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XXVIII.45 Of the customs of France

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

Date de mise en ligne : vendredi 7 septembre 2018

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France was administered, as I have said, by unwritten customs, and the particular practices of each seigniority constituted the civil law. Each seigniority had its civil law, as Beaumanoir says, [1] and a law so particular that this author, who is regarded as the light of those times, and a great light, says he does not believe in the whole realm there were two seigniorities that were governed in every point by the same law.

This prodigious diversity had a first origin, and it had a second. For the first, the reader may remember what I have said above in the chapter on local customs [2]; and as for the second, we find it in the various outcomes of judicial combats, continually fortuitous cases being naturally destined to introduce new practices.

Those customs were preserved in the memories of the old, but little by little written laws and customs were formed.

1st. At the beginning of the third dynasty, [3] the kings issued individual charters, and even issued general ones, in the manner I have explained above : such are the *Establishments* of Philip Augustus and those made by St. Louis. Likewise, the great vassals, in concert with the lords under them, issued in the assizes of their duchies or counties certain charters or establishments according to the circumstances : such were the assizes of Geoffroy, count of Brittany on the division of the nobles ; the customs of Normandy granted by Duke Raoul ; the customs of Champagne, issued by king Theobald ; the laws of Simon, count of Montfort, and others. This produced some written laws, and even more general ones than those they had previously.

2nd. At the beginning of the third dynasty, almost all the populace were serfs ; several reasons obliged the kings and lords to free them.

The lords in freeing their serfs gave them some property ; they had to be given civil laws to govern the disposition of that property. The lords in freeing their serfs deprived themselves of their property ; it was thus necessary to regulate the rights which the lords reserved to themselves as equivalent to their property. Both of these things were settled by the charters of emancipation ; those charters formed a part of our customs, and that part was put down in writing.

3rd. Under the reign of St. Louis and the next kings, able practitioners such as Défontaines, Beaumanoir and others set down in writing the customs of their bailiwicks. Their purpose was rather to furnish a judiciary practice than the customs of their time on the disposition of property. But everything is there ; and although the only authority of these particular writers was in the truth and public nature of the things they were saying, we cannot doubt that they greatly abetted the revival of our French law. Such was in those times our written customs law.

Here now is the great epoch. Charles VII and his successors had the various local customs throughout the realm set down in writing, and prescribed formalities that were to be observed in their redaction. Now as this redaction was done by provinces, and from each seigniority they came to depose in the general assembly of the province the written or unwritten practices of each place, they sought to make these customs more general, as much as could be done without damaging the interests of the individuals which were reserved. [4] Thus our customs took on three characteristics : they were written, they were more general, and they received the seal of royal authority.

Several of these customs having been again written, several changes were made in them, either by removing whatever was not compatible with present jurisprudence, or by adding several things drawn from that jurisprudence.

Although the customary law is regarded among us as containing a sort of opposition to Roman law, so that these two laws divide the territories, it is nevertheless true that several provisions of Roman law have entered into our customs, especially when new redactions of them were made, at times not so distant from our own ; when that law was the

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object of study of all those preparing for civil employment, in times when people no longer boasted of not knowing what they should know, and of knowing what they should not ; when quickness of mind served more to learn one's profession than to exercise it, and when continual amusements were not even the attribute of women.

All that I have said about the formation of our civil laws would seem to lead me also to provide the theory of our political laws ; but that would be a major piece of work. I am like that antiquarian of the *Spectator* who left his country, arrived in Egypt, glaced at the pyramids, and returned home.

[1] Prologue on the custom of Beauvaisis.

[2] Ch. xii.

[3] See compendium of ordinances of Laurière.

[4] It was done this way in the redaction of the customs of Berry and Paris. See La Thaumassiere, ch. iii.