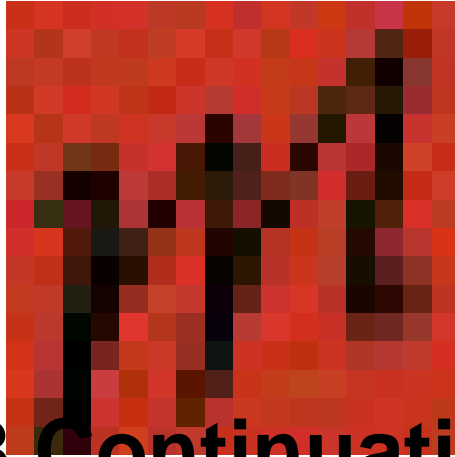


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XXVIII.38 Continuation of the same subject

- The Spirit of Law - Book XXVIII. On the origin and transformations of the civil laws among the French -

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What then is this compilation we have under the name *Establishments of St. Louis* ? What is this obscure, murky, and ambiguous code which is constantly mixing French jurisprudence with Roman law, which speaks like a legislator but has the appearance of a juriconsult, where we find an entire body of jurisprudence on all cases and on all points of civil law ? We must imagine ourselves back in those times.

St. Louis, seeing the abuses of the jurisprudence of his time, sought to turn his peoples away from it : he made several statutes for the tribunals of his domains and for those of his barons, and he had such success that Beaumanoir, who wrote very soon after the prince's death, tells us that the manner of judging established by St. Louis was practiced in a great number of seigniorial courts. [1]

Thus the prince fulfilled his objective, although his statutes for the seigniorial tribunals had not been made to be a general law of the realm, but as an example that each lord might follow, and which each would even have an interest in following. He got rid of the bad by giving a sense of the better. When they saw in his tribunals, and when they saw in those of some lords, a more natural, more reasonable way of proceeding, more consonant with morality, religion, public tranquility, and the security of person and property, they adopted it and abandoned the other.

To invite when one must not constrain, to guide when one must not command : that is supreme skill. Reason has a natural ascendancy ; it even has a tyrannical ascendancy : it is resisted, but that resistance is its triumph ; a little while later one will be forced to revert to it.

St. Louis, to turn people away from French jurisprudence, had the books of Roman law translated so they would be known by the men of the law of those times. Défontaines, who is the first writer [2] we have on practice, made great use of these Roman laws ; his work is in a way a result of the old French jurisprudence, of the laws or *Establishments of St. Louis*, and of Roman law. Beaumanoir made little use of Roman law, but he reconciled ancient French jurisprudence with the statutes of St. Louis.

It is in the spirit of these two works, and especially that of Défontaines, that some bailiffs, I think, created the work of jurisprudence which we call the *Establishments*. It is stated in the title of this work that it is written in accordance with the practice of Paris and Orleans and of baronial courts, and in the prologue that it deals with the practices of the whole realm and of Anjou, and of baronial courts. It is clear that this work was made for Paris, Orleans, and Anjou, as the works of Beaumanoir and Défontaines were made for the counties of Clermont and Vermandois ; and as it appears from Beaumanoir that several laws of St. Louis had reached into the baronial courts, the compiler was right to say that his work was also relevant to baronial courts.

It is clear that the person who created this work compiled the customs of countries with the laws and the *Establishments of St. Louis*. This work is very precious, because it contains the old customs of Anjou and the *Establishments of St. Louis* as they were then practiced, and finally what was practiced there of the old French jurisprudence.

There is nothing so vague as the title and the prologue of the *Establishments*, which have without doubt since been added. First there are the practices of Paris and Orleans and baronial courts ; next the practices of all the lay courts of the realm and of the *prévôté* [3] of France ; next the practices of the whole realm and of Anjou and baronial courts.

I believe that St. Louis had this work begun, and that it was finished by his successor ; and that it was one prince or the other, or both, who had some of the customs of their domains written down ; and because the laws just made by St. Louis were mixed in, this work was named the *Establishments of St. Louis*. Indeed such a great name was sure to confer much favor on the work. All of that was put forward under a general form, and this whole proceeding was a

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great act of prudence. By having them written down, awareness of them was extended ; by giving them a general form, their use was extended. The laws of the realm were then just the customs of each place, retained in the memories of old men. In this general insufficiency, each lord could find in this new code what was lacking in his laws ; it was a spring from which everyone could draw. The difference between this work and those of Défontaines and Beaumanoir is that it speaks in terms of command, like legislators ; and it could be thus because it was a mixture of written customs and laws.

[1] Ch. lxi, p. 309.

[2] He says of himself in his prologue : "Nus lui en prit onques mais cette chose dont j'ai."

[3] [Office of the provost (*prévôt*).]