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2. It has been disputed whether Government may properly prohibit acts merely because they involve a risk of mischief to others. But this kind of “indirectly individualistic” interference seems clearly expedient in some cases: nor can the amount of it be limited by definite rules; but being per se objectionable, it should be minimised. 124–127
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3. This "indirectly individualistic" interference blends in practice with "paternal" interference in the interest of the persons interfered with; the distinction between the latter and directly individualistic interference is sometimes subtle, especially in cases of precautions against imposition. 127–131

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SOCIALISTIC INTERFERENCE

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2. In any case, on strictly individualistic principles, the appropriation of natural resources by individuals may be indefinitely restricted in the interest of the community. Apart from this, abstract theory shows several cases in which the individual's interest does not tend in the direction most conducive to the common interest, even assuming that utility to society is accurately measured by market value. 140–144

3. These cases largely explain the extent to which, in modern States, the provision of commodities is actually undertaken or regulated by Government, with a view to benefit the community as a whole. This kind of interference may be called, in a wide sense, Socialistic. 144–147

4. Public expenditure for emigration, education and culture, art and science, is defensible on similar grounds. 147–149
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6. "Socialism," in a narrower sense, aims at greater equality in the distribution of wealth. Public ownership and governmental management of the instruments of production would tend to realise this; but would arrest industrial progress and diminish the product to be distributed. Still the gain of reducing the actually existing inequalities of income is on the whole clear; and expenditure directed to this end, in the way of equalisation of opportunities, is defensible on individualistic grounds. 151–156

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3. The supply of funds thus rendered—though temporarily they may be to a great extent borrowed—must in the long run be mainly raised by taxation (in a wide sense). 167–170

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3. If changes in law determining rights of property—and analogous rights—inflict definite and considerable damage on individuals, a claim to compensation should be admitted; but not to full compensation, so far as the most profitable use of the right was—before the legal change—a subject of general moral condemnation. 184–188

4. Changes that aim at a more equitable distribution of burdens of taxation do not—speaking broadly—justify a claim for compensation. Nor, ordinarily, do changes in the industrial action of Government, unless the amount of loss that they inflict on special classes is peculiarly sudden and severe. 188–190
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CHAPTER XIII

LAW AND MORALITY

1. Positive Law and Positive Morality may be distinguished by their respective sanctions. But they also differ importantly, regarded merely as intelligible systems: since in the former case doubts as to what is law may be authoritatively removed by judicial interpretation, and divergences between what is and what ought to be law may be removed by legislation. . . . . 191–195

2. But with morality it is otherwise; hence there is much greater conflict, vagueness, and uncertainty in the established moral code than in the established law. . 195–197

3. Positive morality limits importantly the action of government; on the other hand, positive morality is to some extent modifiable by the legislator . . . . 197–199

4. Positive morality is further politically important, for the repression by censure of various kinds of mischievous acts which cannot so well be repressed by legal penalties, and for the encouragement by approbation of beneficent acts . . . . . . . . . . 199–203

5. Prima facie it would seem reasonable for Government to provide and pay for teaching in morality: but there are strong arguments on the other side. Practically, the question for a modern Government is how far it should subvent and control Churches. This will be considered later (ch. xxviii.). . . . . . . 203–207

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THE AREA OF GOVERNMENT—STATES AND DISTRICTS

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2. A State is a body of human beings, living in a certain degree of civilised order, and united by obedience to a common government, which exercises supreme dominion over a certain territory. According to the political ideal, practically now dominant, a State should be co-extensive with a Nation; i.e. its members should be united by a further sentiment of community, not dependent on the existence of a common government . 211–215
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3. Even where this is not the case, it would not ordinarily be held that a part of a State is justified in attempting to secede from the rest with its territory, except on grounds of serious oppression or misgovernment. 215–220

4. Membership of a State is determined primarily by birth—either (1) from parents who are members or (2) within the territory of the State;—but partly also by consent, as expatriation is ordinarily free. 220–223

5. Local differences in laws, within the limits of a State, are largely due to historical causes; how far they ought to be retained is a balanced question. Other variations in legislation, and in other kinds of governmental interference, have a reasonable basis in differences of physical conditions. 223–226

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PRINCIPLES OF INTERNATIONAL DUTY

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2. Firstly, to abstain from interference with other States and their members; but we must note that the partial interfusion of nations raises disputed questions as to the determination of membership of a State, and as to the legitimate treatment of resident aliens. 233–236

3. Special difficulties arise in the case of aliens who are fugitive law-breakers from, or otherwise hostile to, a neighbouring State. 236–239

4. Secondly, a State is bound not to interfere with the rights of property of its neighbours, or the dominion of neighbouring States over their territory. But some difficult questions arise in determining the legitimate extent of this dominion, and the modes of acquiring it; also as regards the relations of members of different States, in territory not under civilised government. 239–244

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2. A belligerent must be allowed to inflict on his enemy such mischief as is likely to be effective in disabling him and inducing him to submit; but he may be expected to abstain from such mischief as does not conduce to these ends importantly in proportion to its amount, whether the mischief be personal injuries, 254–257

3. or seizure of property: but he can hardly be expected to abstain from levying severe contributions, even on the property of non-combatants. 257–260

4. As for neutrals—it is clear that belligerents ought not to injure neutrals, nor neutrals to aid belligerents in their warlike operations: but some difficult questions arise in the effort to reconcile these two principles with each other—and the latter with common humanity—in their practical applications. 260–263

5. The regulation of civil war raises the further question when and how far insurgents ought to receive, from their own government or from neutrals, the rights and privileges of ordinary belligerents. 263–265

6. Grave difficulties are raised by the question "how far agreements imposed on a State by an unjust victor are to be held binding". 265–271

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2. But the distinction between the two is somewhat blurred by the widespread toleration of actual or threatened aggression on behalf of national interests, not justified by recognised rules of international right. For various reasons, too, the definition of international rights must be much more imperfect than that of civil rights. 274–277

3. Moreover, what is commonly called International Law differs from Positive Law within a State, and more resembles Positive Morality, in having the distinction obscure, and the transition gradual and indefinite, between rules that are, and rules that ought to be, established. 277–280

4. Still, in respect of the process of changing it, International Law occupies a position intermediate between Positive Law and Positive Morality; and certain parts of it have reached a degree of definiteness which makes it resemble the former more than the latter. But this is not the case with the most important rules of international duty. 280–284

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2. Restrictions on free trade between States are inexpedient, economically and politically, for the community formed by the aggregate of the trading States; and though they may in certain cases bring economic gain to the particular State imposing them, they are not on the whole to be recommended;—except perhaps by way of retaliation. 288–294

3. The free admission of aliens will generally be advantageous; but in certain circumstances it may be the right policy to place restrictions on it. 295–297

4. Extension of territory through conquest, even when it is not to be condemned as injurious to the conquered, is
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5. Expansion by conquest passes by gradual transitions into expansion by colonisation . . . . . 300–302
6. Emigration in itself, under ordinary circumstances, is rather to be regulated than systematically promoted by government: . . . . . . . . 302–306
7. except where the emigration is into territory under the control of the same government, so that the disposal of unoccupied lands affords a means of promoting it. . 306–309
8. The management of the relations between colonists and “aborigines” is a matter of much difficulty, requiring careful regulations and restrictions . . . . 309–315

PART II

CHAPTER XIX

METHODS AND INSTRUMENTS OF GOVERNMENT

1. When we ask how Government is to be constituted to do the work marked out for it, the need is at once manifest of (1) a Judicial organ to decide whether and by whom laws have been broken, and (2) an Executive organ to prevent and punish such breaches, and enforce reparation for wrongs inflicted by them, to manage the foreign relations of the State, and to levy the necessary taxes. Further, as a security against oppressive taxation, there is need of a Money-granting organ independent of the Executive. . . . . . . . . 319–324
2. The need of Legislation is also clear, in order that legal duties may be definite and “cognoscible,” . . . . 324–328
3. and therefore of a Legislative organ—even if Governmental interference be restricted to the Individualistic minimum, . . . . . . . . 328–332
4. If we admit—as modern States generally do—some amount of “indirectly individualistic,” “paternal,” and “socialistic” legislation, the need of a continually active Legislature becomes still more palpable; and also the need of a larger and more complex Executive;—though part of the additional work thus rendered necessary may be assigned to semi-public institutions . 332–335
5. It is important that Executive functions — whether coercive or non-coercive — should be carefully kept within the limits of the law; and therefore supervised by a legislative organ wholly or mainly distinct from the executive: also the organisation of the Executive should be under the control of the “money-granting” organ, which, again, we may assume to be wholly or mainly identical with the Legislature. 335–339

6. The Executive organ will therefore be normally subordinate to the Legislature, as is, indeed, implied in the term “executive”:—though it must be admitted that this term does not well describe the functions of the organ so called, so far as it deals with foreign affairs. 340–342

7. The Judicial, as well as the Executive organ, should be distinct from the Legislature. 342–345

8. But, for various reasons, the threelfold distinction and separation of Governmental functions as Legislative, Executive, and Judicial, cannot be made complete. 345–353

CHAPTER XX

THE LEGISLATURE

1. Legal experts should have a large and responsible share in legislation; but representatives periodically elected by the citizens at large should constitute the whole, or a chief part, of the organ of legislation; because such persons are more likely to have empirical knowledge of, and keen concern for, the legislative needs of the community, than legislators otherwise selected. 354–360

2. The representative system is also widely commended—perhaps too confidently—as tending to develop energy, self-reliance, and public spirit in the electorate. 361–363

3. Prima facie, the electorate should include all self-supporting sane adults: but the exclusion of some may be justified by special proof (a) that their interests will not suffer, or (b) that they will make a dangerously bad use of the franchise, through intimidation, bribery, or demagoguery. 363–368

4. Extreme ignorance, crime, and disgraceful conduct, pauperism, bankruptcy, are valid reasons for exclusion: there are also reasons of a different kind for excluding certain classes of employees, and married women. 368–371

5. The danger of legislation oppressive to the rich is ad-
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<td>mitted: but cannot well be met by allotting more electoral power to wealth as such.</td>
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**CHAPTER XXI**

**THE EXECUTIVE**

<p>| 1. For the efficient working of the Executive organ, especially at crises, it is expedient that the most important part of its work should be under the control of a Supreme Executive. | 385–388 |
| 2. Generally speaking, the work of the Executive officials should be voluntary and remunerated; and the workers in various grades appointed by official selectors. | 389–392 |
| 3. Qualifications for the lower posts should be partly ascertained by external examinations: and it may be necessary, as a protection against political partisanship, that the examinations should be competitive, and entirely determine admission to the vacancies. As regards higher posts, a responsible superior official should have free choice among duly qualified persons. | 392–395 |
| 4. Each department should have an individual head, for concentration of responsibility: but for some important decisions a council should be consulted; and its consent should be required in certain cases. | 395–397 |
| 5. The tenure of office should be—formally or practically—on “good behaviour,” subordinates being removable from particular employments at the discretion of the chief, but not dismissible from the service without a quasi-judicial inquiry. | 397–399 |</p>
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<td>6. The heads of departments—with or without other persons —should form a Council or Cabinet that should be consulted on the most important Executive decisions. This Council should have an individual head; and it seems most conducive to efficiency to give him the appointment—and perhaps the dismissal—of the heads of departments: but it does not seem expedient to concentrate in his hands the power and responsibility of Supreme Executive control.</td>
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<td>7. We must note the difference between the English and the German types of Constitutional Monarchy.</td>
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**RELATION OF LEGISLATURE TO EXECUTIVE**

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2. Other disadvantages attend the system of a Parliamentary Executive, with large powers, but simply dismissible by the assembly. | 409–411 |

3. These disadvantages are somewhat reduced, in the English constitution, by the power of dissolution which the Cabinet possesses. | 411–414 |

4. The formal monarch, in the English type of polity, is on the whole a valuable, but not an indispensable, institution: but his value depends on his retaining as much real power as is compatible with complete Parliamentary Government. | 414–419 |

5. He need not necessarily be hereditary. | 419–420 |

6. English Parliamentary Government leads naturally to a certain fusion of legislative and executive functions. | 420–421 |

7. The harmony it maintains between Legislature and Executive is a great advantage, but it is realised at the expense of serious drawbacks, especially instability and inexpertness of ministers. | 421–424 |

8. Simple Constitutional Monarchy affords a means of avoiding these drawbacks; but it vests dangerous powers in an irremovable individual, for whose competence there is no adequate security. | 424–428 |

9. This last danger is avoided by the plan of a Periodical
Executive, which is exemplified by the "Presidential System" of the United States, but also admits of a non-monarchical organisation. 428–432

10. The Executive should have some power of practically legislating; but such power should be carefully limited—especially if there are long intervals between parliamentary sessions. The Executive should also have a share in the legislative work of Parliament; and a special control over financial proposals may advantageously be given to it. 432–436

11. The Legislature cannot conveniently be restrained from dealing with particular cases in general legislation; but it should be restrained, by law or custom, from interfering with the selection of individuals for executive work, and from intervening directly with the management of foreign affairs, except in certain cases where the consent of the supreme legislative and money-granting organ seems indispensable. 436–440

12. Some precautions are needed to obviate the danger of undue influence, exercised by the executive on members of Parliament; especially the latter should be generally incapable of holding subordinate executive offices. 440–441

CHAPTER XXIII

TWO CHAMBERS AND THEIR FUNCTIONS

1. A second chamber, though not necessary, is useful in checking hasty legislation, impeding combinations of sinister interests, and supplementing the deficiencies of the primary representative assembly. 442–445

2. To give the two chambers co-ordinate powers is the simplest plan; but it creates a difficulty as regards financial control, and is generally unsuited to Parliamentary government: it is more suitable where the Supreme Executive holds office for life or for a fixed period. 445–450

3. A senate designed to be co-ordinate in power with the House of Representatives should be elected, directly or indirectly, by the citizens at large: if its power is more limited, other modes of appointment are suitable. 450–454

4. The functions of the chambers may be specialised in various ways. 454–456
CHAPTER XXIV

THE JUDICIARY AND ITS RELATION TO OTHER ORGANS

1. The Judiciary should be in the main separate from the Legislature; but (a) the Legislature should somehow avail itself of judicial experience; and (b) the highest Court cannot well be deprived of the power of making Law to some extent. 457–460

2. The Judiciary should decide questions of constitutional as well as civil right, including membership of the Legislature; but the latter should be final judge of its own procedure and order. 460–462

3. For the security of private citizens, it is important that the Judiciary should be as independent of the executive as possible; this should be kept in view in determining the appointment and dismissal of judges. 463–465

4. This is one ground for introducing an unprofessional element into judicial tribunals; but this is also advocated on other grounds. This introduction may take various forms, of which the jury is one. 465–468

5. There are strong grounds for some introduction of judges other than professional lawyers, where special experience of affairs is required for right judgment; but, speaking generally, the weight of argument seems against the use of a jury in civil trials; there are, however, special reasons for adopting it in criminal trials. 468–474

6. There are important differences in the machinery appropriate to civil and criminal cases respectively; especially a public prosecutor is required for the latter; though private prosecutions should also be allowed, unless judicially checked. 474–478

7. Appeals should generally be allowed on questions of law; it is more doubtful how far they should be allowed on questions of fact. If the power of pardon is used as a substitute in criminal cases, it should not be exercised by the executive alone. 478–479

8. The specialisation of the judiciary is a difficult question; in particular, it is doubtful whether there should be "Administrative Courts" for any disputes of right between government officials and private persons. 479–482

9. A specially constructed tribunal is also in some cases
| Necessary for dealing with official misconduct of which the mischief falls on the public. | 482-485 |

**CHAPTER XXV**

**LOCAL AND SECTIONAL GOVERNMENT**

1. Partially independent organs of local government are required to realise the full advantages of representative government; but they involve certain drawbacks and dangers, and the independent power allotted to them requires careful limitation. 486-489

2. The division of areas and functions will be determined by various considerations; among which—apart from historical causes—the degree of separation of interests on the one hand, and the value of uniformity and system on the other hand, are most important. 489-492

3. The division of functions may be illustrated by road-making, sanitary intervention, poor-relief, and the prevention and punishment of crime. 492-496

4. An extensive devolution of legislative powers on local governments has some advantages; but they are outweighed by the attendant drawbacks—at least in the case of a tolerably homogeneous community, of which the parts are in active mutual communication. 496-500

5. Local Governments should be constructed on the general principles before laid down for the organisation of the central government, but with important differences in their application. 500-501

6. In some cases governmental powers may properly be entrusted to sections of the community not locally defined; but such cases are exceptional. 501-504

**CHAPTER XXVI**

**FEDERAL AND OTHER COMPOSITE STATES**

1. If the powers of local Governments are—for historical or other reasons—extended beyond a certain point, the State becomes practically composite; if the component parts are politically co-ordinate and constitutionally separate, it becomes Federal. 505-507

2. Federality implies a constitutional division of powers between the Governments of the part-states and the Government of the whole, by which a substantial autonomy is secured to the former; and some expression of the separate political existence of the part-states.
in the structure of a federal Government is natural, though not essential. A federal Constitution will tend to be stable; but there should be some legal process of changing it. . . . . . . . 507–512

3. The distinction between a Federal State and a Confederation of States having a common organ of Government may be variously drawn; the consideration here regarded as decisive is whether the common Government does or does not enter into important direct relations with individual citizens. . . . . 512–514

4. Points of peculiar importance in the construction of a Federal Government are (1) the appointment of the organ that decides disputed questions of constitutional interpretation; and (2) the provision of adequate security for the divergent interests of the part-states. This latter presents a specially difficult problem where the parts are few and unequal. . . . . 514–516

5. A Federal Union enables its members to enjoy most of the military and economic advantages of large states, with the minimum sacrifice of local independence and individual freedom; the inconveniences of a federal state are chiefly weakness of internal cohesion and diversity of localised legislation. . . . . 516–519

6. The relation of dominant states to dependencies has usually a partial resemblance to one or other of the forms of federal union, with the fundamental distinction that the members of any dependent part-state have no control over the common Government of the whole. Such dependencies chiefly arise either through (1) Conquest—in which case the form of government will reasonably vary with the amount of coercion required— 519–521

7. or (2) through Colonisation. In this latter case the most expeditious relation between mother-country and colony will partly depend on the character and future destiny of the colony; but in any case the Colonial department of the Central Government has a difficult task, and should be very carefully organised. . . 521–525

CHAPTER XXVII

THE CONTROL OF THE PEOPLE OVER GOVERNMENT

1. In West-European States generally, the share of the people at large in Government is confined to the election of legislators; it is therefore very important to ascertain precisely the relation which is or ought to
be thus established between electors and elected. A common view of representative government is, that the “people govern through their representatives.” 526–529

2. If this view is sound, it would be desirable to give the electorate a more direct and complete control over their representatives than is attempted in any European country except Switzerland; but I think, on the contrary, that it should be the constitutional duty of the elected legislator to act on his own judgment. 529–533

3. I think, however, that the direct intervention of the citizens at large is desirable in certain special cases; chiefly (1) to settle a disagreement between two legislative chambers, or (2) when changes are required in a rigid constitution, not alterable by the ordinary process of legislation. 533–535

4. A rigid constitution, if the rigidity be not excessive, is a useful barrier against hasty fundamental changes; but it has some drawbacks—especially the difficulty of finding an unexceptionable organ for deciding constitutional disputes. 535–540

5. The rules included in such a constitution—under whatever heads they may be classed—should be either of a simple and fundamental character, or based on special reasons for distrusting the judgment of the ordinary legislature. 540–543

6. Constitutional rules other than structural may be needed to protect the freedom of individuals from legislative encroachment; but it is difficult to make such rules very precise without hampering the legislature unduly. Examples of this class are rules protecting free speech and freedom of the press. 543–545

CHAPTER XXVIII
THE STATE AND VOLUNTARY ASSOCIATIONS

1. Political Government—of the coercive association called the State—is only one species of government. The voluntary associations found in modern political societies have a kind of government, distinguished from political government by its very limited power of inflicting penalties. 546–548

2. A special danger of obstinate disobedience to Government arises in the case of such associations, when their aims conflict with those of Government, through the consciousness of strength which association gives; this
danger may constitute an adequate ground for special repressive intervention. Similar reasons for special intervention are applicable in the case of political meetings. 548–551

3. Moral coercion—by acts not illegal apart from their coercive purpose—may be exercised by such an association to an extent gravely mischievous; but it is difficult to lay down a legal rule that will effectively prevent the mischief, without too severely restricting freedom. This applies especially to industrial associations; which may also be economically mischievous to the community as a whole, through monopoly. 551–557

4. Churches perform a function useful to the State, which seems likely to be better performed if they are kept independent of the State. How far the danger of conflict between Church and State justifies a permanent interference of Government to avert it is a more difficult question,—the right answer to which seems to vary with circumstances. 557–559

5. If special control over Churches is required, a comparatively unobjectionable mode of exercising it is by granting certain religious associations certain minor privileges and indirect endowments, which they would be afraid of losing in case of conflict. If the Church possesses funds derived from private sources, a more drastic kind of interference will be easy in case of conflict,—and may be expedient even apart from conflict. 559–562

CHAPTER XXIX
PARTIES AND PARTY GOVERNMENT

1. The natural division into parties for political purposes would seem to be multiple, not dual; whether the parties are based on similarity of convictions or on community of interests. 563–567

2. The decisive impulse towards a permanently dual organisation of parties appears to be given by the desire to carry elections,—especially elections in which the Supreme Executive is directly or indirectly appointed. 567–569

3. The dual party system tends to diminish the instability that attaches to Parliamentary Government, and to render the criticism of governmental measures more orderly and circumspect; but it tends to make party-
spirit more comprehensive and absorbing, party-criticism more systematically factious, and the utterances of ordinary politicians more habitually disingenuous. It also aggravates the defects of representative government in other ways. . . . . . . 569–574
4. Certain remedies, partly political partly moral, may be suggested for these evils; the former will vary with the precise form of government adopted. . . . . 574–577

CHAPTER XXX

CLASSIFICATION OF GOVERNMENTS

1. The current classification of forms of government is originally derived from the results of Greek political experience; but the modern use of the leading terms is materially different from the Aristotelian use. . . 578–582

2. We may distinguish two different conceptions of the fundamental principle of democracy. The first is expressed in the proposition “that Government should rest on the active consent of the majority of the citizens.” This is not, however, understood to imply that this majority should have the right to interfere authoritatively in any and every governmental decision. . . 582–587

3. Hence the principle of democracy, as above conceived, may be accepted without accepting the further proposition “that any honest and self-supporting citizen is as well qualified as any other for the work of government.” Its acceptance is therefore compatible with a full admission of the need of specially qualified persons for the greater part of the work of Government. . . 587–590

4. In fact the representative system combines the principle of aristocracy with that of democracy; it also tends to have a useful element of oligarchy, if the representatives are unpaid . . . . . . . . . . . . 590–593

5. The principle of monarchy is also to an important extent reconcilable with that of democracy. . . . . 593–596

CHAPTER XXXI

SOVEREIGNTY AND ORDER

1. The question where Sovereignty or Supreme Political Power resides in a State cannot be satisfactorily answered without a careful definition of Political
CONTENTS

Power. Political power, in an orderly society, is exercised by or through some organ of government; it is the power exercised in such a society by persons whose directions to other members of the society will be enforced, if necessary, by physical violence—though the fear of this violence is not the sole motive producing obedience to such directions . . . . 597–599

2. The power exercised by any individual or body of persons on an organ of government is not strictly political power, unless the former is able to withdraw or diminish the governmental power of the latter. . . . 599–602

3. It is doubtful how far a body that can dismiss an organ of government is to be regarded as its political superior (1) if it can only dismiss at certain periodic intervals, or (2) if it is not completely capable of corporate action. 602–604

4. In a certain sense it is true that the mass of the people in any country is the ultimate depository of political power. But in other than democratic states this power is unconsciously possessed, unexercised, and largely unfeared. Still the wishes of the community impose some limits on governmental power, even in undemocratic communities, through the fear of disorder; and, for a similar reason, leaders of opinion outside Government have a share of political power. . . . 604–607

5. If we ask where supreme political power rests in a State with a given governmental structure, we must extend further the assumption that it is “orderly”; we must take “order” to include performance of the assigned functions, on the part of the different organs of Government . . . . . . . . . . . . . . . . . . . 607–611

6. The actual complexity in the distribution of political power will be further illustrated by considering the question “where supreme political power resides,” in relation to the chief forms of Government distinguished and discussed in previous chapters . . . . 611–616

7. The effective physical force of different sections of the community is by no means proportioned to their numbers. A standing army of professional soldiers is therefore a source of danger to a State. . . . 616–618

8. A moral right of insurrection, as an ultimate resource against misgovernment, must be admitted in a democratic community, no less than under other forms of government . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 618–623