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LECTURE VI.

The connection of the sixth lecture with the first, second, third, fourth, and fifth.

Positive laws, the appropriate matter of jurisprudence, are related in the way of resemblance, or by a close or remote analogy, to the following objects.—1. In the way of resemblance, they are related to the laws of God. 2. In the way of resemblance, they are related to those rules of positive morality which are laws properly so called. 3. By a close or strong analogy, they are related to those rules of positive morality which are merely opinions or sentiments held or felt by men in regard to human conduct. 4. By a remote or slender analogy, they are related to laws merely metaphorical, or laws merely figurative.

To distinguish positive laws from the objects now enumerated, is the purpose of the present attempt to determine the province of jurisprudence.

In pursuance of the purpose to which I have now adverted, I stated, in my first lecture, the essentials of a *law* or *rule* (taken with the largest signification which can be given to the term *properly*).

In my second, third, and fourth lectures, I stated the marks or characters by which the laws of God are distinguished from other laws. And, stating those marks or characters, I explained the nature of the index to his unrevealed laws, or I explained and examined the hypotheses which regard the nature of that index.

In my fifth lecture, I examined or discussed especially the following principal topics (and I touched upon other topics of secondary or subordinate importance).—I examined the distinguishing marks of those positive moral rules which are laws properly so called: I examined the distinguishing marks of those positive moral rules which are styled *laws* or *rules* by an analogical extension of the term: and I examined the distinguishing marks of laws merely metaphorical, or laws merely figurative.

I shall finish, in the present lecture, the purpose mentioned above, by explaining the marks or characters which distinguish 220 positive laws, or laws strictly so called. And, in order to an explanation of the marks which distinguish positive laws, I shall analyze the expression *sovereignty,* the correlative expression *subjection,* and the inseparably connected expression *independent political society*. With the ends or final causes for which governments *ought* to exist, or with their different degrees of fitness to attain or approach those ends, I have no concern. I examine the notions of *sovereignty* and *independent political society,* in order that I may finish the purpose to which I have adverted above: in order that I may distinguish completely the appropriate province of jurisprudence from the regions which lie upon its confines, and by which it is encircled. It is necessary that I should examine those notions, in order that I may finish that purpose. For the essential difference of a positive law (or the difference that severs it from a law which is not a positive law) may be stated thus. Every positive law, or every law simply and strictly so called, is set by a sovereign person, or a sovereign body of persons, to a member or members of the independent political society wherein that person or body is sovereign or supreme. Or (changing the expression) it is set by a monarch, or sovereign number, to a person or persons in a state of subjection to its author. Even though it sprung directly from another fountain or source, it *is* a positive law, or a law strictly so called, by the institution of that present sovereign in the character of political superior. Or (borrowing the language of Hobbes) 'the legislator is he, not by whose authority the law was first made, but by whose authority it continues to be a law.'

Having stated the topic or subject appropriate to my present discourse, I proceed to distinguish sovereignty from other superiority or might, and to distinguish society political and independent from society of other descriptions.

The distinguishing marks of sovereignty and independent political society.

The superiority which is styled sovereignty, and the independent political society which sovereignty implies, is distinguished from other superiority, and from other society, by the following marks or characters.—1. The *bulk* of the given society are in a *habit* of obedience or submission to a *determinate* and *common* superior: let that common superior be a certain individual person, or a certain body or aggregate of individual persons. 2. That certain individual, or that certain body of individuals, is *not* in a habit of obedience to a determinate human superior. Laws (improperly so called) which opinion 221 sets or imposes, may per-

manently affect the conduct of that certain individual or body. To express or tacit commands of other determinate parties, that certain individual or body may yield occasional submission. But there is no determinate person, or determinate aggregate of persons, to whose commands, express or tacit, that certain individual or body renders habitual obedience.

Or the notions of sovereignty and independent political society may be expressed concisely thus.—If a *determinate* human superior, *not* in a habit of obedience to a like superior, receive *habitual* obedience from the *bulk* of a given society, that determinate superior is sovereign in that society, and the society (including the superior) is a society political and independent.

The relation of sovereignty and subjection.

To that determinate superior, the other members of the society are *subject:* or on that determinate superior, the other members of the society are *dependent*. The position of its other members towards that determinate superior, is *a state of subjection,* or *a state of dependence*. The mutual relation which subsists between that superior and them, may be styled *the relation of sovereign and subject,* or *the relation of sovereignty and subjection*.

Strictly speaking, the sovereign portion of the society, and not the society itself, is independent, sovereign, or supreme.

Hence, it follows, that it is only through an ellipsis, or an abridged form of expression, that the *society* is styled *independent*. The party truly independent (independent, that is to say, of a determinate human superior), is not the society, but the sovereign portion of the society: that certain member of the society, or that certain body of its members, to whose commands, expressed or intimated, the generality or bulk of its members render habitual obedience. Upon that certain person, or certain body of persons, the other members of the society are *dependent:* or to that certain person, or certain body of persons, the other members of the society are *subject*. By 'an independent political society,' or 'an independent and sovereign nation,' we mean a political society consisting of a sovereign and subjects, as opposed to a political society which is merely subordinate: that is to say, which is merely a limb or member of another political society, and which therefore consists entirely of persons in a state of subjection.

In order that a given society may form a society political and independent

In order that a given society may form a society political and independent, the two distinguishing marks which I have mentioned above must unite. The *generality* of the given society must be in the *habit* of obedience to a *determinate* and *common* superior: whilst that determinate person, or determinate body of persons must *not* be habitually obedient to a deter-minate person or body. It is the union of that positive, with this negative mark, which renders that certain superior sovereign or supreme, and which renders that given society (including that certain superior) a society political and independent.

political and independent, the two distinguishing marks which are mentioned above must unite.

To show that the union of those marks renders a given society a society political and independent, I call your attention to the following positions and examples.

1. In order that a given society may form a society political, the generality or bulk of its members must be in a *habit* of obedience to a determinate and common superior.

In case the generality of its members obey a determinate superior, but the obedience be rare or transient and not habitual or permanent, the relation of sovereignty and subjection is not created thereby between that certain superior and the members of that given society. In other words, that determinate superior and the members of that given society do not become thereby an independent political society. Whether that given society be political and independent or not, it is not an independent political society whereof that certain superior is the sovereign portion.

For example: In 1815 the allied armies occupied France; and so long as the allied armies occupied France, the commands of the allied sovereigns were obeyed by the French government, and, through the French government, by the French people generally. But since the commands and the obedience were comparatively rare and transient, they were not sufficient to constitute the relation of sovereignty and subjection between the allied sovereigns and the members of the invaded nation. In spite of those commands, and in spite of that obedience, the French government was sovereign or independent. Or in spite of those commands, and in spite of that obedience, the French government and its subjects were an independent political society whereof the allied sovereigns were not the sovereign portion.

Now if the French nation, before the obedience to those sovereigns, had been an independent society in a state of nature or anarchy, it would not have been changed by the obedience into a society political. And it would not have been changed by the obedience into a society political, because the obedience was not

habitual. For, inasmuch as the obedience was not habitual, it was not changed by the obedience from a society political and independent, into a society political but subordinate.—A given society, therefore, is not a society political, unless the generality of its members be in a *habit* of obedience to a determinate and common superior. 223

Again: A feeble state holds its independence precariously, or at the will of the powerful states to whose aggressions it is obnoxious. And since it is obnoxious to their aggressions, it and the bulk of its subjects render obedience to commands which they occasionally express or intimate. Such, for instance, is the position of the Saxon government and its subjects in respect of the conspiring sovereigns who form the Holy Alliance. But since the commands and the obedience are comparatively few and rare, they are not sufficient to constitute the relation of sovereignty and subjection between the powerful states and the feeble state with its subjects. In spite of those commands, and in spite of that obedience, the feeble state is sovereign or independent. Or in spite of those commands, and in spite of that obedience, the feeble state and its subjects are an independent political society whereof the powerful states are not the sovereign portion. Although the powerful states are permanently *superior*, and although the feeble state is permanently *inferior*, there is neither a *habit* of command on the part of the former, nor a *habit* of obedience on the part of the latter. Although the latter is unable to defend and maintain its independence, the latter is independent of the former in fact or practice.

From the example now adduced, as from the example adduced before, we may draw the following inference: that a given society is not a society political, unless the generality of its members be in a *habit* of obedience to a determinate and common superior.—By the obedience to the powerful states, the feeble state and its subjects are not changed from an independent, into a subordinate political society. And they are not changed by the obedience into a subordinate political society, because the obedience is not habitual. Consequently, if they were a natural society (setting that obedience aside), they would not be changed by that obedience into a society political.

2. In order that a given society may form a society political, habitual obedience must be rendered, by the *generality* or *bulk* of its members, to a determinate and *common* superior. In other words, habitual obedience must be rendered, by the *generality* or *bulk* of its members, to *one and the same* determinate person, or determinate body of persons.

Unless habitual obedience be rendered by the *bulk* of its members, and be rendered by the bulk of its members to *one and the same* superior, the given society is either in a state of nature, or is split into two or more independent political societies.

For example: In case a given society be torn by intestine 224 war, and in case the conflicting parties be nearly balanced, the given society is in one of the two positions which I have now supposed.—As there is no common superior to which the bulk of its members render habitual obedience, it is not a political society single or undivided.—If the bulk of each of the parties be in a habit of obedience to its head, the given society is broken into two or more societies, which, perhaps, may be styled independent political societies.—If the bulk of each of the parties be not in that habit of obedience, the given society is simply or absolutely in a state of nature or anarchy. It is either resolved or broken into its individual elements, or into numerous societies of an extremely limited size: of a size so extremely limited, that they could hardly be styled societies independent and *political*. For, as I shall show hereafter, a given independent society would hardly be styled *political,* in case it fell short of a *number* which cannot be fixed with precision, but which may be called considerable, or not extremely minute.

3. In order that a given society may form a society political, the generality or bulk of its members must habitually obey a superior *determinate* as well as common.

On this position I shall not insist here. For I have shown sufficiently in my fifth lecture, that no indeterminate party can command expressly or tacitly, or can receive obedience or submission: that no indeterminate body is capable of corporate conduct or is capable, as a body, of positive or negative deportment.

4. It appears from what has preceded, that, in order that a given society may form a society political, the bulk of its members must be in a habit of obedience to a certain and common

superior. But, in order that the given society may form a society political and independent, that certain superior must not be habitually obedient to a determinate human superior.

The given society may form a society political and independent, although that certain superior be habitually affected by laws which opinion sets or imposes. The given society may form a society political and independent, although that certain superior render occasional submission to commands of determinate parties. But the society is not independent, although it may be political, in case that certain superior habitually obey the commands of a certain person or body.

Let us suppose, for example, that a viceroy obeys habitually the author of his delegated powers. And, to render the example complete, let us suppose that the viceroy receives habitual obedience from the generality or bulk of the persons who inhabit 225 his province.—Now though he commands habitually within the limits of his province, and receives habitual obedience from the generality or bulk of its inhabitants, the viceroy is not sovereign within the limits of his province, nor are he and its inhabitants an independent political society. The viceroy, and (through the viceroy) the generality or bulk of its inhabitants, are habitually obedient or submissive to the sovereign of a larger society. He and the inhabitants of his province are therefore in a state of subjection to the sovereign of that larger society. He and the inhabitants of his province are a society political but subordinate, or form a political society which is merely a limb of another.

A society independent but natural.

A natural society, a society in a state of nature, or a society independent but natural, is composed of persons who are connected by mutual intercourse, but are not members, sovereign or subject., of any society political. None of the persons who compose it lives in the positive state which is styled a state of subjection: or all the persons who compose it live in the negative state which is styled a state of independence.

Society formed by the intercourse of independent political societies.

Considered as entire communities, and considered in respect of one another, independent political societies live, it is commonly said, in a state of nature. And considered as entire communities, and as connected by mutual intercourse, independent political societies form, it is commonly said, a natural society. These expressions, however, are not perfectly apposite. Since all the members of each of the related societies are members of a society political, none of the related societies is strictly in a state of nature: nor can the larger society formed by their mutual intercourse be styled strictly a natural society. Speaking strictly, the several members of the several related societies are placed in the following positions. The sovereign and subject members of each of the related societies form a society political: but the sovereign portion of each of the related societies lives in the negative condition which is styled a state of independence.

Society formed by the intercourse of independent political societies, is the province of international law, or of the law obtaining between nations. For (adopting a current expression) international law, or the law obtaining between nations, is conversant about the conduct of independent political societies considered as entire communities: *circa negotia et causas gentium integrarum*. Speaking with greater precision, international law, or the law obtaining between nations, regards the conduct of sovereigns considered as related to one another.

And hence it inevitably follows, that the law obtaining 226 between nations is not positive law: for every positive law is set by a given sovereign to a person or persons in a state of subjection to its author. As I have already intimated, the law obtaining between nations is law (improperly so called) set by general opinion. The duties which it imposes are enforced by moral sanctions: by fear on the part of nations, or by fear on the part of sovereigns, of provoking general hostility, and incurring its probable evils, in case they shall violate maxims generally received and respected.

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The forms of supreme government.

An independent political society is divisible into two portions: namely, the portion of its members which is sovereign or supreme, and the portion of its members which is merely subject. The sovereignty can hardly reside in *all* the members of a society: for it can hardly happen that some of those members shall not be naturally incompetent to exercise sovereign powers. In

most actual societies, the sovereign powers are engrossed by a single member of the whole, or are shared; exclusively by a very few of its members: and even in the actual societies whose governments are esteemed popular, the sovereign number is a slender portion of the entire political community. An independent political society governed by itself, or governed by a sovereign body consisting of the whole community, is not impossible: but the existence of such societies is so extremely improbable, that, with this passing notice, I throw them out of my account.[(m)]

([m]) If every member of an independent political society were adult and of sound mind, every member would be naturally competent to exercise sovereign powers: and if we suppose a society so constituted, we may also suppose a society which strictly is governed by itself, or in which the supreme government is strictly a government of all. But in every actual society, many of the members are naturally incompetent to exercise sovereign powers: and even in an actual society whose government is the most popular, the members naturally incompetent to exercise sovereign powers are not the only members excluded from the sovereign body. If we add to the members excluded by reason of natural incompetency, the members (women, for example), excluded without that necessity, we shall find that a great majority even of such a society is merely in a state of subjection. Consequently, though a government of all is not impossible, every actual society is governed by one of its members, or by a number of its members which lies between one and all.

Every supreme government is a *monarchy* (properly so called), or an *aristocracy* (in the generic meaning of the expression). In other words, it is a government of *one*, or a government of a *number*.

Every society political and independent is therefore divisible into two portions: namely, the portion of its members which is sovereign or supreme, and the portion of its members which is 238 merely subject. In case that sovereign portion consists of a single member, the supreme government is properly a *monarchy*, or the sovereign is properly a *monarch*. In case that sovereign portion consists of a number of members, the supreme government may be styled an *aristocracy* (in the generic meaning of the expression).—And here I may briefly remark, that a monarchy or government of one, and an aristocracy or government of a number, are essentially and broadly distinguished by the following important difference. In the case of a monarchy or government of one, the sovereign portion of the community is simply or purely sovereign. In the case of an aristocracy or government of a number, that sovereign portion is sovereign as viewed from one aspect, but is also subject as viewed from another. In the case of an aristocracy or government of a number, the sovereign number is an aggregate of individuals, and, commonly, of smaller aggregates composed by those individuals. Now, considered collectively, or considered in its corporate character, that sovereign number is sovereign and independent. But, considered severally, the individuals and smaller aggregates composing that sovereign number are subject to the supreme body of which they are component parts.

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Of the exercise of sovereign powers, by a monarch or sovereign body, through political subordinates or delegates representing their sovereign author.

In an independent political society of the smallest possible 244 magnitude, inhabiting a territory of the smallest possible extent, and living under a monarchy or an extremely narrow oligarchy, all the supreme powers brought into exercise (save those committed to subjects as private persons) might possibly be exercised directly by the monarch or supreme body. But by every actual sovereign (whether the sovereign be one individual, or a number or aggregate of individuals), some of those powers are exercised through political subordinates or delegates representing their sovereign author. This exercise of sovereign powers through political subordinates or delegates is rendered absolutely necessary, in every actual society, by innumerable causes. For example, if the number of the society be large, or if its territory be large, although its number be small, the quantity of work to be done in the way of political government is more than can be done by the sovereign without the assistance of ministers. If the society be governed by a popular body, there is some of the business of government which cannot be done by the sovereign without the intervention of representatives; for there is some of the business of government to which the body is incompetent by reason of its own bulk; and some of the business of government the body is prevented from performing by the private avocations of its members. If the society be governed by a popular body whose members live dispersedly throughout an extensive territory, the sovereign body is constrained by the wide dispersion of its members to exercise through representatives some of its sovereign powers.

In most or many of the societies whose supreme governments are monarchical, or whose supreme governments are oligarchical, or whose supreme governments are aristocratical (in the specific meaning of the name), many of the sovereign powers are exercised by the sovereign directly, or the sovereign performs directly much of the business of government.

Many of the sovereign powers are exercised by the sovereign directly, or the sovereign performs directly much of the business of government, even in some of the societies whose supreme governments are popular. For example: In all or most of the democracies of ancient Greece and Italy, the sovereign people or number, formally assembled, exercised directly many of its sovereign powers. And in some of the Swiss Cantons whose supreme governments are popular, the sovereign portion of the citizens, regularly convened, performs directly much of the business of government.

But in many of the societies whose supreme governments 245 are popular, the sovereign or supreme body (or any numerous body forming a component part of it) exercises through representatives, whom it elects and appoints, the whole, or nearly the whole, of its sovereign or supreme powers. In our own country, for example, one component part of the sovereign or supreme body is the numerous body of *the commons* (in the strict signification of the name): that is to say, such of the commons (in the large acceptation of the term) as share the sovereignty with the king and the peers, and elect the members of the commons' house. Now the commons exercise through representatives the whole of their sovereign powers; or they exercise through representatives the whole of their sovereign powers, except their sovereign power of electing and appointing representatives to represent them in the British Parliament. So that if the commons were sovereign without the king and the peers, not a single sovereign power, save that which I have now specified, would be exercised by the sovereign directly.

Where a sovereign body (or any smaller body forming a component part of it) exercises through representatives the whole of its sovereign powers, it may delegate those its powers to those its representatives, in either of two modes. 1. It may delegate those its powers to those its representatives, subject to a trust or trusts. 2. It may delegate those its powers to those its representatives, absolutely or unconditionally: insomuch that the representative body, during the period for which it is elected and appointed, occupies completely the place of the electoral; or insomuch that the former, during the period for which it is elected and appointed, is invested completely with the sovereign character of the latter.

For example: The commons delegate their powers to the members of the commons' house, in the second of the above-mentioned modes. During the period for which those members are elected, or during the parliament of which those members are a limb, the sovereignty is possessed by the king and the peers, with the members of the commons' house, and not by the king and the peers, with the delegating body of the commons: though when that period expires, or when that parliament is any how dissolved, the delegated share in the sovereignty reverts to that delegating body, or the king and the peers, with the delegating body of the commons, are then the body wherein the sovereignty resides. So that if the commons were sovereign without the king and the peers, their present representatives in parliament would be the sovereign in effect, or would possess 246 the entire sovereignty free from trust or obligation.—The powers of the commons are delegated so absolutely to the members of the commons' house, that this representative assembly might concur with the king and the peers in defeating the principal ends for which it is elected and appointed. It might concur, for instance, in making a statute which would lengthen its own duration from seven to twenty years; or which would annihilate completely the actual constitution of the government, by transferring the sovereignty to the king or the peers from the tripartite body wherein it resides at present.

But though the commons delegate their powers in the second of the above-mentioned modes, it is clear that they might delegate them subject to a trust or trusts. The representative body, for instance, might be bound to use those powers consistently with specific ends pointed out by the electoral: or it might be bound, more generally and vaguely, not to annihilate, or alter essentially, the actual constitution of the supreme government. And if the commons were sovereign without the king and the peers,

they might impose a similar trust upon any representative body to which they might delegate the entire sovereignty.

Where such a trust is imposed by a sovereign or supreme body (or by a smaller body forming a component part of it), the trust is enforced by legal, or by merely moral sanctions. The representative body is bound by a positive law or laws: or it is merely bound by a fear that it may offend the bulk of the community, in case it shall break the engagement which it has contracted with the electoral

And here I may briefly remark, that this last is the position which really is occupied by the members of the commons' house. Adopting the language of most of the writers who have treated of the British Constitution, I commonly suppose that the present parliament, or the parliament for the time being, is possessed of the sovereignty: or I commonly suppose that the king and the lords, with the members of the commons' house, form a tripartite body which is sovereign or supreme. But, speaking accurately, the members of the commons' house are merely trustees for the body by which they are elected and appointed: and, consequently, the sovereignty always resides in the king and the peers, with the electoral body of the commons. That a trust is imposed by the party delegating, and that the party representing engages to discharge the trust, seems to be imported by the correlative expressions *delegation* and *representation*. It were absurd to 247 suppose that the delegating empowers the representative party to defeat or abandon any of the purposes for which the latter is appointed: to suppose, for example, that the commons empower their representatives in parliament to relinquish their share in the sovereignty to the king and the lords.—The supposition that the powers of the commons are delegated absolutely to the members of the commons' house probably arose from the following causes. 1. The trust imposed by the electoral body upon the body representing them in parliament, is tacit rather than express: it arises from the relation between the bodies as delegating and representative parties, rather than from oral or written instructions given by the former to the latter. But since it arises from that relation, the trust is general and vague. The representatives are merely bound, generally and vaguely, to abstain from any such exercise of the delegated sovereign powers as would tend to defeat the purposes for which they are elected and appointed. 2. The trust is simply enforced by moral sanctions. In other words, that portion of constitutional law which regards the duties of the representative towards the electoral body, is positive morality merely. Nor is this extraordinary. For (as I shall show hereafter) all constitutional law, in every country whatever, is, as against the sovereign, in that predicament: and much of it, in every country, is also in that predicament, even as against parties who are subject or subordinate to the sovereign, and who therefore might be held from infringing it by legal or political sanctions.

If a trust of the kind in question were enforced by legal sanctions, the positive law binding the representative body might be made by the representative body and not by the electoral. For example: If the duties of the commons' house towards the commons who appoint it were enforced by legal sanctions, the positive law binding the commons' house might be made by the parliament: that is to say, by the commons' house itself in conjunction with the king and the peers. Or, supposing the sovereignty resided in the commons without the king and the peers, the positive law binding the commons' house might be made by the house itself as representing the sovereign or state.—But, in either of these cases, the law might be abrogated by its immediate author without the direct consent of the electoral body. Nor could the electoral body escape from that inconvenience, so long as its direct exercise of its sovereign or supreme powers was limited to the election of representatives. In order that the electoral body might escape 248 from that inconvenience, the positive law binding its representatives must be made directly by itself or with its direct concurrence. For example: In order that the members of the commons' house might be bound legally and completely to discharge their duties to the commons, the law must be made directly by the commons themselves in concurrence with the king and the lords: or, supposing the sovereignty resided in the commons without the king and the peers, the law must be made directly by the commons themselves as being exclusively the sovereign. In either of these cases, the law could not be abrogated without the direct consent of the electoral body itself. For the king and the lords with the electoral body of the commons, or

the electoral body of the commons as being exclusively the sovereign, would form an extraordinary and ulterior legislature: a legislature superior to that ordinary legislature which would be formed by the parliament or by the commons' house. A law of the parliament, or a law of the commons' house, which affected to abrogate a law of the extraordinary and ulterior legislature, would not be obeyed by the courts of justice. The tribunals would enforce the latter in the teeth of the former. They would examine the competence of the ordinary legislature to make the abrogating law, as they now examine the competence of any subordinate corporation to establish a by-law or other statute or ordinance. In the state of New York, the ordinary legislature of the state is controlled by an extraordinary legislature, in the manner which I have now described. The body of citizens appointing the ordinary legislature, forms an extraordinary and ulterior legislature by which the constitution of the state was directly established: and any law of the ordinary legislature, which conflicted with a constitutional law directly proceeding from the extraordinary, would be treated by the courts of justice as a legally invalid act.—That such an extraordinary and ulterior legislature is a good or useful institution, I pretend not to affirm. I merely affirm that the institution is possible, and that in one political society the institution actually obtains.

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The nature of a *composite state*, or a *supreme federal government:* with the nature of a *system of confederated states*, or a *permanent confederacy of supreme governments*.

It frequently happens, that one society political and independent arises from a federal union of several political societies: or, rather, that one government political and sovereign arises from a federal union of several political governments. By some of the writers on positive international law, such an independent political society, or the sovereign government of such a society, is styled a *composite state*. But the sovereign government of such a society, might be styled more aptly, as well as more popularly, a *supreme federal government*.

It also frequently happens, that several political societies which are severally independent, or several political governments which are severally sovereign, are compacted by a permanent alliance. By some of the writers on positive international law, the several societies or governments, considered as thus compacted, are styled a *system of confederated states*. But the several governments, considered as thus compacted, might be styled more aptly, as well as more popularly, a *permanent confederacy of supreme governments*.

I advert to the nature of a composite state, and to that of a system of confederated states, for the following purposes.—It results from positions which I shall try to establish hereafter, that the power of a sovereign is incapable of legal limitation. It also results from positions which I have tried to establish already, that in every society political and independent, the sovereign is *one* individual, or *one* body of individuals: that unless the sovereign be *one* individual, or *one* body of individuals, the given independent society is either in a state of nature, or is split into two or more independent political societies. But in a political society styled a composite state, the sovereignty is so shared by various individuals or bodies, that the *one* sovereign body whereof they are the constituent members, is not conspicuous and easily perceived. In a political society styled a composite state, there is not obviously *any* party truly sovereign and independent: there is not ob-258viously *any* party armed with political powers incapable of legal limitation. Accordingly, I advert to the nature of a supreme federal government, to show that the society which it rules is ruled by one sovereign, or is ruled by a party truly sovereign and independent. And adverting to the nature of a composite state, I also advert to the nature of a system of confederated states. For the fallacious resemblance of those widely different objects, tends to produce a confusion which I think it expedient to obviate: and, through a comparison or contrast of those widely different objects, I can indicate the nature of the former, more concisely and clearly

1. In the case of a *composite state,* or a *supreme federal government*, the several united governments of the several united societies, together with a government common to those several societies, are jointly sovereign in each of those several societies, and also in the larger society arising from the federal union. Or, since the political powers of the common or general government

were relinquished and conferred upon it by those several united governments, the nature of a composite state may be described more accurately thus. As compacted by the common government which they have concurred in creating, and to which they have severally delegated portions of their several sovereignties, the several governments of the several united societies are jointly sovereign in each and all.

It will appear on a moment's reflection, that the common or general government is not sovereign or supreme. It will also appear on a moment's reflection, that none of the several governments is sovereign or supreme, even in the several society of which it is the immediate chief.

If the common or general government were sovereign or supreme, the several united societies, though constituting one society, would not constitute a composite state: or, though they would be governed by a common and supreme government, their common and supreme government would not be federal. For in almost every case of independent political society, several political societies, governed by several governments, are comprised by the one society which is political and independent: insomuch that a government supreme and federal, and a government supreme but not federal, are merely distinguished by the following difference. Where the supreme government is not federal, each of the several governments, considered in that character, is purely subordinate: or none of the several governments, considered in that character, partakes of the sovereignty. 259 But where the supreme government is properly federal, each of the several governments, *which were immediate parties to the federal compact,* is, in that character, a limb of the sovereign body. Consequently, although they are subject to the sovereign body of which they are constituent members, those several governments, even considered as such, are not purely in a state of subjection.—But since those several governments, even considered as such, are not purely in a state of subjection, the common or general government which they have concurred in creating is not sovereign or supreme.

Nor is any of those several governments sovereign or supreme, even in the several society of which it is the immediate chief. If those several governments were severally sovereign, they would not be members of a composite state: though, if they were severally sovereign, and yet were permanently compacted, they would form (as I shall show immediately) a system of confederated states.

To illustrate the nature of a composite state, I will add the following remark to the foregoing general description.—Neither the immediate tribunals of the common or general government, nor the immediate tribunals of the several united governments, are bound, or empowered, to administer or execute every command that it may issue. The political powers of the common or general government, are merely those portions of their several sovereignties, which the several united governments, as parties to the federal compact, have relinquished and conferred upon it. Consequently, its competence to make laws and to issue other commands, may and ought to be examined by its own immediate tribunals, and also by the immediate tribunals of the several united governments. And if, in making a law or issuing a particular command, it exceed the limited powers which it derives from the federal compact, all those various tribunals are empowered and bound to disobey.—And since each of the united governments, as a party to the federal compact, has relinquished a portion of its sovereignty, neither the immediate tribunals of the common or general government, nor the immediate tribunals of the other united governments, nor even the tribunals which itself immediately appoints, are bound, or empowered, to administer or execute *every* command that it may issue. Since each of the united governments, as a party to the federal compact, has relinquished a portion of its sovereignty, its competence to make laws and to issue other commands, may and ought to be examined by all those various tribunals. And 260 if it enact a law or issue a particular command, as exercising the sovereign powers which it has relinquished by the compact, all those various tribunals are empowered and bound to disobey.

If, then, the general government were of itself sovereign, or if the united governments were severally sovereign, the united societies would not constitute one composite state. The united societies would constitute one independent society, with a government supreme but not federal; or a knot of societies severally independent, with governments severally supreme. Conse-

quently, the several united governments *as forming one aggregate body,* or they and the general government *as forming a similar body,* are jointly sovereign in each of the united societies, and also in the larger society arising from the union of all.

Now since the political powers of the common or general government are merely delegated to it by the several united governments, it is not a constituent member of the sovereign body, but is merely its subject minister. Consequently, the sovereignty of each of the united societies, and also of the larger society arising from the union of all, resides in the united governments *as forming one aggregate body:* that is to say, as signifying their joint pleasure, or the joint pleasure of a majority of their number, agreeably to the modes or forms determined by their federal compact.

By that aggregate body, the powers of the general government were conferred and determined: and by that aggregate body, its powers may be revoked, abridged, or enlarged.—To that aggregate body, the several united governments, though not merely subordinate, are truly in a state of subjection. Otherwise, those united governments would be severally sovereign or supreme, and the united societies would merely constitute a system of confederated states. Besides, since the powers of the general government were determined by that aggregate body, and since that aggregate body is competent to enlarge those powers, it necessarily determined the powers, and is competent to abridge the powers, of its own constituent members. For every political power conferred on the general government, is subtracted from the several sovereignties of the several united governments.—From the sovereignty of that aggregate body, we may deduce, as a necessary consequence, the fact which I have mentioned above: namely, that the competence of the general government, and of any of the united governments, may and ought to be examined by the immediate tribunals of the former, and also by the immediate tribunals of any of the latter. For 261 since the general government, and also the united governments, are subject to that aggregate body, the respective courts of justice which they respectively appoint, ultimately derive their powers from that sovereign and ultimate legislature. Consequently, those courts are ministers and trustees of that sovereign and ultimate legislature, as well as of the subject legislatures by which they are immediately appointed. And, consequently, those courts are empowered, and are even bound to disobey, wherever those subject legislatures exceed the limited powers which that sovereign and ultimate legislature has granted or left them.

The supreme government of the United States of America, agrees (I believe) with the foregoing general description of a supreme federal government. I believe that the common government, or the government consisting of the congress and the president of the united states, is merely a subject minister of the united states' governments. I believe that none of the latter is properly sovereign or supreme, even in the state or political society of which it is the immediate chief. And, lastly, I believe that the sovereignty of each of the states, and also of the larger state arising from the federal union, resides in the states' governments *as forming one aggregate body:* meaning by a state's government, not its ordinary legislature, but the body of its citizens which appoints its ordinary legislature, and which, the union apart, is properly sovereign therein. If the several immediate chiefs of the several united states, were respectively single individuals, or were respectively narrow oligarchies, the sovereignty of each of the states, and also of the larger state arising from the federal union, would reside in those several individuals, or would reside in those several oligarchies, *as forming a collective whole*.[r]

([r]) The Constitution of the United States, or the constitution of their general government, was framed by deputies from the several states in 1787. It may (I think) be inferred from the fifth article, that the sovereignty of each of the states, and also of the larger state arising from the federal union, resides in the states' governments *as forming one aggregate body*. It is provided by that article, that 'the congress, whenever two-thirds of both houses shall deem it necessary shall propose amendments to this constitution: or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments: which amendments, in either case, shall be valid to all intents and purposes, as part of this constitution, *when ratified by the legislatures of* three-fourths *of the several states, or by convention in* three-fourths *thereof*.' See also the tenth section of the first article: in which section, some of the disabilities of the several states' governments are determined expressly.

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