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XXVIII.37 How the "Establishments" of St. Louis fell into oblivion

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

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It was the fate of the *Establishments* that they were born, aged, and died in very little time.

I will make a few observations about that. The code which we have under the name of *Establishment of St. Louis* was never made to serve as law for the whole realm, although that is what the preface of this code states. This compilation is a general code that pronounces on all civil matters, the dispositions of assets by testament or between living persons, dowries and advantages of women, the profits and prerogatives of fiefs, affairs of public order, etc. Now at a time when every city, burg or village had its customs, to issue a general body of civil laws was to attempt to overturn in an instant all the particular laws under which people lived in each place in the kingdom. To make a general custom of all the separate customs would be imprudent, even in these present times when the princes encounter only obedience everywhere. For if it is true that one must not change when the disadvantages equal the advantages, one should even less do so when the advantages are small and the disadvantages immense. Now if we look closely at the state of the realm at that time, when everyone was heady at the thought of his sovereignty and authority, we see clearly that undertaking to change the laws and received practices everywhere was something that could not occur to those who governed.

What I have just said proves again that this code of *Establishments* was not confirmed in parlement by the barons and men of law in the kingdom, as it is said in a manuscript of the city hall of Amiens cited by Mr. Ducange. [1] We see in the other manuscripts that this code was issued by St. Louis in the year 1270 before he left for Tunis : this fact is not more true, for St. Louis left in 1269, as Mr. Ducange has noted, whence he concludes that this code must have been published in his absence. But I say that this cannot be. Why would St. Louis have taken the time of his absence to do something that would have been a sowing of unrest, and which could have produced not changes but revolutions ? Such an undertaking called more than another for being followed closely, and was not the doing of a feeble regency and even one composed of lords [2] whose had an interest in the thing not succeeding.

I say in the third place that it is very likely the code we have is something different from the *Establishments* of St. Louis on the judicial order. This code cites the *Establishments* : it is therefore a work on the *Establishments*, and not the *Establishments*. Moreover Beaumanoir, who speaks often of the *Establishments* of St. Louis, cites only particular establishments of that prince, and not this compilation of *Establishments*. Défontaines, [3] who wrote under that prince, speaks to us of the first two times his *Establishments* on judiciary order were executed as a thing long past. The *Establishments* of St. Louis therefore antedate the compilation I am speaking of, which strictly speaking, and adopting the erroneous prologues placed by some ignoramus at the head of this work, could have appeared only in the last year in the life of St. Louis, or even after the prince's death.

[1] Preface of the *Establishments*.

[2] Matthew [de Vendôme], abbé of St. Denis, Simon of Clermont, count of Nelle, and in case of death Philip, bishop of Évreux, and Jean, count of Ponthieu. We have seen above in ch. xxx that the count of Ponthieu opposed in his seigniori the execution of a new judicial order. It is Défontaines who relates this fact.

[3] See above, ch. xxx.