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**XXVI.6 That the order of
successions depends on the
principles of political or civil
law, and not on the principles
of natural law**

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- 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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The Voconian law prohibited naming a woman as heir, even one's only daughter. There never was, St. Augustine states, a more unjust law. [1] A formula of Marculfus [2] treats as impious the custom that deprives daughters of their fathers' successions. Justinian [3] calls the right of inheritance of males to the prejudice of daughters barbaric. The reason for these notions is that the right which children have to inherit from their fathers has been regarded as a consequence of natural law, which it is not.

Natural law requires fathers to nourish their children, but does not oblige them to make them their heirs. The division of property, the laws on that division, and the successions after the death of the one who had received this share, can all be determined only by society, and consequently by political or civil laws.

It is true that the political or civil order often calls for children to inherit from their fathers, but it does not always require it.

The laws of our fiefs could have had reasons why the eldest male, or the closest relatives on the male side, should have everything, and the daughters nothing ; and the laws of the Lombards [4] could have had some reasons why sisters, natural children, other relatives, and for want of them the public treasury, should share with the daughters.

It was decreed in some Chinese dynasties that the emperor's brothers would succeed him, and that his children would not. If they wanted the prince to possess a degree of experience, if they feared rule by minors, or if it was essential to prevent eunuchs from placing children successively on the throne, they could very well establish such an order of succession ; and when some writers have called those brothers usurpers, [5] they have been applying notions taken from the laws of our own countries.

According to the custom of Numidia, Delsaces, brother of Gala, succeeded to the kingdom, and not his son Massinissa. [6]

There are purely elective monarchies ; and once it is clear that the order of successions must derive from the political or civil laws, it is for them to decide in which cases reason would have that succession turned over to the children, and in which cases it must be given to others.

For one Arabian people, the day when the king mounted the throne, guardians were assigned to all the pregnant women in the country, and the first child to come into the world was the successor prince. [7]

In countries where polygamy is established, the prince has many children ; the number is greater in some countries than in others. There are states where the people would find it impossible to support the king's children [8] ; they were able to establish that the king's children would not succeed him, but rather his sister's.

A prodigious number of children would expose the state to frightful civil wars. The order of succession that gives the crown to the sister's children, who are not more numerous than the children of a prince who had had but one wife would be, avoids these drawbacks.

There are nations where reasons of state or some maxim of religion have required that a certain family should always be on the throne ; such is in the Indies [9] the jealousy of one's caste, and the fear of derogating from it ; it was their thought that, in order always to have princes of the royal blood, it was best to take the children of the king's eldest sister.

The general maxim : to nourish one's children is an obligation of natural law ; to give them one's succession is an obligation of civil or political law. Whence derive the different provisions relating to bastards in the different countries of the world : they follow the civil or political laws of each country.

[1] *The City of God*, book III.

[2] Book II, ch. xii.

[3] Novella 21.

[4] Book II, tit. 14, §6, 7, 8.

[5] Father du Halde, on the second dynasty.

[6] Livy, Decade 3, book IX.

[7] Strabo, book XVI.

[8] Such as Lovengo in Africa. See *Recueil des voyages qui ont servi à l'établissement de la Compagnie des Indes*, vol. IV, part 1, p. 114.

[9] See *Lettres édifiantes et curieuses*, 14th volume ; and *Recueil des voyages qui ont servi à l'établissement de la Compagnie des Indes*, vol. III, part 2, p. 644.