THESIS.

LEGISLATION UNDER LOUIS IX

AND THE

ETABLISSEMENTS.

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LEGISLATION UNDER LOUIS IX& THE 'ÉTABLISSEMENTS.

FEUDALISM AND THE MONARCHY.

The Feudal system reached the point of highest development in the 11th century and maintained its organization essentially unimpaired, throughout the 12th. The great feudal barons had possessed themselves of all the rights of sovereignty and the majority of them were bound to the monarch by only the slight bond of fidelity. The thirteenth century saw the beginning of the attempt on the part of royalty to regain its lost authority, and by the end of that century the result of the attempt was no longer doubtful. The feudal system contained within itself the germs of destruction, While the growing monarchy was in alliance with the new and powerful force which grew into the third estate. The fundamental principle upon which feudalism rested was that of violence while the basis of the growing royal power was the principle of law.

The increase in royal power had begun before the time of Louis IX but its strength had not yet become a menace to feudal institutions. Louis' predecessors had not recognized feudalism as the force antagonistic to the monarchy and had adopted no policy of royal aggrandizement at its expense. In contests with the great nobles the kings were usually victorious but their course served only to establish more firmly the feudal principle

that military force was the basis of power. Their victories were not necessarily final and the feudal barons might look toward regaining in the next contest what they had lost in the former.

But the monarchy before Louis, although it made no attempt upon feudal institutions had pursued a policy of territorial expansion by m ans of alliance and confiscation. The Crusades also had contributed largely to this territorial increase. Many of the great nobles of the kingdom had mortgaged their lands to the king and through their death or inability to regain their lands when they returned, these fiefs became a part of the royal domains. Thus, the monarchy was established upon a secure basis, and was better prepared for the struggle which came afterwards. This territorial expansion of the monarchy enabled the king to establish a military supremacy over the feudal lords. The final crushing out of feudalism, however, came from the establishment of a government, based upon principles directly antagonistic to that system. Its downfall was brought about by the introduction of the regular and orderly action of law into the feudal system, and into the customs of the people.

Louis realized as little as did his predecessors that feudal and monarchic institutions were absolutely antagonistic and that a conflict between the two was inevitable. The policy which he chose was adopted, not to accomplish what it did bring about, the overthrow of the feudal system but to procure a peaceful and orderly system of government for his people. His desire was

the outcome of his piety and nobility of character, but the judicial and legislative measures by which his reform in government was brought about struck at the underlying principles of the feudal government, though without being intended to increase royal at the expense of feudal power. Louis accepted feudal France as it passed to him and his respect for tradition caused him to make no change in society as it existed except to introduce order and to cause the rights of others to be respected.

During Louis's reign a peaceful revolution accomplished an entire change in the aspect of government, and this change was brought about by a completely new method. Heretofore, the reforms by which even the church had attempted to do away with the state of habitual warfare of feudal lords were of necessity upheld by force of arms, now, the quiet work of legislation imperceptibly substituting law and order for violence deprived feudalism of its chief weapons of defense. New influences and new ideas were set to work among the people and brought about a revolution in life and manners. The change was not accompanied by wars or uprisings even on the part of the feudal barons, whose rights were invaded. They understood even less than the king that the movement towards law and order meant their own downfall and so the work of reform took place without armed resistance. When the nobles yielded to the king, they yielded to his wish for peace and for a more orderly system of government, not forseeing the disastrous results to themselves of the curtailment of their sovereign rights.

Thus, during Louis's reign feudalism was enfeebled and prepared for dissolution and although not directly attacked, the principles which maintained its existence were undermined and France was unconsciously made ready for an absolute monarchy.

GROWTH OF THE THIRD ESTATE AND PREVALENCE OF ROMAN LAW.

In his great work of establishing the reign of law, Louis found two allies in forces which had recently grown powerful and were ready to aid him, the bourgeoisie and Roman law. The population of France was divided into those who possessed fiefs and those who did not, while the latter had become the larger, and in some respects more important element. To escape the exactions of the nobles and to secure a measure of civil liberty, which would enable them to become industrially prosperous, there had been a movement of the people towards the cities. These cities were communities which in the midst of a feudal society possessed civil liberties and privileges which made their condition enviable in comparison with that of the subjects of feudal lords. Their inhabitants had become wealthy and prosperous, devoted to commerce and regulating their own commercial industries and enterprises. In the thirteenth century, there were few large cities, which did not possess charters of liberties, which often freed them entirely from the control and jurisdiction of a feudal lord. Those large cities which did not possess such charters exercised many of the same privileges, though having little political independence. About this, however, they concerned themselves little so long as they were on the road to material prosperity. From the very

character of their existence they were hostile to the barons and feared their encroachments upon their rights. For the first time, too, the third estate was an important political factor. Here, therefore, the king found a powerful ally to aid him in establishing law throughout the kingdom and in checking the abuses of the feudal nobles which hindered this work.

Among these towns-people who possessed civil and a degree of political freedom popular ideas of right and equity had arisen. Through their exercise of self-government they had come to demand new liberties in their charters and the tendency to depart in many respects from feudal law had grown up among them. As an instance of this, among the nobles the principle of inheritance gave all the property to the eldest son, by which rule it was kept undivided in the hands of one person, while among the bourgeoisie the more democratic principle of equal division among the children had been adopted. In other matters, also, a new sense of rational equity had been developed in opposition to the aristocratic feudal law.

To the aid of this popular equity came Roman law. Its existence had been almost forgotten, but the recent discovery, 12th century, of a manuscript of the Pandects in Italy had occasioned a great revival of interest. Nowhere was this revival received with greater enthusiasm than in France. In Italy, Bologne had become the center for the distribution of knowledge of Roman law, and the French were foremost in the crowds which flocked there from all over Europe. Soon several of the large cities of France became

centers for study in that country, and the French became skilled in the interpretation of written law. The enthusiasm was fostered by the kings. Philip Augustus authorized a translation of the Code of Justinian and in many ways lent his aid. (1) The opposite course was, however pursued by the Pope and the Church, though not because of opposition to Roman law itself. The principles of Roman law were familiar to the clergy, and were employed in their church councils, but they did not wish it to take precedence of their own canon law, besides, the study had been taken up with so much fervor by the whole body of the clergy that the bishops and the Popes began to look upon it as a detriment to the real interests of the Church and to the spiritual occupations which were the main purpose of the clergy. Honorius III, in 1219, forbade the public ~~pr~~teaching of law at Paris, and Innocent IV, in 1254, renewed the prohibition and extended it to the rest of France.(2) All such prohibitions, however, were ineffectual and the enthusiasm for "the laws of the Emperors" continued unabated. Even among the clergy it still existed to the injury of theology and philosophy and the meditation of holy books.

The legislation in force in France in Louis's reign was a mixture of feudal , customary and canon law, but by far the larger part of the people were under the control of feudal law. In con-

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(1) Duruy, Vol.1.p.344.
(2) Martin, Vol.4.p.291.

trast to the chaotic condition thus existing the principles of Roman law founded upon common sense and natural justice seemed most desirable. These principles increased on the part of the people the dislike for feudal institutions and they soon realized that in this new force they possessed a strong weapon against the feudal régime. Nor, did the king fail to realize the importance of the new principles. Louis authorized in Langue d'Oc the substitution of the Roman code for the customary municipal law of the province. (1) In the other provinces, where customary law was still used, Roman law was a resort in contested cases, and insensibly penetrated customary and feudal law.

IMPORTANCE OF THE LEGISTS.

Thus, during the thirteenth century was waged a conflict between the new rational law of the people and the king, based upon and supported by the principles of Roman law, and the arbitrary feudal law of the nobles, based upon force and tradition. The conflict brought to the front a new class of men, who rose to a position of great importance during Louis's reign, the Legists. At first, only the clergy were lawyers, but soon the wealthy bourgeois entered the class. The Legists came in to being with the introduction of Roman law, and became the leaders who guided and controlled the warfare against feudal law.

There was danger in the wholesale adoption of Roman law. It could not adapt itself to all the needs and circumstances of

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(1) Duruy Vol.1 p.344.

a totally different age and people. It had, therefore, to be reconciled with and to be supplemented by the whole system of legislation then in use. Neither could feudal law be summarily overturned, but by uniting and applying to feudal and customary law the Roman principles, those principles were safely introduced and given the chance by which they afterwards prevailed.

As a result of the final overthrow of feudal law the crown regained many of its prerogatives, which the feudal aristocracy had usurped, and before the end of Louis'reign a long step had been taken toward royal sovereignty, and the outcome in the destruction of feudalism could be seen. In the final success of Louis's measures of reform and in the effectual carrying out of these measures the aid of the Legists was invaluable.

LEGISLATIVE AUTHORITY OF THE KING.

Several circumstances prevented the easy accomplishment of Louis' reform measures, in overcoming these obstanles , also, the aid of the Legists was of greatest importance.

The legislative and judicial power of the king was limited by that of the barons. The kingdom was made up of the fiefs of the great lords and of those of the king. The royal domain was divided into the lands which the king controlled directly through his royal offices and the crown lands which were held of him by Barons. The king possessed full legislative power only in the territory directly under his jurisdiction, his power was not complete throughout the royal domain, and was even more limited

in the territory outside. The legislative power was the sovereign right most jealously guarded by the barons and the king had to respect this right in his barons, and the great lords in the barons who held of them. Thus, the king in his own pays d'obédience exercised the legislative power of a simple baron, while over the rest of the royal domain he exercised the same power which a great lord possessed over the lands which his barons held. Consequently when he wished to put forth an ordinance, which should be binding upon his barons, the king was obliged to obtain their consent, and when he wished it to be binding upon the whole kingdom he secured the concurrence of the great lords, and the ordinance was enforced in their domains with the consent of their barons. The barons of the king had as great legislative power in their fiefs as the king, or a great vassal of the crown, possessed in his pays d'obédience.

Before the reign of Louis, the royal power had been placed in a position of superiority, however, so far as military force and territorial possession were concerned. Philip Augustus was the first king who could turn his attention to purely administrative measures and it was in his reign that the first general ordinances were put forth. Some of these were for the royal domain and others were intended to have more universal application. When he wished an ordinance to be observed outside his own baronies, throughout the royal domain, or in a province of that domain, he secured the assent of all his barons, or of the barons of a

province, and a legislative act embodying their approval was put forth. An ordinance of 1188, on the debts of the crusades began; "It has been decreed by the Lord Philip, king of the French, with theadvice of the Archbishops, Bishops and Barons of his lands,"etc. (1) In 1240, Louis wished to amend certain customs of Anjou and Maine and did so with the advice and consent of his barons and soldiers. (2)

In many provinces the barons were accustomed to assemble at certain tim s of the year and the king instead of summoning them to a special meeting usually took this opportunity to lay before them his plans and wishes, and to obtain their consent.

When the king wished an ordinance to be observed in the territory outside the royal domain he took measures to secure the consent of the barons and the great lords. As supreme suzerain, the king had the right to convoke in assembly all the barons of the kingdom. The custom of issuing from such assemblies general ordinances did not arise until questions of general interest demanded them and such ordinances were very rare. Nothing was fixed concerning the composition of the assembly and the king summoned those whom he chose to take part.

An ordinance of Louis the Eighth in 1223, concerning the Jews was made with the consent of the archbishops, bishops counts, barons and knights of the kingdom, and an oath was taken by those present to observe the ordinance. (3)

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(1) Petiet,p.42.
(2) Petiet,p.43.
(3) Petiet p.45.

This raises the questions who were obliged to observe such a general ordinance and what was the authority of the body which issued it. It seems fairly well established that under Louis the Ninth an ordinance was binding upon those who had been present at the assembly which established it. The attendance of all the great vassals and barons was in practice impossible and those whom the king summoned represented the rest. The ordinance of 1223 contained an agreement of the king and barons to observe it, and adds that it is binding as well upon those who have not taken the oath as upon those who have. (1) The probable explanation of this is not that all the barons of France were to observe such an ordinance but that those present were to observe it whether they had voted for it or not; that it was obligatory upon the minority as being the action of the majority. In an ordinance of 1230, to an agreement to observe the law is added a provision that if any lord prove rebellious the other barons shall aid in forcing him to keep the ordinance. (2)

REFORMS OF LOUIS.

The feudal institutions which the king attempted to check by his ordinances were regarded as perfectly legitimate and were the natural condition of the military society. The disorder of feudal government rested upon a legal foundation and could not

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(1) Petiet p.48.
(2) Petiet, p.49.

be resisted openly. The laws which supported feudalism had become the fundamental laws of the kingdom, and good institutions, which Louis desired to preserved were intermingled with those which he wished to destroy.

The principle reform measures which were carried into effect by Louis were, the abolition of private warfare by the extension of the quarantaine and assurement, the abolition of the judicial duel, the introduction of written procedure in the Courts, the introduction of the system of appeal into the judicial system and the extension of casroyaux and the subjection of the baronial to the royal courts.

Private warfare was the feudal institution of legalized warfare which grew naturally out of a purely military society. Its abolition was one of the greatest of Louis' reforms. There was so little legislation which protected the rights of individuals that they were led to avenge their injuries in the way most natural to men, by personal combat. This natural instinct to retaliate for injuries received, instead of being checked by law was surrounded by every legal form and ceremony.

In the system as established by feudal law two parties, instead of bringing their difficulty before a judge took up arms and carried on warfare against each other. (1) We are familiar with the survival of such a custom in the vendetta and the feuds between families in the days of the early settlement of our own country. The conflict was waged not only between the parties and

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(1) Martin, Vol.4 p.298.

those immediately interested but by the relatives on both sides, to the fortieth degree, and those who would not take up arms lost the right of succession. Declaration of war had to be made and all measures taken according to all the formalities of feudal law.

The privilege of thus engaging in private warfare was confined strictly to the noble class. The system had become firmly established and was regarded by the nobles as one of their sovereign privileges so that direct measure against it could not be taken. The institution of the quarantaine, on the face of it did not seem a measure unfavorable to private warfare, yet was intended to and did check the custom. The quarantaine forbade the relatives to enter into war until forty days after the declaration had been made. The relatives were often so numerous that, without such a provision they were likely to be attacked before they were prepared to enter into war or even before they had received notification of hostilities. The quarantaine apparently obviated this difficulty, but , in fact, the delay was not employed in preparation but often brought about a peaceable adjustment of the difficulty.

The authorship of the law has been contested. Some have held, basing the claim mainly upon a passage of Beaumanoir, which mentions the quarantaine of "le bon roi Phillippe", that Philip Augustus promulgated the law. But the ordinance of Philip nowhere exists, while that of Louis is entire. If Philip

put forth such a law, it probably had little result for he took no other measures against the violence of the feudal system and adopted no such policy of peace as did Louis. Louis directly attacked private warfare, and if he did not originate, he renewed and more successfully enforced the quarantaine. (1)

The quarantaine promoted the other institution by means of which private warfare was checked, that of assurement. If, for any reason, one of the parties in the interval wished a cessation of hostilities or if he desired more time for preparation, he appeared before the common lord and demanded assurement, by which he was protected against attack from his enemy. (2) It was a sort of forced peace brought about by the wish of one of the parties. Its effectiveness depended , naturally, upon the authority of the judge and the respect in which this authority was held.

This institution modified considerably the state of society and was rendered very effective by Louis. He provided that the royal officers should be judges and that only his bailiffs could grant assurement, and settle all disputes arising from its violation. (3) The barons did not give up their privilege without great resistance. Th work of the monarchy was successful, not through the employment of military force but by the moral force of legislation. In making his reform effective the king was

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(1) Beugnot,p.294;
(2) Martin, Vol.4,p.299;
(3) Beugnot,p.294.

aided by the growing desire among all classes for a lessening of the prevailing violence and barbarity.

The judicial duel and private warfare were similar institutions, both having their origin in the same principles of a military feudal society, and both being as firmly established in the customs of the time though the usage of the judicial duel was much more general, and widespread, since it was not confined to one class. The prohibition against private warfare, therefore did not reach the greater part of the people. So called justice continued to be secured by the common people and the lesser vassals by means of the judicial dual, and even the nobles after conceding a part of their privilege of private warfare still possessed, together with their vassals that of the duel. This right was therefore more important and greater results were obtained from its abolition. (Although, to all the difference between classes appeared in the different arms of the combatants.)

The duel was the custom of a warlike people, who used arms upon every occasion. The combat had taken a legal and judicial turn, the form was perfected until it had become a fundamental institution of the feudal system. Nothing was more absurd in principle and nothing was regulated with more form and ceremony. The case between two parties was brought before a judge, who decided according to the evidence presented whether the combat should or should not take place, and rendered the decision according to the res ult of the combat. The combat itself decided which party was in the right. They fought not only upon the main cause at

issue but also upon minor details and points of law. Everything was decided by combat and not only the party concerned but the judge and witnesses could be summoned to combat.

The Church had made ineffective resistance to the custom but it had, nevertheless, become firmly fixed in society and even was regarded by the people as in some sense a consecrated institution. As with the ordeal it seemed a direct appeal to the judgment of God and the side to which heaven granted the victory was regarded as surely in the right.

The system appeared indestructible when Louis attacked it. The barons were called together in 1260 and the ordinance which prohibited the duel was issued. (1) But the ordinance could be enforced only in the royal domain. The barons although summond at the making of the law could not be compelled to put it into effect in their lands. Feudal principles were too strongly opposed and they only gradually prescribed its execution to their subjects. Even then they did not fully relaize its import. The dispensation of justice was to them chiefly a source of revenue

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(1) "Les Etablissements Tome I.p.487
Ordonnance de saint Louis contre les duels. I. "Nous deffendons les batailles par tout nostre domaine entoutes quereles, mais nos n'ostons mie les clains, les repons, les contremanz, ne touz autres erremanz qui ont esté accostumé en cort laie jusques à ores, selonc les usages de divers païs, fors tant que nos en ostons des batailles; et en leu de batilles nos metons preuves de tesmoinz et de chartres. Et sin'ostons mie les autres preuves bones "et loiaus qui ont esté acostumées en cort laie jusques à ores."

and so long as justice remained in their hands they were somewhat disposed to permit the reforms of the king. They saw in the abolition of the duel only the doing away with a sanguinary custom which was distasteful to the piety and morals of the king. (1) The ordinance, though not sweeping in its provisions, changed the existing ceremonies in several important respects. The former procedure was maintained; all the forms of proof in use were kept, but at the moment the judge decided for combat, the investigation and the substitution of written evidence took place, and judgment was rendered according to the testimony offered.

INTRODUCTION OF APPEAL.

In the ordinance by which Louis prohibited the duel were two articles which attracted little attention, yet were worthy of much. (2) These were the articles which established the use of appeal in the judicial system of France. This institution was of the greatest importance in undermining the judicial power of the lords. Under the feudal system, when the institutions of private warfare and the judicial duel were in force

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(1) Beugnot p.300;

(2) "Les Etablissements tome I p.492; V. "Se aucuns viaut fauser jugement en païs là où faussemenz de jugement afiert, il n'i aura point de bataille, mais li claim et li respons et li autre errement dou plait seront raporté en nostre cort; et selonc les erremenz dou plet, l'en fera tenir ou depecier le jugement. Et cil qui sera trovez en son tort l'amandra par la costume de la terre."

if the decision of the judge had seemed unfair he could be summoned by the condemned to combat. The judge was considered as personally responsible for error in the judgment. The new ordinance of Louis allowed appeal, first, from the court of the vassal to that of the suzerain, then, the appeal might be carried up successively through higher courts to the court of the king.

The right of justice was one of the greatest powers of the barons and one which they preserved longest unimpared, but they did not realize the importance of defending and preserving it. The king made it to their financial advantage to allow the innovation and as justice was to them chiefly a means of financial gain their resistance was by this means lessened.

Louis could establish the system only in his own domain, but public opinion came to his aid. The system was advantageous for the lower classes and through the force of popular opinion and the example of the king it was gradually intoduced into the territories of the great lords.

The chief means, however, by which the new system was strengthened was the extension of cas royaux. T hose cases to which the king was a party,or which concerned his lands or vassals were tried in the king's court. Louis extended the institution of Philip Augustus of administrative officers and found them zealous in behalf of the royal power and against that of the feudal nobles. They were anxious to go even farther than the king was willing in the extension of royal power. Louis did not employ the

officers of the feudal system but created new ones. These new bailiffs were from the bourgeois class and were ready to tkae up the new principles of law. They were in favor of the new régime were anxious for the decrease of the power of feudalism and were open to new influences and principles. The king realized the advantage which their zeal gave him. They were at first chiefly administrative officers, but the king came to give them great judicial powers, especially after the change introduced into the judicial system by appeal. The bailiffs were zealous in bringing under the jurisdiction of the king's court all cases, which, in the slightest degree concerned the king or people, who were in any way under his protection.. The extension of cas-royaux called for increased judicial powers and the development of the Parlememt and of the king's court and for a more systematic hierarchy of judicial officials. When the system became more developed, as it necessarily did, after appeal was introduced, an appeal went from the lord's court to the prêvôt, then to the bailiffs and seneschals, then to the court of the king, and it might go finally to the king himself. The general tendency to increase the number of appeals secured unity of power, subordinated more and more the courts of the seigneurs to that of the king, and opened the way for a great work in legislation.

The increased powers of the king's court met with no very great opposition from the nobles. They were not greatly interested in judicial proceedings for the sake of justice and attendance at court was a great burden to them, yet, the loss of their judicial functions meant more to them than they recognized. They ceased

to be present and to take part in the proceedings of the king's court, and their places were filled by royal judicial officers, by clercs, and legists, who introduced Roman law principles into the new legislation. The bailiffs became accustomed to judge according to these principles and to despise all other laws. Seeing the bailiffs so devoted to his cause, the king increased their powers by making them constitute an increasingly larger part of his court. Administrative and judicial functions were not then distinct as now and they retained their administrative and assumed great judicial powers.

The introduction of appeal, the abolition of the duel and private warfare, the subjection of the baronial to the king's court, the gradual destruction of feudal law, and the disuse of feudal customs, the change in publice sentiment, and the growing demands of the third estate, made necessary a new legislation, to meet the new needs and to fill the void caused by the confusion and disorder into which all existing legislation had come. The increased royal power, the unity and regularity of judicial tribunals and the existence of a body of legists, ready for the work, made it possible for such a work to come into existence.

The whole judicial and legislative system of the kingdom was changed by uniting to the customary laws of real merit the new principles of Roman law, but this work was not accomplished by the sudden adoption of a great code of laws like the Etablissements. The credit of that work does not belong to Louis. Nevertheless, during his reign a great work of legislation was carried out, and all the materials made ready for the future compiler of the code.

During his reign a great deal was done toward codifying and arranging the customary laws of the different provinces and towards reconciling them with Roman law. There were many eminent legal writers and many works on jurisprudence were put forth to be the precursors of the more extended code and to furnish an example to its author.

THE ETABLISSEMENTS.

Authorship.

For a long time the authorship of the code has been attributed to Louis, but recent investigation has quite well established the fact that it was a codification of existing laws and customs, compiled by an unknown legist during or just after the reign of Louis. The authenticity of the code has never been questioned, but the theory that it was the work of Louis has been laid aside. It is a collection of legislative laws, enactments and customs of the time of Louis, having the character of an extensive treatise, compiled by a practitioner, but without official legislative authority.

In some of the manuscripts the name of Louis and his order of promulgation appear at the head. (1) Viollet omits this prologue, which attributes the work to Louis, regarding it as an interpolation, and his title is much simpler merely stating that the ordinance is for the provost of Paris and those of the royal domain. (2) In other editions the heading is:" "The Etablissements

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(1) Les Etablissements, II, p.473.
"En l'an de grace mil CCLXX li bon rois Looys de France fist et ordena ces etablissements avant ce qu'il allast en Tunes, en toutes les courz layes reaume et de la pooste de France. Et enseignent cist etablissemenz coument touz juges de cort laye doivent oir et jugier, et terminer toutes les querelles qui sont tretées par devant euls, et des usages de tout le reaume et d'Ango, et de court de baronne, et des redevances que li princes et li baron ont seur les chevaliers et seur les gentils homes qui tienentd'eus. Et furent feiz ces etablissemenz par grand conseill de sages homes et de bonclers, par les concordances des loys et des quanons et des decretales, por confermer les bons usages et les anciennes coutumes, qui sont tenues u reaume de France, seur toutes querelles et seur touz les cas qui i sont avenu et qui chascun jour, i avienent."

(2) Les Etablissements, Vol. II,p. 1. "Ci comancent li establissements le ~~ryde~~ France, les kiex li prevos de et cil douroiaume tiegmeent à leus plais et usent communement."

according to the usage of Paris , of Orleans and of the Court of Barony,"[1] followed by the same preamble of promulgation we have before noted. Beaune says that such acts of pretended promulgation were not rare, to attract attention and to secure for the work the respect it might not otherwise receive. (2) Louis' ordinance of 1260, prohibiting the duel appears in the code, but it may be the work of a copyist, since several times throughout the work the duel is recognized as in force.

As further evidence of Louis'authorship, passages from Beaumanoir and contemporary works upon jurisprudence seem to cite the Établissements as law, but in other parts of the same books, these authors recognize the existence of customs which, if the code was established law, would be in contradiction to it. (3) Also supporting Louis' authorship is the fact that some time before 1264, an inquiry into the customs of the different provinces was ordered by Louis and that this took place is proved by the usages of Anjou. (4) There is, however, no proof in the te xt of the order that it was conducted for the purpose of using the material thus gathered in the compilation of the code. Legislation was in such an unsettled condition that an inquiry of that kind was natural. Louis could but recognize the great need of the work of organizing legislation and the importance in that work of some record of customary law .

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(1) Beugnot, p305.

(2) Beaune, p.271.

(3) Beaune, p.271.

(4) Beugnot, p.30[illegible]

One of the arguments against the legislative authority of the code is found in its literary character. It has not the rigorous form of a law. It is not direct, imperative, concise or brief, but is a confused mixture of enactments without method or purpose in choice of matter or arrangement. It is full of incoherences and even contradictions, making it next to impossible that it should be the work of a legislative body or a council of lawyers, as it would have been necessarily if Louis were the author. It is rather a work of concordance and reconciliation between customary law and Roman law, and would answer the purpose of a guide for judges and practitioners.

But by far the most conclusive evidence that the Établissements were without official authority is the fact that instead of being a general ordinance applicable to all of France, as would be essential, it relates chiefly to the customs of Orleans and seems to have been drawn up by an"Orleanais " for the people of that province. (1)

Sources.

A study of the sources of the Etablissements shows that the code was based upon earlier texts, upon two ordinances of Louis and upon the Coutumes of Maine, Anjou and Orleans. Of the primitive texts, all are in existence, except that of Orleans.

The code is divided into two books although such a division is not required by the arrangement of materials. A comparison

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(1) Viollet. Sources des Etablissements. p.41.

of the first book with the text of the customs of Maine and Anjou leads to the conclusion that the compiler of the code drew his material directly from the Coutumes. The Coutume is almost necessary to the study of the Code . The great difference between the two is that the Coutume is entirely free from the references to Roman and canon law which the Etablissements contain, but leaving out such references, which form a large part of the text of the code, the passages are found to be very similar. Other parts of the first book have their origin in a reglement for the Prêvôt of Paris, and a royal ordinance. The order concerned only the Prêvôt of Paris, but in subsequent texts, lost its original limited meaning and was made applicable to all the provostships. (1)

The second book bears no evidence of a different method of composition and was probably made up in the same way from earlier texts with additions by the author from Roman and canon law. The additions of written law are of the same character in both books, and the conclusion is natural that in the second as in the first, the method was that of coyping primitive texts which were free from such allusions. If the primitive texts of the customs of Orleans could be discovered, it would be found, very likely, to have furnished the model and the inspiration for the second book of the Etablissements. There is every evidence that the basis of the book is a record of the customary law of Orleans, and that the author of the code is an Orleanais. The book contains within

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(1) Viollet. Sources des Etablissements, p.38

itself, however, evidence of its origin. Viollet says, that the name of Orleans is written in almost every line. (1) In Chapter 17, a law contains a reference to a charter which probably was a royal charter for Orleans of 1168, since a provision of this corresponds to the law in question. Other laws mention different charters and établissements made for Orleans. Chapter 31 of book 2 treats the question of whether the children of a free mother are free, though the father be a serf. (2) The expressions used and the treatment of the question would not be understood unless one were familiar with the status of serfs in Orleans at that time. The law decides that such children are free, according to the Roman custom, which early had force in Orleans but in no other provinces. Such examples show clearly the character "orleanais" of the book. Furthermore, references in contemporary works go to prove that there did exist in the thirteenth century a record of the customary law of Orleans. The manuscript of the Livre de Jostice et de Plet contains in a sort of index the names of chapters which are missing, one of which is entitled, L' Usage d' Orlenays. (3) The Etablissements themselves refer directly to this work.(4) The compiler of the code often cites the customs of Orleans to explain laws. A compilation of what ancient Orleanais texts are in existence by La Thaumassiere

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(1) Viollet, Sources des Établissements, p.41.
(2) Les Établissements.
(3) Viollet, Sources des Établissements.
(4) Les Établissements.

finally proves almost conclusively by comparison with the code that the latter was modeled after a Coutume d' Orleans and was not a general law applicable to all France.

The code, though without official sanction was not without great influence and importance. It was read throughout France by all legists and became a great work of reference. It was the source of a great part of the legal knowledge and power in France for long afterwards. Having the character of such a general compilation embracing all branches of legeslation and containing most of the contemporary legislation of the reign of Louis, it was eminently fitted for a position of importance, which it occupied. It signalized many important innovations and improvements. All branches of legislation are treated, civil, criminal, and feudal.

Civil legislation.

The provisions falling under such a head are not gathered together but are found scattered throughout the code. There is no order nor method in arrangement.

The Établissements show that a change had taken place in the ideas of the people, improvements were brought about in customs which had long been fixed. The tendency is toward the amelioration of the harsh conditions under which many of the subjects of the king lived. Especially is this true in the case of serfs and villains. Such institutions and improvements found in the code do not mean that they were entirely new and then put into practice for the first time. They are often customs which

have grown up and were in use though they may not have been incorporated previously in a body of laws. Sometimes they are recognized in the code as already existing customs. A change had taken place in the minds of the people towards the serfs and villains and this is embodied in the code. One of the principles laid down is that the children of a free mother are free. Thus abrogating in favor of the Roman principle the custom which was in force throughout the greater part of the kingdom. (1) A passage which shows the strong tendency towards improvement is the provision that in case of enfranchisement of ~~a~~ serf, if the weight of testimony seems to be as much on one side as the other, the decision shall be in favor of the accused. (2)

In regard to the condition of a villain, even greater improvements are noted. H had so far obtained civil status that outside his master's power and off his master's estate he could enter into nearly the same relations and possessed nearly the same degree of liberty that a freeman did.

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(1) Les Établissements, L. #92.
(2) Les Établissements, L. 4ème.
Se aucuns est apelez de servage, si come il est dit desus, ou de murtre ou d'aucun autre meffait por puoy il doie perdre vie ou membre, et preuves soient traites ênsontre lui, et eil soit avis a la joutise que li faiz soit souffisament provez, et li deffanderres ait proposé en jugemant sa deffiance que il ait fait le fait sor luideffandant - - - - - et preuves soient parigal d' ume partie et be l'autre, broiz did que sentance et jugemanz doit estre plus tost donnez por celui qui est accusés et apelez de servage que porl'autre------selonc droit escrit en Decretales,etc.

Another important provision of the code was in regard to droit d' aubaine. (1) This was a right which was of great profit to the nobles and they had greatly extended it by extending the number of persons who were subject to it. It consisted in the forfeiture of his estate by an alien at his death. The code shows the increasing weakness of feudalism by making this a regalian instead of a feudal right.

One of the most radical changes evidenced by the Etablissements was that the wills of those who died unconfessed should be executed. (2) Formerly all such regulations had been part of the jurisdiction of the Church, not only could a person who died unconfessed not will his property but all his goods were confiscated. As the Church refused the last sacrament to those who made no legacy to the church, the whole matter of testaments was in the hands of the Church which derived great profit from it. The provision of the code therefore, was disadvantageous to the Church.

The condition of debtors, so harsh elsewhere in Europe, was improved in France by special laws of Louis and afterwards by further improvements along that line as shown in the Établissements, which provided that the debtor should not be imprisoned

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(1) Les Etablissements. II. 42δ.
(2) Les Etablissements. II. 137.
"Se aucums home ou aucume fame avoit geumalades VIIII jorz et VIII nuiz, et il ne se vousist confesser et il morust desconfes, trestuit si meuble seroient au baron mais s'il moroit desconfes de mort soubite, la joutise n'i avroit riens, ne la segnorie.---- Et se il avoit fait som testament, l'en le sevroit earder; car nule chose n'est si granz come d'acomplir la volenté au mort, selonc droit ou Code."

except for the d ebts of the king. (1)

The code further defines the duties and prerogatives of different judicial officers, the jurisdiction of courts, the rules governing plaintiff and defendant, proof, and testimony, the final decisions, rules regulating appeal, and , in general, all matters concerning the organization of the judiciary. These provisions show how far people had progressed towards an understanding of the real principles of jurisprudence which govern modern law.

Criminal Legislation.

The criminal legislation of the code marks an advance in public opinion more decided than in any other branch of legislation. The idea of personal revenge, the prominent feature of all feudal institutions is, for the most part, done away with in favor of more enlightened principles of justice and equity. The feudal system had had its private warfare and judicial duel by means of which men settled any difficulties they might have with each other. When these institutions were superseded the new legislation which took their place was founded upon justice, and in these laws either the origin or the real recognition of many of the true principles of jurisprudence ar- seen. Some of the principles which substantiate this are, that the simple wish to commit crime is not punishable, that the accomplice is as worthy of punishment as the one who commits the crime, that in case of division of opinion, the decision shall be favorable to the accused, (2)

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(1) Les Etablissements. II. p 411.
(2) Les Etablissements. I p 452.
"Quant preuvus sunt parigal d'une partie et d'autre, sentence doit plus post estre donnée por franchise ou por celui qui est accusez que por celui qui demande----- si come il est escrit en la didte decretale mot a mot; et usages ve pais s'i accorde."

that the noble is punished more severely than the non-noble, and that judges should decide impartially. (1) This same law gives the order of proceeding in court. When the parties had assembled, the provost summoned enough people who were not parties to the case and the arguments on both sides were subjected to them as jurors. (2) The passage shows how far advanced was the idea of the jury system. It was not a new idea, for it had existed in the feudal system, but the code shows that it had become established in custom and was recognized as the ordinary procedure.

Other provisions of the code relate to crimes and the attendant punishments, and here the advance in public opinion is much less marked than it was in recognition of the principles of jurisprudence. Roman ideas had influenced procedure and forms more than ideas of punishment. The remains of barbarism and superstition are here more easily to be discovered. The number of capital crimes is considerable, murder, treason, sometimes theft, heresy, incendiarism and several other crimes being punishable with death. Theft was punished severely and usually punishment varied according to the value of the object taken. The theft of a horse was a capital offense ,and the explanation of such a law can be found only in an understanding of feudal and chivalric times, and, in the meaning and in a sense symbolic value attached to the horse as a sign of power and sovereignty. Other offenses were punished by mutilation and penalties common to the age, from which we could not expect their laws to be free.

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(1) Les Etablissements Vol.2p.376.
Ne doient avoir reman brance me d'amor, ne de haine, ne de don, ne de promesse, quant ce vient au jugement.
(2) Les Etablissements, II p.314.

Feudal Legislation.

The feudal legislation of the code is not remarkable. The great changes had been accomplished in the system by the reform measures of Louis, but no radical change had been brought about other than those in the feudal system. Feudal principles and institutions were being gradually changed in the direction of greater freedom towards vassals and holders of lands, a less rigid hierarchic division of the lands themselves, The introduction of principles of equity and the gradual assimilation of feudal law to other legislation. Attention is given in the code to the administration of fiefs, to the various duties and prerogatives of the lords and vassals, and to the ceremonies which took place between them.

Conclusion.

The work of Louis was a great work of reform to secure the peace and happiness of his people. The most violent abuses of the feudal system were done away with, not through his personal strength alone but because he called in to his aid elements which were growing powerful and together the king, the common people, and the legists, did the work. The course pursued throughout his reign was a wise one and the work of reform and the destruction of feudalism steadily advanced. All forces except the feudal ~~laws~~ lords combined in both movements. During all this time a system of legislation was growing up which combined Roman and canon law with customary and feudal law, and this work prepared for the Établissements and reached its culmination in that great body of laws.