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**XXVI.9 That things that should
be determined by the
principles of civil law can
rarely be determined by the
principles of the religious laws**

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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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Religious laws are more sublime ; civil laws are more encompassing.

The laws of perfection drawn from religion have as their object more the goodness of the man who observes them than of the society in which they are observed ; civil laws, on the contrary, have as their object more the moral goodness of men in general than of individuals.

Thus, however respectable the thoughts that arise directly from religion, they should not always serve as the principle of civil laws, because these have a different principle, which is the general welfare of society.

The Romans made rules in the republic to preserve women's morals : they were political institutions. When the monarchy was established, they made civil laws on that subject, and made them on the principles of civil government. When the Christian religion was born, the new laws that were made had less to do with good overall morality than with the sanctity of marriage : they conceived the union of the two sexes less in the civil state than in a spiritual state.

At first, by the Roman law, a husband who took his wife back into his house after she was condemned for adultery was punished as an accomplice of her debauchery. [1] Justinian, in a different spirit, decreed that for two years he could go to the monastery and take her back. [2]

When a woman whose husband was away at war heard no more of him, she could, in the earliest times, easily remarry, because she had in her hands the power to divorce. The law of Constantine would have had her wait for four years, after which she could send the bill of divorce to the chief, [3] and if her husband returned, he could no longer accuse her of adultery. But Justinian decreed that, however much time had elapsed since her husband's departure, she could not remarry unless she proved her husband's death by the deposition and oath of the chief. [4] Justinian was being mindful of the indissolubility of marriage, but we can say he was too mindful of it. He required a positive proof when a negative proof sufficed ; he insisted on something very difficult : to give an account of the fate of a man far away and exposed to so many accidents ; he presumes a crime, in other words the husband's desertion, when it was so natural to presume his death. He went against the public welfare by leaving a woman unmarried ; he went against individual interest by exposing it to a thousand dangers.

The law of Justinian, which included among the grounds for divorce the consent of the husband and the wife to enter the monastery, [5] was completely foreign to the principles of the civil laws. It is natural for grounds for divorce to arise from certain impediments that must not have been foreseen before the marriage ; but the desire to preserve one's chastity could be foreseen, since it is in us. That law favors inconstancy in a state which by its nature is perpetual ; it clashes with the fundamental principle of divorce, which allows the dissolution of a marriage only in the expectation of another ; in short, to follow even religious thoughts, all it does is to offer God victims without sacrifice.

[1] Law 11, last § following *ad legem Juliam De adulteriis*.

[2] Novella 134, coll. 9, ch. x, tit. 170.

[3] Law 7, *Codex De repudiis et judicio de moribus sublato*.

[4] *Authentica. Hodie quantiscunque*, *Codex De repudiis et judicio de moribus sublato*.

ings that should be determined by the principles of civil law can rarely be determined by the principles of

[5] *Authentica. Quod hodie, Codex De repudiis et iudicio de moribus sublato.*