

A  
T R E A T I S E  
ON THE  
CONSTITUTIONAL LIMITATIONS  
WHICH REST UPON  
THE LEGISLATIVE POWER OF THE STATES  
OF THE AMERICAN UNION.

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# CONSTITUTIONAL LIMITATIONS

## UPON

### STATE LEGISLATIVE POWER.

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#### CHAPTER I.

##### DEFINITIONS.

A STATE is a body politic, or society of men, united together for the purpose of promoting their mutual safety and advantage by the joint efforts of their combined strength.<sup>1</sup> The terms *nation* and *state* are frequently employed, both in the law of nations and in common parlance, as importing the same thing;<sup>2</sup> but the term *nation* is more strictly synonymous with *people*, and while a single state may embrace different nations or peoples, a single nation will be sometimes so divided as to constitute several states.

In American constitutional law, the word *state* is applied to the several members of the American Union, while the word *nation* is applied to the whole body of the people embraced within the jurisdiction of the Federal government.

*Sovereignty*, as applied to states, imports the supreme, absolute, uncontrollable power by which any state is governed.<sup>3</sup> A state is called a *sovereign state* when this supreme power resides within itself, whether resting in a single individual, or in a number of individuals, or in the whole body of the people.<sup>4</sup> In the view of international law, all sovereign states are equal in rights,

<sup>1</sup> Vattel, b. 1, c. 1, § 1; Story on Const. § 207; Wheat. Int. Law, pt. 1, c. 2, § 2; Halleck, Int. Law, 63; Bouv. Law Dict. "State."

<sup>2</sup> Thompson, J. in *Cherokee Nation v. Georgia*, 5 Pet. 52; Vattel, supra.

<sup>3</sup> Story on Const. § 207; 1 Blackstone, Com. 49; Wheat. Int. Law, pt. 1, c. 2, § 5; Halleck, Int. Law, 63, 64; Chipman on Government, 137.

<sup>4</sup> Vattel, b. 1, c. 1, § 2; Story on Const. § 207; Halleck, Int. Law, 65. In other words, when it is an *independent* state. Chipman on Government, 137.

since, from the very definition of a sovereign state, it is impossible that there can be in respect to it any political superior.

The sovereignty of a state commonly extends to all the subjects of government within the territorial limits occupied by the associated society, and, except upon the high seas which belong equally to all men, like the air, and no part of which can rightfully be appropriated by any nation,<sup>1</sup> the dividing line between sovereignties is usually a territorial line. In American constitutional law, however, there is a division of the powers of sovereignty between the national and state governments by subjects; the former being possessed of supreme, absolute, and uncontrollable power over certain subjects throughout all the States and Territories while the latter have the like complete power, within their respective territorial limits, over other subjects.<sup>2</sup> In regard to certain other subjects, the States possess powers of regulation which are not sovereign powers, inasmuch as they are liable to be controlled, or for the time being to become altogether dormant, by the exercise of a power vested in the general government in respect to the same subjects.

A *constitution* is sometimes defined as the fundamental law of a state, containing the principles upon which the government is founded, regulating the division of the sovereign powers, and directing to what persons each of these powers is to be confided, and the manner in which it is to be exercised.<sup>3</sup> Perhaps an equally complete definition would be, that body of rules and maxims in accordance with which the powers of sovereignty are habitually exercised.

In a very qualified and imperfect sense, every state may be said to possess a constitution; that is to say, some leading principle has prevailed in the administration of its government, until it has become an understood part of its system, to which obedi-

<sup>1</sup> Vattel, b. 1, c. 23, § 281; Wheat. Int. Law, pt. 2, c. 4, § 10.

<sup>2</sup> McLean, J. in *License Cases*, 5 How. 588. "The powers of the general government, and of the State, although both exist and are exercised within the same territorial limits, are yet separate and distinct sovereignties, acting separately and independently of each other within their respective spheres. And the sphere of action appropriated to the United States is as far beyond the reach of the judicial process issued by a State judge or a State court, as if the line of division was traced by landmarks and monuments visible to the eye." Taney, J. in *Ableman v. Booth*, 21 How. 516.

<sup>3</sup> 1 Bouv. Inst. 9; Duer, Const. Juris. 26.