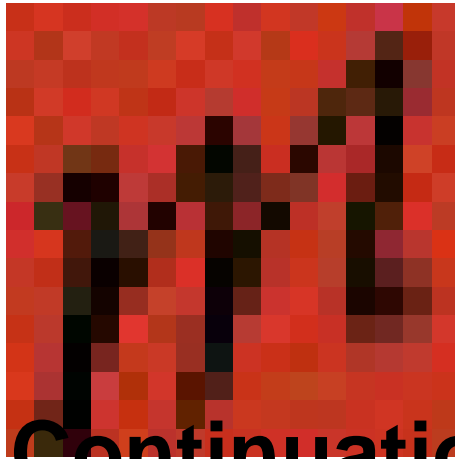


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XXXI.29 Continuation of the same subject

- The Spirit of Law - Book XXXI. Theory of feudal laws among the Franks, in their relation to the transformations in their monarchy -

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It is said in the books of fiefs that when the emperor Conrad left for Rome, the fidèles who were in his service asked him to make a law so the fiefs that passed down to children should also pass on to grandchildren, and that the man whose brother had died without legitimate heirs could succeed to the fief which had belonged to their common father. [1] This was granted.

They add, and it must be remembered that those who speak were living in the time of the emperor Frederick I, [2] that the ancient juriconsults had always held that the succession of fiefs in a collateral line did not go beyond full brothers, although in modern times it had been extended as far as the seventh remove, as by the new right it had been carried in direct line ad infinitum. [3] That is how Conrad's law was gradually extended.

All these things understood, a simple reading of the history of France will show that the perpetuity of fiefs was introduced earlier in France than in Germany. When the emperor Conrad II began to reign in 1024, things were still in Germany as they already were in France under the reign of Charles the Bald, who died in 877. But in France, since the reign of Charles the Bald, such changes were made that Charles the Simple found himself in no position to dispute with a foreign house his incontestable rights to the empire ; and that, finally, at the time of Hugh Capet, the reigning house, stripped of all its domains, could not even maintain the crown.

Charles the Bald's weakness of mind meant in France an equal weakness in the state. But as Louis the German his brother and some of those who succeeded him had greater qualities, the strength of their state was maintained for longer.

Nay, perhaps the phlegmatic humor, and if I dare say it the immutability of the spirit of the German nation, stood up for longer than that of the French Nation against this disposition of things that caused fiefs, as if by natural tendency, to be perpetuated in families.

I add that the kingdom of Germany was not devastated, and so to speak obliterated, as the French one was, by that particular sort of war brought against her by the Normans and the Saracens. There was less wealth in Germany, fewer cities to sack, less coastline to survey, more marshes to cross, and more forests to penetrate. Princes who did not see the state about to collapse at every instant had less need of their vassals, in other words, were less dependent on them. And it seems likely that if the emperors of Germany had not been obliged to go get themselves crowned in Rome and to make continual expeditions into Italy, their fiefs would have preserved their original nature at home for longer.

[1] *Cum vero Conradus Romam proficisceretur, petitum est a fidelibus qui in ejus erant servitio, ut lege ab eo promulgatâ, hoc etiam ad nepotes ex filio producere dignaretur, et ut frater fratri sine legitimo hærede defuncto in beneficio quod eorum patris fuit, succedat* (book I of fiefs, tit. 1).

[2] Cujas has solidly proven it.

[3] *Sciendum est quod beneficium advenientes ex latere, ultra fratres patrueles non progreditur successione ab antiquis sapientibus constitutum, licet moderno tempore usque ad septimum geniculum sit usurpatum, quod in masculis descenditibus novo jure in infinitum extenditur* (ibid.).