

Project i. h.

Donald C. Jackman (State College, Pennsylvania)

The project entitled '*Ius hereditarium*: the Constitutional Role of Inherited Right from Antiquity to the High Middle Ages' is an inquiry into the succession law of the early continental Middle Ages concerned with office-holders including and above the rank of count. The intention is to describe aristocratic family structure as a juristic phenomenon, to the fullest extent possible. The Carolingian period is perceived as a watershed for law of succession: the preceding era is investigated particularly for its formative characteristics, while the following era is treated as a period of transition towards feudal succession. For the ninth and tenth centuries a series of precise juristic preconditions for succession can be identified. For example, while office-holders were male, female rights were important in determining the appropriate successor. Furthermore, inherited right was qualitative in that a successor was usually nearest in lineal relationship and primogeniture was effective in that the eldest son would normally succeed. When succession was not so direct, it could often be handled flexibly; and in the absence of a pre-defined law of succession, solicitude for claimant rights was understood to be juristically indispensable. However, the applicability of the *ius hereditarium* principle was dependent upon the office involved, particularly on the degree to which the office was established as an institution. The *i.h.* principle could be applied simultaneously to several offices with the effect that the inheritance of one was adjusted in accordance with the inheritance of another. The offices remained unitary and were seldom divided or merged into new offices to satisfy claimants.

The rights of inheritance were present, that is, a claim could not be entertained for a person disqualified from assuming the official duties. Thus, the present holder would usually establish the pre-eminence of his claim and those of his descendants. However, when no appreciable lineal claimant was available, the office could fall to one who was related to the predecessor either by marriage or by secondary consanguinity. While this aspect can easily be observed, it does not necessarily follow that the successor lacked remote lineal claims to the office. Furthermore, forfeiture cancelled hereditary right – usually affecting not only the relevant individual but also his immediate family – and after forfeiture, the rights derived from previous office-holders were usually honoured. It is worth adding that the office-holder could abdicate the office and his inherited right voluntarily, in exchange for other offices or property. To some extent aristocratic families could control succession: by making a division of offices; by abdicating an office in favour of a son; or by preserving the rights of a minor son through interim retention. The clearest instances of such practices were provided by royal families.

Genealogical inferences are argued from as wide a range of information as possible, and attention is also given to the comparative accuracy of inferences. However, due to the complexities of genealogical interpretation and the express juristic purpose, the *ius hereditarium* project is oriented neither towards nor around a database. It concentrates rather on a series of examples, with the intention that the information applicable to each example will not exceed an historian's immediate command. For the most part, the examples concern successions of genuine political importance and, in as much as the

juristic conclusions should relate to all further successions of the period studied, it is hoped that the *.i.h.* project might partially fulfil comprehensive prosopographical goals.