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# Public right

## Section I.

The right of a state.

§ 43.

The sum of the laws which need to be promulgated generally in order to bring about a rightful condition is public right. - Public right is therefore a system of laws for a people, that is, a multitude of human beings, or for a multitude of peoples, which, because they affect one another, need a rightful condition under a will uniting them, a constitution (constitutio), so that they may enjoy what is laid down as right. - This condition of the individuals within a people in relation to one another is called a civil condition (status goilis), and the whole of individuals in a rightful condition, in relation to its own members is called a state (civitas). Because of its form, by which all are united through their common interest in being in a rightful condition, a state is called a commonwealth (res publica latius sic dicta). In relation to other peoples, however, a state is called simply a power (potentia) (hence the word potentate). Because the union of the members is (presumed to be) one they inherited, a state is also called a nation (gens). Hence, under the general concept of public right we are led to think not only of the right of a state but also of a right of nations (ius gentium). Since the earth's surface is not unlimited but closed, the concepts of the right of a state and of a right of nations lead inevitably to the idea of a right for a state of nations (ius gentium) or cosmopolitan right (ius cosmopoliticum). So if the principle of outer freedom limited by law is lacking in any one of these three possible forms of rightful condition, the framework of all the others is unavoidably undermined and must finally collapse.

§ 44.

It is not experience from which we learn of the maxim of violence in human beings and of their malevolent tendency to attack one another before external legislation endowed with power appears, thus it is not

b republic in the broad sense

<sup>&#</sup>x27;The English terms "municipal law" and "international law" might be used here, if it were kept in mind that Kant's concern is only with a priori principles. However, given the meaning of Recht specified in AK 6: 229, it seems preferable to continue using this term throughout: das öffentliche Recht or "public right."

<sup>&</sup>lt;sup>d</sup> Although Kant continues to use Gesetzgebung and Gesetzgeber, which were translated in Private Right as "lawgiving" and "lawgiver," he is now discussing a condition in which there are positive laws. Hence "legislation" and "legislator" seem appropriate.

It is true that the state of nature need not, just because it is natural, be a state of injustice (iniustus), of dealing with one another only in terms of the degree of force each has. But it would still be a state devoid of justice (status iustitia vacuus), in which when rights are in dispute (ius controversum), there would be no judge competent to render a verdict having rightful force. Hence each may impel the other by force to leave this state and enter into a rightful condition; for although each can acquire something external by taking control of it or by contract in accordance with its concepts of right, this acquisition is still only provisional as long as it does not yet have the sanction of public law, since it is not determined by public (distributive) justice and secured by an authority putting this right into effect.

If no acquisition were cognized as rightful even in a provisional way prior to entering the civil condition, the civil condition itself would be impossible. For in terms of their form, laws concerning what is mine or yours in the state of nature contain the same thing that they prescribe in the civil condition, insofar as the civil condition is thought of by pure rational concepts alone. The difference is only that the civil condition provides the conditions under which these laws are put into effect (in keeping with distributive justice). - So if external objects were not even provisionally mine or yours in the state of nature, there would also be no duties of right with regard to them and therefore no command to leave

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A state (civitas) is a union of a multitude of human beings under laws of right. Insofar as these are a priori necessary as laws, that is, insofar as they

' Factum

follow of themselves from concepts of external right as such (are not etatutory), its form is the form of a state as such, that is, of the state in idea. as it ought to be in accordance with pure principles of right. This idea serves as a norm (norma) for every actual union into a commonwealth thence serves as a norm for its internal constitution).

Every state contains three authorities within it, that is, the general united will consists of three persons (trias politica): the sovereign authority Tenvereignty)h in the person of the legislator; the executive authority in the nerson of the ruler (in conformity to law); and the judicial authority (to award to each what is his in accordance with the law) in the person of the nidge (potestas legislatoria, rectoria et iudiciaria). These are like the three propositions in a practical syllogism: the major premise, which contains the law of that will; the minor premise, which contains the command to hehave in accordance with the law, that is, the principle of subsumption under the law; and the conclusion, which contains the verdict (sentence), what is laid down as right in the case at hand.

#### \$ 46.

The legislative authority can belong only to the united will of the people. For since all right is to proceed from it, it cannot do anyone wrong by its law. Now when someone makes arrangements about another, it is always possible for him to do the other wrong; but he can never do wrong in what he decides upon with regard to himself (for volenti non fit iniuria). Therefore only the concurring and united will of all, insofar as each decides the same thing for all and all for each, and so only the general united will of the people, can be legislative.

The members of such a society who are united for giving law (societas civilis), that is, the members of a state, are called citizens of a state (cives). In terms of rights, the attributes of a citizen, inseparable from his essence (as a citizen), are: lawful freedom, the attribute of obeying no other law than that to which he has given his consent; civil equality, that of not recogniz-

f (also im Inneren)

<sup>6</sup> Or "powers" [Gewalten]. In §43 and §44 Kant used Macht (potentia), which was translated as "power." He now begins to use Gewalt (potestas). But once he distinguishes the three "powers" or "authorities" within a state, it is only the executive authority that has "power" in one sense, i.e., it is the authority which exercises coercion.

h Herrschergewalt (Souveränität). In this initial distinction of the three authorities within a state Kant specifies that "sovereignty" belongs to the legislative authority. Subsequently he introduces, without explanation, such a variety of terms that it is not always clear which of the three authorities is under discussion. I have used "sovereign," without noting the word used, only when Kant specifies Souverän. When "sovereign" is used for Herrscher or Beherrscher, a note is provided. Otherwise I have used the more general "head of state," except for passages that might indicate that one (physical) person has both legislative and executive authority.

'no wrong is done to someone who consents

to his own rights and powers as a member of the commonwealth, not to the choice of another among the people. From his independence follows another where rights are concerned.

The only qualification for being a citizen is being fit to vote. But being fit to vote presupposes the independence of someone who, as one of the people, wants to be not just a part of the commonwealth but also a member of it, that is, a part of the commonwealth acting from his own choice in community with others. This quality of being independent, however, requires a distinction between active and passive citizens, though the concept of a passive citizen seems to contradict the concept of a citizen as such. - The following examples can serve to remove this difficulty: an apprentice in the service of a merchant or artisan; a domestic servant (as distinguished from a civil servant); a minor (naturaliter vel civiliter); all women and, in general, anyone whose preservation in existence (his being fed and protected) depends not on his management of his own business but on arrangements made by another (except the state). All these people lack civil personality and their existence is, as it were, only inherence. - The woodcutter I hire to work in my yard; the blacksmith in India, who goes into people's houses to work on iron with his hammer, anvil and bellows, as compared with the European carpenter or blacksmith who can put the products of his work up as goods for sale to the public; the private tutor, as compared with the school teacher; the tenant farmer as compared with the leasehold farmer, and so forth; these are mere underlingsk of the commonwealth because they have to be under the direction or protection of other individuals, and so do not possess civil

This dependence upon the will of others and this inequality is, however, in no way opposed to their freedom and equality as human beings, who together make up a people; on the contrary, it is only in conformity with the conditions of freedom and equality that this people can become a state and enter into a civil constitution. But not all persons qualify with equal right to vote within this constitution, that is, to be citizens and not mere associates in the state. For from their being able to demand that all others treat them in accordance with the laws of natural freedom and equality as passive parts of the state it does not

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#### \$ 47.

All those three authorities in a state are dignities, and since they arise necessarily from the idea of a state as such, as essential for the establishment (constitution) of it, they are civic dignities. They comprise the relation of a superior over all (which, from the viewpoint of laws of freedom, can be none other than the united people itself) to the multitude of that people severally as subjects, that is, the relation of a commander (imperans) to those who obey (subditus). - The act by which a people forms itself into a state is the original contract. Properly speaking, the original contract is only the idea of this act, in terms of which alone we can think of the legitimacy of a state. In accordance with the original contract, everyone (omnes et singuli) within a people gives up his external freedom in order to take it up again immediately as a member of a commonwealth, that is, of a people considered as a state (universi). And one cannot say: the human being in a state has sacrificed a part of his innate outer freedom for the sake of an end, but rather, he has relinquished entirely his wild, lawless freedom in order to find his freedom as such undiminished, in a dependence upon laws, that is, in a rightful condition, since this dependence arises from his own lawgiving will.

#### § 48.

Accordingly, the three authorities in a state are, first, coordinate with one another (potestates coordinatae) as so many moral persons, that is, each complements the others to complete the constitution of a state (complementum ad sufficientiam)." But, second, they are also subordinate (subordinatae) to one another, so that one of them, in assisting another, cannot also usurp its function; instead, each has its own principle, that is, it indeed commands in its capacity as a particular person, but still under the condition of the will of a superior. Third, through the union of both each subject is apportioned his rights. 26

It can be said of these authorities, regarded in their dignity, that the will

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<sup>&</sup>lt;sup>j</sup> Vermögen <sup>k</sup> Handlanger

members of it, the right to organize it or to cooperate for introducing certain laws. It follows only that, whatever sort of positive laws the citizens might vote for, these laws must still not be contrary to the natural laws of freedom and of the equality of everyone in the people corresponding to this freedom, namely that anyone can work his way up from this passive condition to an active one.

<sup>1</sup> Würden

<sup>™</sup> Gebeitenden

<sup>&</sup>quot; complement to sufficiency

<sup>°</sup> Qualität

of the legislator (legislatoris) with regard to what is externally mine or yours is irreproachable (irreprehensibel); that the executive power of the supreme ruler (summi rectoris) is irresistible; and that the verdict of the highest judge (supremi indicis) is irreversible (cannot be appealed).

§ 49.

The ruler of a state (rex, princeps) is that (moral or natural) person to whom the executive authority (potestas executoria) belongs. He is the agent of the state, who appoints the magistrates and prescribes to the people rules in accordance with which each of them can acquire something or preserve what is his in conformity with the law (through subsumption of a case under it). Regarded as a moral person, he is called the directorate, the government. His directives to the people, and to the magistrates and their superior (the minister) whom he charges with administering the state (gubernatio), are ordinances or decrees (not laws); for they are directed to decisions in particular cases and are given as subject to being changed. A government that was also legislative would have to be called a despotic as 6:317 opposed to a patriotic government; but by a patriotic government is understood not a paternalistic one (regimen paternale), which is the most despotic of all (since it treats citizens as children), but one serving the native land (regimen civitatis et patriae). In it the state (civitas) does treat its subjects as members of one family but it also treats them as citizens of the state, that is, in accordance with laws of their own independence: each is in possession of himself and is not dependent upon the absolute will of another alongside him or above him.

So a people's sovereign<sup>p</sup> (legislator) cannot also be its ruler, since the ruler is subject to the law and so is put under obligation through the law by another, namely the sovereign. The sovereign can also take the ruler's authority away from him, depose him, or reform his administration. But it cannot punish him (and the saying common in England, that the king, i.e., the supreme executive authority, can do no wrong, means no more than this); for punishment is, again, an act of the executive authority, which has the supreme capacity to exercise coercion in conformity with the law, and it would be self-contradictory for him to be subject to coercion.

Finally, neither the head of state nor its ruler can judge, but can only appoint judges as magistrates. A people judges itself through those of its fellow citizens whom it designates as its representatives for this by a free choice and, indeed, designates especially for each act. For a verdict (a sentence) is an individual act of public justice (iustitiae distributativae) performed by an administrator of the state (a judge or court) upon a subject, that is, upon someone belonging to the people; and so this act is

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invested with no authority to assign (allot) to a subject what is his. Since each individual among a people is only passive in this relationship (to the authorities), if either the legislative or the executive authority were to decide in a controversial case what belongs to him, it might do him a wrong, since it would not be the people itself doing this and pronouncing a verdict of guilty or not guilty upon a fellow citizen. But once the facts in a lawsuit have been established, the court has judicial authority to apply the law, and to render to each what is his with the help of the executive authority. Hence only the people can give a judgment upon one of its members, although only indirectly, by means of representatives (the jury) whom it has delegated. - It would also be beneath the dignity of the head of state to play the judge, that is, to put himself in a position where he could do wrong and so have his decision appealed (a rege male informato ad regem melius informandum)."

There are thus three distinct authorities (potestas legislatoria, executoria, iudiciaria) by which a state (civitas) has its autonomy, that is, by which it forms and preserves itself in accordance with laws of freedom. - A state's pell-being consists in their being united (salus rei publicae suprema lex est). But the well-being of a state must not be understood as the welfare of its citizens and their happiness; for happiness can perhaps come to them more easily and as they would like it to in a state of nature (as Rousseau asserts) or even under a despotic government. By the well-being of a state is understood, instead, that condition in which its constitution conforms most fully to principles of right; it is that condition which reason, by a categorical imperative, makes it obligatory for us to strive after.

### GENERAL REMARK

On the effects with regard to rights that follow from the nature of the civil union.

#### Α.

A people should not inquire with any practical aim in view into the origin of the supreme authority to which it is subject, that is, a subject ought not to reason subtly for the sake of action' about the origin of this authority, as a right that can still be called into question (ius controversum) with regard to the obedience he owes it. For, since a people must be regarded as already united under a general legislative will in order to judge with rightful force

from a king badly instructed to a king to be better instructed

P Beherrscher

<sup>&</sup>lt;sup>q</sup> Souverän

<sup>&#</sup>x27;The well-being of the commonwealth is the supreme law. The saying seems to stem from Cicero De Legibus 3.8, Salus populi suprema lex esto.

<sup>1</sup> merktätig vernünfteln

about the supreme authority" (summum imperium), it cannot and may not judge otherwise than as the present head of state (summus imperans) wills it to. - Whether a state began with an actual contract of submission (pacture) subjectionis civilis) as a fact, or whether power came first and law arrived only afterwards, or even whether they should have followed in this order. for a people already subject to civil law these subtle reasonings are altogether pointless and, moreover, threaten a state with danger. If a subject, having pondered over the ultimate origin of the authority now ruling. wanted to resist this authority, he would be punished, got rid of, or expelled (as an outlaw, exlex) in accordance with the laws of this authority, that is, with every right. - A law that is so holy (inviolable) that it is already a crime even to call it in doubt in a practical way, and so to suspend its effect for a moment, is thought as if it must have arisen not from human beings but from some highest, flawless lawgiver; and that is what the saying "All authority is from God" means. This saying is not an assertion about the historical basis of the civil constitution; it instead sets forth an idea as a practical principle of reason: the principle that the presently existing legislative authority ought to be obeyed, whatever its origin.

Now, from this principle follows the proposition: the sovereign" has only rights against his subjects and no duties (that he can be coerced to fulfill).\* – Moreover, even if the organ of the sovereign, the *ruler*, proceeds contrary to law, for example, if he goes against the law of equality in assigning the burdens of the state in matters of taxation, recruiting and so forth, subjects may indeed oppose this injustice by complaints (gravamina) but not by resistance.

Indeed, even the constitution cannot contain any article that would make it possible for there to be some authority in a state to resist the supreme commander, in case he should violate the law of the constitution, and so to limit him.27 For, someone who is to limit the authority in a state must have even more power<sup>2</sup> than he whom he limits, or at least as much power as he has; and, as a legitimate commander who directs the subjects to resist, he must also be able to protect them and to render a judgment having rightful force in any case that comes up; consequently he has to be able to command resistance publicly. In that case, however, the supreme  $commander^b$  in a state is not the supreme commander; instead, it is the

ane who can resist him, and this is self-contradictory. In that case the sovereign behaves through its minister as also the ruler and so as a despot; and the illusion that allows us to think of the people, through its deputies, in the limiting authority (though it has, properly speaking, only legislative authority) cannot conceal the despotism, so that it does not come to light from the measures the minister takes. The people, in being represented by its deputies (in parliament), has, in these guardians of its freedom and rights, men who have a lively interest in positions for themselves and their families, in the army, the navy and the civil service, that depend on the minister, and who are always ready to play into the government's hands finstead of resisting its encroachments; besides, a public declaration of resistance requires unanimity in a people which has been prepared in advance, and this cannot be permitted in time of peace). - Hence a socalled moderate constitution, as a constitution for the inner rights of a erate, is an absurdity. Instead of belonging to right it is only a principle of prudence, not so much to make it more difficult for a powerful transgressor of the people's rights to exercise at will his influence' upon the government as to disguise his influence under the illusion of an opposition permitted to the people.

Therefore a people cannot offer any resistance to the legislative head of a state which would be consistent with right, since a rightful condition is possible only by submission to its general legislative will. There is, therefore, no right to sedition (seditio), still less to rebellion (rebellio), and least of all is there a right against the head of a state as an individual person (the monarch), to attack his person or even his life (monarchomachismus sub specie tyrannicidii)d on the pretext that he has abused his authority (tyrannis). - Any attempt whatsoever at this is high treason (proditio eminens), and whoever commits such treason must be punished by nothing less than death for attempting to destroy his fatherland (parricida). - The reason a people has a duty to put up with even what is held to be an unbearable abuse of supreme authority is that its resistance to the highest legislation can never be regarded as other than contrary to law, and indeed as abolishing the entire legal constitution. For a people to be authorized to resist, there would have to be a public law permitting it to resist, that is, the highest legislation would have to contain a provision that it is not the highest and that makes the people, as subject, by one and the same judgment sovereign over him to whom it is subject. This is self-contradictory, and the contradiction is evident as soon as one asks who is to be the judge in this dispute between people and sovereign (for, considered in terms of rights, these are always two distinct moral

<sup>&</sup>quot; Staatsgewalt

v jetzt herrschenden

<sup>&</sup>quot;Herrscher

<sup>\*</sup> keine (Zwangs-) Pflichten

y obersten Befehlshaber

<sup>\*</sup> Macht

<sup>&</sup>quot; rechtmässiger Gebieter

b obersten Befehlshaber

<sup>&#</sup>x27; seine willkürlichen Einflüße

d murder of a monarch under the guise of tyrannicide

6:320 \* The dethronement of a monarch can still be thought of as if he had voluntarily laid aside the \* The aethronement of a monarch can sun of monarch of as a fire had community some solutions of crown and abdicated his authority, giving it back to the people, or as if, without any attack of the highest person, he had relinquished his authority and been reduced to the rank of private person. Because of this the people who extorted this from him has at least the pretent of a right of necessity (casus necessitatis) in favor of its crime. But it never has the least right in punish him, the head of state, because of his previous administration, since everything he did, in his capacity as head of state, must be regarded as having been done in extensional conformity with rights, and he himself, as the source of the law, can do no wrong. Of all the atrocities involved in overthrowing a state by rebellion, the assassination of the monarch is not itself the worst, for we can still think of the people as doing it from fear that if he remained alive he could marshal his forces and inflict on them the punishment they deserve, so that their killing him would not be an enactment of punitive justice but merely a dictate of selfpreservation. It is the formal execution of a monarch that strikes horror in a soul filled with the idea of human rights, a horror that one feels repeatedly as soon as and as often as one think of such scenes as the fate of Charles I or Louis XVI. But how are we to explain this feeling, which is not aesthetic feeling (sympathy, an effect of imagination by which we put ourselves in the place of the sufferer) but moral feeling resulting from the complete overturning of all concepts of right? It is regarded as a crime that remains forever and can never be expiated (crimen immortale, inexpiabile), and it seems to be like what theologians call the sin that cannot be forgiven either in this world or the next. The explanation of this phenomenon in the human mind seems to arise from the following reflections upon itself, which throw light on

Any transgression of the law can and must be explained only as arising from a maxim of the criminal (to make such a crime his rule); for if we were to derive it from a sensible impulse, he would not be committing it as a free being and it could not be imputed to him. But how it is possible for the subject to form such a maxim contrary to the clear prohibition of lawgiving reason absolutely cannot be explained, since only what happens in accordance with the mechanism of nature is capable of being explained. Now the criminal can commit his misdeed either on a maxim he has taken as an objective rule (as holding universally) or only as an exception to the rule (exempting himself from it occasionally). In the latter case he only deviates from the law (though intentionally); he can at the same time detest his transgression and, without formally renouncing obedience to the law, only want to evade it. In the first case, however, he rejects the authority of the law itself, whose validity he still cannot deny before his own reason, and makes it his rule to act contrary to the law. His maxim is therefore opposed to the law not by way of default only (negative) but by rejecting it (contrarie) or, as we put it, his maxim is diametrically opposed to the law, as contradictory to it (hostile to it, so to speak). As far as we can see, it is impossible for a human being to commit a crime of this kind, a formally evil (wholly pointless) crime; and yet it is not to be ignored in a system of morals (although it is only the idea of the most extreme evil).

The reason for horror at the thought of the formal execution of a monarch by his people is therefore this: that while his *murder* is regarded as only an *exception* to the rule that the people makes its maxim, his execution must be regarded as a complete overturning of the principles of the relation between a sovereign and his people (in which the people, which owes its existence only to the sovereign's legislation, makes itself his master), so that violence is elevated above the most sacred rights brazenly and in accordance with principle. Like a chasm that irretrievably swallows everything, the execution of a monarch seems to be a crime from which the people cannot be absolved, for it is as if the state commits suicide. There is, accordingly, reason for assuming that the agreement to execute the monarch actually origi-

A change in a (defective) constitution, which may certainly be necessary at times, can therefore be carried out only through reform by the covereign itself, but not by the people, and therefore not by revolution; and when such a change takes place this reform can affect only the executive authority, not the legislative. – In what is called a limited constitution, the constitution contains a provision that the people can legally resist the executive authority and its representatives (the minister) by means of its representatives (in parliament). Nevertheless, no active resistance (by the people combining at will; to coerce the government to take a certain course of action, and so itself performing an act of executive authority) is permitted, but only negative resistance, that is, a refusal of the people (in parliament) to accede to every demand the government puts forth as necessary for administering the state. Indeed, if these demands were always complied with, this would be a sure sign that the people is corrupt, that its representatives can be bought, that the head of the government is ruling despotically through his minister, and that the minister himself is betraying the people.

Moreover, once a revolution has succeeded and a new constitution has heen established, the lack of legitimacy with which it began and has been implemented cannot release the subjects from the obligation to comply with the new order of things as good citizens, and they cannot refuse honest obedience to the authority that now has the power. A dethroned monarch (who survives the upheaval) cannot be held to account, still less be punished, for what he previously carried out, provided he returns to the estate of a citizen and prefers peace for himself and the state to the risk of running away in order to engage in the adventure of trying, as a claimant, to get his throne back, whether by covertly inciting a counterrevolution or by the assistance of other powers. But if he prefers the latter course, his right to do so cannot be challenged since the insurrection that dispossessed him was unjust. But do other powers have the right to band together in an alliance on behalf of this deposed monarch, merely so as not to let that crime perpetrated by the people go unavenged and persist as a scandal for all states? Are they therefore authorized and called upon to restore by force the old constitution in any other state where the presently

nates not from what is supposed to be a rightful principle but from fear of the state's vengeance upon the people if it revives at some future time, and that these formalities are undertaken only to give that deed the appearance of punishment, and so of a rightful procedure (such as murder would not be). But this disguising of the deed miscarries; such a presumption on the people's part is still worse than murder, since it involves a principle that would have to make it impossible to generate again a state that has been overthrown.

<sup>&#</sup>x27; der willkürlichen Verbindung

g Or "pretender," Prätendent

В.

Can the sovereign" be regarded as the supreme proprietor (of the land) or must he be regarded only as the one who has supreme command over the people by law? Since the land is the ultimate condition that alone makes it possible to have external things as one's own, and the first right that can be acquired is to possession and use of such things, all such rights must be derived from the sovereign as lord of the land, or better, as the supreme proprietor of it (dominus territorii). The people, the multitude of subjects, also belong to him (they are his people). But they belong to him not as if he owned them (by a right to things); they instead belong to him as their supreme commander (by a right against persons). – This supreme proprietorship is, however, only an idea of the civil union that serves to represent in accordance with concepts of right the necessary union of the private property of everyone within the people under a general public possessor, so that determination of the particular property of each is in accordance with the necessary formal principle of division (division of land), instead of with principles of aggregation (which proceeds empirically from the parts to the whole). In accordance with concepts of right, the supreme proprietor cannot have any land at all as his private property (for otherwise he would make himself a private person). All land belongs only to the people (and indeed to the people taken distributively, not collectively), except in the case of a nomadic people under a sovereign, with whom there is no private ownership of land. - The supreme commander' can therefore have no domains, that is, no estates for his private use (for maintaining his court). For if he did, it would then be up to his own discretion how far they should be extended, so that the state would run the risk of seeing all ownership of land in the hands of the government and all subjects as serfs (glebae adscripti), possessors only of what is the property of another, and therefore deprived of all freedom (servi). - One can say of the lord of the land that he possesses nothing (of his own) except himself; for if he had something of his own alongside others in the state, a dispute could arise between them and there would be no judge to settle it. But one can also say that he possesses everything, since he has the right of command over the people, to whom all external things belong (divisim) (the right to assign to each what is his).

<sup>h</sup> Beherrscher

From this it follows that within a state there can also be no corporation, estate or order which, as owner of land, can pass it on in accordance with ertain statutes to succeeding generations for their exclusive use (in perpe-(crual). The state can repeal such statutes at any time, provided it compenthis those who are left. A knightly order (whether a corporation or merely arank of individual persons who enjoy special honors) or a clerical order, called the church, can never acquire from those privileges with which they are favored ownership in land to pass on to their successors; they can acquire only use of it up to the present. The estates of a knightly order can be revoked without scruple (though under the condition mentioned above) if public opinion has ceased to favor military honors as a means for safeguarding the state against indifference in defending it. The holdings of the church can be similarly revoked if public opinion has ceased to want masses for souls, prayers and a multitude of clerics appointed for this as the means for saving the people from eternal fire. Those affected by such reforms cannot complain of their property being taken from them, since the reason for their possession hitherto lay only in the people's opinion and also had to hold as long as that lasted. But as soon as this opinion lapses, and even lapses only in the judgment of those who by their merit have the strongest claim to guide judgment, the supposed property has to cease, as if by an appeal of the people to the state (a rege male informato ad regem melius informandum)."

On this originally acquired ownership of land rests, again, the right of the supreme commander," as supreme proprietor (lord of the land), to tax private owners of land, that is, to require payment of taxes on land, excise taxes and import duties, or to require the performance of services (such as providing troops for military service). This must, however, be done in such a way that the people taxes itself, since the only way of proceeding in accordance with principles of right in this matter is for taxes to be levied by those deputized by the people, even in case of forced loans (deviating from previously existing law), which it is permissible to exact by the right of majesty in case the state is in danger of dissolution.

On this supreme proprietorship also rests the right to administer the state's economy, finances and police. Police provide for public security, convenience and decency; for, the government's business of guiding the people by laws is made easier when the feeling for decency (sensus decori), as negative taste, is not deadened by what offends the moral sense, such as begging, uproar on the streets, stenches and public prostitution (venus volgivaga).º

A third right also belongs to the state for its preservation, that of inspec-

Or "supreme owner," Obereigentümer

i Oberbefehlshaber

k nomadisch-beherrschtes

¹ Oberbefehlshaber

m from a king badly informed to a king better informed

<sup>&</sup>quot; Oberbefehlshaber

<sup>&</sup>quot;illicit sexual love of the masses

tion (ius inspectionis), so that no association (of political or religious fanalisms), remaining the content of content (authorized). that could affect the public well-being of society (publicum) remains to cealed. Instead, no association can refuse to disclose its constitution the police demand it. But the police are not authorized to search anyone private residence except in a case of necessity, and in every particular the bishown on the control of the cont they must be warranted to do so by a higher authority.

C.

To the supreme commander there belongs indirectly, that is, insofar as he has taken over the duty of the people, the right to impose taxes on the people for its own preservation, such as taxes to support organizations providing for the poor, foundling homes and church organizations, usually

The general will of the people has united itself into a society which is to maintain itself perpetually; and for this end it has submitted itself to the internal authority of the state in order to maintain those members of the society who are unable to maintain themselves. For reasons of state the government is therefore authorized to constrain the wealthy' to provide the means of sustenance to those who are unable to provide for even their most necessary natural needs. The wealthy have acquired an obligation to the commonwealth, since they owe their existence to an act of submitting to its protection and care, which they need in order to live; on this obligation the state now bases its right to contribute what is theirs to maintaining their fellow citizens. This can be done either by imposing a tax on the property or commerce of citizens, or by establishing funds and using the interest from them, not for the needs of the state (for it is rich), but for the needs of the people. (Since we are speaking here only of the right of the state against the people) it will do this by way of coercion, by public taxation, nor merely by voluntary contributions, some of which are made for gain (such as lotteries, which produce more poor people and more danger to public property than there would otherwise be, and which should therefore not be permitted). The question arises whether the care of the poor should be provided for by current contributions - collected not by begging, which is closely akin to robbery, but by legal levies - so that each generation supports its own poor, or instead by assets gradually accumulated and by pious institutions generally (such as widows' homes, hospitals, and the like). - Only the first arrangement, which no one who has to live can withdraw from, can be considered in keeping with the right of a state; for even if current contributions increase with the number of the

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10001, this arrangement does not make poverty a means of acquisition for pooling (as is to be feared of religious institutions) and so does not become an unjust burdening of the people by government.

As for maintaining those children abandoned because of poverty or shame, or indeed murdered because of this, the state has a right to charge inc people with the duty of not knowingly letting them die, even though they are an unwelcome addition to the population.' Whether this should the done by taxing elderly unmarried people of both sexes generally (by which I mean wealthy unmarried people), since they are in part to blame for there being abandoned children, in order to establish foundling homes, or whether it can be done rightly in another way (it would be hard 10 find another means for preventing this) is a problem which has not yet been solved in such a way that the solution offends against neither rights

As for churches, they must be carefully distinguished from religion, which is an inner disposition lying wholly beyond the civil power's sphere of influence. (As institutions for public divine worship on the part of the people, to whose opinion or conviction they owe their origin) churches become a true need of a state, the need for a people to regard themselves as subjects of a supreme invisible power to which they must pay homage and which can often come into very unequal conflict with the civil power. So a state does have a right with regard to churches. It does not have the right to legislate the internal constitutions of churches or to organize them in accordance with its own views, in ways it deems advantageous to itself, that is, to prescribe to the people or command beliefs and forms of divine worship (ritus) (for this must be left entirely to the teachers and directors the people itself has chosen). A state has only a negative right to prevent public teachers from exercising an influence on the visible political commonwealth that might be prejudicial to public peace. Its right is therefore that of policing, of not letting a dispute arising within a church or among different churches endanger civil harmony. For the supreme authority to say that a church should have a certain belief, or to say which it should have or that it must maintain it unalterably and may not reform itself, are interferences by it which are beneath its dignity; for in doing this, as in meddling in the quarrels of the schools, it puts itself on a level of equality with its subjects (the monarch makes himself a priest), and they can straightaway tell him that he understands nothing about it. The supreme authority especially has no right to prohibit internal reform of churches, for what the whole people cannot decide upon for itself the legislator also cannot decide for the people. But no people can decide

never to make further progress in its insight (enlightenment) regarding

beliefs, and so never to reform its churches, since this would be opposed

<sup>&</sup>lt;sup>p</sup> Oberbefehlshaber

<sup>&</sup>lt;sup>q</sup> die es selbst nicht vermögen

<sup>&#</sup>x27; die Vermögenden

<sup>&#</sup>x27;Or "the wealth [resources] of the state," Staatsvermögen

to the humanity in their own persons and so to the highest right of the people. So no supreme authority can decide on this for the people. But as for the expenses of maintaining churches: for the very same reason these cannot be charged to the state but must rather be charged to the part of the people who profess one or another belief, that is, only to the

D.

The rights of the supreme commander of a state also include: 1) the distribution of offices, which are salaried administrative positions; 2) the distribution of dignities, which are eminent estates without pay, based on honor alone, that is, a division of rank into the higher (destined to command) and the lower (which, though free and bound only by public law, is still destined to obey the former); and 3) besides these (relatively benefi-

With regard to civil offices, the question arises whether the sovereign, once having given someone an office, has a right to take it away as he pleases (if the official has not committed a crime). I say, no. For the head of state can never make a decision about a civil official which the united will of the people would not make. Now the people (which has to bear the costs incurred from appointing an official) undoubtedly wants him to be competent for the position he is assigned to; and this he can be only after he has spent sufficiently long time in preparation and training, time he could have spent in training for another position that would have supported him. If the head of state had this right, offices would be filled as a rule by people who had not acquired the skill requisite for them and the mature judgment achieved by practice, and this would be contrary to the intention of the state, which also requires that everyone be able to rise from lower to higher offices (which would otherwise fall into the hands of sheer incompetence). Hence civil officials must be able to count on life-

Among dignities, not just those attached to an office but also that which makes its possessors members of a higher estate even without any special services on their part, is that of the nobility, which is distinct from the civil estate of the people and is transmitted to male descendants and by them to a wife born as a commoner, though if a woman born into the nobility marries a commoner she does not pass this rank on to her husband but herself reverts to the mere civil rank (of the people). - Now the question is whether the sovereign is entitled to establish a nobility, insofar as it is an estate intermediate between himself and the rest of the citizens that can be inherited. What this question comes down to is not whether it would be

' obersten Befehlshabers

nudent for the sovereign to do this, with a view to his own or the people's dvantage, but only whether it would be in accord with the rights of the people for it to have an estate of persons above it who, while themselves deliberts, are still born rulers" (or at least privileged) with respect to the people. – The answer to this question comes from the same principle as the reply to the preceding one: "What a people (the entire mass of subcannot decide with regard to itself and its fellows, the sovereign can also not decide with regard to it." Now an hereditary nobility is a rank that precedes merit and also provides no basis to hope for merit, and is thus a hought-entity without any reality. For if an ancestor had merit he could still not bequeath it to his descendants: they must acquire it for themselves, since nature does not arrange things in such a way that talent and will, which make meritorious service to the state possible, are also hereditary. Since we cannot admit that any human being would throw away his freedom, it is impossible for the general will of the people to assent to such a groundless prerogative, and therefore for the sovereign to validate of - The anomaly of subjects who want to be more than citizens of the state, namely born officials (a born professor, perhaps) may have crept into the machinery of government from older times (feudalism, which was organized almost entirely for war). The only way the state can then gradually correct this mistake it has made, of conferring hereditary privileges contrary to right, is by letting them lapse and not filling vacancies in these positions. So it has a provisional right to let these titled positions of dignity continue until even in public opinion the division into sovereign, nobility and commoners has been replaced by the only natural division into sovereign and people.

Certainly no human being in a state can be without any dignity, since he at least has the dignity of a citizen. The exception is someone who has lost it by his own crime, because of which, though he is kept alive, he is made a mere tool of another's choice (either of the state or of another citizen). Whoever is another's tool (which he can become only by a verdict and right) is a bondsman (servus in sensu stricto) and is the property (dominium) of another, who is accordingly not merely his master (herus) but also his owner (dominus) and can therefore alienate him as a thing, use him as he pleases (only not for shameful purposes) and dispose of his powers,

<sup>&</sup>quot; Befehlshaber

<sup>&</sup>quot;Leibeigener, technically, "serf." In 6:241 Kant classed Leibeigene and Sklaven together: they would be "human beings without personality." In 6:324 he used grunduntertänig (glebae adscripti) - as in the present passage he uses Gutsuntertan (glebae adscriptus) - and called serfs servi. Here too he refers to a Leibeigener as servus in sensu stricto or simply servus. In 6:333, a criminal is said to have reduced himself to the status of a slave, Sklavenstand. I shall henceforth reserve "serf" for Gutsuntertan and "slave" for Sklave and use the more general "bondsman" for Leibeigener.

though not of his life and members. No one can bind himself to this has coases to be a person, by a contract of of dependence, by which he ceases to be a person, by a contract, since that he can make a contract. Now it might seem that he can make a contract. only as a person that he can make a contract. Now it might see that someone could put himself under obligation to another person by contract to let and hire (locatio conductio), to perform services (in retunio wages, board or protection) that are permissible in terms of their quality but indeterminate in terms of their quantity, and that he thereby becomes just a subject (subjectus), not a bondsman (servus). But this is only a deceptive appearance. For if the master is authorized to use the powers of his subject as he pleases, he can also exhaust them until his subject dies of the subject driven to despair (as with the Negroes on the Sugar Islands); his subject will in fact have given himself away, as property, to his master, which is impossible. - Someone can therefore hire himself out only for work that is determined as to its kind and its amount, either as a day laborer or as a subject living on his master's property. In the latter case he can make a contract, for a time or indefinitely, to perform services by working on his master's land in exchange for the use of it instead of receiving wages as a day laborer, or to pay rent (a tax) specified by a lease in return for his own use of it, without thereby making himself a serf (glebae adscriptus), by which he would forfeit his personality. Even if he has become a personal subject by his crime, his subjection cannot be inherited, because he has incurred it only by his own guilt. Nor can a bondsman's offspring be claimed as a bondsman because he has given rise to the expense of being educated; for parents have an absolute natural duty to educate their children and, in case the parents are in bondage, their masters take over this duty along with possession of their subjects.

6:331

Ε.

On the right to punish and to grant clemency.

The right to punish is the right a ruler has against a subject to inflict pain upon him because of his having committed a crime. The head of a state can therefore not be punished; one can only withdraw from his dominion. – Atransgression of public law that makes someone who commits it unfit to be a citizen is called a crime simply (crimen) but is also called a public crime (crimen publicum);28 so the first (private crime) is brought before a civil court, the latter before a criminal court. - Embezzlement, that is, misappropriation of money or goods entrusted for commerce, and fraud in buying and selling, when committed in such a way that the other could detect it, are

theft and robbery and the like are all the property and the like are all t the commonwealth and potition as it is the commonwealth and the commonwealth a hange, the commonwealth and not just an individual person. – They can indambed into crimes arising from a mean character (indolis abiectae) and be mes arising from a violent character (indolis violentae).

punishment by a court (poena forensis) – this is distinct from natural pungiment (poena naturalis), in which vice punishes itself and which the egislator does not take into account – can never be inflicted merely as a neans to promote some other good for the criminal himself or for civil society. It must always be inflicted upon him only because he has committed a rime. For a human being can never be treated merely as a means to the purposes of another or be put among the objects of rights to things: his innate personality protects him from this, even though he can be condemned to lose his civil personality. He must previously have been found punishable before any thought can be given to drawing from his punishment something of use for himself or his fellow citizens. The law of punishment is a categorical imperative, and woe to him who crawls through the windings of eudaimonism in order to discover something that releases the criminal from punishment or even reduces its amount by the advantage it promises, in accordance with the Pharisaical saying, "It is better for one man to die than for an entire people to perish." For if justice goes, there is no longer any value in human being's living on the earth. -What, therefore, should one think of the proposal to preserve the life of a criminal sentenced to death if he agrees to let dangerous experiments be made on him and is lucky enough to survive them, so that in this way physicians learn something new of benefit to the commonwealth? A court would reject with contempt such a proposal from a medical college, for justice ceases to be justice if it can be bought for any price whatsoever.

But what kind and what amount of punishment is it that public justice makes its principle and measure? None other than the principle of equality (in the position of the needle on the scale of justice), to incline no more to one side than to the other. Accordingly, whatever undeserved evil you inflict upon another within the people, that you inflict upon yourself. If you insult him, you insult yourself; if you steal from him, you steal from yourself; if you strike him, you strike yourself; if you kill him, you kill yourself. But only the law of retribution (ius talionis) - it being understood, of course, that this is applied by a court (not by your private judgment) can specify definitely the quality and the quantity of punishment; all other principles are fluctuating and unsuited for a sentence of pure and strict justice because extraneous considerations are mixed into them. - Now it would indeed seem that differences in social rank would not allow the principle of retribution, of like for like, but even when this is not possible

<sup>\*</sup> bei sehenden Augen des Anderen

Gleiches mit Gleichem

in terms of the letter, the principle can always remain valid in terms of the censibilities of the upper classes. effect if account is taken of the sensibilities of the upper classes. A high for example, imposed for a verbal injury has no relation to the offense for someone wealthy might indeed allow himself to indulge in a verbal insule on some occasion; yet the outrage he has done to someone's love of honor can still be quite similar to the hurt done to his pride if he is constrained by judgment and right not only to apologize publicly to the one he has insulted but also to kiss his hand, for instance, even though he is of lower class. Similarly, someone of high standing given to violence could be condemned not only to apologize for striking an innocent citizen socially inferior to himself but also to undergo a solitary confinement involve ing hardship; in addition to the discomfort he undergoes, the offender's vanity would be painfully affected, so that through his shame like would be fittingly repaid with like. – But what does it mean to say, "If you steal from someone, you steal from yourself"? Whoever steals makes the property of everyone else insecure and therefore deprives himself (by the principle of retribution) of security in any possible property. He has nothing and can also acquire nothing; but he still wants to live, and this is now possible only if others provide for him. But since the state will not provide for him free of charge, he must let it have his powers for any kind of work it pleases (in convict or prison labor) and is reduced to the status of a slave for a certain time, or permanently if the state sees fit. - If, however, he has committed murder he must die. Here there is no substitute that will satisfy justice. There is no similarity between life, however wretched it may be, and death, hence no likeness between the crime and the retribution unless death is judicially carried out upon the wrongdoer, although it must still

be freed from any mistreatment that could make the humanity in the

person suffering it into something abominable. - Even if a civil society

were to be dissolved by the consent of all its members (e.g., if a people

inhabiting an island decided to separate and disperse throughout the

world), the last murderer remaining in prison would first have to be

executed, so that each has done to him what his deeds deserve and blood

guilt does not cling to the people for not having insisted upon this punish-

ment; for otherwise the people can be regarded as collaborators in this

public violation of justice. This fitting of punishment to the crime, which can occur only by a judge imposing the death sentence in accordance with the strict law of retribution, is shown by the fact that only by this is a sentence of death pronounced on every criminal in proportion to his inner wickedness (even when the crime is not murder but another crime against the state that can be paid for only by death). - Suppose that some (such as Balmerino29 and others) who took part in the recent Scottish rebellion believed that by their uprising they were only performing a duty they owed the House of Stuart, while others on the contrary were out for their private interests;

and suppose that the judgment pronounced by the highest court had been and suppose to make the choice between death and convict labor. I say the case the man of honor would choose it is case the man of honor would choose it is that each a case the man of honor would choose death, and the scoundrel half this case the man of honor with the research and the scoundrel partitude. This comes along with the nature of the human mind; for popular of honor is acquainted with something that he values even more the man of honor with the parely beauty and the parely beauty that he values even more the man be then life, namely honor, while the scoundrel considers it better to highly man than not to live at all (animam praeferre pudori. Iuven.). Since he man of honor is undeniably less deserving of punishment than the other, both would be punished quite proportionately if all alike were entenced to death; the man of honor would be punished mildly in terms of his sensibilities and the scoundrel severely in terms of his. On the other hand, if both were sentenced to convict labor the man of honor would be punished too severely and the other too mildly for his vile action. And so pere too, when sentence is pronounced on a number of criminals united ma plot, the best equalizer before justice is death. - Moreover, one has never heard of anyone who was sentenced to death for murder complaining that he was dealt with too severely and therefore wronged; everyone would laugh in his face if he said this. – If his complaint were justified it would have to be assumed that even though no wrong is done to the eriminal in accordance with the law, the legislative authority of the state is still not authorized to inflict this kind of punishment and that, if it does so, it would be in contradiction with itself.

Accordingly, every murderer - anyone who commits murder, orders it, or is an accomplice in it - must suffer death; this is what justice, as the dea of judicial authority, wills in accordance with universal laws that are grounded a priori. - If, however, the number of accomplices (correi) to such a deed is so great that the state, in order to have no such criminals in it, could soon find itself without subjects; and if the state still does not want to dissolve, that is, to pass over into the state of nature, which is far worse because there is no external justice at all in it (and if it especially does not want to dull the people's feeling by the spectacle of a slaughterhouse), then the sovereign must also have it in his power, in this case of necessity (casus necessitatis), to assume the role of judge (to represent him) and pronounce a judgment that decrees for the criminals a sentence other than capital punishment, such as deportation, which still preserves the population.30 This cannot be done in accordance with public law but it can be done by an executive decree that is, by an act of the right of majesty which, as clemency, can always be exercised only in individual cases.

In opposition to this the Marchese Beccaria,31 moved by overly compassionate feelings of an affected humanity (compassibilitas), has put forward his assertion that any capital punishment is wrongful because it could not be contained in the original civil contract; for if it were, everyone in a

6:335

<sup>&</sup>quot;Preferring a life of shame," Juvenal Satires 3.8.83.

people would have to have consented to lose his life in case he murdered whereas it is impossible for annual consented. someone else (in the people), whereas it is impossible for anyone to consent to this because no one can dispose of his own life. This is all

No one suffers punishment because he has willed it but because he has willed it but because he has because he h No one sutters punishment occasion. What is done to some have willed a punishable action; for it is no punishment if what is done to some one have be punished. is what he wills, and it is impossible to will to be punished. — Saying that will to be punished if I murder someone is saying nothing more than that subject myself together with everyone else to the laws, which will naturally also be penal laws if there are any criminals among the people. As a colegislator in dictating the penal law, I cannot possibly be the same person who, as a subject, is punished in accordance with the law; for as one who is punished, namely as a criminal, I cannot possibly have a voice in legislation (the legislator is holy). Consequently, when I draw up a penal law against myself as a criminal, it is pure reason in me (homo noumenon), legislating with regard to rights, which subjects me, as someone capable of crime and so as another person (homo phaenomenon), to the penal law, together with all others in a civil union. In other words, it is not the people (each individual in it) that dictates capital punishment but rather the court (public justice), and so another than the criminal; and the social contract contains no promise to let oneself be punished and so to dispose of oneself and one's life. For, if the authorization to punish had to be based on the offender's promise, on his willing to let himself be punished, it would also have to be left to him to find himself punishable and the criminal would be his own judge. - The chief point of error (πρωτον ψευδος) in this sophistry consists in its confusing the criminal's own judgment (which must necessarily be ascribed to his reason) that he has to forfeit his life with a resolve on the part of his will to take his own life, and so in representing as united in one and the same person the judgment upon a right<sup>a</sup> and the realization of that right.<sup>b</sup>

There are, however, two crimes deserving of death, with regard to which it still remains doubtful whether legislation is also authorized to impose the death penalty. The feeling of honor leads to both, in one case the honor of one's sex, in the other military honor, and indeed true honor, which is incumbent as duty on each of these two classes of people. The one crime is a mother's murder of her child (infanticidium maternale); the other is murdering a fellow soldier (commilitonicidium) in a duel. - Legislation cannot remove the disgrace of an illegitimate birth any more than it can wipe away the stain of suspicion of cowardice from a subordinate officer who fails to respond to a humiliating affront with a force of his own rising above fear of death. So it seems that in these two cases people find themselves in the state of nature, and that these acts of killing (homocidium), which would then not have to be

alled murder (homocidium dolosum), are certainly punishable but cannot be with death by the supreme power. A child that comes into the punished apart from marriage is born outside the law (for the law is marriage) therefore outside the protection of the law. It has, as it were, stolen into he commonwealth (like contraband merchandise), so that the commonwealth can ignore its existence (since it was not right' that it should have come to exist in this way), and can therefore also ignore its annihilation; and no decree can remove the mother's shame when it becomes known that she gave birth without being married. - So too, when a junior officer is insulted he sees himself constrained by the public opinion of the other members of his estate to obtain satisfaction for himself and, as in the state of nature, burishment of the offender not by law, taking him before a court, but by a fuel, in which he exposes himself to death in order to prove his military courage, upon which the honor of his estate essentially rests. Even if the office should involve killing his opponent, the killing that occurs in this fight which takes place in public and with the consent of both parties, though rejuctantly, cannot strictly be called murder (homocidium dolosum). - What, now, is to be laid down as right in both cases (coming under criminal iustice)? - Here penal justice finds itself very much in a quandary. Either it must declare by law that the concept of honor (which is here no illusion) counts for nothing and so punish with death, or else it must remove from the crime the capital punishment appropriate to it, and so be either cruel or indulgent. The knot can be undone in the following way: the categorical imperative of penal justice remains (unlawful killing of another must be punished by death); but the legislation itself (and consequently also the civil constitution), as long as it remains barbarous and undeveloped, is responsible for the discrepancy between the incentives of honor in the people (subjectively) and the measures that are (objectively) suitable for its purposes. So the public justice arising from the state becomes an injustice from the perspective of the justice arising from the people.

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#### II.

Of all the rights of a sovereign, the right to grant clemency to a criminal (ius aggratiandi), either by lessening or entirely remitting punishment, is the slipperiest one for him to exercise; for it must be exercised in such a way as to show the splendor of his majesty, although he is thereby doing injustice in the highest degree. - With regard to crimes of subjects against one another it is absolutely not for him to exercise it; for here failure to punish (impunitas criminis) is the greatest wrong against his subjects. He can make use of it, therefore, only in case of a wrong done to himself

<sup>&</sup>quot; Rechtsbeurteilung b Rechtsvollziehung

(crimen laesae maiestatis). But he cannot make use of it even then if he failure to punish could endanger the people's security. – This right is only one that deserves to be called the right of majesty.

On the relation with regard to rights of a citizen to his native land and to foreign countries.

A country (territorium) whose inhabitants are citizens of it simply by is constitution, without their having to perform any special act to establish the right (and so are citizens by birth), is called their native land. A country of which they are not citizens apart from this condition is called a foreign country. If a foreign country forms part of a larger realm it is called a province (in the sense in which the Romans used this word), which must respect the land of the state that rules it as the mother country (rego domina); for a province is not an integral part of the realm (imperii), a place of residence for fellow-citizens, but only a possession of it, a secondary house

6:338

- 1) A subject (regarded also as a citizen) has the right to emigrate, for the state could not hold him back as its property. But he can take out of it with him only his movable belongings, not his fixed belongings, as he would be doing if he were authorized to sell the land he previously possessed and take with him the money he got for it.
- 2) The lord of the land has the right to encourage immigration and settling by foreigners (colonists), even though his native subjects might look askance at this, provided that their private ownership of land is not
- 3) He also has the right to banish a subject to a province outside the country, where he will not enjoy any of the rights of a citizen, that is, to deport him, if he has committed a crime that makes it harmful to the state for his fellow citizens to associate with him.
- 4) He also has the right to exile him altogether (ius exilii), to send him out into the wide world, that is, entirely outside his country (in Old German, this is called *Elend* [misery]). Since the lord of the land then withdraws all protection from him, this amounts to making him an outlaw

#### THE METAPHYSICS OF MORALS

§ 51.

The three authorities in a state, which arise from the concept of a commonpealth as such (res publica latius dicta), are only the three relations of the mited will of the people, which is derived a priori from reason. They are a nure idea of a head of state, which has objective practical reality. But this head of state (the sovereign) is only a thought-entity (to represent the entire people) as long as there is no physical person to represent the supreme authority in the state and to make this idea effective on the people's will. Now, the relation of this physical person to the people's will can be thought of in three different ways: either that one in the state has command over all; or that several, equal among themselves, are united in command over all the others; or that all together have command over each and so over themselves as well. In other words, the form of a state is either autocratic, aristocratic or democratic. (The expression monarchical, in place of autocratic, is not suitable for the concept intended here; for a monarch is one who has the highest authority, whereas an autocrat, who rules by himself, has all the authority. The autocrat is the sovereign, whereas the monarch merely represents the sovereign.) - It is easy to see that the autocratic form of state is the simplest, namely the relation of one (the king) to the people, so that only one is legislator. The aristocratic form of state is already composed of two relations: the relation of the nobility (as legislator) to one another, to constitute the sovereign, and then the relation of this sovereign to the people. But the democratic form of state is the most composite of all, since it involves the following relations: first, it unites the will of all to form a people; then it unites the will of the citizens to form a commonwealth; then it sets this sovereign, which is itself the united will of the citizens, over the commonwealth.\* It is true that, with regard to the administration of right within a state, the simplest form is also the best. With regard to right itself, however, this form of state is the most dangerous for a people, in view of how conducive it is to despotism. It is indeed the most reasonable maxim to simplify the mechanism of unifying a nation by coercive laws, that is, when all the members of the nation are passive and obey one who is over them; but in that case none who are subjects are also citizens of the state. As for the consolation with which the people is supposed to be content - that monarchy (strictly speaking here, autocracy) is the best constitution when the monarch is good (i.e., when he not only intends what is good but also has insight into it) - this is one of those wise remarks that are tautologous. It says nothing more than that the best constitution is the one by which the administrator of the state is made into the best ruler, that is, that the best constitution is that which is best.

<sup>&</sup>lt;sup>d</sup> Unterhauses. Some editors suggest that this is a typographical error for Untertans, in which case the phrase would mean only that the mother country possesses the province as a subject. If Unterhauses is not a typographical error, Kant may mean that the citizens of the mother country are not, by birth, citizens of the province of the ruling state. See 6:338 and 6:348. A province is a "foreign country" (Ausland), as far as the "mother country" or ruling

<sup>\*</sup> I shall not mention the adulterations of these forms that arise from invasion by powerful unauthorized people (oligarchy and ochlocracy), or the so-called mixed constitutions, since this would take us too far afield.

It is futile to inquire into the historical documentation of the mechanism of government, that is, one cannot reach back to the time at which civil society began (for savages draw up no record of their submission to law) besides, we can already gather from the nature of uncivilized human beings that they were originally subjected to it by force). But it is culpable to undertake this inquiry with a view to possibly changing by force the constitution that now exists. For this transformation would have to take place by the people acting as a mob, not by legislation; but insurrection in a constitution that already exists overthrows all civil rightful relations and therefore all right, that is, it is not change in the civil constitution but dissolution of it. The transition to a better constitution is not then a metamorphosis but a palingenesis, which requires a new social contract on which the previous one (now annulled) has no effect. - But it must still be possible, if the existing constitution cannot well be reconciled with the idea of the original contract, for the sovereign to change it, so as to allow to continue in existence that form which is essentially required for a people to constitute a state. Now this change cannot consist in a state's reorganizing itself from one of the three forms into another, as, for example, aristocrats agreeing to submit to autocracy or deciding to merge into a democracy, or the reverse, as if it rested on the sovereign's free choice/ and discretion which kind of constitution it would subject the people to. For even if the sovereign decided to transform itself into a democracy, it could still do the people a wrong, since the people itself could abhor such a constitution and find one of the other forms more to its advantage.

The different forms of states are only the letter (littera) of the original legislation in the civil state, and they may therefore remain as long as they are taken, by old and long-standing custom (and so only subjectively), to belong necessarily to the machinery of the constitution. But the spirit of the original contract (anima pacti originarii) involves an obligation on the part of the constituting authority to make the kind of government suited to the idea of the original contract. Accordingly, even if this cannot be done all at once, it is under obligation to change the kind of government gradually and continually so that it harmonizes in its effect with the only constitution that accords with right, that of a pure republic, in such a way that the old (empirical) statutory forms, which served merely to bring about the submission of the people, are replaced by the original (rational) form, the only form which makes freedom the principle and indeed the condition for any exercise of coercion, as is required by a rightful constitution of a state in the strict sense of the word. Only it will finally lead to what is literally a state. -This is the only constitution of a state that lasts, the constitution in which

' Geschichtsurkunde freien Wahl

of itself rules and depends on no particular person. It is the final end of public right, the only condition in which each can be assigned concluwhat is his; on the other hand, so long as those other forms of state are supposed to represent literally just so many different moral persons invested with supreme authority, no absolutely rightful condition of civil society can be acknowledged, but only provisional right within it.

Any true republic is and can only be a system representing the people, in order to protect its rights in its name, by all the citizens united and acting through their delegates (deputies). But as soon as a person who is head of state (whether it be a king, nobility, or the whole of the population, the democratic union) also lets itself be represented, then the united people does not merely represent the sovereign: it is the sovereign itself. For in it (the people) is originally found the supreme authority from which all rights of individuals as mere subjects (and in any event as officials of the state) must be derived; and a republic, once established, no longer has to let the reins of government out of its hands and give them over again to those who previously held them and could again nullify all new institutions by their absolute choice.

A powerful ruler in our time<sup>32</sup> therefore made a very serious error in iudgment when, to extricate himself from he embarrassment of large state debts, he left it to the people to take this burden on itself and distribute it as it saw fit; for then the legislative authority naturally came into the people's hands, not only with regard to the taxation of subjects but also with regard to the government, namely to prevent it from incurring new debts by extravagance or war. The consequence was that the monarch's sovereignty wholly disappeared (it was not merely suspended) and passed to the people, to whose legislative will the belongings of every subject became subjected. Nor can it be said that in this case one must assume a tacit but still contractual promise of the National Assembly not to make itself the sovereign but only to administer this business of the sovereign and, having attended to it, return the reins of government into the monarch's hands; for such a contract is in itself null and void. The right of supreme legislation in a commonwealth is not an alienable right but the most personal of all rights. Whoever has it can control the people only through the collective will of the people; he cannot control the collective will itself, which is the ultimate basis of any public contract. A contract that would impose obligation on the people to give back its authority would not be incumbent upon the people as the legislative power, yet would still be binding upon it; and this is a contradiction, in accordance with the saying "No one can serve two masters."

<sup>8</sup> Herrschergewalt

h Matthew 6:24

Public right Section II.

The right of nations.

As natives of a country, those who constitute a nation can be looked upon analogously to descendants of the same ancestors (congeniti) even though they are not. Yet in an intellectual sense and from the perspective of rights, since they are born of the same mother (the republic) they constitute as it were one family (gens, natio), whose members (citizens of the state) are of equally high birth and do not mix with those who may live near them in a state of nature, whom they regard as inferior; the latter (savages), however, for their own part consider themselves superior because of the lawless freedom they have chosen, even though they do not constitute states but only tribes. The right of states in relation to one another (which in German is called, not quite correctly, the right of nations, but should instead be called the right of states, ius publicum civitatum) is what we have to consider under the title the right of nations. Here a state, as a moral person, is considered as living in relation to another state in the condition of natural freedom and therefore in a condition of constant war. The rights of states consist, therefore, partly of their right to go to war, partly of their right in war, and partly of their right to constrain each other to leave this condition of war and so form a constitution that will establish lasting peace, that is, its right after war. In this problem the only difference between the state of nature of individual human beings and of families (in relation to one another) and that of nations is that in the right of nations we have to take into consideration not only the relation of one state toward another as a whole, but also the relation of individual persons of one state toward the individuals of another, as well as toward another state as a whole. But this difference from the rights of individuals in a state of nature makes it necessary to consider only such features as can be readily inferred from the concept of a state of nature.

§ 54.

The elements of the right of nations are these: 1) states, considered in external relation to one another, are (like lawless savages) by nature in a nonrightful condition. 2) This nonrightful condition is a condition of war (of the right of the stronger), even if it is not a condition of actual war and actual attacks being constantly made (hostilities). Although no state is wronged by another in this condition (insofar as neither wants anything better), this condition is in itself still wrong in the highest degree, and states neighboring upon one another are under obligation to leave it. 3) A league of nations in accordance with the idea of an original social contract

is necessary, not in order to meddle in one another's internal dissensions hut to protect against attacks from without. 4) This alliance must, however, involve no sovereign authority (as in a civil constitution), but only an association (federation); it must be an alliance that can be renounced at any time and so must be renewed from time to time. This is a right in enhsidium of another and original right, to avoid getting involved in a state of actual war among the other members (foedus Amphictyonum).33

\$ 55.

As regards the original right that free states in a state of nature have to go no war with one another (in order, perhaps, to establish a condition more closely approaching a rightful condition), the first question that arises is: what right has a state against its own subjects to use them for war against other states, to expend their goods and even their lives in it, or to put them at risk, in such a way that whether they shall go to war does not depend on their own judgment, but they may be sent into it by the supreme command of the sovereign?

It might seem that this right can be easily proved, namely from the right to do what one wants with what belongs to one (one's property). Anyone has an incontestable property in anything the substance of which he has himself made. - What follows, then, is the deduction, as a mere jurist would draw it up.

There are various natural products in a country that must still be considered artifacts (artefacta) of the state as far as the abundance of natural products of a certain kind is concerned, since the country would not have yielded them in such abundance had there not been a state and an orderly, powerful government, but the inhabitants had been in a state of nature. - Whether from lack of food or from the presence of predatory animals in the country where I live, hens (the most useful kind of fowl), sheep, swine, cattle and so forth would either not exist at all or at best would be scarce unless there were a government in this country, which secures the inhabitants in what they acquire and possess. - This holds true of the human population as well, which can only be small, as it is in the American wilderness, even if we attribute to these people the greatest industry (which they do not have). The inhabitants would be very scarce since they could not take their attendants and spread out on a land that is always in danger of being laid waste by men or by wild and predatory beasts. There would therefore not be adequate sustenance for such a great abundance of human beings as now live in a country. - Now just as we say that since vegetables (e.g., potatoes) and domestic animals are, as regards their abundance, a human product, which he can use, wear out or destroy (kill), it seems we can also say that since most of his subjects are his own product, the supreme authority in a state, the sovereign, has the right to lead them into war as he would take them on a hunt, and into battles as on a pleasure trip.

While such an argument for this right (which may well be present obscurely in the monarch's mind) holds with regard to animals, which can be one's property, it simply cannot be applied to human beings, especially as citizens of a state. For they must always be regarded as colegislating members of a state (not merely as means, but also as ends in themselves). and must therefore give their free assent, through their representatives, not only to waging war in general but also to each particular declaration of war. Only under this limiting condition can a state direct them to serve in a way full of danger to them.

We shall therefore have to derive this right from the duty of the sovereign to the people (not the reverse); and for this to be the case the people will have to be regarded as having given its vote to go to war. In this capacity it is, although passive (letting itself be disposed of), also active and represents the sovereign itself.

\$ 56.

In the state of nature among states, the right to go to war (to engage in hostilities) is the way in which a state is permitted to prosecute its right against another state, namely by its own force, when it believes it has been wronged by the other state; for this cannot be done in the state of nature by a lawsuit (the only means by which disputes are settled in a rightful condition). - In addition to active violations (first aggression, which is not the same as first hostility) it may be threatened. This includes another state's being the first to undertake preparations, upon which is based the right of prevention (ius praeventionis), or even just the menacing increase in another state's power (by its acquisition of territory) (potentia tremenda). This is a wrong to the lesser power merely by the condition of the superior power, before any deed on its part, and in the state of nature an attack by the lesser power is indeed legitimate.34 Accordingly, this is also the basis of the right to a balance of power among all states that are contiguous and could act on one another.

As for active violations which give a right to go to war, these include acts of retaliation (retorsio), a state's taking it upon itself to obtain satisfaction for an offense committed against its people by the people of another state, instead of seeking compensation (by peaceful methods) from the other state. In terms of formalities, this resembles starting a war without first renouncing peace (without a declaration of war); for if one wants to find a right in a condition of war, something analogous to a contract must be assumed, namely, acceptance of the declaration of the other party that both want to seek their right in this way.

awesome power

\$ 57. The greatest difficulty in the right of nations has to do precisely with right during a war; it is difficult even to form a concept of this or to think of law in this lawless state without contradicting oneself (inter arma silent leges). Right during a war would, then, have to be the waging of war in accordance with principles that always leave open the possibility of leaving the erate of nature among states (in external relation to one another) and entering a rightful condition.

No war of independent states against each other can be a punitive war (hellum punitivum). For punishment occurs only in the relation of a superior (imperantis) to those subject to him (subditum), and states do not stand in that relation to each other. - Nor, again, can any war be either a war of extermination (bellum internecinum) or of subjugation (bellum subjugatorium), which would be the moral annihilation of a state (the people of which would either become merged in one mass with that of the conqueror or reduced to servitude). The reason there cannot be a war of subjugation is not that this extreme measure a state might use to achieve a condition of neace would in itself contradict the right of a state; it is rather that the idea of the right of nations involves only the concept of an antagonism in accordance with principles of outer freedom by which each can preserve what belongs to it, but not a way of acquiring, by which one state's increase of power could threaten others.

A state against which war is being waged is permitted to use any means of defense except those that would make its subjects unfit to be citizens; for it would then also make itself unfit to qualify, in accordance with the right of nations, as a person in the relation of states (as one who would enjoy the same rights as others). Means of defense that are not permitted include: using its own subjects as spies; using them or even foreigners as assassins or poisoners (among whom so-called snipers, who lie in wait to ambush individuals, might well be classed); or using them merely for spreading false reports - in a word, using such underhanded means as would destroy the trust requisite to establishing a lasting peace in the future.

In war it is permissible to exact supplies and contributions from a defeated enemy, but not to plunder the people, that is, not to force individual persons to give up their belongings (for that would be robbery, since it was not the conquered people that waged the war; rather, the state under whose rule they lived waged the war through the people). Instead, receipts should be issued for everything requisitioned, so that in the peace that follows the burden imposed on the country or province can be divided proportionately.

k Knechtschaft

The right of a state after a war, that is, at the time of the peace treaty and with a view to its consequences, consists in this: the victor lays down the conditions on which it will come to an agreement with the vanquished and hold negotiations for concluding peace. The victor does not do this from any right he pretends to have because of the wrong his opponent is supposed to have done him; instead, he lets this question drop and relies on his own force. The victor can therefore not propose compensation for the costs of the war since he would then have to admit that his opponent had fought an unjust war. While he may well think of this argument he still cannot use it, since he would then be saying that he had been waging a punitive war and so, for his own part, committing an offense against the vanquished. Rights after a war also include a right to an exchange of prisoners (without ransom), without regard for their being

A defeated state or its subjects do not lose their civil freedom through the conquest of their country, so that the state would be degraded to a colony and its subjects to bondage; for if they did the war would have been a punitive war, which is self-contradictory. - A colony or province is a people that indeed has its own constitution, its own legislation, and its own land, on which those who belong to another state are only foreigners even though this other state has supreme executive authority over the colony or province. - The state having that executive authority is called the mother state, and the daughter state, though ruled by it, still governs itself (by its own parliament, possibly with a viceroy presiding over it) (civitas hybrida). This was the relation Athens had with respect to various islands and that Great Britain now has with regard to Ireland.

Still less can bondage and its legitimacy be derived from a people's being overcome in war, since for this one would have to admit that a war could be punitive. Least of all can hereditary bondage be derived from it; hereditary bondage as such is absurd since guilt from someone's crime cannot be inherited.

The concept of a peace treaty already contains the provision that an amnesty goes along with it.

The right to peace is 1) the right to be at peace when there is a war in the vicinity, or the right to neutrality; 2) the right to be assured of the continuance of a peace that has been concluded, that is, the right to a guarantee; 3) the right to an alliance (confederation) of several states for their common defense against any external or internal attacks, but not a league for attacking others and adding to their own territory.

hybrid state

§ 60.

There are no limits to the rights of a state against an unjust enemy (no limits with respect to quantity or degree, though there are limits with respect to quality); that is to say, an injured state may not use any means mhatever but may use those means that are allowable to any degree that it is able to, in order to maintain what belongs to it. - But what is an unjust enemy in terms of the concepts of the right of nations, in which - as is the case in a state of nature generally - each state is judge in its own case? It is an enemy whose publicly expressed will (whether by word or deed) reveals a maxim by which, if it were made a universal rule, any condition of peace among nations would be impossible and, instead, a state of nature would be perpetuated. Violation of public contracts is an expression of this sort. Since this can be assumed to be a matter of concern to all nations whose freedom is threatened by it, they are called upon to unite against such misconduct in order to deprive the state of its power to do it. But they are not called upon to divide its territory among themselves and to make the state, as it were, disappear from the earth, since that would be an injustice against its people, which cannot lose its original right to unite itself into a commonwealth, though it can be made to adopt a new constitution that by its nature will be unfavorable to the inclination of war.

It is pleonastic, however, to speak of an unjust enemy in a state of nature; for a state of nature is itself a condition of injustice. A just enemy would be one that I would be doing wrong by resisting; but then he would also not be my enemy.

\$ 61.

Since a state of nature among nations, like a state of nature among individual human beings, is a condition that one ought to leave in order to enter a lawful condition, before this happens any rights of nations, and anything external that is mine or yours which states can acquire or retain by war, are merely provisional. Only in a universal association of states (analogous to that by which a people becomes a state) can rights come to hold conclusively and a true condition of peace come about. But if such a state made up of nations were to extend too far over vast regions, governing it and so too protecting each of its members would finally have to become impossible, while several such corporations would again bring on a state of war. So perpetual peace, the ultimate goal of the whole right of nations, is indeed an unachievable idea. Still, the political principles directed toward perpetual peace, of entering into such alliances of states, which serve for continual approximation to it, are not unachievable. Instead, since continual approximation to it is a task based on duty and therefore on the right of human beings and of states, this can certainly be achieved.

Such an association of several states to preserve peace can be called a permanent congress of states, which each neighboring state is at liberty to join. Something of this kind took place (at least as regards the formalities of the right of nations for the sake of keeping the peace) in the first half of the present century, in the assembly of the States General at the Hague. The ministers of most of the courts of Europe and even of the smallest republics lodged with it their complaints about attacks being made on one of them by another. In this way they thought of the whole of Europe as a single confederated state which they accepted as arbiter, so to speak, in their public disputes. But later, instead of this, the right of nations survived only in books; it disappeared from cabinets or else, after force had already been used, was relegated in the form of a deduction to the obscurity of archives.

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By a congress is here understood only a voluntary<sup>m</sup> coalition of different states which can be dissolved at any time, not a federation (like that of the American states) which is based on a constitution and can therefore not be dissolved. — Only by such a congress can the idea of a public right of nations be realized, one to be established for deciding their disputes in a civil way, as if by a lawsuit, rather than in a barbaric way (the way of savages), namely by war.

# Public right Section III.

## Cosmopolitan right.35

§ 62.

This rational idea of a peaceful, even if not friendly, thoroughgoing community of all nations on the earth that can come into relations affecting one another is not a philanthropic (ethical) principle but a principle having to do with rights. Nature has enclosed them all together within determinate limits (by the spherical shape of the place they live in, a globus terraqueus)." And since possession of the land, on which an inhabitant of the earth can live, can be thought only as possession of a part of a determinate whole, and so as possession of that to which each of them originally has a right, it follows that all nations stand originally in a community of land, though not of rightful community of possession (communio) and so of use of it, or of property in it; instead they stand in a community of possible physical interaction (commercium), that is, in a thoroughgoing relation of each to all the others of offering to engage in commerce with any other, and each has a right to make this attempt without the other being authorized to behave toward it as an enemy because it has made this attempt. - This right, since it has to do with the possible union of all nations with a view to certain universal laws for their possible commerce, can be called cosmopolitan right (ius cosmopoliticum).

Although the seas might seem to remove nations from any community with one another, they are the arrangements of nature most favoring their commerce by means of navigation; and the more *coastlines* these nations have in the vicinity of one another (as in the Mediterranean), the more lively their commerce can be. However, visiting these coasts, and still more settling there to connect them with the mother country, provides the occasion for troubles and acts of violence in one place on our globe to be felt all over it. Yet this possible abuse cannot annul the right of citizens of the world to try to establish community with all and, to this end, to visit all regions of the earth. This is not, however, a right to make a settlement on the land of another nation (ius incolatus); for this, a specific contract is required.

The question arises, however: in newly discovered lands, may a nation undertake to *settle* (*accolatus*)<sup>q</sup> and take possession in the neighborhood of a people that has already settled in the region, even without its consent?

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<sup>&</sup>quot; willkürliche

<sup>&</sup>quot; globe of earth and water

<sup>&</sup>lt;sup>o</sup> Kant moves between *Wechselwirkung*, i.e., interaction, intercourse, or "commerce" in a very general sense, and *Verkehr*, which he used in his discussion of contracts to signify exchange of property, "commerce" in a more specific sense.

pright to inhabit

<sup>4</sup> dwell near, as a neighbor

If the settlement is made so far from where that people resides that there is no encroachment on anyone's use of his land, the right to settle is not open to doubt. But if these people are shepherds or hunters (like the Hottentots, the Tungusi, or most of the American Indian nations) who depend for their sustenance on great open regions, this settlement may not take place by force but only by contract, and indeed by a contract that does not take advantage of the ignorance of those inhabitants with respect to ceding their lands. This is true despite the fact that sufficient specious reasons to justify the use of force are available: that it is to the world's advantage, partly because these crude peoples will become civilized (this is like the pretext by which even Büsching36 tries to excuse the bloody introduction of Christianity into Germany), and partly because one's own country will be cleaned of corrupt men, and they or their descendants will, it is hoped, become better in another part of the world (such as New Holland). But all these supposedly good intentions cannot wash away the stain of injustice in the means used for them. Someone may reply that such scruples about using force in the beginning, in order to establish a lawful condition, might well mean that the whole earth would still be in a lawless condition; but this consideration can no more annul that condition of right' than can the pretext of revolutionaries within a state, that when

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# Conclusion

constitutions are bad it is up to the people to reshape them by force and to be unjust once and for all so that afterwards they can establish justice all

the more securely and make it flourish.

If someone cannot prove that a thing is, he can try to prove that it is not. If (as often happens) he cannot succeed in either, he can still ask whether he has any interest in assuming one or the other (as an hypothesis), either from a theoretical or from a practical point of view. An assumption is adopted from a theoretical point of view in order merely to explain a certain phenomenon (such as, for astronomers, the retrograde motion and stationary state of the planets). An assumption is adopted from a practical point of view in order to achieve a certain end, which may be either a pragmatic (merely technical end) or a moral end, that is, an end such that the maxim of adopting it is itself a duty. - Now it is evident that what would be made our duty in this case is not the assumption (suppositio) that this end can be realized, which would be a judgment about it that is merely theoretical and, moreover, problematic; for there can be no obligation to do this (to believe something). What is incumbent upon us as a

duty is rather to act in conformity with the idea of that end, even if there is not the slightest theoretical likelihood that it can be realized, as long as its impossibility cannot be demonstrated either.

Now morally practical reason pronounces in us its irresistible veto: there s to be no war, neither war between you and me in the state of nature nor between us as states, which, although they are internally in a lawful condition, are still externally (in relation to one another) in a lawless condition; for war is not the way in which everyone should seek his rights. So the question is no longer whether perpetual peace is something real or a fiction, and whether we are not deceiving ourselves in our theoretical indgment when we assume that it is real. Instead, we must act as if it is something real, though perhaps it is not; we must work toward establishing perpetual peace and the kind of constitution that seems to us most conducive to it (say, a republicanism of all states, together and separately) in order to bring about perpetual peace and put an end to the heinous waging of war, to which as their chief aim all states without exception have hitherto directed their internal arrangements. And even if the complete realization of this objective always remains a pious wish, still we are certainly not deceiving ourselves in adopting the maxim of working incessantly toward it. For this is our duty, and to admit that the moral law within us is itself deceptive would call forth in us the wish, which arouses our abhorrence, rather to be rid of all reason and to regard ourselves as thrown by one's principles into the same mechanism of nature as all the other species of animals.

It can be said that establishing universal and lasting peace constitutes not merely a part of the doctrine of right but rather the entire final end of the doctrine of right within the limits of mere reason; for the condition of peace is alone that condition in which what is mine and what is yours for a multitude of human beings is secured under laws living in proximity to one another, hence those who are united under a constitution; but the rule for this constitution, as a norm for others, cannot be derived from the experience of those who have hitherto found it most to their advantage; it must, rather, be derived a priori by reason from the ideal of a rightful association of human beings under public laws as such. For all examples (which only illustrate but cannot prove anything) are treacherous, so that they certainly require a metaphysics. Even those who ridicule metaphysics admit its necessity, though carelessly, when they say for example, as they often do, "the best constitution is that in which power belongs not to human beings but to the laws." For what can be more metaphysically sublimated than this very idea, which even according to their own assertion has the most confirmed objective reality, as can also be easily shown in actually occurring cases? The attempt to realize this idea should not be made by way of revolution, by a leap, that is, by violent overthrow of an already existing defective constitution (for there would then be an intervening moment in which any rightful

<sup>&#</sup>x27; Kunstzweck

condition would be annihilated). But if it is attempted and carried out by gradual reform in accordance with firm principles, it can lead to continual approximation to the highest political good, perpetual peace.

# Appendix Explanatory remarks

on

The metaphysical first principles of the doctrine of right

6:356

I take the occasion for these remarks chiefly from the review of this book in the *Göttingen Journal* (No.28, 18 Feb. 1797).<sup>37</sup> In this review the book was examined with insight and rigor, but also with appreciation and "the hope that those first principles will be a lasting gain for the science." I shall use this review as a guide for my criticism as well as for some elaboration of this system.

My astute critic takes exception to a definition at the very beginning of the Introduction to the Doctrine of Right. What is meant by the faculty of desire? It is, the text says, the capacity to be by means of one's representations the cause of the objects of these representations. - To this exposition he objects "that it comes to nothing as soon as one abstracts from the external conditions of the result of desire. - But the faculty of desire is something even for an idealist, even though the external world is nothing for him." $\check{I}$ reply: but are there not also intense but still consciously futile longings (e.g., Would to God that man were still alive!), which are devoid of any deed but not devoid of any result, since they still work powerfully within the subject himself (make him ill), though not on external things? A desire, as a striving (nisus) to be a cause by means of one's representations, is still always causality, at least within the subject, even when he sees the inadequacy of his representations for the effect he envisages. - The misunderstanding here amounts to this: that since consciousness of one's capacity in general is (in the case mentioned) also consciousness of one's incapacity" with respect to the external world, the definition is not applicable to an idealist. Since, however, all that is in question here is the relation of a cause (a representation) to an effect (a feeling) in general, the causality of a representation (whether the causality is external or internal) with regard to its object must unavoidably be thought in the concept of the faculty of desire.

# LOGICAL PREPARATION FOR A RECENTLY PROPOSED CONCEPT OF A RIGHT.

If philosophers versed in right want to rise or venture all the way to metaphysical first principles of the doctrine of right (without which all their juridical science would be merely statutory), they cannot be indifferent to assurance of the completeness of their division of concepts of rights, since otherwise that science would not be a rational system but merely an aggregate hastily collected. – For the sake of the form of the system, the topic of principles must be complete, that is, the place for a concept (locus communis) must be indicated, the place that is left open for this concept by the synthetic form of the division. Afterwards one may also show that one or another concept which might be put in this place would be self-contradictory and falls from this place.

Up to now jurists have admitted two commonplaces: that of a right to things and that of a right against persons. By the mere form of joining these two concepts together into one, two more places are opened up for concepts, as members of an a priori division: that of a right to a thing akin to a right against a person and that of a right to a person akin to a right to a thing. It is therefore natural to ask whether we have to add some such new concept and whether we must come across it in the complete table of division, even if it is only problematic. There can be no doubt that this is the case. For a merely logical division (which abstracts from the content of cognition, from the object) is always a dichotomy, for example, any right is either a right to a thing or not a right to a thing. But the division in question here, namely the metaphysical division, might also be a fourfold division; for besides the two simple members of the division, two further relations might have to be added, namely those of the conditions limiting a right, under which one right enters into combination with the other. This possibility requires further investigation. - The concept of a right to a thing akin to a right against a person drops out without further ado, since no right of a thing against a person is conceivable. Now the question is whether the reverse of this relation is just as inconceivable or whether this concept, namely that of a right to a person akin to a right to a thing, is a concept that not only contains no self-contradiction but also belongs necessarily (as given a priori in reason) to the concept of what is externally mine or yours, that of not treating persons in a similar way to things in all

¹ Vermögen

<sup>&</sup>quot; seines Vermögen uberhaupt . . . seines Unvermögens

<sup>&</sup>quot;Rechtswissenschaft. See 6:229, where Kant seemed to say that only systematic knowledge of natural right is a true science. When coupled with that passage, his use here of erhaben oder versteigen, which I have translated as "rise or venture," might be a suggestion that some philosophic jurists have got out of their element in attempting to discuss the issues at hand.