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THE INFLUENCE OF THE EIGHTEENTH. NOVEL OF JUSTINIAN

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Justinian, conqueror and legislator, ruled with dazzling brilliancy over the Roman Empire of the East from 527 to 565 A.D. His generals brought to a successful issue the conquest of Africa and Italy. His juris consults gave to legal science that body of law known as the *Corpus Juris Civilis.* His fame as a legislator has easily survived that of conqueror. Truly Bulwer said, "The Pen is mightier than the Sword."

The Novels of Justinian, and later Emperors, mark the completion of the *Corpus Juris.* These *constitutiones* were enacted (535 to 565 A.D.) to add to and perfect the existing body of Roman law. The Emperor had an ideal excellence, so necessary in law, as the *Constitutio Cordi nobis est* attests: "It lies at our heart, conscript fathers, ever to regulate the cares of our mind most zealously, so that nothing begun by us remains imperfect."

The Eighteenth Novel (536 A.D.) introduced the all-important principle of cognation into the Roman system of law; which principle produced a transformation perhaps never before or since equalled in the law of property rights. Cognation is the opening wedge in the decline of the ancient *patria potestas.* The present Novel limits also the absolute disposition of property by testaments and provides a statutory portion for children legitimate and natural. The inception of individual legal equality is first met with in this *Constitutio.* It covers many points of procedure and among these, one in the subject of special pleadings, providing that a possessor defendant, who alleges title in answer to plaintiff's demand, and has legal title as mortgagee not specifically alleged, loses such title and forfeits possession to the claimant. The suggestion is made of the division of the paternal inheritance between children before death lest the succession be the cause of a "thousand quarrels to them."

I.

THE PRINCIPLE OF COGNATION.

The principle of cognation was known to other legal systems before incorporated in the Roman law. Religion, among the Hindus, called to the succession on failure of legitimate heirs, the son of an "appointed daughter." Sir Henry Maine, in "Early Law and Custom," page 91, says: "He is, in Roman phrase, a 'cognate,' a kinsman through women only, who according to the usage prevailing among all the more powerful races of mankind, either from the first or at a certain stage of their development, can not continue the family." "Some customs near akin to the Hindu usage of 'appointing' a daughter appear to have been very widely diffused over the ancient world, and traces of them are found far down in history. The daughter here becomes neither the true successor of her father, * * * but a channel through which his blood passes to a male child, capable, according to the oldest nations, of sacrificing to him; and, according to the newer ideas, of taking his property and preserving the continuity of the household. Among the Athenians a father, fearing sonlessness, might have a son raised up to him by a daughter."

Legislation, on the other hand, introduced cognation to the Roman system of law in the reign of Justinian. Whether religion anciently in Rome, as in Greece and India, developed cognation, and at the time of the introduction of the law of the Twelve Tables it had gone into disuse, may be questioned. In the first third of the sixth century, A.D., agnation determined the line of descent.

By the law of the Twelve Tables, intestate property passed first to *sui heredes*, then to the nearest agnate, and finally to the gentiles. The *sui heredes* "were the agnatic descendants of the deceased who were subject to his immediate power. They belong to the household of the deceased by virtue of the *patria potestas*" (Sohm's "Institutes of Roman Law," p. 445). This law of succession by the Twelve Tables was unjust and inequitable in that it deprived emancipated sons and descendants of women entirely from the inheritance of the ancestor, preferring the agnates and gentiles.

Following and supplementing the law of the Twelve Tables, the prætorian edict gave the patrimony of the intestate by *honorum possessio:* First, to the children, emancipated and unemancipated; second, to *sui heredes* not including emanci-

pated children, and in default of *sui* to the nearest agnate; third, to cognates; and fourth, to the husband and wife (Sohm's "Institutes," pp. 439–42). The prætor gave relief to the emancipated children by including them with those under *potestas*. Justinian made no provision for the descendants of women until the legislation embraced in

The Eighteenth Novel increased the intestacy share of children in case of four children or less to one-third, and in excess of four children to one-half of the inheritance. It amended the Early Civil law in this that all grandsons and great-grandsons by a son to a grandfather should be entitled to their father's share, although they were not, as such grandsons and great-grandsons, if emancipated, entitled to such portion by the Early Civil law.

Further, it enacted that grandsons and daughters and great-grandsons and daughters to a grandfather by a daughter and to a paternal and maternal grandmother should be heirs to such grandfather, paternal and maternal grandmother. "We ordain one succession in regard to all grandsons or great-grandsons, not permitting a woman to receive less than a man in such cases" (*Post* Novel 18, chapter IV). This *Constitutio* made all descendants, male and female, heirs of the grandparents, male and female.

The Eighteenth Novel made grandsons and great-grandsons heirs of the grandparents; the law of the Twelve Tables, however, still excluded the inheritance of sons in power from their children and such inheritance passed to the *paterfamilias*. The 118th Novel expressly made children of sons in power the heirs of such son, and upon the latter's death the children and not their grandparents succeeded to the succession of such son.

Chapter IV, 118th Novel, reads: "Moreover we desire [that] no difference may exist in any succession or inheritance between those persons, males and females, who are called to the inheritance, whom we decree to be called to the inheritance in common, whether linked to the deceased by a male or female; but in all successions, we decree the difference of agnates and cognates to cease, either on account of the female person, or because of emancipation, or in any mode whatever treated of in former laws, and without any distinction of this kind we decree all to come to the intestate succession of cognates according to the decree of his cognation."

With the 118th *Constitutio* the Justinian law recognized in its full scope the principle of cognation which had been of a slow

growth in Roman law. The prætor first introduced cognation allowing emancipated children a portion of the inheritance; then the *senatus consulta:* Tertullianum gave to a mother the right to succeed her intestate children; the Orphitianum gave the first right of children to the succession of their intestate mother; Valentinian II. and Theodosius "gave children a right of intestate succession as against maternal ascendants in preference to more remote agnates." Anastasius gave emancipated brothers and sisters the right to take with agnatic brothers and sisters (Sohm's "Institutes," p. 442). The 18th Novel made cognates heirs of grandparents and the 118th Novel made cognates the heirs of their father.

"Cognation is the relationship arising through common descent from the same pair of married persons, whether the descent be traced through males or females" (Maine's "Ancient Law," p. 141).

Thus in Roman law, the principle of agnation became merged in that of cognation. The latter has been bequeathed to and forms the rules of descent and ascent in the following countries:

The laws of Holland recognize two successions for intestate property: feudal and allodial. "The succession of relatives among us is either according to the rule of the law of the place, or by choice of the public law." By the *lex loci*: "In the first degree of the ascending line are father and mother; in the first degree of the descending line are sons and daughters. In the second degree of ascending relatives are two grandfathers and two grandmothers; that is, on the father's and mother's side. * * * In the second degree of descending relatives are grandchildren: that is, sons' sons, sons' daughters, daughters' sons, daughters' daughters" (Grotius' "Dutch Jurisprudence," pp. 174–7). The *lex publica* provides: "First, then, as long as descending relatives are found they are alone entitled to the inheritance, to the exclusion of all other relatives." On failure of the latter, "the father and the mother of the deceased, in case both are alive, inherit the whole of their children's property" (*Ibid.* 187 *et seq.*).

The French Civil Code, s. 745, provides: "Children or their descendants succeed to their father and mother, grandfather, grandmother, or other ascendants, without distinction of sex or primogeniture, and although they be of different marriages."

In regard to successions of ascendants, s. 746, recites: "If

the deceased has left neither posterity, nor brother, sister, nor descendants of them, the succession is divided in halves between the ascendants of the paternal line and the ascendants of the maternal line."

The *Code Civil Italien.* s. 736, is: "Legitimate children and their descendants succeed to the father, to the mother and every other ascendant, without distinction of sex and although they are of different marriages."

S. 738: "If one dies leaving neither posterity, * * * the father and mother succeed by equal portions."

S. 739: "If one dies * * * ascendants of the paternal line succeed for one-half, and for the other half ascendants of the maternal line, without regard to the origin of the estate."

Johnston's translation of the "Institutes of the Law of Spain," page 119, interpretates: "From all that has been said, we draw one general conclusion, that all the property of the parents is the lawful portion or right (*la legitime*) of the children, with the exception of a fifth; and the property of the child, who dies without issue or descendants, belongs of right (*son legitima*) to the parents.

"In successions *ab intestato*, the descendants hold the first place, and among them children without regard to sex, inherit the property of the deceased. * * * In default of descendants, ascendants succeed or inherit * * * without distinction of the paternal or maternal side."

The Civil Code of Louisiana, art. 902, declares: "Legitimate children or their descendants inherit from their father and mother, grandfathers or other ascendants, without distinction of sex or primogeniture, and though they may be born from different marriages."

Art. 903, proceeds: "If any one dies leaving no descendants, but a father and mother, * * * the succession is divided into two equal portions, one of which goes to the father and mother, who divide it equally between them * * *."

Art. 906, continues: "If there are ascendants in the paternal and maternal lines in the same degree the estate is divided into two equal shares, one of which goes to the ascendants on the paternal, and the other to ascendants on the maternal side, whether the number of ascendants on each side be equal or not."

The Austrian Civil Code (*de Winiwarter*) reads: "Legitimate children may be of the male or female sex" (s. 732).

Sec. 738: "The inheritance is then divided in two equal parts. The one half belongs to the parents of the father and the other to the parents of the mother."

In England before the Conquest, real and personal property was divided equally between children and their descendants; since that period the feudal law has regulated landed property; and personalty, after payment of lawful debts, is divided *pro rata* between the wife and children, or if the wife was deceased, between the children.

"Before the Conquest * * * and in more ancient times still, all the children, both male and female, inherited alike; and the estate, whether real or personal, descended to all equally (1 Salk. 251; Hale's H. C. L. 220; Dalrymp. Feud. 201–2;" Burn's "Ecclesiastical Law," p 380).

"Sec. 5. All ordinaries shall distribute * * * the residue by equal portions to and among the children of such persons dying intestate and such persons as legally represent such children" (*Ibid.*, p. 340).

In Scotland the Civil Law of Rome was generally adopted, and hence what has been said (*supra*) applies with more force to North Britain. "There is no doubt that the extent to which Roman Civil Law has been incorporated with the law of Scotland has given it a greater resemblance to the codes of the majority of European states than it has to the Common Law of England" (Burton's "Law of Scotland," p. 105).

The revised statutes of several of the United States are subjoined:

Connecticut's, Sec. 630. The distribution of intestate real estate "shall be distributed in equal portions * * * among the children and the legal representatives of any of them." Sec. 632, "If there be no children * * * then to the parent or parents." The rule of the Civil Law is adopted in regard to ascertaining the degree of next of kin in Connecticut, Illinois and Massachusetts.

Illinois', chap. 39, Sec. 1: "That estates, both real and personal, of residents and non-resident proprietors in this State dying intestate * * * shall descend and be distributed: * * * First, to his or her children and their descendants." On failure of descendants "then to parents."

Massachusetts', Chap. 125, Sec. 1, real estate descends: "First, in equal shares to his children, * * * then to all his

other lineal descendants. Second, if he leaves no issue, then in equal shares to his father and mother."

Walker in his "American Law," page 400, states: "First of all (by the statute law of Ohio) property descends to children and their issue, *per capita*, where all are in the same degree, and *per stirpes*, where they are not. This rule operates wherever there are children or children's issue to the exclusion of all collateral relatives.

"The rules of descent (*Ibid.*, p. 396) vary considerably in the different States, but all the States agree in departing from the English law so far as to promote equality among the heirs. For example, the two great characteristics of the English canons of descent, namely, primogeniture, or a preference of the eldest son over all the other children, and a preference of males over females, are probably found nowhere in the United States."

Our first conclusion, then, is that the principle of cognation in descending and ascending lines in the succession laws of the countries of Holland, France, Italy, Spain, Louisiana, Austria, England and Scotland before the Conquest and thereafter in distribution of personalty, and most generally in the States of the United States, had its source in the Eighteenth Novel of Justinian.

INDIVIDUAL OWNERSHIP AND CONTRACT.

Judge Holmes has said: "I shall use the history of our law so far as it is necessary to explain a conception or to interpret a rule. In doing so there are two errors to be avoided. * * * One is that of supposing because an idea seems very familiar and natural to us, that it has always been so. Many things which we take for granted have had to be laboriously fought out or thought out in past times. The other mistake is the opposite one of asking too much of history. We start with man full grown. It may be assumed that the earliest barbarian whose practices are to be considered, had a good many of the same feelings and passions as ourselves" ("The Common Law," 2).

Religion among early societies has established ownership. Among the Jews, God gave the land to the patriarchs, thus delegating the ownership of land to men. Among the Greeks and Romans, the domestic gods were their first religion and gave them the idea of property. The ancient religious beliefs gave rise to the conception of private family property ("*La Cité Antique*," 62–9).

The family (gens) has been from the first the only form of society. Comparing the domestic institutions, M. Coulange finds the same religious principles running through all the races descending from the Aryan branch of mankind in India, Greece and Rome, and draws the inference then that the family organization preceded the separation of the Aryan group. The early right of property was in the family which finally gave way to individual ownership. Each member of the family is an integral part of the family and free service is unknown" (*Ibid.*, 125–6–7).

M. Tarde in his critical work, "*Les Transformations du Droit*," 12, makes the conclusions following: "In penal law, * * * from family retaliation and revenge, follow pecuniary compensation and subsequently legal proceedings. In the *régime* of persons, the primitive universality of the matriarchy was followed by patriarchy, and then the slavery of women, and the change from this slavery to the slow emancipation of women. * * * In civil right, the primitive universality of the village community, then of family in the *régime* of goods, before the gradual conception of private property."

"In the oldest times the family is the sole owner; individual ownership is unknown and common ownership is the only recognized form. The common ownership of the family developed in the course of time into the private ownership of the individual" (Sohm's "Institutes of Roman Law," 408).

"To a man who wished to make a will the ancient legislator replied: 'You are the owner neither of your property nor of yourself; you and your goods, all that belong to the family, that is to say to your ancestors and to posterity!' " (Tarde, *Ibid.*, 72–3).

"The Roman law, which supplies the only sure route by which the mind can travel back without a check from civilization to barbarism, shows us society organized in separate families, each ruled by the *paterfamilias*, its despotic chief" (Maine's "Early Law and Custom," 238).

The *sui heredes* "are heirs of the house, and even in their parents' lifetime are regarded as in a manner owners [of the family estate]" (Gaius' "Institutes," B. II. 157). "Whatever our children in power or our slaves receive in mancipation or acquire by delivery, whatever claim they obtain either by stipulation or on any other ground is acquired for us; for he who is in power can have nothing of his own" (*Ibid.*, II. 87).

"Under the old civil law the father's absolute power is not confined to the person of his child, but extends equally to his

property. In fact, the effect of *patria potestas* is virtually to destroy the proprietary capacity of the *filiusfamilias.* He is incapable of having any rights of property of his own. Whatever he acquires passes, by the necessary operation of the law, to the *paterfamilias.* * * * It was only during the Empire that Roman law, in the course of its progressive development, broke through, one by one, the consequences flowing from the ancient law and gradually established the principle of the proprietary capacity of *filiusfamilias*" (Sohm's "Institutes," 391).

"The ancient law of Rome forbade the children under power to hold property apart from their parents, or (we should rather say) never contemplated the possibility of their claiming a separate ownership. The father was entitled to take the whole of the son's acquisitions, and to enjoy the benefit of his contracts without being entangled in any compensating liability" (Maine's "Ancient Law," 136).

"Every Roman citizen is either a *paterfamilias* or a *filiusfamilias*, according as he is free, or not free from paternal power. *Paterfamilias* is the generic name for a *homo sui juris*, whether man or woman, child or adult, married or unmarried; *filiusfamilias* is the generic name for a *homo aliani juris*, whether son or daughter, grandson or granddaughter, and so on" (Sohm's *Ibid.*, 120).

A *filiusfamilias* when a *miles* had a limited proprietary capacity in his *peculium castrense;* from the pay received in the army, ownership in him was extended to pay received in public office, called *peculium quasi castrense.* Later, ownership included property inherited by the *filiusfamilias* from his mother. And in Justinian's reign the son could own all property except *ex re patris.* The *paterfamilias* had the usufruct of the *bona adventicia* (Sohm's *Ibid.*, 391–2).

The one-ownership of the father of a family by gradual change did not include certain property in which the son came to have exclusive ownership, thus leaving the father only a usufruct therein. The one qualification for owning property, except as just stated, was that one should be a *homo sui juris*, that is, a *paterfamilias.*

The inheritances of intestates by a law of the Twelve Tables belong in the first place to their *sui heredes*, who are descendants under power, as a son or daughter, and other descendants only by a son, whether actual or adopted. The grandson becomes *suus heres* only when his father or other ascendant ceases to be in power (Gaius III. 1, 2). A son or sons and daughter or

daughters and descendants through males are called to the inheritance simultaneously (*Ibid.*, III. 7). The immediate children succeed *per capita*, the descendants of deceased children *per stirpes* (*Ibid.*, III. 8). On failure of *suus heres*, the nearest agnate succeeds (*Ibid.*, III. 9, 10, 11). If there are no agnates the gentile succeeds (*Ibid.*, III. 17). Emancipated children do not succeed (*Ibid.*, III. 18); nor if not under power (*Ibid.*, III. 20); nor cognates (*Ibid.*, III. 24). The prætor calls emancipated children to the inheritance with the unemancipated (*Ibid.*, 25).

The Eighteenth Novel made all grandchildren, male and female, heirs of the grandparents, male and female, in the event of intestacy. When the parent of the grandchild or grandchildren was deceased the child or children received *per stirpes* the share of their parent, male or female. "We ordain one succession in regard to grandsons or great-grandsons, not permitting a man to receive less than a woman in such case" (18th Novel, chapter IV.).

We see the principle of agnation merged in that of cognation in intestate succession. The result is the diverging of ownership from the immediate lines—the sons and daughters—to the children, male and female, of a deceased daughter; and the property of a deceased paternal or maternal grandmother, instead of going to the nearest agnate with grandchildren living, descends to all such grandchildren. Such grandchildren take their deceased parents' share. If these grandchildren were in power the *paterfamilias* received the usufruct, but the grandchildren, male and female, became *sui juris* as to such property. The power of the *paterfamilias* over private property is thus further curtailed, and we witness the creation of new individual ownership produced by the principle of cognation.

The 118th Novel, chapter I., decreed: "Accordingly, if any one of the descendants survived him [one who has died intestate] of either sex or in whatever degree, whether descending from the genus male or female, and whether he is *sui juris*, or whether in power [such descendant] is preferred to all ascendants and collaterals. For although one, who is deceased, shall have been in another's power, nevertheless his children, of either sex or in whatever degree they may be, even to the parents themselves, in whose power he was, who has deceased, we decree to be preferred, to wit, in those things which are not acquired to fathers by our laws. For concerning the usufruct of these things which ought to be acquired or preserved to them, we preserve to parents our published laws concerning these

things; nevertheless in such a way if it shall have happened that any one of these descendants dies having left children, those sons or daughters or other descendants succeed in the place of their parents, whether they are found in the power of the deceased or *sui juris*, they will be about to accept such part from the inheritance of the deceased, as many as these may be, so much as their parents would have received if they had survived, which succession antiquity called *in stirpes*. For in this succession we are unwilling to prescribe degree, but we enact, with sons and daughters, grandsons to be called from a pre-deceased son or daughter, nor does it make any difference whether they are males or females, and whether they descend from the masculine or feminine sex, whether they are in power or even *sui juris*."

The Eighteenth Novel made all grandchildren the heirs of grandparents; that is to say, the principle of cognation superseded the narrower one of agnation. Cognation was, as we have seen, transferred to the One hundred and eighteenth Novel from the Eighteenth. The next step was to make all grandchildren the heirs of a deceased *filiusfamilias* under *potestas* at the time of his death. Hence the property of the son which formerly reverted to the *paterfamilias* descends to the grandchildren, converting the ownership of the *paterfamilias* into the individual ownership of the heirs, descending *per capita* to the sons and daughters and *per stirpes* to their descendants by representation. The estate of a deceased *filiusfamilias* under power passed then upon intestacy to his descendants just as the estate of the *paterfamilias* deceased devolved.

With the enactment of the One hundred and eighteenth Novel the *patria potestas* lost its supremacy in the law of private property by giving the deceased *filiusfamilias* heirs; and the principle of intestate cognatic succession gave full birth to individual ownership in each of such heirs.

"The movement of the progressive societies has been uniform in one respect. Through all its course it has been distinguished by the gradual dissolution of family dependency and the growth of individual obligation in its place. The individual is steadily substituted for the family, as the unit of which civil laws take account" (Maine's "Ancient Law," 163).

The exclusive ownership in the private property of the family extended from the time of the Twelve Tables (500 B.C.) to the end of the first third of the sixth century A.D., over one thousand years except in certain property acquired by the *filius-*

familias in which the head of a family had a usufruct. Then by intestate cognatic succession introduced in the Eighteenth and later incorporated in the One hundred and eighteenth Novel we find family ownership has passed into that of the individual.

We further conclude that the principle of intestate cognatic succession introduced in the Eighteenth Novel produced a profound evolution in the rights of private property, expanding the family ownership in the *paterfamilias* to the extent of creating a separate ownership in each member of the family.

INDIVIDUAL CONTRACT.

"The word status may be usefully employed to construct a formula expressing the progress thus indicated (the gradual dissolution of family dependency and the growth of individual obligation in its place), which, whatever be its value, seems to me to be sufficiently ascertained. All the forms of status taken notice of in the law of persons were derived from, and to some extent are still colored by the powers and privileges anciently residing in the family. If, then, we employ status, agreeably with the usage of the best writers, to signify those personal conditions only, and avoid applying the term to such conditions as are the immediate or remote result of agreement, we may say that the movement of the progressive societies has hitherto been a movement from status to contract" (Maine's "Ancient Law," 164–5).

"It will now be seen what is meant by the saying that the progress of society is from status to contract. What I think is meant is, that the rights and duties which are attached to individuals as members of a class are coming gradually more and more under the control of those upon whose assent they come into existence; and that the remedy for any breach of them is more frequently now than formerly the ordinary remedy for breaches of contract. This is obviously the case with the rights and duties which attach to master and servant; and it is even beginning to show itself very strongly in the relations of husband and wife" (Markby's "Elements of Law," 101).

In passing from the subject of ownership to that of contract, let us picture a vast plain and rising from its surface in equal proportions many mountains sporadic. We will, for convenience, call each eminence a *paterfamilias.* The relations between the collective group of *patresfamilias* are regulated by the respective heads in family rights, and breaches of duties are adjudicated in the public court. That is to say, all exogamous or public relations are personal to the *patresfamilias* and if con-

tracted by their children or slaves in power accrue to the benefit of such *patres*. Under these social conditions the rights of ownership and contract are limited to the despotic chiefs.

To consider each *mons* apart and to itself in its endogamous or private relations, we find the *paterfamilias* the high-priest, sole judge and proprietor. We have seen *supra* that the ownership of a son and head of a family, when deceased intestate, passed to their heirs and created individual ownership in each heir.

In case the *paterfamilias* dies intestate the *mons* or eminence in its collective ownership is divided between the heirs and becomes *monticuli* or little eminences. A levelling process is in action creating heads and doing away with sons of families. Each *monticulus* becomes a separate owner. Instead of the *montes* contracting with one another the *monticuli* bargain with the *monticuli* and the remaining *montes*. The process ends when collective or family ownership becomes individual property exclusively.

The public encroaches upon the domestic *forum* and as the levelling process goes on the business of the public court from cases between *montes*, assumes jurisdiction between *mons* and *monticulus*, and *monticulus* and *monticulus*. The private or family court thus in time disappears.

May we assume from the foregoing that family rights and duties, just as ownership, become by this process individual rights and duties? If so, our third conclusion is that intestate cognatic succession of the Eighteenth Novel converted family rights and duties into individual rights and duties.

CONCEPTION OF INDIVIDUAL OWNERSHIP.

The principles and laws of the ancients differed from ours. The conception of private property has never been conceived by some races of men, with others it is a slow growth. The conception and appropriation of real property as belonging to an individual was a complex problem; personal property being first recognized as such among the Tartars for instance. With the early Germans land was given out for a year and exchanged at the end of that time, an ownership rather of the crops than the land. From the earliest times the Greeks and Romans recognized private family property. While the Germans did not own the land they did the yearly crops; with the Greeks they owned the land but the crops were held in common. The family and private ownership have from the beginning been deeply rooted and grown with the domestic religion (*La Cité Antique*, chapter VI.).

Aside from the Romance peoples who have closely, almost exactly, followed the Roman law in their respective systems of law, is it not a fair conclusion that our conception of private individual property and individual rights and duties had its source in the Roman Law, and its progress was accelerated by the principle of intestate cognatic succession introduced by the Eighteenth Novel?

INDIVIDUAL LEGAL EQUALITY.

"Of the whole family it was only the *paterfamilias* who was able to appear before the tribunal of the city. Public justice exists only for him. He was also responsible for the *dèlicts* committed by the members of his own family.

"If justice, for the son and wife, was not in the city, it was in the house. Their judge was the *paterfamilias*, sitting as a tribunal, by reason of his martial and paternal authority, in the name of the family and under the eyes of the domestic gods" (Coulange's "*La Cité Antique*," p. 102).

From the foregoing it will be seen that those persons not *sui juris* had no standing in the public court and had recourse only to the family court. In the preceding pages we have shown the gradual merging of the family into the public court. To the same end, we subjoin the following, respecting the parties litigant passing from the private family tribunal to the public *forum*.

The Roman family law may be considered in three relations, the law of marriage; the law of guardianship; and the law of *patria potestas*. The latter is the relation between the *paterfamilias*, and his descendants. We have *supra* endeavored to show that the principle of cognation levelled the power of the *paterfamilias* in ownership into separate individual ownership upon intestacy, creating individual rights of ownership and contract in immediate children male and female *per capita* and the descendants of such deceased children *per stirpes*.

Excepting the law of marriage, the relation in property between husband and wife; and the law of guardianship, the relation in property rights between guardian and ward, we find by the principle of intestate cognatic succession in ownership all individuals born free become *sui juris*, that is, all free persons, male and female, not minors, married women, or those under legal disability.

The conclusion follows that being *sui juris* in ownership and contract, each individual, except as stated, may bring or defend an action in respect of the rights and duties of such ownership and contract.

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(*To be continued*).