A simple formulation of the problem: in the south, ab intestat succession made for rather equal division, but testamentary right allowed extreme inequality and even disinheritance; in the north, the testament was very limited in power to affect succession because of the equal division called for by the coutumiers, but in various places the préciput, and in noble succession always the droit d'ainesse, called for preference of the eldest son. The Midi thus saw perpetuation of family less secure or more secure, depending on the will of the paterfamilias, the coutumiers in the north guaranteed some preference for the eldest, but necessary care for all descendant, and in any case the preservation of the lineage.

By the use of fideicommissaires, and the principle of representation, the Roman areas had the ability to entail in a very precise fashion, but at the same time Novel 118 called for equal division; the Revolutionary solution was to apotheosize the latter and limit the former. This, in effect, carried out a parallel movement in the coutumiers, where the equal division (based on old communal family) was altered to favor lineage continuity via propres by limiting the individual's right of disposal. The Revolutionary solution here was to eliminate conception of propres and so free each generation to dispose of inheritance at will. Thus what one might call a fair division among descendants inherent in the coutumiers of the middle ages, was truly made in their favor by making everything that they inherited alienable; the same latent equality of heirs in Novel 118 was made triumphant by restricting the testamentary power that until the Revolution had dominated all else.

If one wants to speak of liberal powers of the individual, I would say that the Roman paterfamilial power is by far the most distinctive; the flaw is the ability to dictate just which person in the next generation will succeed to that power. The "liberality" of the notion of equal division of heritage in the north is chimaerical if one considers the functions of propres to inhibit each heir from disposing of the property. Family pride there works in a way which in Roman law it does not, since the paterfam. can substitute a different line, adopt children, etc.

The philosophical implications of the two succession principles could well be developed--indeed, must be--beyond the legal historians treatment of them to this time. Ewer may be an exception.

Another very useful approach would be to show how the influence of one law upon the other helped to weaken provisions in each against certain kinds of restrictions. So, customary law gained by creating rentes constituées classified as propres by using Roman law ideas of jus in re, and again used contract ideas from Roman law to establish pacts for future succession which evaded restrictions against unequal division of the inheritance. In the Roman law area, on the other hand, pacts for future succession were also forbidden, but evaded by utilizing common law inter vivos which has the effect of controlling future successions if they didn't specify it. LePointe provides examples of these things in passing, but each would have to be investigated au fond.

So, the basic plan would be to get a set of examples, some of direct development out of one law of things aiding family continuity, some of one law helping the other escape limitations against doing that; then, sorting them out, speculate on the effects regarding capital investment, social stability by the interpenetration of property holding (every piece in north was simultaneously real property in two different families!), and lastly political effect in terms of office.

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Reading a bit by Goubert in the Hist. Econ. & Soc., II, 343-4, on the importance of rentes constituées, which he attributes to their high return, 5%, compared to offices (on p. 343), and then remarks their low return (on p. 344), it is evident that he only thinks of them as fluid capital and not as propres. He always takes the point of view of the possessor as if he were a code civil possessor, not realizing the restraints upon the disposition of those rentes which had made it possible for him to inherit them in the first place and which would allow him to restrain his descendants, in the name of the lineage, in the next generation. It may here be the classic case of not understanding the mentality of an earlier age because of the "laws"--here of society, not of the cosmos--were utterly different from ours today. This point can be elevated into a methodological principle, which can be used as a club over the head of quantifiers who ask questions that seem normal to them but are abnormal for the period they are investigating.