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(Abridged)

By James Wilson, writing for The Supreme Court of the United States of America

1793

[The Supreme Court of the United States of America. *Chisholm v. Georgia*. 1793. 2 U.S. 2 Dall. 419 (1793). In the Public Domain.]

Wilson, Justice—This is a case of uncommon magnitude. One of the parties to it is a State, certainly respectable, claiming to be sovereign. The question to be determined is, whether this state, so respectable, and whose claim soars so high, is amenable to the jurisdiction of the supreme court of the United States? This question, important in itself, will depend on others, more important still. . . .

. . .

I. I am first to examine this question by the principles of general jurisprudence. What I shall say upon this head, I introduce, by the observation of an original and profound writer, who, on the philosophy of mind, and all the sciences attendant on this prime one, has formed an era not less remarkable, and far more illustrious, than that formed by the justly celebrated Bacon, in another science, not prosecuted with less ability, but less dignified as to its object; I mean the philosophy of nature. Dr. Reid, in his excellent inquiry into the human mind, on the principles of common sense, speaking of the sceptical and illiberal philosophy, which, under bold, but false, pretensions to liberality, prevailed in many parts of Europe before he wrote, makes the following judicious remark: “The language of philosophers, with regard to the original faculties of the mind, is so adapted to the prevailing system, that it cannot fit any other; like the coat that fits the man for whom it was made, and shows him to advantage, which yet will fit very awkward upon one of a different make, although as handsome and well proportioned. It is hardly possible to make any innovation in our philosophy concerning the mind and its operations, without using new words and phrases, or giving a different meaning to those that are received.” With equal propriety, may this solid remark be applied to the great subject, on the principles of which the decision of this court is to be founded. The perverted use of *genus* and *species* in logic, and of *impressions* and *ideas* in metaphysics, have never done mischief so extensive or so practically pernicious, as has been done by *states* and *sovereigns,* in politics and jurisprudence; in the politics and jurisprudence even of those who wished and meant to be free. . . .

. . .

[I]t is now proper, that I should disclose the meaning which I assign to [the terms *state* and *sovereign*], and the application which I make of the latter. In doing this, I shall have occasion incidentally to evince, how true it is, that states and governments were made for man; and at the same time, how true it is, that his creatures and servants have first deceived, next vilified, and at last, oppressed their master and maker.

Man, fearfully and wonderfully made, is the workmanship of his all-perfect Creator: a state, useful and valuable as the contrivance is, is the inferior contrivance of man and from his native dignity, derives all its acquired importance. . . .

Let a state be considered as subordinate to the People: but let everything else be subordinate to the state. The latter part of this position is equally necessary with the former. For in the practice, and even, at length, in the science of politics, there has very frequently been a strong current against the natural order of things, and an inconsiderate or an interested disposition to sacrifice the end to the means. As the state has claimed precedence of the people; so, in the same inverted course of things, the government has often claimed precedence of the state; and to this perversion in the second degree, many of the volumes of confusion concerning sovereignty owe their existence. . . . By a state, I mean, a complete body of free persons united together for their common benefit, to enjoy peaceably what is their own, and to do justice to others. It is an artificial person. It has its affairs and its interests: it has its rules: it has its rights: and it has its obligations. It may acquire property, distinct from that of its members: it may incur debts, to be discharged, out of the public stock, not out of the private fortunes of individuals. It may be bound by contracts; and for damages arising from the breach of those contracts. In all our contemplations, however, concerning this feigned and artificial person, we should never forget, that, in truth and nature, those who think and speak and act, are men.

Is the foregoing description of a state, a true description? It will not be questioned, but it is. Is there any part of this description, which intimates, in the remotest manner, that a state, any more than the men who compose it, ought not to do justice and fulfil engagements? It will not be pretended, that there is. If justice is not done; if engagements are not fulfilled; is it, upon general principles of right, less proper, in the case of a great number, than in the case of an individual, to secure, by compulsion, that which will not be voluntarily performed? Less proper, it surely cannot be. The only reason, I believe, why a free man is bound by human laws, is, that he binds himself. Upon the same principles, upon which he becomes bound by the laws, he becomes amenable to the courts of justice, which are formed and authorised by those laws. If one free man, an original sovereign, may do all this, why may not an aggregate of free men, a collection of original sovereigns, do this likewise? If the dignity of each, singly, is undiminished; the dignity of all, jointly, must be unimpaired. A state, like a merchant, makes a contract. A dishonest state, like a dishonest merchant, wilfully refuses to discharge it: the latter is amenable to a court of justice: upon general principles of right, shall the former, when summoned to answer the fair demands of its creditor, be permitted, Proteus-like, to assume a new appearance, and to insult him and justice, by declaring I am a *sovereign* state? Surely not. Before a claim, so contrary, in its first appearance, to the general principles of right and equality, be sustained by a just and impartial tribunal, the person, natural or artificial, entitled to make such claim, should certainly be well known and authenticated. Who, or what, is a sovereignty? What is his or its sovereignty? . . . . In one sense, the term *sovereign* has for its correlative, *subject*. In this sense, the term can receive no application; for it

has no object in the constitution of the United States. Under that constitution, there are *citizens,* but no *subjects*. . . .

In another sense, according to some writers, every state, which governs itself, without any dependence on another power, is a sovereign state. . . . As a citizen [of the Union], I know, the government of [Georgia] to be republican; and my short definition of such a government is--one constructed on this principle, that the supreme power resides in the body of the people. As a judge of this court, I know, and can decide, upon the knowledge, that the citizens of Georgia, when they acted upon the large scale of the Union, as a part of the "People of the United States," did *not* surrender the supreme or sovereign power to that state; but, *as to the purposes of the Union,* retained it to themselves. *As to the purposes of the Union,* therefore, Georgia *is not a sovereign state*. . . .

There is third sense, in which the term sovereign is frequently used, and which it is very material to trace and explain, as it furnishes a basis for what, I presume, to be one of the principal objections against the jurisdiction of this court over the State of Georgia. In this sense, sovereignty is derived from a feudal source. . . . [At one] time, the feudal system was extended over . . . almost all the . . . nations of Europe; and every kingdom became, in fact, a large fief. . . . But in the case of the King, the sovereignty had a double operation. While it vested him with jurisdiction over others, it excluded all others from jurisdiction over him. With regard to him, there was no superior power; and consequently, on feudal principles, no right of jurisdiction. "The law," says Sir William Blackstone, "ascribes to the King, the attribute of sovereignty: he is sovereign and independent, within his own dominions; and owes no kind of subjection to any other potentate upon earth. Hence it is, that no suit or action can be brought against the King, even in civil matters; because no court can have jurisdiction over him: for all jurisdiction implies superiority of power." This last position is only a branch of a much more extensive principle. . . . The principle is, that all human law must be prescribed by a superior: this principle I mean not now to examine: suffice it, at present, to say, that another principle, very different in its nature and operations, forms, in my judgment, the basis of sound and genuine jurisprudence; laws derived from the pure source of equality and justice must be founded on the *consent* of those whose obedience they require. The sovereign, when traced to his source, must be found in the man.

I have now fixed, in the scale of things, the grade of a state; and have described its composure: I have considered the nature of sovereignty; and pointed its application to the proper object. I have examined the question before us, by the principles of general jurisprudence. In those principles, I find nothing, which tends to evince an exemption of the State of Georgia, from the jurisdiction of the court. I find everything to have a contrary tendency.

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