in registered wedlock/matrimony. But the qualifying clause making the duty of mutual support of parents and children dependent upon the absence of public or government support was omitted. The State evidently did not visualize a social security system as a substitute for support by next of kin"(Gsovski 1948, p. 73).

In 1924, the first constitution at the Union level (USSR) was ratified. This document

or 6 years of travel on the first Soviet tram. See <https://www.rbth.com/business/332176-history-russian-ruble>

framed the regulations in several other soviets as well.

In the specific locus/loci of inheritance laws and marital relationships, the radicality of the Soviet Law is evident. One important concept that stayed an integral part of the particularity of the Soviet inheritance law is the *izdhiventsy* which can be translated as the dependents and does not necessarily require people to have blood ties. Another distinctive feature of the early provisions is that, since state recognition was merely a recognition for a couple to be considered as 'married'; even the kids of the unregistered couples could inherit whatever is there that can be inherited.

The legalization of wills, or legacy letters by a State notary was mandatory. Legalization meant that the will (that must be in writing, too) has to be submitted to the notary, who "satisfies himself as to the testator's identity, scrutinizes the will's contents, draws attention to the rights of heredes necessari and, if the will is not in fraudem legis nor to the 'substantial prejudice of the state', certifies the testator's signature and places the will in his archives"(Brown 1963, p. 301). The duty expected of the notary in RSFSR slightly surpasses the duties of a notary of Western Europe.

With the Constitution of 1936, the scope of inheritance changed, allowing the inheritance only of 'individual property', which is defined as 'earned income and savings, the dwelling-house, and the auxiliary household economy, household effects, and utensils, things for personal use and comfort' (Article 10). The term 'earned' here allows for broad interpretation (and is criticized by Szirmai(1961) as faulty and confused). It must be added such private ownership of agricultural property is permitted to the peasant household (*dvor*)(Brown 1963, p. 297).

After the peasant insurgencies of the NEP era, World War II called the family back to the stage. The welfare of the people lost its significance compared to the urgency of the motherland's defense. Topics such as gay marriage or children born out of wedlock, came back to their pre-revolutionary statuses. In 1920, RSFSR became the first modern country to legalize abortion, until its ban in 1936 under Stalin, based on the argument of decreasing population growth and productivity. It was relegalized in 1955 (Savage 1987, p. 1031). As for homosexuality, early criminal codes (1922, 1926) did not codify its punishment, which was made a punishable offense again in 1934, just like in the pre-revolutionary period (Gsovski 1947, p. 76). Gsovski reports that under the Edicts of the Presidium of July 8, 1944, and March 15, 1945, children born out of officially acknowledged matrimony had no right of succession after their fathers. This *de facto* illegitimate child may not claim the name of its father. Nor can its mother demand maintenance and support from the father for raising the child.

"Thus, though the name illegitimate child is not used, the children born out of wedlock obtain a legal status totally different from that of children born in wedlock and all conditions in the aforementioned edicts are in evidence to produce the stigma of illegitimacy" (*Ibid* 84).

Other provisions on inheritance changed in the 1940s as well. Already in 1945, the Civil Code was providing that persons in a descending line of relationship and the surviving spouse, and any dependent actually receiving complete support from the decedent for not less than one year before his death shall inherit on a per capita basis. Hazard reports the following details:

"Inheritance taxation was levied on a graduated scale reaching 90 percent on all property, except that inherited from abroad, and government bonds and State Savings Bank deposits. A decedent estate may be distributed in accordance with a testamentary declaration, but this declaration may not bequeath property to anyone outside of the class of inheritors who would have taken if the testator had died intestate, nor may a minor child be cut off with less than 3/4 of the share it would have received by way of intestacy." (Hazard 1944, p. 482).

At this period, notaries had to witness the will unless there was military occupation and the will was *nuncupative* (*i.e.* oral).

6. PEOPLE'S REPUBLIC OF CHINA

6.1 The Imperial Background: Qing Dynasty, and The Republic of China

The Qing period, which is the last imperial dynasty in China, lasted from 1636 until the formation of the Republic of China in 1912. “In October of 1911, a group of revolutionaries in southern China led a successful revolt against the Qing Dynasty, establishing in its place the Republic of China and ending the imperial system.” Chiang Kai-shek chooses Nanjing to be the capital of the new Guomindang (GMD). With the support from Stalin, Communists gained leverage and had effective control over mainland China, pushing the nationalists to Taiwan. Guomindang and the Communists chose to stay in ceasefire during the 2nd World War era, directing their focus and hostility towards Japan, rather than each other. However, by 1932, GMD leader Chiang, left the optimism he had not long ago, in 1928. Several factors come into play here. First of all, controlling all of China is a cosmic task, and instead of fighting with the Warlords in the North and destroying them, Chiang Kai-shek chose to sign alliances with them, which provided him the opportunity to accomplish the Northern Expedition at the expense of the dubious loyalty of his enemy (Corrin et al. 1991, 97).

The civil war between Chang Kai-shek's Kuomintang Nationalists and Mao Zedong's Communists resumed even after the end of World War II. The civil war was only suspended during World War II due to the existence of an exogenous threat: Japan, at the main axis.

The traditional code of China did not contain many provisions on the law of succession but one thing was clear: females, and all persons claiming through females, are excluded from succession to the family property. The power of testation was practically absent the father could only deprive a rebellious or debauched son of a part or the whole of his inheritance.(Valk 1961, p. 297).

6.2 Jurisprudence and Legal Thought in the People's Republic of China

In 1949, the Chinese Communists were committed to the notion that political power depended on control of political (and legal) institutions. By 1959, in the wake of the Anti-Rightist Campaign and ongoing campaigns against counterrevolutionaries, the Party's unfettered control over legal institutions and personnel was well entrenched. A decade later, the ideological and political themes of the Cultural Revolution left the role of formal law and legal institutions further marginalized (Potter 1999, p. 673). The Chinese state had a legislative branch named the National People's Congress, an executive branch, known as the State Council, and its various subordinate ministries, including the Ministry of Public Security (police), and two legal organs: the Supreme People's Court and the Supreme People's Procuratorate. (Tanner 2007, p.18).

It is important to note that although for a while, seeing the USSR as the avant-garde communist state the PRC follows its institutions and methods, later on, PRC deviated from the Soviet model seriously. The Cultural Revolution initiated by Mao Zedong played an immense role in it. The legal structure was completely abolished during the Cultural Revolution years which are between 1966 and 1976 until Deng Xiaoping started implementing the Open Door Policy and the state strategies on the way to communism took a different turn. Surely, the border disputes between the USSR and PRC, reaching their peak in the Damansky incident was a crucial trigger in the falling apart of the ideological and political alliance between the USSR and PRC, as already mentioned in previous sections.

Unlike Stalin's decision of forced collectivization, Mao's decision to nationalize the land did not result in similar-scale peasant insurgencies, for Mao granted use rights to formerly poor peasants. Furthermore, peasant agriculture gave way to capitalist family agriculture even without the need for huge collectivization, even though it still produces for the market (farm consumption having become insignificant) and makes use of modern equipment, industrial inputs, and bank credit (Amin 2013).

“The post-Mao economic reforms required a legal system for protecting property and contract relations. Private property rights received formal recognition under the post-Mao legal reforms. Echoing provisions dating to the 1950s, the 1978 and 1982 Constitutions formally recognized rights to personal property.” (Potter 1999, p. 678-679). When Deng Xiaoping customized China's socialist road further and foresaw that for economic development, material incentives should be used, the state policies shifted from Mao Zedong Thought which focused on revo-

lutionary praxis. Under this scheme, the accumulation of private income is incentivized. Property rights were later extended through legal protections for patents, trademarks, copyright, and other intellectual property rights. The grant of land use rights for private farming and business operations marks another rupture. “The Law of the PRC on Urban Real Estate (1994) expanded the possibilities of private land use rights, but also tightened state control over the granting and exercise of these rights. The expanded recognition of property rights remains conditional upon deference to state interests...Constitutional requirements that the exercise of citizens’ rights, including the right to own property, do not conflict with state or social interests grant the state a monopoly to interpret those interests and thus to determine the extent to which private property rights will be recognized and enforced.”(*Ibid*)

6.3 The Law of Inheritance in the PRC

The equivalent of Gsovski’s work in Chinese Law would be Marius Hendricus van der Valk’s lengthy chapter he published in the special edition named *The Law Of Inheritance* in the journal *Law in Eastern Europe*. Van der Valk’s work too, clarifies key concepts and refers to primary sources, while also introducing the reader to the several shifts in the inheritance law in the People’s Republic of China.

A scholar who is wishing to explore the inheritance laws of the early years of the People’s Republic of China is highly dependent on M. H. van der Valk’s comprehensive accounts since apparently his avant-garde attempt to explore the territory has almost ended with him.

Referring to the Communist Manifesto (just as Griffin did), Van der Valk interprets the same sentence in a different way, advocating that

“...neither Lenin nor Engels has said there shall be no system of succession in a socialist society. On the contrary, in the Communist Manifesto, Marx and Engels declared that communism does only deprive any person of the opportunity to use his possessions in order to enslave other people’s labor. Marx and Engels taught that the capitalist system of succession has the private property system as a premise; this means succession to the right to exploit the means of production. The system of succession under socialism is built on the basis that the means of production are in socialist ownership; only means of life, *sheng huo tzu liao*, can be inherited, not means of production that can be used for exploitation. But they have never taught that under a socialist system, there can be no system of succession” (Valk 1961, p. 303).

The first constitution of the People's Republic of China was promulgated in 1954. Article 12 of this Constitution stipulates that "The state protects the rights of its citizens to inherit private property according to law". Perhaps the most radical shift from the previous practices of inheritance was regarding women's inclusion. Additionally, the right of peasants to own land was expressly recognized, and a dual system of ownership of the means of production existed. Capitalist production or individual handicraftsmen (from which profit can be derived) having been totally abrogated, the logical conclusion is that the means of production of which they were owners could be inherited. (Valk 1961, p. 307). Additional provisions, may be made by provinces or municipalities, if there are no provisions; or no concrete provisions for certain circumstances such might be the case in autonomous regions of minority peoples (Art. 64). Prof. Van der Valk's accounts explain the status of cooperatives and the inheritance of their members, which constituted a good amount of people in rural China:

There are first-stage cooperatives (I) and second-stage cooperatives (II) and difference between (I) and (II) is that the latter is, in the main, less explanation nature and more precise; the purpose, as set forth in (I), was gradually to replace private ownership of the means of production by collective ownership by the masses (Art. 1). This was to be achieved in two stages: the elementary and the advanced. At the elementary stage, *ch'u chi chieh tuan*, part of the means of production was owned collectively; and for a definite period of time members would be allowed to retain ownership of land and other means of production, which they had pooled under united management; they were to receive an appropriate return on this property (Art. 3). Consequently, at this stage land and other means of production could be inherited; it is in agreement with the provision that, upon withdrawal from the co-operative, members could take with them the means of production which they still owned (Art. 15). At the advanced stage, *kao chi chieh tuan*, however, all the chief means of production: land and other means of production needed by the co-operative would be common property (Art. 3). So they could no longer be inherited, as the basic condition, private ownership, was absent." (Valk 1961, p. 307-308).

In the case of communist states, one might justly be afraid of confiscation by the state or escheat of the property. However, in special situations, practical and ideological objections may militate against the State's acceptance of inheritance. Consequently, "the courts have frequently rejected governmental nationalization of estate property in favor of its distribution to distant relatives or sisters-in-law of the decedent, public organizations, or national enterprises." (Foster-Simons 1985, 48) PRC's system of succession under socialism is built on the basis of an essential distinction between the means of production and means of life: the former is in socialist ownership

whereas the second can be inherited.(Valk 1961, p. 303).

7. CONCLUSION

The transformation of inheritance laws in the RSFSR and PRC needs explanation because the state ideology (as an ideology is described by Marx and Engels) in the USSR and PRC stayed the same throughout the period of interest, even though the inheritance laws showed variation both in their justification of existence and content. This thesis offers to adopt Althusser's conceptualization of ideology, underlying its dynamics and irreducibility characteristics, to solve this puzzle. In this sense, this thesis is theory-confirming, since it confirms the validity of Althusser's theory of ideology among others. However, an additional footnote to the debates on methodology could be derived from the discussions made here.

The reasoning behind choosing the inheritance laws as the objective indicator of communist/Marxist characteristics of the state is already explained. The case study conducted in this thesis, at least to a certain extent exposes the inadequacy of solely looking at laws to claim ideological congruence or noncongruence of a state, at least in longitudinal analysis. Still, several other factors could be in play at this point, so I am willing to offer some control cases to discuss the issue and challenge the interpretive outcomes of this thesis.

Is there a self-proclaimed communist/socialist state that does not adopt any inheritance laws at all? The results of my survey on the issue show that there are not any. In the case selection chapter of this thesis, it is underlined that the USSR and PRC are not only good examples to compare because of their proximity, interrelations, or simultaneous existence for a considerable time period, but also because of their state power, comparable to other historical global powers. However, even when we look at inheritance laws in Nepal, or Cuba, which are rather small states, or North Korea, which is highly totalitarian and might resemble to USSR and PRC in that sense (at least to certain periods of our cases), private property is recognized in part. Then maybe, inheritance laws are not a good indicator of communist ideology. I doubt so, and the literature on the PRC's and USSR's inheritance laws does not really challenge it either. Since property relations of individuals and state are a distinctive

policy area for socialist states, as social benefits would be for a welfare state, the problem does not seem to lie in the variable.¹ Also, still, inheritance is still quite strictly exercised in some periods of our cases, as well as in other communist states.

Is there a non-socialist state in which inheritance is exercised almost as strictly as we would expect from a capitalist state? Japan is an infamous example with its inheritance tax that can go as high as %55 of the value of inherited money, yet, how to characterize its economic identity is a whole thesis topic by itself, so countries such as South Korea, Germany or France could be better reference points. Germany is defined as a “social federal state” in its constitution whereas France is defined as a “social Republic”.² These cases can too, be dismissed by declaring them welfare state and designating a deviation from the ideal form of capitalism. What does it tell us? It seems like incondite adoption of looking at inheritance laws, by which I mean the neglect of social-historical context and dismissing particularities of cases, decrease the explanatory power of any generalizations made on ideological congruence of governments. Already at the theoretical level, it is challenging to adopt the abolishment of inheritance without adopting socialism. Anarchist thought would not be a fruitful point of reference here, since it already (at least in most of its branches) defies the concept of state and laws as such. Left libertarianism³ could have proposed an alternative approach but it is criticized for being de facto unrealistic.

Our survey in both contexts demonstrated that political forces that promised the empowerment of people already had to guarantee some sort of individual economic liberty to distinguish themselves from the previous imperial order which let alone private property, didn't grant mass society its own bodily liberty until recently. Approaching 1930s Russia with today's liberal individualistic sentiments -or 1960's Eurocentric individualistic sentiments for that matter-, simply creates a bias and results in comparing rather irrelevant things with one another. Obtaining the private property of the huge acres of land or real estate was not a priority of the impoverished Chinese or Russian peasant, who did not gain his independence from the landlord until very recently anyways. To wit, in many ways, the peasants' conditions were better off than they were before, unlike the nobility's case.

¹The examples could be multiplied easily here. Policies regarding carbon footprint in a self-proclaimed green state, policies on women's headscarves, and access to religious education in a theocratic (Islamist in this case) equivalents.

²See the 1st clause of Article 20 in Chapter 2 (named “The Federation And The Länder”) of the Constitution of Germany and Article 1 in the Preamble Section of the Constitution of France.

³In a nutshell, left-libertarianism holds on to the combination of resource egalitarianism and full self-ownership (Demuijnck 2006). Demuijnck (2006) elaborates on the paradoxes of this approach extensively.

To wit, our attempts to find non-communist references advocating the abolishment of inheritance or communist cases abolishing the inheritance altogether do not seem to be challenging our debate here much. Studying and analyzing the content of laws that are of characteristic importance to a certain ideology, is not quite telling when it comes to assessing ideological congruence of the state.

This thesis explored inheritance laws in the PRC and RSFSR, also referring to the effect of the pre-communist period. Since the approach to the concept of property is the trademark distinction point between capitalism and socialism, the expectation was to observe an overlap between the state ideology (socialism/communism) in PRC and RSFSR and the laws. However, the variation in inheritance laws throughout time pushed us to revisit the definition of ideology. The one-to-one overlap between state ideology and observable/countable state policies that manifest themselves in the laws, might not always be possible simply due to the characteristics of ideology pointed out by political thinker Louis Althusser: ideology manifests itself through embedded practices, therefore it is observable in a sense, that is granted, but it is also irreducible. It seems that the natural outcome of this sort of thought process is that, not only for our cases but also for any other political science text studying the ideological congruence of a government, transnational institution, or a state, it is inevitable to err if only the raw material (codified laws, in this case) is taken into consideration without questioning: 1- historical and social conditions shaping the studied phenomenon is well understood, 2- the reason behind the particular relation between a particular form and particular content is exposed.

Was the introduction and expansion of inheritance rights compatible with communist ideology? I say yes based on two reasons: The first reason is already established by many scholars, communism is not inherently against the concept of inheritance, it is against a form of inheritance that deprives others of equality or symbolizes wealth as such. Ownership of the means of production, or ownership of luxury goods that manifest the generational and significantly than the others in the society well-off position of an individual, might and does constitute a problem. But we do not even know if indeed the communist state of living without even needing a strong state apparatus would problematize the right of living in the same house for the members of a family for the next generations or not. Marx abstained from talking about his 'utopia', more focused on problematizing the already existing system.

The second reason, which could inevitably give birth to a huge discussion on the problem of criterion is that almost any policy would be in line with any ideology if the relationship between that specific policy and the end goal is established. Samir Amin's method of trying to explain how China could still be considered a socialist

state (in 2013 at least), is very much driven by the same logic we can obtain regarding the inheritance laws in RSFSR and PRC. In China 2013, Amin advocates that the preliminary phase in the potential commitment of any society to liberating itself from historical capitalism on the long route to communism, is state capitalism and it is inevitable. How then, one can distinguish the state capitalism of a state on its way to socialism from a state capitalism exercised by a state that is solely capitalist? Amin in this case, suggests looking at official texts such as Five-Year Plans in the PRC's case. For whom are the policies most beneficial in the long run? Are there any urgent problem provisions that are being answered? Who is favored and why, for the short-term cost-benefit analysis?

In the USSR, in the early years of the revolution where ideology was dominant to the objective global and local economic and political conditions, inheritance rights were expanded horizontally, that is; with the lack of importance of marriage, for instance, more people had the right of inheritance from a deceased relative or acquaintance. However, the scope of the inheritable goods could not be enlarged much due to the communal forms of living and already poor conditions which limit the personal acquisition of material and monetary goods. Later, especially after the 1936 constitution and Stalin's attempt at codification of legal documents, both the inheritance law and overall Soviet Jurisprudence, came closer to that of Western liberal legal thought, if we can melt the Western legal traditions in one pot.

For China, even in the early years of the revolution, the necessity of drawing a line between the imperial past seems to be stronger. Therefore, the citizens of the People's Republic of China had more rights to acquire various goods compared to those in the imperial era. Perhaps due to population, the state was more eager to make compromises to the communist ideology, compared to motivating people to work.

Our survey in both contexts demonstrated that political forces that promised the empowerment of people already had to guarantee some sort of individual economic liberty to distinguish themselves from the previous imperial order which let alone private property, didn't grant mass society its own bodily liberty until recently. Approaching 1930s Russia with today's liberal individualistic sentiments -or 1960's Eurocentric individualistic sentiments for that matter-, simply creates a bias and results in comparing rather irrelevant things with one another. Obtaining the private property of the huge acres of land or real estate was not a priority of the impoverished Chinese or Russian peasant, who did not gain his independence from the landlord until very recently anyway. To wit, in many ways, the peasants' conditions were better off than they were before, unlike the nobility's case.

Another misleading approach would be to neglect the political power struggles and World War conditions in the twentieth century. Neither China nor Russia was not experiencing their socialist transformation in a vacuum, free from relations with other states and global political events. Their involvement with international conflicts may have caused the divergences from the theoretical prescriptions foreseen by Marxist theoreticians. On the other hand, as the literature demonstrates, for Marx and Engels there were clear distinctions between the means of production and means of life. The right of inheritance was given to people since 1) it was believed that means of life should not be the primary focus of yet institutionally and economically weak states which are only on the previous steps towards communism, 2) these rather harmless forms of inheritance gave people an incentive to be more productive.

Yet, even without the distinction between means of life and means of production, if we measure the practical compliance of these two cases at hand by looking at their long-term goals and whether they were able to justify their law-making in the framework of the long road to socialism or not, could still be telling.

In the end, with its methodological extension, this thesis confirms what P. Ishwara Bhat identifies about comparative legal research: it needs to be intertwined with critical evaluation of historical and sociological knowledge, to be freed from the danger of being reduced to a “dry juxtapositional statement” (Bhat 2019). And with its theoretical role, this thesis confirms the validity and usefulness of Althusser’s conceptualization of ideology, to comprehend its effects and interventions on tangible political and social institutions such as the law.

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