

<http://montesquieu.ens-lyon.fr/spip.php?article3055>



**XXVI.16 That one must not
decide by the rules of civil law
when one should decide by
those of political law**

- The Spirit of Law - Book XXVI. On laws in the relation they must have with the order of things on which they bear -
Date de mise en ligne : vendredi 7 septembre 2018

Copyright © Montesquieu - Tous droits réservés

We shall get to the bottom of all the questions if we avoid confusing the rules that derive from the property of the community with those that arise from the liberty of the community.

Is the domain of a state alienable, or is it not ? This question must be decided by the political law, and not by the civil law. It must not be decided by the civil law because it is as necessary for there to be a domain that enables the state to subsist as it is necessary that there be within the state civil laws that regulate the disposition of properties.

If therefore the domain is alienated, the state will be forced to make a new fund for another domain. But this expedient again overturns the political government, because, by the nature of the thing, at each domain that is established, the subject will always pay more, and the sovereign will always receive less ; in a word, the domain is necessary, and the alienation is not.

In monarchies, the order of succession is based on the good of the state, which requires that this order be fixed, to avoid the misfortunes which I have said must occur in despotism, where everything is uncertain because everything there is arbitrary.

It is not for the reigning family that the order of succession is established, but because it is in the interest of the state that there be a reigning family. The law that determines the succession of individuals is a civil law, the object of which is the interest of individuals ; the law which determines the succession to the monarchy is a political law, the object of which is the preservation of the state.

From this it follows that when the political law has established an order of succession in a state, and this order comes to an end, it is absurd to claim the succession by virtue of the civil law of any people whatsoever. A particular society does not make laws for another society. The civil laws of the Romans are not more applicable than any other civil laws ; they themselves did not use them when they judged kings, and the maxims by which they judged kings are so abominable that they must not be revived.

It further follows from this that when political law has made some family abdicate the succession, it is absurd to attempt to use restitutions taken from civil law. Restitutions are in the law, and can be good against those who live in the law ; but they are not good for those who have been established for the law, and who live for the law.

It is foolish to pretend to decide on the rights of realms, of nations, and of the earth by the same maxims by which one decides between individuals on a right to a gutter, to invoke Cicero's expression. [\[1\]](#)

[\[1\]](#) Book I of *Laws*.