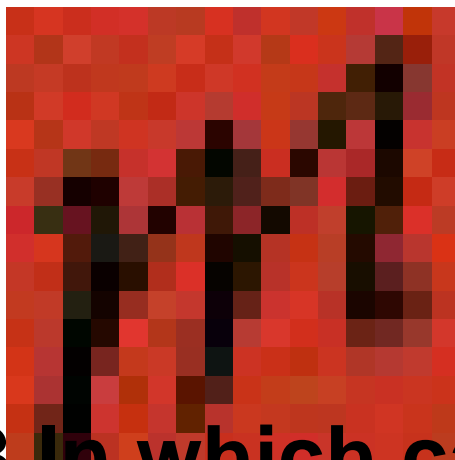


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**XXVI.13 In which case one  
must follow, with respect to  
marriages, the laws of the  
religion, and in which case one  
must follow the civil laws**

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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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It has happened in every country and in all times that religion has made marriages its business. Once certain things have been regarded as impure or illicit, despite the fact they were necessary, religion had to be called in to legitimate them in one case and reject them in the others.

On the other hand, marriages being of all human actions the one which is of greatest concern to society, they had of course to be regulated by civil laws.

Everything that concerns the character of marriage, its form, the manner of contracting it, the fecundity it procures, which has led all peoples to understand that it was the object of a particular benediction which, while not always appertaining to it, depended on certain superior favors - all this falls within the competence of religion.

The consequences of that union as it relates to property, to mutual advantages, to everything connected to the new family, to the one from which it sprang, to the one that will be born - all these are the business of the civil laws.

As one of the important purposes of marriage is to remove all the uncertainties of illegitimate conjunctions, religion puts its stamp on it, and civil laws add their own, so as to confer all the authenticity possible. Thus, in addition to the conditions that religion demands for the marriage to be valid, civil laws can require still others.

What gives the civil laws this power is that they are added marks, and not contradictory marks. The law of religion calls for certain ceremonies, and the civil laws call for the consent of the fathers ; in so doing, they are asking for something more, but they are asking for nothing contrary.

It follows from this that it is up to religious law to decide whether the bond shall be indissoluble or not : for if the religious laws had established the bond as indissoluble, and the civil laws had ruled that it can be broken, those would be two contradictory things.

Sometimes the marks imprinted on marriage by civil laws are not absolutely necessary, such as those established by the laws which, instead of nullifying the marriage, have been content to punish those who contracted it.

Among the Romans, the Papian laws declared illegitimate the marriages they prohibited, and merely subjected them to penalties [1] ; and the senatus consultum issued on the speech of the emperor Mark Anthony declared them null and void : there was no longer any marriage, wife, dowry, or husband. [2] Civil law decides according to the circumstances ; sometimes it focuses on repairing the damage, sometimes on preventing it.

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[1] See what I have said on this subject in chapter xxi of the book on laws in their relation to the number of inhabitants [Book XXIII].

[2] See law 16 following in *Ritu Nuptiarum*, and law 3, §1, also in the *Digest*, *De donationibus inter virum et uxorem*.