

【英汉对照全译本】

LECTURES ON JURISPRUDENCE

法学讲演录

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(三)

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The purpose of the following attempt to determine the province of jurisprudence, stated or suggested. - The manner of the following attempt to determine the province of jurisprudence. - Law: what, in most, comprehensive literal sense. - Law of God. - Human Laws. - Two classes: 1st. Laws set by political superiors; 2ndly, Laws set by men not political superiors. - Objects improper-

ly, but by close analogy, termed laws. — The two last placed in one class under the name positive morality. — Objects metaphorically termed laws. — Laws or rules, *properly* so called, are a species of commands. — The meaning of the term *command*. — The meaning of the term *duty*. — The terms *command* and *duty* are correlative. — The meaning of the term *sanction*. — To the existence of a command, a duty, and a sanction, a *violent* motive to compliance is not requisite. — Rewards are not *sanctions*. — The meaning of the term *command*, briefly re-stated. — The inseparable connection of the three terms, *command*, *duty*, and *sanction*. — The manner of that connection. — *Laws* or *rules* distinguished from commands which are *occasional* or *particular*. — The definition of a law or rule, *properly* so called. — The meaning of the correlative terms *superior* and *inferior*. — *Laws* (*improperly* so called) which are not commands. — *Laws* (*properly* so called) which may *seem* not imperative. — *Laws* which are not commands, enumerated.

下述试图界定法学范围之目的,包括明确陈述出来的与未明确陈述出的。——下述去界定法学范围之努力的方式。——法律:即使在最为易于理解的严格意义上它是什么。——上帝之法。——人法。——两种类型,第一种类型,政治上的优位者所创设的法律;第二种类型,人类为自身所创设,而非由政治上的优位者所创设的法律。——某些不能在严格意义上称之为法律,但却因相近似的类比而被称之为法律的对象。——将上文所提及的两种类型以实在道德的名义,置于一个类型之中。——在比喻意义上被称之为法律的那些对象。——能在严格意义上如此称谓的法律或者规则,都是命令的诸多支类。——命令这个术语的含义。——义务这个术语的含义。——命令与义务是相互联系着的术语。——制裁这个术语的含义。——对于一个命令、义务以及制裁的存在而言,强烈的服从动机并不是必须的。——奖励不是制裁。——简单重申一下命令这个术语的含义。——命令、义务与制裁,三个术语之间不可分离的联系。——命令、义务与制裁,三个术语相互联系的方式。——法律或者规则与命令的区别,后者往往是偶然的或者特定的。——关于能够在严格意义上如此称谓的法律或者规则的定义。——优位者与劣位者这一对相互关联着的术语的含义。——那些(不能在严格意义上以法

律称之为)法律,不是命令。——那些(严格意义上可以如此称之),但看起来可能不是命令性的法律。——对那些并非命令之法律的列举。

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The connection of the second with the first lecture. - The Divine laws, or the laws of God. - Of the Divine laws, some are *revealed*, and others are *unrevealed*. - Such of the Divine laws as are *revealed*. - Such of the Divine laws as are *unrevealed*. - What is the *index* to such of the Divine laws as are unrevealed? - The *hypotheses* or *theories* which regard the nature of that index. - The hypothesis or theory of a *moral sense*, or *innate practical principles*; of a *practical reason*; of a *common sense*, etc. etc. - The theory or hypothesis of *utility*. - A brief summary of the theory of utility. - The following explanations of that summary briefly introduced. - The true *tendency* of a human action, and the true *test* of that tendency. - According to the theory of utility, God's commands are mostly *rules*. - It does not follow from the theory of utility, that *every* useful action is the object of a Divine injunction; and *every* pernicious action, the object of a Divine prohibition. - A current and specious objection to the theory of utility, introduced and stated. - The *two* apt answers to the foregoing objection briefly introduced. - The *first* answer to the foregoing objection stated. - The *second* answer to the foregoing objection briefly introduced. - If our conduct were truly adjusted to the principle of general utility, our conduct would conform, for the most part, to *rules*; rules which emanate from the Deity, and to which the tendencies of human actions are the guide or index. - *Theory* and *practice* are inseparable. - If our conduct were truly adjusted to the principle of general utility, our conduct would be guided, for the most part, by *sentiments* associated with *rules*; rules which emanate from the Deity, and to which the tendencies of human actions are the guide or index. - If our conduct were truly adjusted to the principle of general utility, our conduct would conform, for the most part, to Divine *rules*, and would also be guided, for the most part, by *sentiments*

associated with those rules. But, in anomalous and excepted cases (of comparatively rare occurrence), our conduct would be fashioned *directly* on the principle of general utility, or guided by a conjecture and comparison of *specific* or *particular* consequences. — The *second* answer to the foregoing objection, briefly resumed.

第二讲与第一讲之间的联系。——神法或者上帝之法。——关于神法,有些是已经被揭示出来的,有些则是仍未被揭示出来的。——这些神法都是已经被揭示出来的。——这样的一些神法是未被揭示出来的。——对于那尚未被揭示出来的神法而言,什么才是对它们的指引?——关于那种指引之性质的假说与理论。关于道德感、先天实践原则以及实践理性与常识的假说或者理论。——关于功利的假说理论。——关于功利理论的简短总结。——下面是对那个已经做过介绍的简短总结的说明。——人类行为的真正立场倾向,以及对这种立场倾向真正的衡量标准。——根据功利原则,上帝的命令是最为主要的规则。——从功利理论里面得不出这样的结论,说每一个有益的行为都是神的命令的对象;每一个有害的行为,都是神的禁令的对象。——介绍与说明一种当前流行但似是而非的对功利理论的反对意见。——对于上述简要提及之反对意见的两个适当回应。——对前述反对意见的第一个回应。——对前述简略提及之反对意见的第二个回应。——如果我们的行为真的是按照一般功利原则进行调整的,那么在极大程度上,我们的行为是符合规则的:那是些来自神灵的规则,对于这些规则来说,人类行为的立场倾向都是指南或者指引。——理论与实践是不可分离的。——如果我们的行为真的是根据一般功利原则而进行调整的话,那么在极大程度上,我们的行为就要接受与规则联系密切的感的指导:这些规则往往是来自神灵的,人类行为的立场倾向是它们的指南或者指引。——如果我们的行为真的是根据一般功利的原则进行调整的话,那么在极大的程度上,我们的行为应该遵守神法;或者在极大程度上,应该接受与那些规则相联系着的感的指导。然而,在[相对不经常发生的]异常与例外情况下,我们的行为将直接根据一般功利原则而作出决定,或者接受对具体或者个别后果进行的估量与比较的指导。——对前述所简洁提及之反对意见的第二个回答。

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Apology for introducing the principle of utility. - The connection of the third with the second lecture. - A second objection to the theory of utility, stated. - An answer to that second objection, introduced. - An objection to the foregoing answer, stated. - The foregoing objection to the foregoing answer solved or extenuated. - The second objection to the theory of utility, together with the foregoing answer to that second objection, briefly re-stated.

对引入功利原则所作出的解释。——第三讲与第二讲之间的联系。——已经提出的第二种对功利理论的反意见。——对刚刚所引介的反意见的第二个回应。——对前述所提及的响应的反意见。——针对前述回应的前述反意见,已经被解决或削弱。——简述第二个反对功利理论的意见,以及前述对第二个反意见的回应。

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The connection of the fourth with the third lecture. - The second objection to the theory of utility, resumed. - A further answer to that second objection. - The hypothesis of *a moral sense*, briefly introduced. - 'A moral sense,' 'a common sense,' 'a moral instinct,' 'a principle of reflection or conscience,' 'a practical reason,' 'innate practical principles,' 'connate practical principles,' etc. etc., are various expressions for one and the same hypothesis. - The hypothesis in question involves two assumptions. - The first of the two assumptions involved by the hypothesis in question stated in general expressions. - The foregoing statement of the first assumption, exemplified and explained by an imaginary case. - The first of the two assumptions involved by the hypothesis in question, briefly re-stated in general expressions. - The second of the two as-

sumptions involved by the hypothesis in question briefly stated. - As an index to God's commands, a moral sense were less fallible than the principle of general utility. - But is there any *evidence* to sustain the hypothesis in question? - The hypothesis in question is disproved by the negative state of our consciousness. -

The two current arguments in favour of the hypothesis in question, briefly stated.

- The first argument in favour of the hypothesis in question, examined. - The second argument in favour of the hypothesis in question, examined. - A brief statement of the fact whereon the second argument in favour of the hypothesis in question is founded. - The fact accords exactly with the hypothesis or theory of utility. - A brief statement of the intermediate hypothesis which is compounded of the hypothesis of utility and the hypothesis of a moral sense. - The division of positive law into *law natural* and *law positive*, and the division of *jus civile* into *jus gentium* and *jus civile*, suppose or involve the intermediate hypothesis which is compounded of the hypothesis of utility and the hypothesis of a moral sense. - The foregoing disquisitions on the index to God's commands, closed with an endeavour to clear the theory of utility from two current though gross misconceptions. - The two misconceptions stated. - The first misconception examined. - The second misconception examined.

第四讲与第三讲之间的联系。——针对功利理论的第二个反对意见的简要重述。——对第二个反对意见的一个进一步回应。——对一个关于道德感的假设的简单介绍。——“道德感”、“常识”、“道德本能”、“关于反思与良知的原则”、“实践理性”、“本能的实践原则”、“先天实践原则”等等，都完全是同一个假设的不同表述方式而已。——正在讨论的假说涉及两个前提。——用一般的表述对正在讨论的假说所涉及的两个假定中的第一个，进行阐明。——通过一种假想的情形，来举例说明与阐释前述对第一种假定的陈述。——正在讨论中的假说所涉及的两个假定中的第一个，用一般性的表述间接地进行重述。——对我们所讨论的假说所涉及的两个前提的第二个的简洁陈述。——作为对上帝命令的指引，道德感并不比一般功利原则更容易出错。——然而，有什么证据能够支撑我们正在讨论的这个假说呢？——根据我们良知的消极状态，正在讨论的这个假说遭到了驳斥。——简单陈述一下那赞同我们当前所讨论的假说的两个主张。——对

赞同我们所讨论中的假说的第一个主张,进行考察。——对赞同我们所讨论的假说的第二个主张,进行考察。——对赞同所讨论中的假说的第二个主张所据以建立的事实,所作的一个简明扼要的陈述。——这个事实严格地符合假说或者功利理论。——对一种调和性的假说的简明扼要的陈述,这种假说混合了关于功利的假说以及关于道德感的假说。——将实在法分为自然的法与实际制定的法的分类,以及将市民法分为万民法与公民法的分类,预设了或者涉及了调和性假说,这种假说混合了关于功利的假说以及关于道德感的假说。——结束前述关于对上帝命令的指引的论述,并且努力去清除掉功利理论中的两种正在流行但却十分严重的误解。——对第一种误解的考察。——对第二种误解的考察。

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Laws proper or properly so called, and laws improper or improperly so called. - Analogy and metaphor at used in common parlance defined. - Laws improper are of two kinds: 1. Laws closely analogous to laws proper; 2. Laws metaphorical or figurative. - Division of laws proper, and of such improper laws as are closely analogous to the proper. - Distribution of laws proper, and of such improper laws as are closely analogous to the proper, under three capital classes: 1. The law of God, or the laws of God; 2. Positive law, or positive laws; 3. Positive morality, rules of positive morality, or positive moral rules. - Digression to explain the expressions *positive law* and *positive morality*. - Explanation of the following expressions, viz. *science of jurisprudence* and *science of positive morality*; *science of ethics* or *deontology*, *science of legislation* and *science of morals*. - Meaning of the epithet good or bad as applied to a human law. - Meaning of the epithet good as applied to the law of God. - The expression *law of nature*, or *natural law*, has two disparate meanings. It signifies the law of God, or a portion of positive law and positive morality. - The connection of the present (the fifth) lecture with the first, second, third, fourth, and sixth. - The essentials of a law properly so called, together with certain consequences which those essentials im-

port. The laws of God, and positive laws are laws properly so called. — The generic character of positive moral rules. — Of positive moral rules, some are laws proper, but others are laws improper. The positive moral rules, which are laws properly so called, are *commands*. — Laws set by men, as private persons, in pursuance of legal rights. — The positive moral rules, which are laws improperly so called, are laws *set or imposed by general opinion*. — A law set or imposed by general opinion, is merely the *opinion or sentiment* of an *indeterminate* body of persons in regard to a kind of conduct. — A brief statement of the analogy between a law proper and a law set or imposed by general opinion. — Distinction between a *determinate* and an *indeterminate* body of single or individual persons. — Laws set by *general* opinion, or opinions or sentiments of *indeterminate bodies*, are the only opinions or sentiments that have gotten the name of *laws*.

But an opinion or sentiment held or felt by an *individual* or by *all* the members of a *certain aggregate*, may be as closely analogous to a law proper as the opinion or sentiment of an indeterminate body. — The foregoing distribution of laws proper, and of such improper laws as are closely analogous to the proper, briefly recapitulated. — The sanctions, proper and improper, by which those laws are respectively enforced; the duties, proper and improper, which those laws respectively impose; and the rights, proper and improper, which those laws respectively confer. — The law of God, positive law, and positive morality, sometimes *coincide*, sometimes do *not* coincide, and sometimes *conflict*. — The acts and forbearances, which, according to the theory of utility, are objects of the law of God; and other acts and forbearances, which, according to the same theory, ought to be objects respectively of positive morality and law. — The foregoing distribution of laws proper, and of such improper laws as are closely analogous to the proper, tallies, in the main, with a division of laws which is given incidentally by Locke in his 'Essay on Human Understanding.' — Laws metaphorical or figurative. — The common and negative nature of laws of the class. — The common and negative nature of laws metaphorical or figurative, shewn by examples. — Laws metaphorical or figurative are often blended and confounded with laws imperative and proper. — Physical or natural sanctions. — In strictness, de-

claratory law, laws repealing laws, and laws of imperfect obligation (in the sense of the Roman jurists), ought to be classed respectively with laws, metaphorical or figurative, and rules of positive morality. — Note on prevailing tendency: 1st, to confound positive law with the science of legislation, and positive morality with deontology: Examples from Blackstone, Paley, the writers on international law; 2ndly, to confound positive law with positive morality, and both with legislation and deontology; Examples from the Roman jurists and Lord Mansfield.

严格意义上的法律或者能在严格意义上如此称之为的法律,以及非严格意义的法律或者不能在严格意义上如此称之为的法律。——在通常说法里使用的类比与比喻,并对它们作出界定。——非严格意义上的法律主要有两类:(1)与严格意义上的法律具有紧密的类似性的法律;(2)比喻性或者修饰意义上的法律。——在准确意义上的法律,以及此类非准确意义上但却与准确意义上的法律有着紧密的类比性关系的法律之间,所存在的区分。——将那些严格意义上的法律,与此类非严格意义上但却与严格意义的法律有着十分紧密的近似性关系的法律,分为三个主要的种类。(1)上帝之法,或者上帝的法律。(2)实在法,或者实际制定的法律。(3)实在道德,或者实在道德的规则,或者实在道德规范的规则。——也许有些离题,但我将去阐释对实在法或者实在道德的表述。——对如下表述的解释:特别是,法学科学以及实在道德科学;伦理学或道义论科学、立法科学以及道德规范科学。——使用于由人类制定的那些法的称号含义的好或者坏。——对于使用于上帝之法的“好的”这个称谓的含义。——自然的法或者自然法这个表述,有着两个截然不同的含义。它可以表示上帝之法,或者表示实在法或者实在道德的一部分。——目前这一讲[第五讲]与第一、第二、第三、第四以及第六讲之间的联系。——准确意义上的法的本质要素,以及那些本质要素所包含的某些结论。上帝的那些法律,以及实际存在的由人所制定的那些法律,都是在严格意义上能以法律称之为的法律。——实在道德规范规则的一般特征。——对于实在道德规则而言,有些是严格意义上的法,而其他的则不是严格意义上的法。那些能够在严格意义上以法律称之为的实在道德规范的规则,就是命令。——由作为私人的人所设定的那些法律,是为了维护其法律权利。——那些能够在严格意义上被以法律称之为的实在道德的规则,往往

是由一般舆论所设定或者施加的法律。——一个由一般舆论所设定或者是施加的法,仅仅是那由人们所构成的不确定的实体,在关于某类行为上所具有的舆论或者感觉而已。——对在严格意义上的法与一个由一般舆论所设定或施加的法两者之间类比的一个简明扼要的陈述。——在一个由单个或者多个人所组成的确定的实体,与一个同样由单个或者多个人所构成的不确定的实体之间的区别。——那些通过某个一般舆论,或者通过为某些不确定的实体所持有的某些舆论与感觉而设定的法,都仅仅是一些获得了法之名称的舆论与感觉而已。然而,一种由某个个体所持有与感受到的舆论与感觉,或者为某一个确定的群体的所有成员所持有与感受到的某种舆论或感觉,可能会与一个严格意义上的法有着密切的类似关系,就像为一个不确定的实体所持有与感受到的舆论或感觉,与严格意义上法律有密切的类似关系一样。——对前述在严格意义上的那些法律与那些非严格意义上的法律之间所作区分的一个简要重述。那非严格意义上的法律与严格意义上的法律之间,具有十分密切的类似性关系。——无论是在严格意义上还是在非严格意义上,正是通过它们那些法律才分别得以执行的某些制裁;无论是在严格意义上还是非严格意义上,那些法律所分别施加的某些义务;以及无论在严格意义还是非严格意义上,那些法律所分别授予的权利。——上帝之法,实在法,以及实在道德,它们有时候相互一致,有时候却不那么一致,而有时候则是相互冲突的。——作为或不作为某种行为,根据功利理论,都是上帝之法所规定的对象。而且,作为或者不作为,根据同样的理论,则应该是实在道德与实在法分别规定的对象。——前述在严格意义上的法,与那些非严格意义上、但却与严格意义上的法具有十分紧密的类似性关系的法之间作出的区分,在大体上,与洛克在其《人类理解论》中顺便给出的对法律的区分,是一致的。——比喻或者修饰意义上的那些法律。——以及该类法律的一般性质及消极性质。——通过例证而被表示出来的,在比喻或者修饰意义上的法律之中所存在的一般否定性的性质。——比喻或者修饰意义上的法常常被与强制性的法及严格意义上的法混同为一或者混淆。——物理性质的制裁或者自然性质的制裁。——从严格意义上来说,解释性质的那些法律,撤销其他法律的那些法律,以及具有不完善义务的法律(在罗马法学家们的意义上),分别都应该被归类为比喻意义或者修饰意

义上的法,以及实在道德的那些规则。——第一,一种将实在法与立法科学,将实在道德与道义论科学相混淆的趋势。以及从布莱克斯通那里获得的例子。——在目前流行的一种将法律是什么与法律应该是什么相混淆,或者将道德是什么与道德应该是什么相混淆的趋势之下。也就是说,第一,将实在法与立法科学相混淆,并且将实在道德与道义论科学相混淆,从布莱克斯通以及佩利等国际法著作家们那里而来的例子;以及第二,将实在法与实在道德相混淆,以及既将实在法与立法相混淆,也将实在法与道义论相混淆。从罗马法学家们以及曼斯菲尔勋爵那里而来的例子。

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The connection of the sixth lecture with the first, second, third, fourth, and fifth. — The distinguishing marks of sovereignty and independent political society. — The relation of sovereignty and subjection. — Strictly speaking, the sovereign portion of the society, and not the society itself, is independent, sovereign, or supreme. — In order that a given society may form a society political and independent, the two distinguishing marks which are mentioned above must unite. — A society independent but natural. — Society formed by the intercourse of independent political societies. — A society political but subordinate. — A society not political, but forming a limb or member of a society political and independent. — The definition of the abstract term *independent political society* (including the definition of the correlative term *sovereignty*) cannot be rendered in expressions of perfectly precise import, and is therefore a fallible test of specific or particular cases. In order that an independent society may form a society political, it must not fall short of a *number* which cannot be fixed with precision, but which may be called considerable, or not extremely minute. — Certain of the definitions of the term *sovereignty*, and of the implied or correlative term *independent political socie-*

ty, which have been given by writers of celebrity. — The ensuing portion of the present lecture is concerned with the following topics; — 1. The forms of supreme government; 2. The limits of sovereign power; 3. The origin of government, or the origin of political society. — The forms of supreme government. — Every supreme government is a *monarchy* (property 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*. — Of such distinctions between aristocracies as are founded on differences between the proportions which the number of the sovereign body may bear to the number of the community. Of such distinctions between aristocracies as are founded on differences between the modes wherein the sovereign number may share the sovereign powers. — Of such aristocracies as are styled *limited monarchies*. — Various meanings of the following terms; — 1. The term 'sovereign,' or 'the sovereign'; 2. The term 'republic,' or 'commonwealth'; 3. The term 'state,' or 'the state'; 4. The term 'nation.' — Of the exercise of sovereign powers by a monarch or sovereign body, through political subordinates or delegates representing their sovereign author. Of the distinction of sovereign, and other political powers into such as are *legislative*, and such as are *executive* or *administrative*. The true natures of the communities or governments which are styled by writers on positive international law *half sovereign states*. — 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. — The limits of sovereign power. — The essential difference of a positive law. — It follows from the essential difference of a positive law, and from the nature of sovereignty and independent political society, that the power of a monarch properly so called, or the power of a sovereign number in its collegiate and sovereign capacity, is incapable of *legal* limitation. — Attempts of sovereigns to oblige themselves, or to oblige the successors to their sovereign powers. — The meanings of the epithet *unconstitutional*, as it is contradistinguished to the epithet *illegal*, and as it is applied to conduct of a monarch, or to conduct of a sovereign number in its collegiate and sovereign capacity. — The meaning of Hobbes's proposition, that 'no law can be unjust.' — *Just* or *unjust*, *justice* or *injustice*,

is a term of relative and varying import. - Considered severally, the members of a sovereign body are in a state of subjection to the body, and may therefore be legally bound, even as members of the body, by laws of which it is the author.

- The nature of political or civil liberty, together with the supposed difference between free and despotic governments. - Why it has been doubted, that the power of a sovereign is incapable of legal limitation. - The proposition is asserted expressly by renowned political writers of opposite parties or sects. - A sovereign government of one, or a sovereign government of a number in its collegiate and sovereign capacity, has no *legal rights* (in the proper acceptation of the term) *against its own subjects*. - 'Right is might.' - 'Right' as meaning 'faculty,' and 'right' as meaning 'justice.' - 'Right' as meaning 'faculty,' and 'right' as meaning 'law.' - From an appearance of a sovereign government before a tribunal of its own, we cannot infer that the government lies under legal duties, or has legal rights against its own subjects. - Though a sovereign government of one, or a sovereign government of a number in its collegiate and sovereign capacity, cannot have legal rights against its own subjects, it may have a legal right against a subject or subjects of another sovereign government.

- The origin or causes of political government and society. - The proper purpose or end of political government and society, or the purpose or end for which they ought to exist. The position 'that every government continues through the people's *consent*,' and the position 'that every government arises through the people's *consent*,' examined and explained. - The hypothesis of the *original covenant* or the *fundamental civil pact*. - The distinction of sovereign governments into governments *de jure* and governments *de facto*. - General statement of the province of jurisprudence as defined in the foregoing lectures.

第六讲与前面的第一、第二、第三、第四以及第五讲之间的联系。——主权者以及独立政治社会的区分性标志。——主权者与服从之间的关系。——严格地说,那个社会的主权者部分,不是该社会本身,它是独立的,主权的,最高的。——为了使得一个特定社会能够构成一个独立的政治社会,前述所提及之两个区分性标志必须结合起来。——一个独立但却处于自然状态的社会。——一个由一些各自独立的政治社会的

相互交往而构成的社会。——一个是政治社会,但却处于从属状态的社会。——一个并非政治社会,但却构成了一个政治上独立社会的所属部分或者成员的社会。——关于政治上的独立社会这个抽象术语的定义(包括与之相互关联着的主权者这个术语),不能用一些具有极为精确含义的术语来进行表现,并且因此可能不是一个对具体或者特定情形进行衡量的正确尺度。——为了使得一个独立的社会能够构成一个政治社会,就必须不能缺乏相当数量的、几乎不可以被精确界定出来的人口,但是,这个相当数量的、几乎不可以被精确界定出来的人口,却可以称作是相当多的,或者数量绝对不算少。——对于主权者这个术语,以及潜在的或者与之相互关联着的政治上的独立社会这个术语,有许多声誉卓著的作家们已经给出了许多定义。——当前一讲接着的部分,主要关注的是如下论题:——(1)最高统治的各种形式;(2)主权利力的限制问题;(3)政府的起源,或者说政治社会的起源。——最高统治的各种形式。——每一个最高统治,都是一个君主政治(在严格意义上称之),或者一个贵族政治(在该表述一般的含义上来说)。换言之,它是一个由一人构成的政府,或者一个由数人构成的政府。——作为对贵族政治的这些区分,建立在一些不同的比例关系之上,这个比例关系,是在主权者人数与社会全部人口数量之间所具有的比例。作为对贵族政治的这些区分类,它们建立在这样一些模式的不同之上。这些模式,就是在主权者数人之间分享主权利力的模式。——对于那些被称为有限君主制的贵族政治。——下面一些术语所具有的纷繁多样的含义:——(1)“主权者”这个术语,或者“那个主权者”这个术语;(2)“共和政治”或者“共和国”这个术语;(3)“政府”或者“那个政府”这个术语;(4)“国家”这个术语。——一个由君主或者主权者实体所行使的主权利力,可以通过政治上的从属者或者被授权机构来行使。而这些政治上的从属者或者被授权机构,是代表其作为授权者的主权者的。关于主权利力或者其他政治权力的一些分类,这些分类诸如立法权,以及诸如执行权或者行政权。那些被研究实在国际法的作家们称之为半主权国的社会或者政府的性质。——复合国,或者一个最高联邦政府的性质;以及国家联盟体系,或者最高政府永久联盟的性质。——对主权利力的那些限制。——实在法的本质特性。——从实在法的本质特性里,以及从主权独立的社会性质里,我们

可以得出一个结论：一个能够在严格意义上以君主称之的君主的权力，或者一个以其集体或者至高无上统治者的资格而成为主权者的一个主权者群体所具有的权力，是不能够有法律上的限制的。——那些主权者试图给自己施加义务的企图，以及试图给那些继任其主权利力的继任者施加义务的企图。——根据我在上文所已经提出的两个例子，我将转而去考虑违宪这个称谓所具有的那些含义，并且是在将之与非法这个称谓相对照的意义上考虑违宪这个称谓所具有的那些含义的，以及是在将之适用于某个君主的行为，或者适用于某个以其集体与至高无上的统治资格而成为主权者群体的行为的意义上，考虑违宪这个称谓所具有的那些含义的。——霍布斯有一个命题“没有法律能够是非正义的”，这个命题的含义。——正义的或者非正义的，正义或者非正义，是一个在含义上相互对应而又变动不居的术语。——分别地加以考虑时，主权者实体的成员处于对该实体的服从状态之中。并且，可能因此受到该实体作为创制者所创制之法律的约束，哪怕他是这个实体的成员。——政治自由或者公民自由，以及我们所设想的在自由政府与专制政府之间所存在的不同之处的性质。——对于主权者权力不能受到法律上的限制这个论断而言，为什么它会遭到质疑。——那个为作为反对方或者反对派的许多声誉卓著的政治著作家们，所公开表达出来的命题。——一个由一人统治的政府，或者一个由某些人以其集体与至高无上的资格而统治的主权政府这一问题，并不具有针对其臣民的法律权利（在权力这个术语严格而准确的意义上）。——能力。——作为意指“权能”的“right”，作为意指“正当”的“right”，以及作为意指“法律”的“right”。——从主权政府在其自身所属法院面前的表现，我们并不能得出推论说，该政府处于某些法律义务之下，或者说该主权政府具有某些针对其臣民的法律权利。——尽管一个一人统治的主权政府，或者一个多人以其集体或者至高无上的统治资格而成为主权者的主权政府，不能拥有针对其臣民的法律权利，但它可以拥有一些针对另外一个主权政府所属之某一臣民或者某些臣民的法律权利。——政治政府与政治社会的起源或者原因。——政治政府与政治社会的正确目标或者目的，或者说它们之所以应该存在而应具有的目标或者目的。——对这两种观点的考察说明，一个观点是“每一个政府都是通过人民的同意而持续存在的”；另外一个观点是，“每一个政府之所以产

生,都是由于人民的同意。”——关于初始契约或者基础市民契约的假设。——主权政府中法律政府与事实政府之间所存在的区别。——对在前述演讲中被界定之法学范围的那些一般性陈说。

(四)

ANALYSIS OF PERVADING NOTIONS

LECTURE XII 778

对几个常见概念的分析

第十二讲 779

Recapitulation. - Natural and moral rights, or rights which are merely sanctioned religiously or morally. - Ideas, the analysis of which is inevitably involved in that of right. Obligations or duties are positive or negative. - Forbearances cannot be styled with propriety *negative services*. - Obligations are relative or absolute. - Rights imply *persons, things, acts, and forbearances*. - Persons, natural or fictitious. - Meaning of 'physical person,' or 'person' simply. - 'Person' frequently synonymous with 'status' or 'condition.' - Fictitious or legal persons.

摘要重述——自然权利和道德权利,或者只具有宗教或道德制裁力的权利。——有着种种概念,对它们的分析不可避免地要涉及权利。——义务或责任或者是积极的,或者是消极的。——不作为不能被正确称为消极的服务。——义务或者是相对的,或者是绝对的。——权利蕴含着人、物、作为和不作为。——自然人或拟制人。——“生物学意义上的人”或“人”的朴素含义。——旁注:“人”这个词常常与地位或身份意义相同。——拟制的人或法人。

LECTURE XIII 818

第十三讲 819

Recapitulation. - Meaning of 'thing'. - Distinctions between things - Things signifying acts and forbearances. - Corporeal and incorporeal things. -