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XXVI.3 On civil laws that are contrary to natural law

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

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If a slave, says Plato, defends himself and kills a free man, he must be treated like a parricide. [1] That is a civil law that punishes natural defense.

The law which, under Henry VIII, condemned a man without being confronted by the witnesses was contrary to natural defense ; indeed, in order to condemn, it is indispensable for the witnesses to know that the man against whom they depose is the one who is accused, and that he be able to say : I am not the man you mean.

The law passed in that same reign that condemned any girl who, having had illicit intercourse with someone, did not declare it to the king before she married him, violated the defense of natural modesty ; it is as unreasonable to require a girl to make that declaration as to ask a man not to try to defend his life.

The law of Henry II that condemns to death a girl whose child has perished, in the case where she has not declared her pregnancy to the magistrate, is not less contrary to natural defense. It sufficed to oblige her to inform one of her closest female relatives, who could look out for the preservation of the child.

Gundebald, king of Burgundy, wished to reduce to slavery the wife or the son of a man who had stolen something if they did not reveal the crime. [2] This law was unnatural : a woman should accuse her husband ! A son, his father's accuser ! To avenge a criminal act, they mandated one even more criminal.

Much has been said of an English law that allowed a girl of seven to choose herself a husband. [3] This law was revolting in two ways : it took no account of the time of maturity that nature has given to the mind, nor to the time of maturity which nature has given to the body.

A father could, among the Romans, oblige his daughter to repudiate her husband, even though he had himself consented to the marriage. [4] But it is unnatural to put divorce into the hands of a third person.

If divorce is in keeping with nature, that is only when the two parties, or at least one of them, consent to it ; and when neither consents, it is a monstrous divorce. Finally, access to divorce can be offered only to those who have the burdens of marriage, and who feel the moment when it is in their interest to put an end to them.

[1] Book IX of *Laws*.

[2] *Law of the Burgundians*, tit. 47.

[3] Mr. Bayle mentions this law in his *Critique of the History of Calvinism*, p. 293.

[4] See law 5 of the Codex, *De repudiis et judicio de moribus sublato*.