

1975-11-10b [FAMILY, GENERAL] Family Cohesion & the Presumed Will of the Deceased  
[Expanding thoughts on Vallier, *Droit Successoral*, 267ff]

The intensive discussion of how far representation should extend in the Code Civil provides very keen evidence of the sense of family in France around 1800. The *ab intestat* rules, for one thing, declare what the model for every succession should be in terms of the family's interests; and the strict limits upon testamentary power (esp. the *disponible*) indicate the limits which the "State" believes an individual must observe in altering the intestate rules. The rule of presumed affection accounts for the immediate surviving family, and the limits of degrees of relationship sets the limit to the "family" at 12 degrees. The rules of representation (infinite in descendants--but that's farcical since it could never go beyond 4 degrees in actuality) go by heads to ascendants and collaterals of the same degree, but in descendants to lines descended from the children of the deceased. There is a very practical reason for this, which Vallier seems not to recognize, in that descendants would multiply their offspring if they could get a bigger expectation. The Roman principle of representation is evident here: new families founded, not individual descendants, are the criterion. So, the idea of representation is declared to be a "fiction of the law", but later authors claimed it was in fact a "disposition de la lot" (p. 271), and foreign copies of the Code Civil do not refer to it as a fiction. Authors cited in 19th century who were obviously agitated by the word "fiction", saying that anything which entered as a fiction but remained for any length of time in operation became then part of the truth. There is considerable "realism" in these jurists' thought, to be so bothered by a word.