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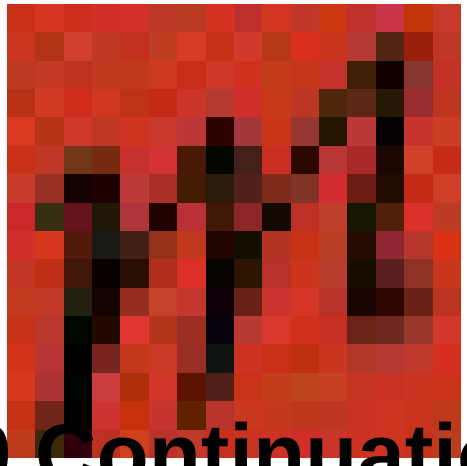

XXVIII.39 Continuation of the same subject

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

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There was an inner defect in this compilation : it formed an amphibious code, where French jurisprudence had been mixed with Roman law ; it combined things that never had any connection, and often were contradictory. It is impossible to make good jurisprudence out of two contrary jurisprudences.

I am quite aware that French tribunals of men or peers, judgments without appeal to another tribunal, and the manner of pronouncing by the words *I condemn* [1] or *I absolve,* were in some ways similar to the popular judgments of the Romans. But little use was made of this ancient jurisprudence ; rather, they made use of that which was since introduced by the emperors, which was used everywhere in this compilation, to regulate, limit, amend, and extend French jurisprudence.

As I have said, St. Louis had had the works of Justinian translated to accredit Roman law. Soon it was taught in the schools ; they preferred Roman law in its natural form to the disfigured form in which it appeared in the new code.

Besides, this compilation included rules for things that soon no longer existed : judgements of peers, judicial combats, private wars, the servitude of Jews, crusaders, and serfs ; and as the following centuries were centuries of changes, the more they made, the more had to be made ; and this code was ever less adapted to the present state of things, especially since the local provisions it contained also changed.

Moreover, the judicial forms introduced by St. Louis ceased to be in use. The prince had had less in view the thing itself, in other words the best way to judge, than the best way to improve the old practice of judging. The first objective was to turn people away from the old jurisprudence, and the second was to constitute a new one. But once the disadvantages of this one had appeared, there was soon another to succeed it.

Thus the laws of St. Louis changed French jurisprudence less than they offered means of changing it ; they opened new tribunals, or rather paths to achieve that ; and when it became possible to attain easily the one that had overall authority, judgments, which previously made up only the practices of a particular seigniory, constituted a universal jurisprudence. They had succeeded, on the strength of the *Establishments*, in having overall decisions which were entirely lacking in the realm : once the building was constructed, the scaffolding was allowed to come down.

Thus the *Establishments* had effects which one should not have expected from the masterpiece of legislation. Sometimes it takes many centuries to prepare changes ; events mature, and revolutions are at hand.

The parlement decided in last resort almost all the disputes in the kingdom. Previously it was judging only cases that were between dukes, counts, barons, bishops, and abbés, [2] or between the king and his vassals, [3] rather in the relation they had with the political order than with the civil order. Soon they were obliged to make it permanent, instead of convening only a few times a year as it had ; finally, several of them were created, so they would be able to handle all the cases.

Parlement no sooner became a fixed body than its decrees began to be compiled. Jean de Monluc, under the reign of Philip the Fair, made the compendium that today we call the Olim Registers.

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[1] *Establishments*, book II, ch. xv.

[2] See Dutillet on the court of peers. See also Laroche Flavin, book I, ch. iii, Budée and Paul-Emile.

[3] The other matters were decided by ordinary tribunals.