

origin of the right, no one could be hardy enough to defend it on such merely conservative grounds in an age like ours, which has begun to demand a rationale for most institutions. Accordingly, we find that attempts are made to support this institution by means of reasoning, and this reasoning we will now state and confute.

In the first place, the vindicators say that the father, having alimented and advanced his son, has a right to his sole succession, on the ground of that maintenance and advancement. But if the right to a sole succession be founded on such a ground only, it should not be confined, as it now is, to the father alone, for cases continually occur where a widowed mother or an elder brother does precisely the same thing. But no one has ever thought of allowing them the exclusive right of succession. Again, it cannot be said, because the father alimnts and advances the son, that he is therefore entitled to be reimbursed his charges and expenses. For in this view the father does not give as nature would prompt, but he lends, merely to be repaid, perhaps with a usurious interest for his risk. And in all this there is no attempt to distinguish between the son's property, derived from his own young-hearted labor and success, and that which is purely *ex repatris*.

In these arrangements the true theory of the right to succession *ab intestato* is entirely lost sight of. This right is a logical consequence from the moral right which the successors had, to be alimented by the predecessor (to use the terms of our late comprehensive fiscal statute) during his lifetime. For example, a man supports his wife and children whilst he lives, and upon his death they take his property to themselves in the place of the previous alimmentation, and this is equally applicable to parents or to brothers and sisters. In regard to mediate and more distant relatives, the same principle of old applied with equal force and stringency. But it was in that case the connection of the tribe or larger family. All who have studied Roman law in its original institutions, will readily understand this.

We have here a test to apply to this part of our scheme of distribution, and, tried by it, we shall find the principle of sole paternal succession not only to be wrong, but to be precisely the reverse of what is right. The succession to property, as we have