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**XXVI.15 That one must not
determine by the principles of
political law things that
depend on the principles of
civil 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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As men have renounced their natural independence to live under political laws, they have renounced the natural community of property to live under civil laws.

By these first laws they acquire liberty ; by the second, property. We must not decide by the laws of liberty, which, as we have said, is only the domain of the community, what should be decided only by the laws that relate to property. It is a paralogism to say that the private good must yield to the public good : that applies only in cases having to do with the domain of the community, which is to say the liberty of the citizen ; it does not apply in those pertaining to the property of goods, because the public good is always that each person without exception preserve the property which the civil laws give him.

Cicero maintained that agrarian laws were damaging because the community was established only so that every person would preserve his property.

Let us therefore posit as maxim that where the public good is concerned, the public good is never to deprive an individual of his property, or even to take the least bit of it by law or political statute. In this case, the civil law, which is the guarantor of property, must be strictly followed.

Thus, when the public requires the land of an individual, it must never act by the rigor of the political law, but it is there that civil law must prevail, which, with a mother's [\[1\]](#) eyes, looks at each individual even the same as the whole community.

If the political magistrate wants to construct some public edifice or some new road, he must indemnify ; the public is in this respect like an individual dealing with another individual. It is quite enough that he can oblige a citizen to sell him his inheritance, and that he deprives him of the great privilege which he holds by virtue of civil law of not being forced to give up his property.

After the peoples who destroyed the Romans had abused their own conquests, the spirit of liberty recalled them to that of equity ; they exercised the most barbaric rights with moderation ; and if there were any doubt, one would only need to read the admirable work of Beaumanoir, who wrote on jurisprudence in the twelfth century. [\[2\]](#)

In his day they were repairing the highways, as we do today. He says that when a highway could not be repaired, another was constructed, as close to the old one as possible ; but that the landowners were compensated at the expense of those who derived some benefit from the road. [\[3\]](#) At that time the decision was based on civil law ; in our time we have decided by political law.

[\[1\]](#) [A mother's, because *law* (*loi*) is feminine in French.]

[\[2\]](#) [Philippe de Beaumanoir, *Coutumes de Beauvaisis*, 13th century.]

[\[3\]](#) The lord named collectors to raise the toll from the peasants ; gentlemen were obliged by the count to contribute, the man of the Church by the bishop (Beaumanoir, ch. xxii).