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XVI.15 On divorce and repudiation

- The Spirit of Law - Book XVI. How the laws of domestic slavery relate to the nature of the climate -

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XVI.15 On divorce and repudiation

There is a difference between divorce and repudiation, which is that divorce comes about by mutual consent occasioned by mutual incompatibility, whereas repudiation occurs by the will and for the advantage of one of the two parties, independently of the will and advantage of the other.

It is sometimes so necessary for wives to repudiate, and it is always such a pity for them to do so, that it is a tyrannical law that gives this right to men while withholding it from women. A husband is master of the house ; he has a thousand means of holding or remanding his wives to their duty, and it seems that in his hands reputation is just another abuse of his authority. But a wife who repudiates is invoking what can only be a sad remedy. It is always a great misfortune for her to be forced to find a second husband when she has lost most of her charms with another. One of the advantages of the charms of youth in women is that a husband in advancing years is inclined to benevolence by the memory of his pleasures.

It is therefore a general rule that in every country where the law grants men recourse to repudiation, it should grant it to women as well. Further, in climates where women live in domestic slavery, it seems the law ought to allow repudiation to wives, and only divorce to husbands.

When the wives are in a seraglio, the husband cannot repudiate for cause of incompatible ways ; it is the husband's fault if their ways are incompatible.

Repudiation for reason of the woman's barrenness has to be excluded except in the case of a single wife ; when one has multiple wives, this reason is of no importance to the husband.

The law of the Maldives allows a man to take back a wife he has repudiated. [1] The law of Mexico forbade a reconciliation on pain of death. [2] The law of Mexico was more sensible than that of the Maldives : at the very time of dissolution, its focus was on the perpetuity of marriage, whereas the law of the Maldives seems to trifle equally with marriage and repudiation.

The Mexican law granted only divorce. That was another reason not to allow persons who had voluntarily separated to reunite. Repudiation seems rather to come from an impetuous mind and some passion of the soul ; divorce seems to be a matter of deliberation.

Divorce ordinarily has great political utility ; and as for civil utility, it is instituted for the husband and for the wife, and is not always favorable to the children.

[1] *Voyage de François Pyrard*. He takes her rather than another because in this case fewer expenses are incurred.

[2] *History of the Conquest*, by [Antoine de] Solis, p. 499.