

G. THE FRENCH COMPARISON

Chronology:

Louis VI (the Fat) — 1108–1137, time of Henry I

Louis VII (the Young) — 1137–1180, time of Stephen and Henry II

Philip II (Augustus) — 1180–1223, recovered Normandy and launched Albigensian Crusade

Louis IX (St. Louis) — 1226–1270

Philip III (the Bold) — 1270–1285

Philip IV (the Fair) — 1285–1314, war with Edward I and conflict with Pope Boniface VIII

1302 — the Estates General

1307–1312 — destruction of the Templars

Beaumanoir on Kingship

PHILIPPE DE RÉMI, SIEUR DE BEAUMANOIR, COUTUMES DE BEAUVAISIS, §§ 1103, 1510, 1512–13, 1515 (1283)¹
trans. [with modifications] from F.R.P. Akehurst, *The Coutumes de Beauvaisis of Philippe de Beaumanoir* [Philadelphia, 1992]²

§ 1103. . . . It is also the king's right, notwithstanding any waiver that anyone has put into writing, whether general or special, that the king may, if the debtor is joining the king's army or going on crusade against the enemies of the faith, have the debt postponed [*aterminer*], according to the needs of those going with him, or who are going on some necessary business at his command, for what he wants to do should be taken for law. But this can be done by no one but him in the kingdom of France. . . .

§ 1510. There are exceptional times when you cannot and should not do what has been lawful [*pour droit*] by long custom and practice, for example anyone can know that there are two kinds of times: war and peace. And it is reasonable for peace time to be dealt with according to the usage and custom which has been habitual and developed [*usees et acoustumees*] over a long period for life in peacetime But in times of war or fear of war, kings and princes, lords who hold directly from the king [*barons*] and lower ones, have to do many things which, if they were done in times of peace, would be wrongs towards their subjects; but the emergency [*tans de necessité*] excuses them, so the king can make new laws for the common good of the kingdom: for example, when he thinks he will have to defend his land or attack someone who has wronged him, he is accustomed to order that gentlemen who are squires be all made knights, and the rich men and poor should furnish armor, each according to his position and that towns should repair their fortifications [*services*] and their fortresses, and that everyone be ready to move when the king gives the order. The king can give all such laws and others which seem right to him and his counsel in time of war, or fear of war to come; and the barons can do the same in their lands, provided it is not in order to take arms [*entreprendre*] against the king.

§ 1512. No one can make a new law [*établissement*] which will be enforced as such [*pour droit*], or a new market, or new customs, except the king in the kingdom of France, save in times of emergency [*necessité*], for in those times every baron can force the sale of his subject's goods, as we have said above; but they cannot make new markets, nor new customs [*coustumes*] without the king's permission. But the king can do this when he likes, and when he sees it is for the common good, for example, we see the king giving new customs every day to certain towns which are his own or to certain lords among his subjects, for example to repair bridges or roads, or churches, or various other public works [*aaisemens communs*]; in such cases the king can act, but not others.

§ 1513. You should know that if the king makes some new law for the common good, it does not affect things done in the past, nor things which will happen in the future, until observance of the law has been ordered. . . .

¹ The date is traditional. It might be more cautious to say that the work was completed before 1296.

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§ 1515. Although the king can make new laws, he must take great care to make them for reasonable causes and for the common good, and after much consultation [*par grant conseil*], and especially they must not be made against God or against morality [*bonnes meurs*]; for if he did (which will never happen, with God's help), his subjects should not permit it, for each person should above all things love and fear God with all his heart and for the honor of Holy Church, and after that his earthly lord. And everyone should obey the commandments of our Lord in the hope of the reward of heavenly treasures [*des biens celestiaux*], and after that obey his earthly lord according to what one should do for one's temporal goods [*les possessions temporeus*]. *Here ends the chapter on laws and times of emergency.*

Pierre de Mornay on Kingship

LONDON BL MS ARUNDEL 459, fol. 70v (1278)

transcribed in K. Pennington, *The Prince and the Law* [Berkeley, 1993], 99–100 n. 92, 94, 95, 97, trans. CD³

[This is a student's report of an academic disputed question, perhaps disputed at the university of Orléans in the year 1278, when, if we've got the right man, the doctor, Pierre de Mornay, who gives the judgment, would have been a quite young man. He was to go on to become a counselor of Philip IV, bishop of Orléans and then of Auxerre, and chancellor of France for a brief period before his death in 1306.]

The . . . question was this: There was a custom in Brittany that if anyone of the jurisdiction of the count [?duke] of Brittany was called before the count in either a civil or a criminal case, he could complain or appeal to the king of France, and thus the count could not further lay hands on the matter. Then the king of France wished to remit this right to the count, indeed we put it that he did so *de facto*, without calling the barons. Then the barons said: "Sir King, your remission is not valid, because operates to the prejudice of us and the whole land, and you did not call us when you made this remission." The king said, "It is indeed valid, and we are not bound to call you for this." Query whether this remission is valid or not? And the doctor discussed this question briefly. First, he argued that is valid according to the law, [C.1.19(22).2]. Since the king of France is reputed not to have a superior to himself in his lands, and hence by a certain error he reputes himself to be the prince. He can grant whatever rescript he wishes to his subordinates, so long as the right of an adversary is not totally damaged or taken away, according to the example of the prince who can also do this according to the law [just cited]. By this remission the right of the barons was not taken away entirely nor that of any other subordinates, therefore, etc. But the doctor in determining to the contrary said: Now something which would be tolerated [when done to] a few persons is reputed a great error and great iniquity [reading *iniquitas*] [when done to] many persons or those of a given province. [D.28.6.43; C.8.53(54).24; and especially D.1.16.6.]⁴ Sir Peter Mornay disputed these questions in 1278 on the Friday before Christmas.

H. COURT STRUCTURE AND SOCIAL STRUCTURE, c. 1300

from F. Stephenson & F. Marcham, *Sources of English Constitutional History*
(rev. ed., New York, 1972) I:96–101, 104–9, 177–89, 246–8 (Nos. 39A, 39B, 40, 54, 65)

THE BOROUGH OF IPSWICH

S&M No. 39A–B

(A) JOHN: CHARTER TO IPSWICH (1200)

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⁴ In contrast to the previous citation to Roman law, which supports the conclusion reached in that section, these citations to Roman law are decidedly stretching a point. The Latin of the sentence is somewhat garbled, but Prof. Pennington's translation, which I largely follow here, seems to capture what is intended. CD.