

<http://montesquieu.ens-lyon.fr/spip.php?article3053>



**XXVI.14 In which case, in  
marriages between relatives,  
one should go by the laws of  
nature, and in which case by  
civil laws**

Date de mise en ligne : vendredi 7 septembre 2018

- The Spirit of Law - Book XXVI. On laws in the relation they must have with the order of things on which they bear -

---

Copyright © Montesquieu - Tous droits réservés

---

When it comes to the prohibition of marriage between relatives, it is a very delicate thing to find the thin line where the laws of nature stop and civil laws begin. For that, we must establish some principles.

The marriage of son and mother confounds the state of things : the son owes boundless respect to his mother ; the wife owes boundless respect to her husband : the marriage of a mother and her son would in both cases reverse their natural state.

Besides, nature has advanced in woman the time when she can have children, and delayed it in man ; and for the same reason, the woman ceases earlier to have this capacity, and the man later. If marriage between mother and son were allowed, it would almost always result that when the husband was capable of entering into nature's designs, the woman would be no longer.

Marriage between father and daughter, like the preceding one, is repugnant to nature ; but it is less repugnant, because it does not have these two obstacles. Thus the Tartars, who can marry their daughters, [1] never marry their mothers, as we read in the relations. [2]

It has always been natural for fathers to watch over their children's chastity. Having the responsibility of establishing them, they had to preserve for them both the most perfect body and the least corrupt soul, all that can best incite desires, and all that is most apt to elicit affection. Fathers, ever concerned with preserving their children's morals, had to have a natural aversion to whatever could corrupt them. Marriage is not a corruption, you will say ; but before the marriage a person must speak, must inspire loved, must entice : it is this enticement that must have appalled.

Therefore there had to be an insurmountable barrier between those who were to provide education and those who were to receive it, and they had to avoid every kind of corruption, even for a legitimate cause. Why are fathers so intent on depriving those who are to marry their daughters of their company and familiarity ?

Horror for the incest of brother with sister must have come from the same source. It suffices that fathers and mothers have wished to keep the morals of their children and their houses pure, for them to have inspired horror in their children for anything that could urge them toward the union of the two sexes.

The prohibition of marriage between first cousins has the same origin. In earliest times, in other words in holy times, in the ages when luxury was unknown, all children remained in the house, and settle there, for only a very small house was required for a large family. [3] The children of two brothers, or first cousins, were considered, and considered themselves, as brothers. [4] The aversion between brothers and sisters for marriage thus also existed between first cousins. [5]

These causes are so powerful and so natural that they have acted almost everywhere on earth, independently of any communication. It is not the Romans who told the inhabitants of Formosa [6] that marriage with their relatives to the fourth remove was incestuous ; it is not the Romans who told that to the Arabs [7] ; they did not teach it in the Maldives. [8]

Now if some peoples have not rejected marriages between fathers and children, sisters and brothers, we have seen in Book I that intelligent beings do not always follow their laws. Religious thoughts have often made men fall into these aberrations : who would have thought it ? If the Assyrians and Persians married their mothers, the former did it out of religious respect for Semiramis, and the latter because the religion of Zoroaster gave a preference to such marriages. [9] If the Egyptians married their sisters, that again was a folly of the Egyptian religion, which consecrated

those marriages in honor of Isis. As the spirit of religion is to impel us to do great and difficult things with effort, we must not judge that a thing is natural just because a false religion has consecrated it.

The principle that these marriages between fathers and children, brothers and sisters are forbidden for the preservation of natural chastity in the household will help us discover which marriages are forbidden by natural law, and which can be forbidden only by civil law.

As the children dwell, or are assumed to dwell, in their father's house, and consequently the son-in-law with the mother-in-law, the father-in-law with the daughter-in-law or with his wife's daughter, marriage between them is forbidden by the law of nature. In this case, the image has the same effect as the reality, because it has the same cause : civil law neither can nor should allow such marriages.

There are peoples, as we have said, among whom first cousins are regarded as brothers because they usually dwell in the same house ; there are others where this custom is quite unknown. In the former societies, marriage between first cousins should be considered contrary to nature, but not in the latter.

But the laws of nature cannot be local laws. Thus, when these marriages are forbidden or permitted, they are, according to the circumstances, permitted or forbidden by a civil law.

It is not a necessary custom for the brother-in-law and sister-in-law to live in the same house. Marriage is therefore not forbidden between them to preserve chastity in the house, and the law that forbids or permits it is not a law of nature, but a civil law, which varies by circumstances and depends on customs of each country ; these are cases where the laws depend on ways or manners.

Civil laws forbid marriages when, by practices accepted in a certain country, they happen to be in the same circumstances as those which are forbidden by the laws of nature ; and they permit them when the marriages do not fit that case. Prohibition by the laws of nature is invariable, because it depends on something invariable : the father, the mother, and the children necessarily live in the house. But the prohibitions of civil laws are accidental, because they depend on an accidental circumstance : first cousins and others accidentally living in the same house.

This explains why the laws of Moses, those of the Egyptians [\[10\]](#) and of several other peoples, allow marriage between brother-in-law and sister-in-law, while those same marriages are forbidden in other nations.

In the Indies, they have a quite natural reason for allowing these sorts of marriages. The uncle there is regarded as a father, and it is his duty to support and establish his nephews as if they were his own children : this springs from the character of this people, which is good and full of humanity. This law or this practice has produced another one : if a husband has lost his wife, he does not fail to marry her sister [\[11\]](#) : and this is entirely natural, for the new wife becomes the mother of her sister's children, and there is no wicked stepmother.

---

[\[1\]](#) This law of theirs is very ancient. Attila, says Priscus, in his embassy, stopped in a certain place to marry his daughter Esca - a thing allowed, he says, by the laws of the Scythians, p. 22.

[\[2\]](#) *Histoire des Tatares*, part III, p. 236.

[\[3\]](#) It was thus among the earliest Romans.

## In which case, in marriages between relatives, one should go by the laws of nature, and in which case by

[4] Indeed, among the Romans, they had the same name ; first cousins were called brothers.

[5] This was true in Rome in the earliest times, until the people made a law to allow them : they wanted to favor an extremely popular man, one who had married his first cousin (Plutarch, in *Roman Questions*).

[6] *Recueil des voyages qui ont servi à l'établissement de la Compagnie des Indes*, vol. V, part I, "Relation de l'état de l'île de Formose."

[7] Coran, chapter "On women."

[8] See François Pyrard.

[9] They were regarded as more honorable. See Philo, *De specialibus legibus quæ pertinent ad præcepta Decalogi*, Paris, 1640, p. 778.

[10] See law VIII in Codex, *De incestis et inutilibus nuptiis*.

[11] *Lettres édifiantes et curieuses*, 14th volume, p. 403.