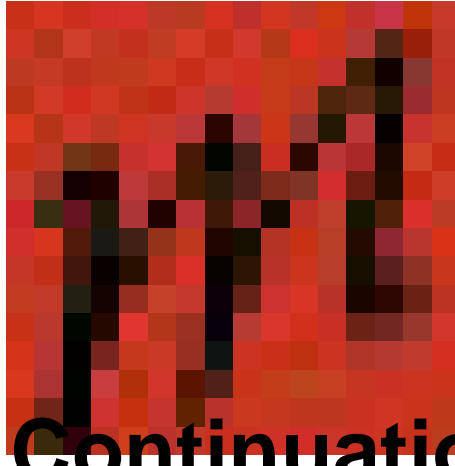


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XXXI.33 Continuation of the same subject

- 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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When fiefs were revocable or for life, they were a part of the political laws only ; that is why in the civil laws of those times there is so little mention of the laws of fiefs. But once they became hereditary, and could be given, sold, and bequeathed, they were part both of the political laws and of the civil laws. The fief considered as an obligation for military service was an aspect of political law ; considered as a type of property that could be traded, it was an aspect of civil law. This is what gave birth to the civil laws relative to fiefs.

Fiefs having become hereditary, laws bearing on the order of successions had to be relative to the perpetuity of fiefs. Thus was established, despite the provision of Roman law and of the Salic law, [1] this rule of French law : *propres ne remontent point*. [2] The fief had to be served, but a grandfather or a great-uncle would have been bad vassals to give to a lord : thus this rule at first applied only to fiefs, as we learn from Boutillier. [3]

Fiefs having become hereditary, the lords, who had to see that the fief was served, required that daughters who were to succeed to the fief, and I think sometimes the males, should not marry without their consent, [4] and so marriage contracts became for nobles a feudal disposition and a civil disposition. In such an act, concluded before the lord's eyes, they made provisions for the future succession, with the intention that the fief could be served by the heirs ; and so it was nobles alone who were first at liberty to dispose of future successions by marriage contract, as Boyer [5] and Aufrerius [6] have observed.

It is needless to say that redemption by one of the lineage, [7] based on the ancient right of families, which is a mystery of our ancient French jurisprudence which I have not the time to develop, could apply with respect to fiefs only when they became perpetual.

Italiam, Italiam... [8]

I close the treatise on fiefs where most authors have begun it.

[1] Under the heading of allods. ["[...] c'est-à-dire qu'en pays coutumier les ascendants ne succèdent à leurs descendants que dans les meubles, acquêts, et conquêts immeubles, et non pas dans les propres." Claude-Joseph de Ferrière, *Dictionnaire de droit et de pratique*, Paris : Brunet, 3rd edition, 1749, t. II, p. 614.]

[2] Book IV, *De feudis*, tit. 59. [i.e., properties do not revert to a previous generation.]

[3] *Somme rural*, book I, [tit. 76, p. 447](#).

[4] Following an ordinance of St. Louis in 1246, to confirm the customs of Anjou and the Maine, those who have the trusteeship of a daughter heir of a fief will give an assurance to the lord that she will be married only with her own consent.

[5] Decision 155, no. 8 and 204. No. 38.

[6] In *Capelle Tholose*, decision 453.

[7] [*Retrait lignager* se dit quand un lignager retire des mains d'un tiers acquereur un ancien propre de sa famille vendu par son parent. (Furetière).]

[8] [*Aeneid*, book III, line 523, representing the cry of the voyager who has first spied the coast of Italy.]