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XXVI.2 On divine and human laws

- 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

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One ought not to decide by divine laws what should be decided by human laws, nor determine by human laws what should be determined by divine laws.

These two sorts of laws differ in their origin, their object and their nature.

Everyone agrees that human laws are of a different nature from the laws of religion, and that is a great principle ; but this principle is itself subject to others, which we must identify.

1st The nature of human laws is to be subject to all the accidents that occur, and to vary as men's desires change ; the nature of the laws of religion, on the contrary, is never to vary. Human laws decide on the good, religion on the best ; the good can have a different object, because there are several kinds of good, but the best is but one, so it cannot change. The laws can of course be changed, because they are only supposed to be good ; but the institutions of religion are always assumed to be the best.

2nd There are states where the laws are nothing, or are nothing but a capricious and transient desire of the sovereign. If in these states the laws of religion were of the nature of the human laws, the laws of religion would be nothing either ; yet it is necessary to society for there to be something fixed, and it is this religion which is something fixed.

3rd The force of religion lies in its being believed ; the force of human laws lies in their being feared. Antiquity suits religion, because we often believe things more as they have further receded ; for we do not have in our heads the accessory notions taken from those times that could contradict them. Human laws on the contrary benefit from their novelty, which indicates a particular and present attention of the legislator to see that they are observed.