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# XXVIII.41 The ebb and flow of ecclesiastical jurisdiction and lay jurisdiction

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

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Civil authority being in the hands of countless lords, it had been easy for ecclesiastical jurisdiction to allow itself ever greater scope ; but as ecclesiastical jurisdiction sapped the jurisdiction of lords, and in that way helped add strength to royal jurisdiction, royal jurisdiction gradually restrained ecclesiastical jurisdiction, and the latter retreated before the former. The parlement, which had adopted in its procedural form all that was good and useful in that of the clerical tribunal, soon could see nothing but its abuses ; and with royal jurisdiction gaining ground every day, it was always in a better position to correct those very abuses. Indeed, they were intolerable ; and without enumerating them, I shall refer the reader to Beaumanoir, Boutillier, and the ordinances of our kings. [1] I shall speak only of those that directly involve the public interest. We know of these abuses from the decrees that reformed them : dense ignorance had introduced them ; a sort of clarity appeared, and they were gone. We can judge from the silence of the clergy, which itself anticipated the correction, which, given the nature of the human mind, deserves praise. Any man who died without giving some of his possessions to the Church, which was called dying *unshriven*, was denied communion and burial. If one died without making a will, the family had to get the bishop to name, along with them, arbitrators to determine what the deceased should have given had he made a will. A couple could not sleep together on their wedding night, nor even the next two, without having purchased permission to do so ; it was indeed those three nights that had to be chosen, since they would not have paid much money for the others. The parlement corrected all that : in the glossary of Ragau's French law [2] we find the decree which it issued [3] against the bishop of Amiens.

To return to the beginning of my chapter : when in any century or under any government we see the various bodies of the state seeking to expand their authority, and take certain advantages over each other, we would often be wrong if we regarded their enterprises as a certain sign of their corruption. By a misfortune attached to the human condition, great and moderate men are rare ; and since it is always easier to follow one's strength than to check it, it is perhaps easier in the class of superior persons to find extremely virtuous persons than extremely wise men.

The mind tastes such delights in dominating other minds ; even those who love the good love themselves so much that there is no one who is not unhappy enough the he still must suspect his good intentions ; and in truth, our acts depend on so many things that it is a thousand times easier to do good than to do it well.

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[1] See Boutillier, *Somme rural*, [tit. 9](#), which persons cannot make a demand in lay court ; and Beaumanoir, ch. xi, p. 56 ; and the statutes of Philip Auguste on this subject, and the establishment of Philip Augustus made with the clergy, the king, and the barons.

[2] At the word "Exécuteurs testamentaires."

[3] Of 19 March 1409.