For Michael and Estelle Morgan

Kant's Political Writings

EDITED WITH AN INTRODUCTION
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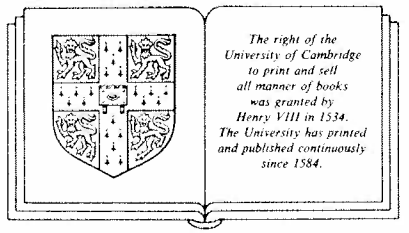

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Contents

CONTENTS

Preface

This volume, to the best of my knowledge, is the first in English to contain all the political writings of Kant which the author himself had published. There have been earlier translations of almost all the pieces which make up this volume; Dr Nisbet has asked me to acknowledge his debt to these, particularly to Professor John Ladd's translation of *The Metaphysical Elements of Right* (*The Metaphysical Elements of Justice*, Indianapolis, New York, Kansas City, 1965). The aim of this volume is to introduce English-speaking readers in general and students of political theory in particular to Kant's political writings. The bibliography in the present volume may serve as a guide for further reading. For a general introduction to Kant, the student can do no better than read Stephan Körner's *Kant* (Penguin Books, Harmondsworth, Middlesex, 1955), easily available in a pocket edition.

Only those writings which deal explicitly with the theory of politics and which were published by him have been included. I have omitted other essays, such as the *Conjectural Beginning of the Human Race* (*Mutmasslicher Anfang des Menschengeschlechts*), *The End of All Things* (*Das Ende aller Dinge*) and Kant's review of J. G. Herder's *Ideen*, which touch only marginally on politics. I have, however, included a brief but essential passage from the *Critique of Pure Reason* (*Kritik der reinen Vernunft*). In accordance with the aims of the series, I have not included any extracts, unless they form self-contained wholes. A few passages in other writings published by Kant are excluded, since they do not add anything of substance to his theory of politics. I decided to include the first part of *Theory and Practice* (*Über den Gemeinspruch: Das mag in der Theorie richtig sein, taugt aber nicht für die Praxis*), which is devoted to ethics. Since this volume does not set out to be a definitive critical edition of Kant's political writings I did not follow this precedent in the case of *The Metaphysics of Morals* (*Die Metaphysik der Sitten*) and *The Contest of Faculties* (*Der Streit der Fakultäten*). To print both works in full would inevitably have distracted attention from the main purpose of this volume. I hope that the brief summaries of what was omitted will give

having acted justly. Politics can easily be reconciled with morality in the former sense (i.e. as ethics), for both demand that men should give up their rights to their rulers. But when it comes to morality in its second sense (i.e. as the theory of right), which requires that politics should actively defer to it, politics finds it advisable not to enter into any contract at all, preferring to deny that the theory of right has any reality and to reduce all duties to mere acts of goodwill. This subterfuge of a secretive system of politics could, however, easily be defeated if philosophy were to make its maxims public, would it but dare to allow the philosopher to publicise his own maxims.

With this in mind, I now put forward another transcendental and affirmative principle of public right. It might be formulated as follows: 'All maxims which *require* publicity if they are not to fail in their purpose can be reconciled both with right and with politics.'

For if they can only attain their end by being publicised, they must conform to the universal aim of the public (which is happiness), and it is the particular task of politics to remain in harmony with the aim of the public through making it satisfied with its condition. But if this end is to be attained *only* through publicity (i.e. by dispelling all distrust of the maxims employed), the maxims in question must also be in harmony with public right; for only within this right is it possible to unite the ends of everyone. I must, however, postpone the further elaboration and discussion of this principle until another occasion, although it can already be seen that it is a transcendental formula if one removes all the empirical conditions relating to happiness, i.e. the substance of the law, and looks exclusively to the form of universal lawfulness.

If it is a duty to bring about in reality a state of public right (albeit by an infinite process of gradual approximation), and if there are also good grounds for hoping that we shall succeed, then it is not just an empty idea that *perpetual peace* will eventually replace what have hitherto been wrongly called peace treaties (which are actually only truces). On the contrary, it is a task which, as solutions are gradually found, constantly draws nearer fulfilment, for we may hope that the periods within which equal amounts of progress are made will become progressively shorter.

The Metaphysics of Morals[1]

This work begins with a preface and a general introduction. Its main body falls into two parts—*The Metaphysical Elements of the Theory of Right* and *The Metaphysical Elements of the Theory of Virtue*. The extracts included in the present edition are taken only from *The Metaphysical Elements of the Theory of Right*. They include the most important paragraphs from the introduction to this part of the work, and its second main section, which deals with *The Theory of Public Right*. In order to place the relevant passages in their proper context, I have provided a brief summary of the other sections preceding *The Theory of Public Right*.

In the preface to *The Metaphysics of Morals*, Kant points out that a complete metaphysics of right is impossible because completeness in an account of empirical matters is impossible. He refers only to *The Metaphysical Elements of the Theory of Right* because the second part, *The Metaphysical Elements of the Theory of Virtue*, was published at a later date. Kant also states that, in his treatise, he has put into the body of the text those arguments relating to the system of right which were arrived at by *a priori* reasoning and has relegated those relating to specific empirical cases to the notes. Kant then defends the apparent obscurity of his style by saying that it is impossible to aim at popularity in a work involving a system of criticism of the faculty of reason.

In his general introduction to the *Metaphysics of Morals*, Kant discusses the fundamental terms and presuppositions of this work, pointing out that science can make progress without explicit reference to *a priori* laws, but that the case of morality is different. Moral laws are laws only in so far as they have an *a priori* basis and are necessary. He explains why he distinguishes between legal and moral laws: the former admit of no incentive except that of duty, the latter do not.

A full account of this introduction would be too long to justify inclusion here. Kant proceeds to provide definitions for many of the terms which he uses, thus supplying a brief account of the principles underlying his moral philosophy (cf. my introduction pp. 17–21 for a brief discussion of his moral philosophy). In the course of the argument Kant also states that a collision of duties is impossible, because two opposing rules involving the objective-practical necessity of an action cannot exist side by side. If there are conflicting obligations, the stronger obligation always prevails.

This introduction is followed by *The Metaphysical Elements of the Theory of Right*.

INTRODUCTION TO THE THEORY OF RIGHT[2]

§ A

Definition of the Theory of Right

The sum total of those laws which can be incorporated in external legislation is termed the *theory of right* (*Ius*). If legislation of this kind actually exists, the theory is one of *positive right*. If a person who is conversant with it or has studied it (*Iuriconsultus*) is acquainted with the external laws in their external function, i.e. in their application to instances encountered in experience, he is said to be *experienced in matters of right* (*Iurisperitus*). This body of theory may amount to the same as *jurisprudence* (*Iurisprudentia*), but it will remain only the *science of right* (*Iuriscientia*) unless both its elements are present. The latter designation applies to a *systematic* knowledge of the theory of natural right (*Ius naturae*), although it is the student of natural right who has to supply the immutable principles on which all positive legislation must rest.

§ B

What is Right?

The *jurist*, if he does not wish to lapse into tautology or to base his answer on the laws of a particular country at a particular time instead of offering a comprehensive solution, may well be just as perplexed on being asked this as the logician is by the notorious question: '*What is truth?*' He will certainly be able to tell us what is legally right (*quid sit iuris*) within a given context, i.e. what the laws say or have said in a particular place and at a particular time: but whether their provisions are also in keeping with right, and whether they constitute a universal criterion by which we may recognise in general what is right and what is unjust (*iustum et iniustum*), are questions whose answers will remain concealed from him unless he abandons such empirical principles for a time and looks for the sources of these judgements in the realm of pure reason. This will enable him to lay the foundations of all possible positive legislations. And while empirical laws may give him valuable guidance, a purely empirical theory of right, like the wooden head in Phaedrus'[3] fable, may have a fine appearance, but will unfortunately contain no brain.

The concept of right, in so far as it is connected with a corresponding obligation (i.e. the moral concept of right), applies within the following conditions. *Firstly*, it applies only to those relationships between one

person and another which are both external and practical, that is, in so far as their actions can in fact influence each other either directly or indirectly. But *secondly*, it does not concern the relationship between the will[4] of one person and the *desires* of another (and hence only the latter's needs, as in acts of benevolence or hardheartedness); it concerns only the relationship between the will of the first and the *will* of the second. And *thirdly*, the will's *material* aspect, i.e. the end which each party intends to accomplish by means of the object of his will, is completely irrelevant in this mutual relationship; for example, we need not ask whether someone who buys goods from me for his own commercial use will gain anything in the process. For we are interested only in the *form* of the relationship between the two wills, in so far as they are regarded as *free*, and in whether the action of one of the two parties can be reconciled with the freedom of the other in accordance with a universal law.

Right is therefore the sum total of those conditions within which the will of one person can be reconciled with the will of another in accordance with a universal law of freedom.

§ C

The Universal Principle of Right

'Every action which by itself or by its maxim enables the freedom of each individual's will to co-exist with the freedom of everyone else in accordance with a universal law is *right*.'

Thus if my action or my situation in general can co-exist with the freedom of everyone in accordance with a universal law, anyone who hinders me in either does me an injustice; for this hindrance or resistance cannot co-exist with freedom in accordance with universal laws.

It also follows from this that I cannot be required to make this principle of all maxims my own maxim, i.e. *to make it the maxim of my own actions*; for each individual can be free so long as I do not interfere with his freedom by my *external actions*, even although his freedom may be a matter of total indifference to me or although I may wish in my heart to deprive him of it. That I should make it my maxim to *act* in accordance with right is a requirement laid down for me by ethics.

Thus the universal law of right is as follows: let your external actions be such that the free application of your will can co-exist with the freedom of everyone in accordance with a universal law. And although this law imposes an obligation on me, it does not mean that I am in any way expected, far less required, to restrict my freedom *myself* to these conditions purely for the sake of this obligation. On the contrary, reason merely

says that individual freedom *is* restricted in this way by virtue of the idea behind it, and that it may also be actively restricted by others; and it states this as a postulate which does not admit of any further proof.

If it is not our intention to teach virtue, but only to state what is *right*, we may not and should not ourselves represent this law of right as a possible motive for actions.

§ D

Right entails the Authority to use Coercion

Any resistance which counteracts the hindrance of an effect helps to promote this effect and is consonant with it. Now everything that is contrary to right is a hindrance to freedom based on universal laws, while coercion is a hindrance or resistance to freedom. Consequently, if a certain use to which freedom is put is itself a hindrance to freedom in accordance with universal laws (i.e. if it is contrary to right), any coercion which is used against it will be a *hindrance* to a *hindrance of freedom*, and will thus be consonant with freedom in accordance with universal laws—that is, it will be right. It thus follows by the law of contradiction that right entails the authority to apply coercion to anyone who infringes it.

§ E

In its 'strict' *Sense, Right can also be envisaged as the Possibility of a general and reciprocal Coercion consonant with the Freedom of Everyone in accordance with Universal Laws*

This proposition implies that we should not conceive of right as being composed of two elements, namely the obligation imposed by a law, and the authority which someone who obligates another party through his will possesses to coerce the latter into carrying out the obligation in question. Instead, the concept of right should be seen as consisting immediately of the possibility of universal reciprocal coercion being combined with the freedom of everyone. For just as the only object of right in general is the external aspect of actions, right in its strict sense, i.e. right unmixed with any ethical considerations, requires no determinants of the will apart from purely external ones; for it will then be pure and will not be confounded with any precepts of virtue. Thus only a completely external right can be called right in the *strict* (or narrow) sense. This right is certainly based on each individual's awareness of his obligations within the law; but if it is to remain pure, it may not and cannot appeal to this awareness as a motive which might determine the will to act in accordance

with it, and it therefore depends rather on the principle of the possibility of an external coercion which can coexist with the freedom of everyone in accordance with universal laws.

Thus when it is said that a creditor has a right to require the debtor to pay his debt, it does not mean that he can make the latter feel that his reason itself obliges him to act in this way. It means instead that the use of coercion to compel everyone to do this can very well be reconciled with everyone's freedom, hence also with the debtor's freedom, in accordance with a universal external law: thus right and the authority to apply coercion mean one and the same thing.

The law of reciprocal coercion, which is necessarily consonant with the freedom of everyone within the principle of universal freedom, is in a sense the *construction* of the concept of right: that is, it represents this concept in pure *a priori* intuition by analogy with the possibility of free movement of bodies within the law of the *equality of action and reaction*. Just as the qualities of an object of pure mathematics cannot be directly deduced from the concept but can only be discovered from its construction, it is not so much the *concept* of right but rather a general, reciprocal and uniform coercion, subject to universal laws and harmonising with the concept itself, which makes any representation of the concept possible. But while this concept of dynamics (i.e. that of the equality of action and reaction) is based upon a purely formal concept of pure mathematics (e.g. of geometry), reason has taken care that the understanding is likewise as fully equipped as possible with *a priori* intuitions for the construction of the concept of right.

In geometry, the term 'right' (*rectum*), in the sense of '*straight*', can be used either as the opposite of '*curved*' or of '*oblique*'. In the first sense, it applies to a line whose *intrinsic nature* is such that there can be only *one* of its kind between two given *points*. But in the second sense, it applies to an *angle* between two intersecting or coincident *lines* whose nature is such that there can be only *one* of its kind (a right angle) between the given lines. The perpendicular line which forms a right angle will not incline more to one side than to the other, and will divide the area on either side of it into two equal parts. By this analogy, the theory of right will also seek an assurance that each individual receives (with mathematical precision) *what is his due*. This cannot be expected of *ethics*, however, for it cannot refuse to allow some room for exceptions (*latitudinem*).[5]

Kant then adds some remarks on 'equivocal right'. He does not mean right in the strict sense, but in the wider sense of the word. Only two aspects of right arise here: equity and the right of necessity. Kant remarks of equity that it

concerns only such cases as are outside strict right, i.e. where there is no case in law at all. The right of necessity applies to cases where one acts against someone else (for instance, by taking someone else's life because one's own life is in danger). A man cannot be punished with any greater punishment than the loss of life itself. There can be therefore no law punishing a man who acts out of necessity.

Kant explains the division of the theory of right into private and public right. He also distinguishes between innate and acquired rights. In his view, freedom (i.e. independence from the coercive will of another), in so far as it can coexist with the freedom of everyone else in accordance with a universal law, is the sole original right. It belongs to every man by virtue of his humanity. Equality, honesty and the right to act towards others in such a way that their rights are not infringed all derive from this right of freedom. Kant also provides a general division of the metaphysics of morals, distinguishing between those duties which are duties of right and those which are duties of virtue.

In the first section of *The Metaphysical Elements of Right*, Kant deals with private right which is concerned with property. There are two kinds of property: property which one possesses directly through physical possession and property which one only possesses indirectly. Kant examines the philosophical foundations of the law of property, deducing it from the idea of original communal possession of the soil. He also argues that external possession of things of which we are not in physical possession is possible only because we are noumenal beings, not necessarily bound by the limits of mere empirical (phenomenal) possessions. Kant goes on to argue that external possessions are possible only in a state of civil society, whereas in a state of nature, such possession can have only a provisional character.

Subsequently, Kant deals with the right of acquiring things and with various other rights, such as the rights of persons, marriage, parentage, landlords, contract, money, books, inheritance, etc. His discussion of the theory of private right is followed by a discussion of the theory of public right, which is printed below.

THE THEORY OF RIGHT, PART II: PUBLIC RIGHT[6]

SECTION I: POLITICAL RIGHT

§ 43

Public right is the sum total of those laws which require to be made universally public in order to produce a state of right. It is therefore a system of laws for a people, i.e. an aggregate of human beings, or for an aggregate of peoples. Since these individuals or peoples must influence one another, they need to live in a state of right under a unifying will: that is, they require a *constitution* in order to enjoy their rights.

A condition in which the individual members of a people are related to each other in this way is said to be a *civil* one (*status civilis*), and when considered as a whole in relation to its own members, it is called a *state*

(*civitas*). Since the state takes the form of a union created by the common interest of everyone in living in a state of right, it is called a *commonwealth* (*res publica latius sic dicta*). In relation to other peoples, however, it is simply called a *power* (*potentia*—hence the word 'potentate'); and if it claims to be united by heredity, it may also call itself a *congeneric nation* (*gens*). Within the general concept of public right, we must therefore include not only *political right* but also *international right* (*ius gentium*). And since the earth's surface is not infinite but limited by its own configuration, these two concepts taken together necessarily lead to the idea of an *international political right* (*ius gentium*) or a *cosmopolitan right* (*ius cosmopoliticum*). Consequently, if even only one of these three possible forms of rightful state lacks a principle which limits external freedom by means of laws, the structure of all the rest must inevitably be undermined, and finally collapse.

§ 44

Experience teaches us the maxim that human beings act in a violent and malevolent manner, and that they tend to fight among themselves until an external coercive legislation supervenes. But it is not experience or any kind of factual knowledge which makes public legal coercion necessary. On the contrary, even if we imagine men to be as benevolent and law-abiding as we please, the *a priori* rational idea of a non-lawful state will still tell us that before a public and legal state is established, individual men, peoples and states can never be secure against acts of violence from one another, since each will have his own right to do *what seems right and good to him*, independently of the opinion of others. Thus the first decision the individual is obliged to make, if he does not wish to renounce all concepts of right, will be to adopt the principle that one must abandon the state of nature in which everyone follows his own desires, and unite with everyone else (with whom he cannot avoid having intercourse) in order to submit to external, public and lawful coercion. He must accordingly enter into a state wherein that which is to be recognised as belonging to each person is allotted to him *by law* and guaranteed to him by an adequate power (which is not his own, but external to him). In other words, he should at all costs enter into a state of civil society.

The state of nature need not necessarily be a *state of injustice* (*iniustus*) merely because those who live in it treat one another solely in terms of the amount of power they possess. But it is a *state devoid of justice* (*status iustitia vacuus*), for if a *dispute* over rights (*ius controversum*) occurs in it, there is no competent judge to pronounce legally valid decisions. Anyone

may thus use force to impel the others to abandon this state for a state of right. For although each individual's *concepts of right* may imply that an external object can be acquired by occupation or by contract, this acquisition is only *provisional* until it has been sanctioned by a public law, since it is not determined by any public (distributive) form of justice and is not guaranteed by any institution empowered to exercise this right.

If no-one were willing to recognise any acquisition as rightful, not even provisionally so, before a civil state had been established, the civil state would itself be impossible. For in relation to their form, the laws relating to property contain exactly the same things in a state of nature as they would prescribe in a civil state, in so far as we conceive of this state only in terms of concepts of pure reason. The only difference is that in the second case, the conditions under which the laws are applied (in accordance with distributive justice) are given. Thus if there were not even a *provisional* system of external property in the state of nature, there would not be any rightful duties in it either, so that there could not be any commandment to abandon it.

§ 45

A state (*civitas*) is a union of an aggregate of men under rightful laws. In so far as these laws are necessary *a priori* and follow automatically from concepts of external right in general (and are not just set up by statute), the form of the state will be that of a state in the absolute sense, i.e. as the idea of what a state ought to be according to pure principles of right. This idea can serve as an internal guide (*norma*) for every actual case where men unite to form a commonwealth.

Every state contains three powers, i.e. the universally united will is made up of three separate persons (*trias politica*). These are the *ruling power* (or sovereignty) in the person of the legislator, the *executive power* in the person of the individual who governs in accordance with the law, and the *judicial power* (which allots to everyone what is his by law) in the person of the judge (*potestas legislatoria*, *rectoria et iudiciaria*). They can be likened to the three propositions in a practical operation of reason: the major premise, which contains the *law* of the sovereign will, the minor premise, which contains the *command* to act in accordance with the law (i.e. the principle of subsumption under the general will), and the conclusion, which contains the *legal decision* (the sentence) as to the rights and wrongs of each particular case.

§ 46

The legislative power can belong only to the united will of the people. For since all right is supposed to emanate from this power, the laws it gives must be absolutely *incapable* of doing anyone an injustice. Now if someone makes dispositions for *another* person, it is always possible that he may thereby do him an injustice, although this is never possible in the case of decisions he makes for himself (for *volenti non fit iniuria*).[7] Thus only the unanimous and combined will of everyone whereby each decides the same for all and all decide the same for each—in other words, the general united will of the people—can legislate.

The members of such a society (*societas civilis*) or state who unite for the purpose of legislating are known as *citizens* (*cives*), and the three rightful attributes which are inseparable from the nature of a citizen as such are as follows: firstly, lawful *freedom* to obey no law other than that to which he has given his consent; secondly, civil *equality* in recognising no-one among the people as superior to himself, unless it be someone whom he is just as morally entitled to bind by law as the other is to bind him; and thirdly, the attribute of civil *independence* which allows him to owe his existence and sustenance not to the arbitrary will of anyone else among the people, but purely to his own rights and powers as a member of the commonwealth (so that he may not, as a civil personality, be represented by anyone else in matters of right).

Fitness to vote is the necessary qualification which every citizen must possess. To be fit to vote, a person must have an independent position among the people. He must therefore be not just a part of the commonwealth, but a member of it, i.e. he must by his own free will actively participate in a community of other people. But this latter quality makes it necessary to distinguish between the *active* and the *passive* citizen, although the latter concept seems to contradict the definition of the concept of a citizen altogether. The following examples may serve to overcome this difficulty. Apprentices to merchants or tradesmen, servants who are not employed by the state, minors (*naturaliter vel civiliter*),[8] women in general and all those who are obliged to depend for their living (i.e. for food and protection) on the offices of others (excluding the state)—all of these people have no civil personality, and their existence is, so to speak, purely inherent. The woodcutter whom I employ on my premises; the blacksmith in India who goes from house to house with his hammer, anvil and bellows to do work with iron, as opposed to the European carpenter or smith who can put the products of his work up for public

sale; the domestic tutor as opposed to the academic, the tithe-holder as opposed to the farmer; and so on—they are all mere auxiliaries to the commonwealth, for they have to receive orders or protection from other individuals, so that they do not possess civil independence.

This dependence upon the will of others and consequent inequality does not, however, in any way conflict with the freedom and equality of all men as *human beings* who together constitute a people. On the contrary, it is only by accepting these conditions that such a people can become a state and enter into a civil constitution. But all are not equally qualified within this constitution to possess the right to vote, i.e. to be citizens and not just subjects among other subjects. For from the fact that as passive members of the state, they can demand to be treated by all others in accordance with laws of natural freedom and equality, it does not follow that they also have a right to influence or organise the state itself as *active* members, or to co-operate in introducing particular laws. Instead, it only means that the positive laws to which the voters agree, of whatever sort they may be, must not be at variance with the natural laws of freedom and with the corresponding equality of all members of the people whereby they are allowed to work their way up from their passive condition to an active one.

§ 47

All of the three powers within the state are dignities, and since they necessarily follow from the general idea of a state as elements essential for its establishment (constitution), they are *political dignities*. They involve a relationship between a universal *sovereign* (who, if considered in the light of laws of freedom, can be none other than the united people itself) and the scattered mass of the people as subjects, i.e. a relationship of *commander* (*imperans*) to him who *obeys* (*subditus*). The act by which the people constitutes a state for itself, or more precisely, the mere idea of such an act (which alone enables us to consider it valid in terms of right), is the *original contract*. By this contract, all members of the people (*omnes et singuli*)[9] give up their external freedom in order to receive it back at once as members of a commonwealth, i.e. of the people regarded as a state (*universi*). And we cannot say that men within a state have sacrificed a *part* of their inborn external freedom for a specific purpose; they have in fact completely abandoned their wild and lawless freedom, in order to find again their entire and undiminished freedom in a state of lawful dependence (i.e. in a state of right), for this dependence is created by their own legislative will.

§ 48

The three powers in the state are related to one another in the following ways. Firstly, as moral persons, they are co-ordinate (*potestates coordinatae*), i.e. each is complementary to the others in forming the complete constitution of the state (*complementum ad sufficientiam*). But secondly, they are also *subordinate* (*subordinatae*) to one another, so that the one cannot usurp any function of the others to which it ministers; for each has its own principle, so that although it issues orders in the quality of a distinct person, it does so under the condition of a superior person's will. Thirdly, the combination of both relationships described above assures every subject of his rights.

It can be said of these powers, considered in their appropriate dignity, that the will of the *legislator* (*legislatoris*) in relation to external property cannot be reproached (i.e. it is irreprehensible), that the executive power of the supreme *ruler* (*summi rectoris*) cannot be opposed (i.e. it is irresistible), and that the verdict of the supreme *judge* (*supremi iudicis*) cannot be altered (i.e. it is without appeal).

§ 49

The *ruler* of the state (*rex*, *princeps*) is that moral or physical person who wields the executive power (*potestas executoria*). He is the *agent* of the state who appoints the magistrates, and who prescribes rules for the people so that each may acquire something or retain what is his by law (i.e. by subsuming individual cases under the law). If the ruler is taken to be a moral person, he is called the *directory* or government. His *commands* to the people, the magistrates, and their superiors (ministers) who are responsible for *administering the state* (*gubernatio*), are not laws but ordinances or decrees; for they depend upon decisions in particular cases and are issued subject to revision. A *government* which were also to make *laws* would be called a *despotic* as opposed to a *patriotic* government. This is not to be confused with a *paternal* government (*regimen paternale*); the latter is the most despotic kind of all, for it treats the citizens like children. A patriotic government (*regimen civitatis et patriae*) means that although the state itself (*civitas*) treats its subjects as if they were members of one family, it also treats them as citizens of the state, i.e. in accordance with laws guaranteeing their own independence. Thus each is responsible for himself and does not depend upon the absolute will of anyone equal or superior to him.

The sovereign of the people (the legislator) cannot therefore also be the

ruler, for the ruler is subject to the law, through which he is consequently beholden to *another* party, i.e. the sovereign. The sovereign may divest the ruler of his power, depose him, or reform his administration, but he cannot *punish* him. (And that is the real meaning of the common English saying that the king—i.e. the supreme executive authority—can do no wrong.) For to punish the ruler would in turn be an act of the executive power, which alone possesses the supreme authority to apply *coercion* in accordance with the law, and such a punishment would mean subjecting the executive power itself to coercion, which is self-contradictory.

Finally, neither the sovereign nor the ruler may *pass judgement*; they can only appoint judges as magistrates. The people judge themselves, through those fellow-citizens whom they have nominated as their representatives, by free election, for each particular juridical act. For a legal decision or sentence is a particular act of public justice (*iustitiae distributivae*) by an administrator of the state (a judge or court of law) upon a subject, i.e. one who belongs to the people, and it does not carry the necessary authority to grant or assign to the subject that which is his. Now since each member of the people is purely passive in his relationship to the supreme authority, it would be possible for either the legislative or the executive power to do him an injustice in any decision it might make in a controversial case involving that which belongs to the subject; for it would not be an action of the people themselves in pronouncing a fellow citizen *guilty* or *not guilty*. After the facts of a legal suit have thus been established, the court of law has the judicial authority to put the law into practice and to ensure, by means of the executive authority, that each person receives his due. Thus only the *people*, albeit through the indirect means of the representatives they have themselves appointed (i.e. the jury), can pass judgement upon anyone of their own number. Besides, it would be beneath the dignity of the head of state to act the part of a judge, i.e. to put himself in a position where he could do some injustice, and thus give cause for an appeal to some higher authority (*a rege male informato ad regem melius informandum*).[10]

There are thus three distinct powers (*potestas legislatoria*, *executoria*, *iudiciaria*) which give the state (*civitas*) its autonomy, that is, which enable the state to establish and maintain itself in accordance with laws of freedom. The *welfare* of the state consists in the union of these powers (*salus reipublicae suprema lex est*).[11] But this welfare must not be understood as synonymous with the *well-being* and *happiness* of the citizens, for it may well be possible to attain these in a more convenient and desirable way within a state of nature (as Rousseau declares), or even under a despotic

regime. On the contrary, the welfare of the state should be seen as that condition in which the constitution most closely approximates to the principles of right; and reason, *by a categorical imperative*, obliges us to strive for its realisation.

General Remarks On the Legal Consequences of the Nature of the Civil Union

A

The origin of the supreme power, for all practical purposes, is *not discoverable* by the people who are subject to it. In other words, the subject *ought not* to indulge in *speculations* about its origin with a view to acting upon them, as if its right to be obeyed were open to doubt (*ius controversum*). For since the people must already be considered as united under a general legislative will before they can pass rightful judgement upon the highest power within the state (*summumim perium*), they cannot and may not pass any judgement other than that which is willed by the current head of state (*summus imperans*). Whether in fact an actual contract originally preceded their submission to the state's authority (*pactum subiectionis civilis*), whether the power came first and the law only appeared after it, or whether they ought to have followed this order—these are completely futile arguments for a people which is already subject to civil law, and they constitute a menace to the state. For if the subject, having delved out the ultimate origin, were then to offer resistance to the authority currently in power, he might by the laws of this authority (i.e. with complete justice) be punished, eliminated or banished as an outlaw (*exlex*). A law which is so sacred (i.e. inviolable) that it is practically a crime even to cast doubt upon it and thus to suspend its effectiveness for even an instant, cannot be thought of as coming from human beings, but from some infallible supreme legislator. That is what is meant by the saying that 'all authority comes from God', which is not a *historical derivation* of the civil constitution, but an idea expressed as a practical principle of reason, requiring men to obey the legislative authority now in power, irrespective of its origin.

From this there follows the proposition that the sovereign of a state has only rights in relation to the subject, and no (coercive) duties. Furthermore, if the organ of the sovereign, the ruler, does anything against the laws (e.g. if he infringes the law of equal distribution of political burdens in taxation, recruiting, or the like), the subject may lodge *complaints* (*gravamina*) about this injustice, but he may not offer resistance.

Indeed, even the actual constitution cannot contain any article which might make it possible for some power within the state to resist or hold in check the supreme executive in cases where he violates the constitutional laws. For a person who is supposed to hold the power of the state in check must have more power than (or at least as much power as) the one who is held in check; and if, as a rightful commander, he ordered the subjects to offer resistance, he would also have to be able to *protect* them and to pass legally valid judgements in each particular case which arose, so that he would have to be able to order resistance publicly. But if this were so, the latter instead of the former would be the supreme executive, which is self-contradictory. In such a case, the sovereign would simultaneously be acting through his minister as a ruler, i.e. despotically, and any attempt to pretend that the people (whose power is purely legislative) can hold the executive in check through their deputies cannot conceal the underlying despotism successfully enough to prevent it becoming apparent in the means which the minister employs. The people, who are represented in parliament by their deputies, have in these men guarantors of their freedom and their rights. These deputies, however, will also be actively interested in themselves and their own families, and they will depend upon the minister to supply them with positions in the army, navy or civil service. And even disregarding the fact that there would have to be a prearranged agreement among the people before any resistance could be publicly proclaimed (although such agreements are impermissible in times of peace), we can thus see that the deputies, instead of offering resistance to the pretensions of the government, will always be ready to play into its hands. A so-called 'moderate' political constitution, as a constitution regulating the internal rights of the state, is therefore an absurdity. Far from harmonising with right, it is merely a clever expedient, designed to make it as easy as possible for the powerful transgressor of popular rights to exercise his arbitrary influence upon the government, disguising this influence as a right of opposition to which the people are entitled.

There can thus be no rightful resistance on the part of the people to the legislative head of state.[12] For a state of right becomes possible only through submission to his universal legislative will. Thus there can be no right of *sedition* (*seditio*), and still less a right of *rebellion* (*rebellio*), least of all a right to *lay hands on* the person of the monarch as an individual, or to take his life on the pretext that he has misused his power (*monarchomachismus sub specie tyrannicidii*). The least attempt to do so is *high treason* (*proditio eminens*), and a traitor of this kind, as one who has tried to *destroy his fatherland* (*parricida*), may be punished with nothing less than death.

The reason why it is the duty of the people to tolerate even what is apparently the most intolerable misuse of supreme power is that it is impossible ever to conceive of their resistance to the supreme legislation as being anything other than unlawful and liable to nullify the entire legal constitution. For before such resistance could be authorised, there would have to be a public law which permitted the people to offer resistance: in other words, the supreme legislation would have to contain a provision to the effect that it is not supreme, so that in one and the same judgement, the people as subjects would be made sovereign over the individual to whom they are subject. This is self-contradictory, and the contradiction is at once obvious if we ask who would act as judge in this dispute between the people and the sovereign (for in terms of right, they are still two distinct moral persons). It then becomes clear that the people would set themselves up as judges of their own cause.*

* It is possible to conceive of a monarch's *dethronement* as a *voluntary* abdication of the crown and a renunciation of his power by giving it back to the people, or as a forfeiture of power, without violation of the monarch's person, whereby he is simply relegated to the rank of a private citizen. And while one might at least appeal to a supposed *right of necessity* (*casus necessitatis*) as an excuse for the people's action in forcibly dethroning the head of state, they can never have the slightest right to punish him for his previous administration. For everything which he previously did in his capacity as head of state must be considered to have been outwardly in keeping with right, and he himself, regarded as the source of all laws, is incapable of any unjust action. But of all the outrages attending a revolution through rebellion, even the *murder* of the monarch is not the worst; for it is still possible to imagine that the people did it because they *feared* that if he were allowed to survive, he might recover his power and mete out to the people the punishment they deserved, in which case their behaviour would not be an act of penal justice but simply an act of self-preservation. It is the formal *execution* of a monarch which must arouse dread in any soul imbued with ideas of human right, and this feeling will recur whenever one thinks of events like the fate of Charles I or Louis XVI. But how are we to explain this feeling? It is not aesthetic (like that sympathy which comes from imagining oneself placed in the sufferer's situation), but rather moral, being our reaction to the complete reversal of all concepts of right. It is seen as a crime which must always remain as such and which can never be effaced (*crimen immortale*, *inexpiabile*), and it might be likened to that sin which the theologians maintain can never be forgiven either in this world or the next. The explanation of this phenomenon of the human psyche would seem to lie in the following reflections concerning our own nature, reflections which also cast some light on the principles of political right.

Every transgression of the law can and must be explained only as the result of a maxim of the criminal whereby he makes a rule out of misdeeds like the one in question. For if we were to explain such transgressions in terms of a motive of the senses, the deed could not have been committed by the criminal as a free being, and he could not consequently be held responsible for it. But it is absolutely impossible to explain how the subject is able to formulate a maxim contrary to the clear prohibition of legislative reason, for only those events which follow the mechanism of nature are capable of explanation. Now the criminal can commit his misdeed either by adopting a maxim based on an assumed objective rule (as if it were universally valid), or merely as an exception to the rule (by exempting himself from it as the occasion requires). In the *latter* case, he merely

Any alteration to a defective political constitution, which may certainly be necessary at times, can thus be carried out only by the sovereign himself through *reform*, but not through revolution by the people. And if any such alteration takes place, it can only affect the *executive power*, not the legislature.

A constitution may be arranged in such a way that the people, through their representatives in parliament, are lawfully able to *resist* the executive power and its representative (the minister). This is known as a limited constitution. But even a constitution of this kind cannot permit any active resistance (i.e. an arbitrary association of the people designed to force the government to adopt a certain mode of action, and hence an attempt by the people themselves to act as the executive power). The people may offer only a *negative* form of resistance, in that they may *refuse* in parliament to comply on all occasions with those demands which the executive says must necessarily be met for administrative purposes. In fact, if the people were to comply on all occasions, it would be a sure indication that they were decadent, their representatives venal, the head of the government a despot through his minister, and the minister himself a traitor to the people.

deviates (albeit deliberately) from the law, for he may at the same time deplore his own transgression and simply wish to get round the law without formally terminating his obedience to it. But in the *former* case, he rejects the authority of the law itself (although he cannot deny its validity in the light of his own reason), and makes it his rule to act in opposition to it; his maxim is thus at variance with the law not simply through *deficiency* (*negative*); it is actually *contrary* to the law (*contrarie*), or, so to speak, diametrically opposed to it as a contradiction (i.e. virtually hostile to it). So far as can be seen, it is impossible for men to commit a crime of such formal and completely futile malice, although no system of morality should omit to consider it, if only as a pure idea representing ultimate evil.

Thus the reason why the thought of the formal execution of a monarch *by his people* inspires us with dread is that, while his *murder* must be regarded merely as an exception to the rule which the people have taken as their maxim, his *execution* must be seen as a complete *reversal* of the principles which govern the relationship between the sovereign and the people. For it amounts to making the people, who owe their existence purely to the legislation of the sovereign, into rulers over the sovereign, thereby brazenly adopting violence as a deliberate principle and exalting it above the most sacred canons of right. And this, like an abyss which engulfs everything beyond hope of return, is an act of suicide by the state, and it would seem to be a crime for which there can be no atonement. There are therefore grounds for assuming that agreements to perform such executions do not really proceed from any supposed principle of right, but from the people's fear of revenge from the state if it should ever recover, and that such formalities are introduced only in order to give the deed an air of penal justice and of *rightful procedure* (with which murder, on the other hand, could not be reconciled). But this disguise is futile, since any such presumption on the part of the people is more atrocious than murder itself, for it in fact embodies a principle which must make it impossible for an overthrown state to be reconstituted.

Furthermore, if a revolution has succeeded and a new constitution has been established, the unlawfulness of its origin and success cannot free the subjects from the obligation to accommodate themselves as good citizens to the new order of things, and they cannot refuse to obey in an honest way the authority now in power. The dethroned monarch, if he survives such a revolution, cannot be taken to task for his earlier management of the state, far less punished for it. This applies so long as he has retired to the status of a citizen, preferring his own peace and that of the state to the hazards of abandoning his position and embarking as a pretender on the enterprise of restoration, whether through secretly instigated counter-revolution or the support of other powers. But if he prefers the latter course, his right to his property remains intact, since the rebellion which deprived him of it was unjust. It must, however, be left to international right to decide whether other powers have the right to join in an association for the benefit of this fallen monarch simply in order that the people's crime should not go unpunished or remain as a scandal in the eyes of other states, and whether they are entitled or called upon to overthrow a constitution established in any other state by revolution, and to restore the old one by forcible means.

B

Can the sovereign be regarded as the supreme proprietor of the land, or must he be regarded only as one who exercises supreme command over the people by means of laws? Since the land is the ultimate condition under which it is alone possible to possess external objects as one's own, while the possession and use of such objects in turn constitutes the primary hereditary right, all such rights must be derived from the sovereign as *lord of the land*, or rather as the supreme proprietor (*dominus territorii*). The people, as a mass of subjects, also belong to him (i.e. they are his people), although they do not belong to him as an owner by the right of property, but as a supreme commander by the right of persons.

But this supreme ownership is only an idea of the civil union, designed to represent through concepts of right the need to unite the private property of all members of the people under a universal public owner; for this makes it possible to define particular ownership by means of the necessary formal principle of *distribution* (division of the land), rather than by principles of *aggregation* (which proceeds empirically from the parts to the whole). The principles of right require that the supreme proprietor should not possess any land as private property (otherwise he would become a private person), for all land belongs exclusively to the people

(not collectively, but distributively). Nomadic peoples, however, would be an exception to this rule, for they do not have any private property in the shape of land. Thus the supreme commander cannot own any *domains*, i.e. land reserved for his private use or for the maintenance of his court. For since the extent of his lands would then depend on his own discretion, the state would run the risk of finding all landed property in the hands of the government, and all the subjects would be treated as serfs bound to the soil (*glebae adscripti*) or holders of what always remained the property of someone else; they would consequently appear devoid of all freedom (*servi*). One can thus say of a lord of the land that he *possesses nothing* of his own (except his own person). For if he owned something on equal terms with anyone else in the state, he could conceivably come into conflict with this other person without there being any judge to settle it. But it can also be said that he *possesses everything*, because he has the right to exercise command over the people, to whom all external objects (*divisim*) belong, and to give each person whatever is his due.

It follows from this that there can be no corporation, class or order within the state which may as an owner hand down land indefinitely, by appropriate statutes, for the exclusive use of subsequent generations. The state can at all times repeal such statutes, with the one condition that it must compensate those still alive. The *order of knights* (either as a corporation or simply as a class of eminently distinguished individual persons) and the *order of the clergy* (i.e. the church) can never acquire ownership of land to pass on to their successors by virtue of the privileges with which they have been favoured; they may acquire only the temporary use of it. Either the land tenure of the military orders or the estates of the church can be suspended without hesitation, so long as the above-named condition is fulfilled. This could happen to the military orders if public opinion no longer wished to use *military honour* as a means of protecting the state against indifference in matters of defence, or alternatively to the church if the public no longer wished to use masses for the dead, prayers and a host of men employed as spiritual advisers as means of urging on the citizens to preserve them from eternal fire. Those who are affected by such a reform cannot complain of being expropriated, for *public opinion* was the only ground on which their previous possessions were based, and they remained legitimate so long as this opinion remained constant. But as soon as public opinion changes (above all in the judgement of those who, by virtue of their merit, have the strongest claim to lead it), the pretended ownership must cease as if by public appeal to the state (*a rege male informato ad regem melius informandum*).[13]

From this basic right of ownership as it was originally acquired, the supreme commander (as the supreme proprietor or lord of the land) derives his right to *tax* the private landowners, i.e. to impose levies in the shape of land taxes, excises and customs duties, or to require work such as military service. But it must be done in such a way that the people tax themselves, for this alone would be in keeping with laws of right. It is therefore done through the corps of deputies of the people, although it may be permissible to impose an enforced loan (i.e. a loan not provided for in the law as it has hitherto stood) by the right of majesty in cases where the state is threatened with dissolution.

From the same source, the rights of economic and financial administration and of the police force are derived. The police look after public *security*, *convenience* and also *propriety*; for it makes it much easier for the government to perform its business of governing the people by laws if the public sense of propriety (*sensus decori*—a negative taste) is not dulled by affronts to the moral sense such as begging, uproar in the streets, offensive smells and public prostitution (*venus volgivaga*).

A third kind of right is necessary for the preservation of the state—the right of *inspection* (*ius inspectionis*). This requires that no association which could influence the *public* welfare of society (*publicum*), such as an association of political or religious *illuminati*, may be kept secret; at the request of the police, it must not refuse to disclose its constitution. But only in cases of emergency may the police search anyone's private residence, and in each case, they must be authorised to do so by a higher authority.

C

Indirectly, i.e. in so far as he takes the duty of the people upon himself, the supreme commander has the right to impose taxes upon the people for their own preservation, e.g. for the *care of the poor*, for *foundling hospitals* and *church activities*, or for what are otherwise known as charitable or pious institutions.

For the general will of the people has united to form a society which must constantly maintain itself, and to this end, it has subjected itself to the internal power of the state so as to preserve those members of the society who cannot do so themselves. The nature of the state thus justifies the government in compelling prosperous citizens to provide the means of preserving those who are unable to provide themselves with even the most rudimentary necessities of nature. For since their existence itself is an act of submission to the protection of the commonwealth and to the

care it must give them to enable them to live, they have committed themselves in such a way that the state has a right to make them contribute their share to maintaining their fellow citizens. This may be done by taxing the citizens' property or their commercial transactions, or by instituting 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. The contributions should not be purely *voluntary* (for we are here concerned only with the *rights* of the state as against the subjects), they must in fact be compulsory political impositions. Some voluntary contributions such as lotteries, which are made from profit-seeking motives, should not be permitted, since they create greater than usual numbers of poor who become a danger to public property.

It might at this point be asked whether the poor ought to be provided for by *current contributions* so that each generation would support its own members, or by gradually accumulated *capital funds* and *pious foundations* at large (such as widows' homes, hospitals, etc.). Funds must certainly not be raised by begging, which has close affinities with robbery, but by lawful taxation. The first arrangement (that of current contributions) must be considered the only one appropriate to the rights of the state, for no-one who wishes to be sure of his livelihood can be exempt from it. These contributions increase with the numbers of poor, and they do not make poverty a means of support for the indolent (as is to be feared in the case of pious foundations), so that the government need not impose an *unjust* burden on the people.

As for the support of children abandoned through need or through shame (and who may even be murdered for such reasons), the state has a right to make it a duty for the people not to let them perish knowingly, even although they are an unwelcome increase to the state's population. But whether this can justly be done by taxing bachelors of both sexes (i.e. single persons of *means*) as a class which is partly responsible for the situation, using the proceeds to set up foundling hospitals, or whether any other method is preferable (although it is scarcely likely that any means of preventing the evil can be found)—this is a problem which has not yet been successfully solved without prejudice to right or to morality.

The *church*, as an institution for public *divine service* among the people whose opinions or convictions created it, must be carefully distinguished from religion, which is an inward attitude of mind quite outside the sphere of influence of the civil power. As such, the church fulfils a genuine political necessity, for it enables the people to regard themselves as subjects of an *invisible* supreme power to which they must pay homage and which

may often come into very unequal conflict with the civil power. The state certainly has no right to legislate on the internal constitution of the church, to arrange church affairs to suit its own advantage, or to issue directions and commands to the people in matters of faith and liturgical forms (*ritus*); for all this must be left entirely to the teachers and supervisors whom the people have themselves elected. It has only a *negative* right to prevent the public teachers of religion from exercising any influence on the *visible* political commonwealth such as might threaten the public peace, and to ensure that internal conflicts within the church or conflicts between different churches do not endanger civil concord. That is, it has a right like that of the police. It would be *beneath the dignity* of the ruling authority to interfere in church affairs by requiring that a church should have a certain belief and by laying down which belief it should have, or by demanding that it should preserve this belief without alteration and never attempt to reform itself. For by becoming involved in a scholastic quarrel, the supreme power would be placing itself on an equal footing with the subjects and the monarch setting himself up as a priest. The subjects may tell him outright that he does not understand the affairs in question, especially if he attempts to prohibit internal reforms, for anything which the entire people cannot decide for itself cannot be decided for the people by the legislator either. But no people can decide never to make further progress in opinions relating to its faith (i.e. in enlightenment), nor can it decide never to undertake reforms in affairs of the church, for this would be contrary to humanity as represented in the person of the people, hence also to the people's highest rights. Thus no ruling authority may make such a decision for the people. But for precisely the same reason, the onus of paying the costs of maintaining the church cannot fall upon the state; they must be met by that portion of the people which follows one or other particular creed, i.e. by the congregation.

D

The rights of the supreme commander in the state also include (1) the distribution of *offices* as jobs involving remuneration; (2) the distribution of *dignities*, i.e. distinctions of rank without remuneration, based purely on honour, giving rise to a division between the superior or commanding class and the inferior class which, although free and bound only by public law, is predetermined to obey the former; (3) *penal right* (over and above the more or less benevolent rights already described).

If we consider civil offices, we are faced with the question of whether

the sovereign has a right to take away an office at his discretion without any misdemeanour on the part of the person to whom he had given it. I reply in the negative. For a decision which the united will of the people would never make about a civil official cannot be made by the head of state either. Now the people (who will have to bear the costs incurred in appointing an official) will undoubtedly wish this official to be fully qualified to perform the work he is given. But he cannot be fully qualified unless he has been able to devote a sufficient period to extended preparation and training, during which period he will have sacrificed the time he could have spent learning some other profession as a means of supporting himself. Thus if people were dismissed without reason, the office would as a rule be filled with individuals who had not acquired the necessary skill or achieved through practice a mature faculty of judgement. But this is contrary to the intention of the state; and besides, the state also requires that every individual should be able to rise from a lower office to higher ones (which would otherwise fall into the hands of utterly unsuitable persons), and hence to count on receiving a livelihood throughout his life.

As for civil *dignities*, the *nobility* includes not only those positions to which an office is attached, but also those which make the holder a member of a higher class, even if he performs no particular services. The nobility is distinct from the civil status occupied by the people, for it is inherited by the male descendants. Through the latter, it can also be conferred upon female relatives of ignoble birth, although a woman of noble birth cannot in turn confer noble status upon a husband who was not born a nobleman, but must herself revert to the purely civil status of the people. The question which now arises is whether the sovereign is entitled to create a nobility as a *hereditary* class between himself and the rest of the citizens. The answer will not, however, depend upon whether it suits the sovereign's policies for furthering his own or the people's advantage, but simply upon whether it is in keeping with right that anyone should have above him a class of persons who, although themselves subjects, will in relation to the people be commanders by birth, or at least possess greater privileges than they do.

As before, the answer to this question will be found in the principle that anything which the people (i.e. the entire mass of subjects) cannot decide for themselves and their fellows cannot be decided for the people by the sovereign either. Now a *hereditary* nobility is a distinction bestowed before it is earned, and since it gives no grounds for hoping that it will be earned, it is wholly unreal and fanciful. For if an ancestor has earned his position

through merit, he still cannot pass on his merit to his descendants. On the contrary, the latter must always earn it themselves, for nature is not such that the talent and will which enable a person to serve the state meritoriously can be *inherited*. Now since it cannot be assumed of anyone that he will throw his freedom away, it is impossible for the universal will of the people to agree to so groundless a prerogative; thus the sovereign cannot make it valid either.

It may be, however, that an anomaly of this sort has crept into the mechanism of government in past ages (as with the feudal system, which was almost entirely geared to making war), so that some subjects claim that they are more than citizens and are entitled by birth to official posts (a hereditary professorship, let us say). In this case, the state can make good its mistake of unrightfully bestowing hereditary privileges only by a gradual process, by allowing the posts to fall vacant and omitting to fill them again. The state thus has a provisional right to allow such dignities to persist as titles until public opinion itself realises that the hierarchy of sovereign, nobility and people should give way to the more natural division of sovereign and people.

No human being in the state can be totally without a position of dignity, for each at least has that of a citizen, unless he has forfeited it through some *crime* of his own doing. If the latter is the case, he may indeed be kept alive, but he will be made a mere instrument of another person (either the state or another citizen). Anyone in this position is a *bondsman or slave* (*servus in sensu stricto*) and is part of the *property* (*dominium*) of someone else, who is therefore not just his *master* (*herus*), but also his *owner* (*dominus*); the latter may accordingly make him over to anyone else as a chattel or use him as he wishes (except for infamous purposes), and he may *dispose of* his powers, although not of his life and limbs, at his own discretion. No-one can enter by contract into such a state of dependence and thus cease to be a person; for only as a person is he able to make a contract. Now it may seem that in return for payment, food or protection, a man can bind himself to another person by a contract of hire (*locatio conductio*) whereby he must perform certain services of a permissible nature but of an *indeterminate amount*, and that this will merely make him a *servant* (*subiectus*) but not a *slave* (*servus*). But this is an illusion. For if the master is authorised to use the powers of his servant as he pleases, he may (as happens with the negroes in the West Indies) exhaust him to the point of death or despair, and the servant will really have made himself over to his master as property, which is impossible. The servant can thus hire himself out only for work which is determinate both in nature and in

quantity, either as a day labourer or a resident servant. In the latter case, he will not receive a wage, but will be allowed to use his master's land; and he will fulfil his side of the contract of tenure partly by serving on this land and partly by paying definite sums (i.e. a rent) for his own use of it. He can do this without making himself a *serf of the soil* (*glebae adscriptus*) and thereby forfeiting his personality, and he may enter into a temporary or hereditary leasehold. He may, however, have become a *personal* subject through some misdemeanour he has committed, but he cannot *inherit* any such position of servitude, for he can acquire this status only through his own guilt. And it is in no way more permissible for anyone to claim ownership of a bondsman's offspring on account of the costs incurred in educating him, for education is an absolute natural duty of parents, and if the parents' status is servile, it is in turn the duty of the masters, since the latter cannot take possession of their bondsmen without also taking over their duties.

E

The Right of Punishment and the Right of Pardon

I

The *right of punishment* is the right of the commander as against the subject to inflict pain on him for some crime he has committed. Thus the supreme authority in the state cannot be punished; a subject may at most withdraw from his rule. An infringement of the public law which renders the guilty person incapable of citizenship is known as a *crime* (*crimen*) in the absolute sense, or alternatively, as a public crime (*crimen publicum*). The former (a private crime) will be dealt with by a court of civil justice, the latter (a public crime) by a court of criminal justice. *Embezzlement* (i.e. misappropriation of money or goods entrusted to someone for commercial purposes) and fraudulent dealings in buying and selling under the eyes of another party are private crimes. On the other hand, counterfeiting money or bills of exchange, theft, robbery, and the like are public crimes, because they endanger the commonwealth and not merely an individual person. Such crimes might in turn be divided into those of *base* motivation (*indolis abiectae*) and those of *violent* motivation (*indolis violentae*).

Judicial punishment (*poena forensis*) should be distinguished from *natural punishment* (*poena naturalis*); the latter is found where vice punishes itself, and is thus no concern of the legislator. Judicial punishment can never be merely a means of furthering some extraneous good for the criminal himself or for civil society, but must always be imposed on

the criminal simply *because he has committed a crime*. For a human being can never be manipulated just as a means of realising someone else's intentions, and is not to be confused with the objects of the law of kind. He is protected against this by his inherent personality, although he may well be sentenced to forfeit his civil personality. He must first be found worthy of punishment before any thought is given to the possible utility which he or his fellow citizens might derive from his punishment. The penal law is a categorical imperative, and woe betide anyone who winds his way through the labyrinth of the theory of happiness in search of some possible advantage to be gained by releasing the criminal from his punishment or from any part of it, or who acts in the spirit of the pharisaical saying: 'It is better that one man should die than that the whole people should go to ruin.' For if justice perishes, there is no further point in men living on earth. What then are we to think of the proposal that the life of a condemned criminal should be spared if he agrees to let dangerous experiments be carried out on him in order that the doctors may gain new information of value to the commonwealth, and is fortunate enough to survive? A court of justice would dismiss with contempt any medical institution which made such a proposal; for justice ceases to be justice if it can be bought at a price.

But what kind and what degree of punishment does public justice take as its principle and norm? None other than the principle of equality in the movement of the pointer on the scales of justice, the principle of not inclining to one side more than to the other. Thus any undeserved evil which you do to someone else among the people is an evil done to yourself. If you slander him, you slander yourself; if you rob him, you rob yourself; if you strike him, you strike yourself; and if you kill him, you kill yourself. But it should be understood that only the *law of retribution* (*ius talionis*) can determine exactly what quality and quantity of punishment is required, and it must do so in court, not within your private judgement. All other criteria are inconstant; they cannot be reconciled with the findings of pure and strict justice, because they introduce other outside considerations.

Now it may well appear that class differences do not allow for the principle of retribution whereby like is exchanged for like. But although it is impossible according to the letter, it may still remain valid in terms of effect if we consider the sensibilities of the more distinguished classes. Thus a monetary fine on account of a verbal injury, for example, bears no relation to the actual offence, for anyone who has plenty of money could allow himself such an offence whenever he pleased. But the injured

honour of one individual might well be closely matched by the wounded pride of the other, as would happen if the latter were compelled by judgement and right not only to apologise publicly, but also, let us say, to kiss the hand of the former, even though he were of lower station. The same would apply if a high-ranking individual convicted of violence were sentenced, in return for the blows he had dealt an inferior but guiltless citizen, not only to make an apology but also to undergo a period of painful solitary confinement; for apart from the resultant discomfort, the perpetrator's vanity would also be painfully affected, and this humiliation would provide an appropriate repayment of like with like.

But what does it mean to say: 'If you rob him, you rob yourself'? Anyone who steals makes the property of everyone else insecure; by the right of retribution, he thus robs himself of the security of all possible ownership. He has nothing and he cannot acquire anything, but he still wishes to live, and this is possible only if others provide him with sustenance. But since the state will not do this for nothing, he must place his powers at the state's disposal for whatever tasks it chooses (i.e. hard labour), and he is relegated to the status of a slave for a certain period or even permanently, according to circumstances. But if he has committed murder, he must *die*. In this case, no possible substitute can satisfy justice. For there is no *parallel* between death and even the most miserable life, so that there is no equality of crime and retribution unless the perpetrator is judicially put to death (at all events without any maltreatment which might make humanity an object of horror in the person of the sufferer). Even if civil society were to dissolve itself with the consent of all its members (for example, if a people who inhabited an island decided to separate and to disperse to other parts of the world), the last murderer in prison would first have to be executed in order that each should receive his deserts and that the people should not bear the guilt of a capital crime through failing to insist on its punishment; for if they do not do so, they can be regarded as accomplices in the public violation of justice.

This equality of punishments is therefore possible only if the judge passes the death sentence in accordance with the strict law of retribution. It will be a sign of such equality if the death sentence is pronounced on all criminals in proportion to their inner *malice* (even if the crime in question is not murder, but some other crime against the state which can only be effaced by death). Let us take the case of the last Scottish rebellion, in which various participants (such as Balmerino[14] and others) considered that they were only fulfilling a duty they owed to the house of Stuart, while others were furthering their personal aims. If the supreme court

had passed judgement to the effect that each should be free to choose between death and penal servitude, I say that the honourable man would choose death and the scoundrel penal servitude; for such is the nature of man. The former knows something which he values more highly than life itself, namely *honour*; but the latter considers even a life of disgrace better than no life at all (*animam praeferre pudori*—Juvenal).[15] Now the first is unquestionably less culpable than the second, so that if they are both condemned to death, they each receive punishment proportionate to their deserts; for the first will be punished mildly in relation to his own sensibility, and the second severely in relation to his. On the other hand, if both were sentenced to penal servitude, the first would be punished too severely, and the second too mildly for the degree of his baseness. Thus in sentencing a number of criminals who have joined in a conspiracy, the most balanced solution in terms of public justice is once again the *death penalty*. Besides, no-one has ever heard of a criminal condemned to death for murder complaining that the punishment was excessive and therefore unjust; everyone would laugh in his face if he said so. Otherwise, it would have to be assumed that although no injustice is done to the criminal according to the law, the legislative power in the state is not authorised to impose this sort of penalty, and that if it does so, it is in contradiction with itself.

All murderers, whether they have themselves done the deed, ordered it to be done, or acted as accomplices, must suffer the death penalty. This is what justice, as the idea of judicial power, wills in accordance with universal laws of *a priori* origin. But the number of accomplices (*correi*) in such a deed might be so great that the state, in order to rid itself of such criminals, would soon reach the stage of having no more subjects, and yet it would not wish to dissolve itself and revert to the state of nature, for the latter, devoid of all external justice, is much worse still. And above all, the state will not wish to blunt the people's feelings by a spectacle of mass slaughter. The sovereign must therefore have the power to act as judge himself in such an emergency (*casus necessitatis*), and to pass a sentence which imposes a penalty other than death on the criminals so that the community of people may be preserved (e.g. a sentence of deportation). This procedure, however, may not be adopted in consequence of any public law, but only as a peremptory order, i.e. an act based on the right of majesty; and this, as a right of mercy, may only be exercised in isolated cases.

But the Marchese Beccaria,[16] from motives of compassionate sentimentality and affected humanity (*compassibilitas*), has set up in opposition

to this view his claim that capital punishment is always *contrary to right*. For he maintains that it could not have been contained in the original civil contract, since this would have compelled each individual to agree to forfeit his life if he were to murder anyone else (among his own people), and such an agreement is impossible because no-one can dispose of his own life.

This is pure sophistry and distortion of the principles of right. For a person does not suffer punishment because he wished to have *the punishment itself*, but because he wished to commit a *punishable deed*. After all, it is not a punishment if a person is subjected to something which he wishes, and it is impossible to *wish* to be punished. To say: 'I wish to be punished if I murder anyone' means nothing more than 'I submit along with the rest of the people to the laws, which, if there are criminals among the people, will naturally include penal laws.' As a co-legislator who dictates the *penal law*, I cannot possibly be the same person who, as a subject, is punished in accordance with the law. For in the latter capacity, i.e. as a criminal, I cannot possibly have a say in the legislation, since the legislator is holy. Thus if I promulgate a penal law against myself as a criminal, it is the pure rightful and legislative reason within me (*homo noumenon*) which subjects me as a person capable of crime, hence as one person (*homo phaenomenon*) along with all the others within the civil union, to the penal law. In other words, it is not the people (i.e. all individuals) who dictate the death penalty, but the court of public justice, i.e. someone other than the criminal; and the social contract does not contain a promise by anyone to let himself be punished and hence to dispose of himself and his own life. For if the authority to impose punishments had to depend upon a *promise* on the part of the malefactor to *will* his own punishment, it would also have to be left to him to declare himself culpable, and the criminal would thus be his own judge. The cardinal error (πρῶτον ψεῦδος) in this sophistry consists in regarding the criminal's own judgement that he must forfeit his life (a judgement which one must necessarily attribute to his *reason*) as a decision on the part of his *will* to take his own life: this amounts to representing the execution of right and the adjudication of right as united in one and the same person.

There are, however, two further crimes worthy of the death penalty, but it remains doubtful whether the *legislature* has the authority to impose this penalty upon them. Both of them are actuated by a sense of honour, but the first involves *sexual honour* whereas the second involves *military honour*. Both are true forms of honour, and it is a duty of the two classes of people involved (women and soldiers respectively) to uphold them.

The first crime is *infanticide* by the mother (*infanticidium maternale*), and the second is *murder of a comrade in arms* (*commilitonicidium*) in a duel. No legislation can remove the disgrace of an illegitimate birth; nor can it efface the stain which is left when suspicions of cowardice fall upon a subordinate officer who does not react to a humiliating encounter with a vigour surpassing the fear of death. It therefore appears that in cases of this kind, men find themselves in a state of nature. And while their *killing* of each other (*homicidium*) should not then be called *murder* (*homicidium dolosum*), it still remains punishable, although the supreme power cannot punish it with death. The child born outside marriage is outside the law (for marriage is a lawful institution), and it is therefore also outside the protection of the law. It has found its way into the commonwealth by stealth, so to speak, like contraband goods, so that the commonwealth can ignore its existence and hence also its destruction, for it ought not to have come into existence at all in this way; and no decree can remove the mother's disgrace if the illegitimate birth becomes known. In the same way, if a military man with the rank of a junior officer is offered an affront, he finds himself compelled by the universal opinion of his equals to seek satisfaction and to punish the offender, although not through the workings of the law in a court of justice, but by means of a duel as in the state of nature. He thereby risks losing his own life in order to prove his martial courage, on which the honour of his profession is essentially based; and even if it involves *killing* his opponent, the deed may not actually be called *murder* (*homicidium dolosum*), because it occurred in a public conflict to which both parties (however unwillingly) consented.

What, then, are the rights and wrongs of these two cases in so far as they are subject to criminal justice? Penal justice is here faced with a very difficult problem, for it must either declare that the concept of honour, which in the present case is no mere illusion, is null and void before the law and ought to be punished by death, or it must exempt the crimes in question from the death penalty. And while the first course would be cruel, the second would be over-indulgent. The solution to this dilemma is that the categorical imperative of penal justice (whereby the unlawful killing of another person must be punished by death) remains in force, although the legislation itself (hence also the civil constitution), so long as it remains barbarous and undeveloped, is to blame for the fact that the motives of honour obeyed by the people are subjectively incompatible with those measures which are objectively suited to their realisation, so that public justice as dispensed by the state is *injustice* in the eyes of the people.

II

The *right of pardon* (*ius aggratiandi*), whereby the criminal's punishment is either mitigated or completely remitted, is certainly the most equivocal of all the rights exercised by the sovereign; for while it may confirm the aura of his majesty, it can at the same time do a great deal of injustice. In cases involving crimes of the subjects against one another, the sovereign should on no account exercise this right, for exemption from punishment (*impunitas criminis*) in such cases means doing the greatest injustice to the subjects. Thus he can only make use of it when *he himself* has been done an injury (*crimen laesae maiestatis*), and he may not do so even then if a remittance of punishment might endanger the security of the people. This right is the only one which deserves to be called a right of majesty.

On the Relationship of the Citizen to his own and other Countries with Regard to Right

§ 50

A country (*territorium*) whose inhabitants are fellow citizens of one and the same commonwealth by the very nature of the constitution (i.e. without having to exercise any particular right, so that they are already citizens by birth) is called the *fatherland* of these citizens. Lands in which this condition of citizenship does not apply to them are *foreign countries*. And a country which is part of a wider system of government is called a *province* (in the sense in which the Romans used this word); since it is not, however, an integrated part of an empire (*imperii*) whose inhabitants are all fellow-citizens, but is only a *possession* and *subordinate realm* of the empire, it must respect the territory of the ruling state as its *motherland* (*regio domina*).

1. The *subject* (considered also as a citizen) has the right of emigration, for the state could not hold him back as it might a piece of property. But he can take only his mobile belongings with him; he cannot take his fixed possessions, as would indeed be the case if he were authorised to sell the land he had hitherto possessed and to take the money he received for it with him.

2. The *lord of the land* has the right to encourage the immigration and settlement of foreigners (colonists), even though the native subjects should look askance at it. But he must see to it that private ownership of the land by the native subjects is not diminished.

3. If a subject should commit a crime which makes it a danger to the state for him to associate with his fellow citizens, the lord of the land has

the right to *banish* him to a foreign province where he will not share any of the rights of a citizen, i.e. he has a right to *deport* him.

4. The lord indeed has the right to exile him completely (*ius exilii*), to send him out into the world at large, i.e. to foreign countries (for which the old German word was 'Elend', the same word as that denoting misery). And since the lord of the land thereby withdraws his protection from him, it is tantamount to making him an outlaw within his own frontiers.

§ 51

The three powers within the state, which emerge from the general concept of a *commonwealth* (*res publica latius dicta*), are simply so many relationships within the united will of the people (which is derived *a priori* from reason itself), and are likewise a pure idea of the supreme head of state, which also has objective and practical reality. But this head of state (the sovereign) is only an abstraction (representing the entire people) so long as there is no physical person to represent the highest power in the state and to make this idea influence the will of the people. Now the relationship between the head of state and the people can be envisaged in three different ways. Either *one* person within the state will rule over everyone, or *several* persons of equal rank will unite to rule over all others, or *all* will rule collectively over each (hence also over themselves). That is, the *form of the state* will either be *autocratic*, *aristocratic*, or *democratic*. (The expression 'monarchic' instead of 'autocratic' does not properly cover the concept here intended, for a *monarch* is one who has the *highest* power, while an *autocrat* or absolute ruler is one who has *all* the power; the latter is the sovereign, whereas the former merely represents him.)

It can readily be seen that the autocratic form is the *simplest* form of state, for it involves only a relationship between one individual (the king) and the people, and the legislator is a single person. An aristocratic state is *composite*, involving two kinds of relationship: that of the aristocrats (as legislators) towards one another, thereby constituting the sovereign, and then the relationship between this sovereign and the people. But the democratic form is the most composite of all. For it must first unite the will of all in order to make a people; it must then unite the will of the citizens to make a commonwealth; and finally, it must unite their will to place at the head of the commonwealth a sovereign, who is simply this united will itself.* As far as the actual *manipulation* of right within the

* I make no mention here of perversions of these forms by the interference of unauthorised rulers (as in *oligarchy* and *ochlocracy*), nor of so-called *mixed* constitutions, since this would go beyond the scope of the present work.

state is concerned, the simplest form is of course also the best, but in relation to *right* itself, it is the most dangerous from the point of view of the people, for it is extremely conducive to despotism. Simplification is certainly the most rational maxim for the mechanical process of uniting the people by means of coercive laws, so long as all the people are passive and obedient to a single individual above them—but this would mean that no subjects could be *citizens*. Perhaps, however, the people are supposed to content themselves with the consolation that monarchy (in this case, autocracy) is the best political constitution *if the monarch is a good one* (i.e. if he has not only the will but also the necessary insight to be one). But this saying is a tautology, for it merely means that the best constitution is that *by which* the administrator of the state is made into the best ruler, i.e. that the best constitution is that which is best.

§ 52

It is futile to hunt for *historical documentation* of the origins of this mechanism. That is, we cannot reach back to the time at which civil society first emerged (for savages do not set up any formal instruments in submitting themselves to the law, and it can easily be gathered from the nature of uncivilised man that they must have initially used violent means). But it would be quite culpable to undertake such researches with a view to forcibly changing the constitution at present in existence. For this sort of change could only be effected by the people by means of revolutionary conspiracy, and not by the legislature. But revolution under an already existing constitution means the destruction of all relationships governed by civil right, and thus of right altogether. And this is not a change but a dissolution of the civil constitution; and the transition to a better one would not then be a metamorphosis but a palingenesis, for it would require a new social contract on which the previous one (which is now dissolved) could have no influence. But it must still be possible for the sovereign to alter the existing constitution if it cannot readily be reconciled with the idea of the original contract, and yet in so doing to leave untouched that basic form which is essential if the people are to constitute a state. This alteration cannot be such that the state abandons one of the three fundamental forms and reconstitutes itself in accordance with one of the two remaining ones, as would happen, for example, if the aristocrats agreed to submit to an autocracy or to disband and create a democracy or vice versa. This would imply that it depended on the sovereign's own free choice and discretion to subject the people to whatever constitution he wished. For even if the sovereign decided to go over

to democracy, he might still be doing the people an injustice; for they might themselves detest this form of constitution and find one of the two others more congenial.

The three forms of state are merely the *letter* (*littera*) of the original legislation within civil society, and they may therefore remain as part of the mechanism of the constitution for as long as they are considered necessary by old and long established custom (i.e. purely subjectively). But the *spirit* of the original contract (*anima pacti originarii*) contains an obligation on the part of the constitutive power to make the *mode of government* conform to the original idea, and thus to alter the mode of government by a gradual and continuous process (if it cannot be done at once) until it accords *in its effects* with the only rightful constitution, that of a pure republic. The old empirical (and statutory) forms, which serve only to effect the *subjection* of the people, should accordingly resolve themselves into the original (rational) form which alone makes *freedom* the principle and indeed the condition of all *coercion*. For coercion is required for a just political constitution in the truest sense, and this will eventually be realised in letter as well as in spirit.

This, then, is the only lasting political constitution in which the *law* is the sole ruler, independent of all particular persons; it is the ultimate end of all public right, and the only condition in which each individual can be given his due *peremptorily*. But as long as the various forms of the state are supposed to be represented literally by an equivalent number of distinct moral persons invested with supreme power, only a *provisional* internal right instead of an absolute condition of right can obtain within civil society.

Any true republic, however, is and cannot be anything other than a *representative system* of the people whereby the people's rights are looked after on their behalf by deputies who represent the united will of the citizens. But as soon as a head of state in person (whether this head of state be a king, a nobility, or the whole populace as a democratic association) also allows himself to be represented, the united people then does not merely represent the sovereign, but actually *is* the sovereign itself. For the supreme power originally rests with the people, and all the rights of individuals as mere subjects (and particularly as state officials) must be derived from this supreme power. Once it has been established, the republic will therefore no longer need to release the reins of government from its own hands and to give them back to those who previously held them, for they might then destroy all the new institutions again by their absolute and arbitrary will.

It was thus a great error of judgement on the part of a certain powerful ruler in our own times when he tried to relieve himself of the embarrassment of large national debts by leaving it to the people to assume and distribute this burden at their own discretion.[17] It was thus natural that the people should acquire legislative powers not only in matters of taxation but also in matters of government, for they had to ensure that the government would incur no new debts by extravagance or by war. The monarch's ruling authority thus disappeared completely; for it was not merely suspended but actually passed over to the people, to whose legislative will the property of every subject was now submitted. Nor is it possible to say that we must postulate a tacit yet contractual promise on the part of the national assembly not to take over the sovereignty, but only to administer the sovereign's business and to hand back the reins of government to the monarch after the business had been completed. For a contract of this kind would in itself be null and void. The right of the supreme legislation in the commonwealth is not alienable; on the contrary, it is the most personal right of all. Whoever possesses it can only exercise control over the people through the people's collective will, but not over the collective will itself, the original foundation of all public contracts. A contract which obliged the people to give back their authority would not be in accord with the people's function as a legislative power. And this, according to the proposition that no man can serve two masters, is self-contradictory.

SECTION II: INTERNATIONAL RIGHT

§ 53

The human beings who make up a nation can, as natives of the country, be represented as analogous to descendants from a common ancestry (*congeniti*) even if this is not in fact the case. But in an intellectual sense or for the purposes of right, they can be thought of as the offspring of a common mother (the republic), constituting, as it were, a single family (*gens*, *natio*) whose members (the citizens) are all equal by birth. These citizens will not intermix with any neighbouring people who live in a state of nature, but will consider them ignoble, even though such savages for their own part may regard themselves as superior on account of the lawless freedom they have chosen. The latter likewise constitute national groups, but they do not constitute states.

What we are now about to consider under the name of international right or the right of nations is the right of *states* in relation to one another

(although it is not strictly correct to speak, as we usually do, of the *right of nations*; it should rather be called the *right of states—ius publicum civitatum*). The situation in question is that in which one state, as a moral person, is considered as existing in a state of nature in relation to another state, hence in a condition of constant war. International right is thus concerned partly with the right to make war, partly with the right of war itself, and partly with questions of right after a war, i.e. with the right of states to compel each other to abandon their warlike condition and to create a constitution which will establish an enduring peace. A state of nature among individuals or families (in their relations with one another) is different from a state of nature among entire nations, because international right involves not only the relationship between one state and another within a larger whole, but also the relationship between individual persons in one state and individuals in the other or between such individuals and the other state as a whole. But this difference between international right and the right of individuals in a mere state of nature is easily deducible from the latter concept without need of any further definitions.

§ 54

The elements of international right are as follows. Firstly, in their external relationships with one another, states, like lawless savages, exist in a condition devoid of right. Secondly, this *condition* is one of war (the right of the stronger), even if there is no actual war or continuous active fighting (i.e. hostilities). But even although neither of two states is done any injustice by the other in this condition, it is nevertheless in the highest degree unjust in itself, for it implies that neither wishes to experience anything better. Adjacent states are thus bound to abandon such a condition. Thirdly, it is necessary to establish a federation of peoples in accordance with the idea of an original social contract, so that states will protect one another against external aggression while refraining from interference in one another's internal disagreements. And fourthly, this association must not embody a sovereign power as in a civil constitution, but only a partnership or *confederation*. It must therefore be an alliance which can be terminated at any time, so that it has to be renewed periodically. This right is derived *in subsidium* from another original right, that of preventing oneself from lapsing into a state of actual war with one's partners in the confederation (*foedus Amphictyonum*).

§ 55

If we consider the original right of free states in the state of nature to make war upon one another (for example, in order to bring about a condition closer to that governed by right), we must first ask what right the state has *as against its own subjects* to employ them in a war on other states, and to expend or hazard their possessions or even their lives in the process. Does it not then depend upon their own judgement whether they wish to go to war or not? May they simply be sent thither at the sovereign's supreme command?

This right might seem an obvious consequence of the right to do what one wishes with one's own property. Whatever someone has himself substantially *made* is his own undisputed property. These are the premises from which a mere jurist would deduce the right in question.

A country may yield various *natural products*, some of which, because of their very *abundance*, must also be regarded as *artefacts* of the state. For the country would not yield them in such quantities if there were no state or proper government in control and if the inhabitants still lived in a state of nature. For example, domestic poultry (the most useful kind of fowl), sheep, pigs, cattle, etc. would be completely unknown in the country I live in (or would only rarely be encountered) if there were no government to guarantee the inhabitants their acquisitions and possessions. The same applies to the number of human beings, for there can only be few of them in a state of nature, as in the wilds of America, even if we credit them with great industry (which they do not have). The inhabitants would be very sparsely scattered, for no-one could spread very far afield with his household in a land constantly threatened with devastation by other human beings, wild animals, or beasts of prey. There would thus be no adequate support for so large a population as now inhabits a country.

Now one can say that vegetables (e.g. potatoes) and domestic animals, in quantity at least, are *made* by human beings, and that they may therefore be used, expended or consumed (i.e. killed) at will. One might therefore appear justified in saying that the supreme power in the state, the sovereign, has the right to lead his subjects to war as if on a hunt, or into battle as if on an excursion, simply because they are for the most part produced by the sovereign himself.

But while this legal argument (of which monarchs are no doubt dimly aware) is certainly valid in the case of animals, which can be the *property* of human beings, it is absolutely impermissible to apply it to human beings themselves, particularly in their capacity as citizens. For a citizen

must always be regarded as a co-legislative member of the state (i.e. not just as a means, but also as an end in himself), and he must therefore give his free consent through his representatives not only to the waging of war in general, but also to every particular declaration of war. Only under this limiting condition may the state put him to service in dangerous enterprises.

We shall therefore have to derive the right under discussion from the *duty* of the sovereign towards the people, not vice versa. The people must be seen to have given their consent to military action, and although they remain passive in this capacity (for they allow themselves to be directed), they are still acting spontaneously and they represent the sovereign himself.

§ 56

In the state of nature, the *right to make war* (i.e. to enter into hostilities) is the permitted means by which one state prosecutes its rights against another. Thus if a state believes that it has been injured by another state, it is entitled to resort to violence, for it cannot in the state of nature gain satisfaction through *legal proceedings*, the only means of settling disputes in a state governed by right. Apart from an actively inflicted injury (the first aggression, as distinct from the first hostilities), a state may be subjected to *threats*. Such threats may arise either if another state is the first to make *military preparations*, on which the right of *anticipatory attack* (*ius praeventionis*) is based, or simply if there is an alarming increase of power (*potentia tremenda*) in another state which has acquired new territories. This is an injury to the less powerful state by the mere fact that the other state, even without offering any active offence, is *more powerful*; and any attack upon it is legitimate in the state of nature. On this is based the right to maintain a balance of power among all states which have active contact with one another.

Those *active injuries* which give a state the *right to make war* on another state include any unilateral attempt to gain satisfaction for an affront which the people of one state have offered to the people of the other. Such an act of *retribution* (*retorsio*) without any attempt to obtain compensation from the other state by peaceful means is similar in form to starting war without prior declaration. For if one wishes to find any rights in wartime, one must assume the existence of something analogous to a contract; in other words, one must assume that the other party has *accepted* the declaration of war and that both parties therefore wish to prosecute their rights in this manner.

§ 57

The most problematic task in international right is that of determining rights in wartime. For it is very difficult to form any conception at all of such rights and to imagine any law whatsoever in this lawless state without involving oneself in contradictions (*inter arma silent leges*).[18] The only possible solution would be to conduct the war in accordance with principles which would still leave the states with the possibility of abandoning the state of nature in their external relations and of entering a state of right.

No war between independent states can be a *punitive* one (*bellum punitivum*). For a punishment can only occur in a relationship between a superior (*imperantis*) and a subject (*subditum*), and this is not the relationship which exists between states. Nor can there be a *war of extermination* (*bellum internecinum*) or a *war of subjugation* (*bellum subiugatorium*); for these would involve the moral annihilation of a state, and its people would either merge with those of the victorious state or be reduced to bondage. Not that this expedient, to which a state might resort in order to obtain peace, would in itself contradict the rights of a state. But the fact remains that the only concept of antagonism which the idea of international right includes is that of an antagonism regulated by principles of external freedom. This requires that violence be used only to preserve one's existing property, but not as a method of further acquisition; for the latter procedure would create a threat to one state by augmenting the power of another.

The attacked state is allowed to use any means of defence except those whose use would render its subjects unfit to be citizens. For if it did not observe this condition, it would render itself unfit in the eyes of international right to function as a person in relation to other states and to share equal rights with them. It must accordingly be prohibited for a state to use its own subjects as spies, and to use them, or indeed foreigners, as poisoners or assassins (to which class the so-called sharpshooters who wait in ambush on individual victims also belong), or even just to spread false reports. In short, a state must not use such treacherous methods as would destroy that confidence which is required for the future establishment of a lasting peace.

It is permissible in war to impose levies and contributions on the conquered enemy, but not to plunder the people, i.e. to force individual persons to part with their belongings (for this would be robbery, since it was not the conquered people who waged the war, but the state

of which they were subjects which waged it *through them*). Bills of receipt should be issued for any contributions that are exacted, so that the burden imposed on the country or province can be distributed proportionately when peace is concluded.

§ 58

The right which applies *after* a war, i.e. with regard to the peace treaty at the time of its conclusion and also to its later consequences, consists of the following elements. The victor sets out the conditions, and these are drawn up in a *treaty* on which agreement is reached with the defeated party in order that peace may be concluded. A treaty of this kind is not determined by any pretended right which the victor possesses over his opponent because of an alleged injury the latter has done him; the victor should not concern himself with such questions, but should rely only on his own power for support. Thus he cannot claim compensation for the costs of the war, for he would then have to pronounce his opponent unjust in waging it. And even if this argument should occur to him, he could not make use of it, or else he would have to maintain that the war was a punitive one, which would in turn mean that he had committed an offence in waging it himself. A peace treaty should also provide for the exchange of prisoners without ransom, whether the numbers on both sides are equal or not.

The vanquished state and its subjects cannot forfeit their civil freedom through the conquest of the country. Consequently, the former cannot be degraded to the rank of a colony or the latter to the rank of bondsmen. Otherwise, the war would have been a punitive one, which is self-contradictory.

A *colony* or province is a nation which has its own constitution, legislation and territory, and all members of any other state are no more than foreigners on its soil, even if the state to which they belong has supreme *executive* power over the colonial nation. The state with executive power is called the *mother state*. The daughter state is *ruled* by it, although it *governs* itself through its own parliament, which in turn functions under the presidency of a viceroy (*civitas hybrida*). The relationship of Athens to various islands was of this kind, as is that of Great Britain towards Ireland at the present moment.

It is even less possible to infer the rightful existence of *slavery* from the military conquest of a people, for one would then have to assume that the war had been a punitive one. Least of all would this justify hereditary

slavery, which is completely absurd, for the guilt of a person's crime cannot be inherited.

It is implicit in the very concept of a peace treaty that it includes an *amnesty*.

§ 59

The *rights of peace* are as follows: firstly, the right to remain at peace when nearby states are at war (i.e. the right of *neutrality*); secondly, the right to secure the continued maintenance of peace once it has been concluded (i.e. the right of *guarantee*); and thirdly, the right to form *alliances* or confederate leagues of several states for the purpose of communal defence against any possible attacks from internal or external sources—although these must never become leagues for promoting aggression and internal expansion.

§ 60

The rights of a state against an *unjust enemy* are unlimited in quantity or degree, although they do have limits in relation to quality. In other words, while the threatened state may not employ *every* means to assert its own rights, it may employ any intrinsically permissible means to whatever degree its own strength allows. But what can the expression 'an unjust enemy' mean in relation to the concepts of international right, which requires that every state should act as judge of its own cause just as it would do in a state of nature? It must mean someone whose publicly expressed will, whether expressed in word or in deed, displays a maxim which would make peace among nations impossible and would lead to a perpetual state of nature if it were made into a general rule. Under this heading would come violations of public contracts, which can be assumed to affect the interests of all nations. For they are a threat to their freedom, and a challenge to them to unite against such misconduct and to deprive the culprit of the power to act in a similar way again. But this does *not* entitle them *to divide up the offending state among themselves* and to make it disappear, as it were, from the face of the earth. For this would be an injustice against the people, who cannot lose their original right to unite into a commonwealth. They can only be made to accept a new constitution of a nature that is unlikely to encourage their warlike inclinations.

Besides, the expression 'an unjust enemy' is a *pleonasm* if applied to any situation in a state of nature, for this state is itself one of injustice. A just enemy would be one whom I could not resist without injustice. But if this were so, he would not be my enemy in any case.

§ 61

Since the state of nature among nations (as among individual human beings) is a state which one ought to abandon in order to enter a state governed by law, all international rights, as well as all the external property of states such as can be acquired or preserved by war, are purely *provisional* until the state of nature has been abandoned. Only within a universal *union of states* (analogous to the union through which a nation becomes a state) can such rights and property acquire *peremptory* validity and a true *state of peace* be attained. But if an international state of this kind extends over too wide an area of land, it will eventually become impossible to govern it and thence to protect each of its members, and the multitude of corporations this would require must again lead to a state of war. It naturally follows that *perpetual peace*, the ultimate end of all international right, is an idea incapable of realisation. But the political principles which have this aim, i.e. those principles which encourage the formation of international alliances designed to *approach* the idea itself by a continual process, are not impracticable. For this is a project based upon duty, hence also upon the rights of man and of states, and it can indeed be put into execution.

Such a *union of several states* designed to preserve peace may be called a *permanent congress of states*, and all neighbouring states are free to join it. A congress of this very kind (at least as far as the formalities of international right in relation to the preservation of peace are concerned) found expression in the assembly of the States General at The Hague in the first half of this century.[19] To this assembly, the ministers of most European courts and even of the smallest republics brought their complaints about any aggression suffered by one of their number at the hands of another. They thus thought of all Europe as a single federated state, which they accepted as an arbiter in all their public disputes. Since then, however, international right has disappeared from cabinets, surviving only in books, or it has been consigned to the obscurity of the archives as a form of empty deduction after violent measures have already been employed.

In the present context, however, a *congress* merely signifies a voluntary gathering of various states which can be *dissolved* at any time, not an association which, like that of the American states, is based on a political constitution and is therefore indissoluble. For this is the only means of realising the idea of public international right as it ought to be instituted, thereby enabling the nations to settle their disputes in a civilised manner by legal proceedings, not in a barbaric manner (like that of the savages) by acts of war.

SECTION III: COSMOPOLITAN RIGHT

§ 62

The rational idea, as discussed above, of a *peaceful* (if not exactly amicable) international community of all those of the earth's peoples who can enter into active relations with one another, is not a philanthropic principle of ethics, but a principle of *right*. Through the spherical shape of the planet they inhabit (*globus terraqueus*), nature has confined them all within an area of definite limits. Accordingly, the only conceivable way in which anyone can possess habitable land on earth is by possessing a part within a determinate whole in which everyone has an original right to share. Thus all nations are *originally* members of a community of the land. But this is not a *legal community* of possession (*communio*) and utilisation of the land, nor a community of ownership. It is a community of reciprocal action (*commercium*), which is physically possible, and each member of it accordingly has constant relations with all the others. Each may *offer* to have commerce with the rest, and they all have a right to make such overtures without being treated by foreigners as enemies. This right, in so far as it affords the prospect that all nations may unite for the purpose of creating certain universal laws to regulate the intercourse they may have with one another, may be termed *cosmopolitan* (*ius cosmopoliticum*).

The oceans may appear to cut nations off from the community of their fellows. But with the art of navigation, they constitute the greatest natural incentive to international commerce, and the greater the number of neighbouring coastlines there are (as in the Mediterranean), the livelier this commerce will be. Yet these visits to foreign shores, and even more so, attempts to settle on them with a view to linking them with the mother-land, can also occasion evil and violence in one part of the globe with ensuing repercussions which are felt everywhere else. But although such abuses are possible, they do not deprive the world's citizens of the right to *attempt* to enter into a community with everyone else and to *visit* all regions of the earth with this intention. This does not, however, amount to a right to *settle* on another nation's territory (*ius incolatus*), for the latter would require a special contract.

But one might ask whether a nation may establish a *settlement alongside another nation* (*accolatus*) in newly discovered regions, or whether it may take possession of land in the vicinity of a nation which has already settled in the same area, even without the latter's consent. The answer is that the right to do so is incontestable, so long as such settlements are established sufficiently far away from the territory of the original nation for neither

party to interfere with the other in their use of the land. But if the nations involved are pastoral or hunting peoples (like the Hottentots, the Tunguses, and most native American nations) who rely upon large tracts of wasteland for their sustenance, settlements should not be established by violence, but only by treaty; and even then, there must be no attempt to exploit the ignorance of the natives in persuading them to give up their territories. Nevertheless, there are plausible enough arguments for the use of violence on the grounds that it is in the best interests of the world as a whole. For on the one hand, it may bring culture to uncivilised peoples (this is the excuse with which even Büsching[20] tries to extenuate the bloodshed which accompanied the introduction of Christianity into Germany); and on the other, it may help us to purge our country of depraved characters, at the same time affording the hope that they or their offspring will become reformed in another continent (as in New Holland). But all these supposedly good intentions cannot wash away the stain of injustice from the means which are used to implement them. Yet one might object that the whole world would perhaps still be in a lawless condition if men had had any such compunction about using violence when they first created a law-governed state. But this can as little annul the above condition of right as can the plea of political revolutionaries that the people are entitled to reform constitutions by force if they have become corrupt, and to act completely unjustly for once and for all, in order to put justice on a more secure basis and ensure that it flourishes in the future.

Conclusion

If a person cannot prove that a thing exists, he may attempt to prove that it does not exist. If neither approach succeeds (as often happens), he may still ask whether it is *in his interest to assume* one or other possibility as a hypothesis, either from theoretical or from practical considerations. In other words, he may wish on the one hand simply to explain a certain phenomenon (as the astronomer, for example, may wish to explain the sporadic movements of the planets), or on the other, to achieve a certain end which may itself be either *pragmatic* (purely technical) or *moral* (i.e. an end which it is our duty to take as a maxim). It is, of course, self-evident that no-one is duty-bound to make an *assumption* (*suppositio*) that the end in question can be realised, since this would involve a purely theoretical and indeed problematic judgement; for no-one can be obliged to accept a given belief. But we can have a duty to act in accordance with the idea of such an end, even if there is not the slightest theoretical

probability of its realisation, provided that there is no means of demonstrating that it cannot be realised either.

Now, moral-practical reason within us pronounces the following irresistible veto: *There shall be no war*, either between individual human beings in the state of nature, or between separate states, which, although internally law-governed, still live in a lawless condition in their external relationships with one another. For war is not the way in which anyone should pursue his rights. Thus it is no longer a question of whether perpetual peace is really possible or not, or whether we are not perhaps mistaken in our theoretical judgement if we assume that it is. On the contrary, we must simply act as if it could really come about (which is perhaps impossible), and turn our efforts towards realising it and towards establishing that constitution which seems most suitable for this purpose (perhaps that of republicanism in all states, individually and collectively). By working towards this end, we may hope to terminate the disastrous practice of war, which up till now has been the main object to which all states, without exception, have accommodated their internal institutions. And even if the fulfilment of this pacific intention were forever to remain a pious hope, we should still not be deceiving ourselves if we made it our maxim to work unceasingly towards it, for it is our duty to do so. To assume, on the other hand, that the moral law within us might be misleading, would give rise to the execrable wish to dispense with all reason and to regard ourselves, along with our principles, as subject to the same mechanism of nature as the other animal species.

It can indeed be said that this task of establishing a universal and lasting peace is not just a part of the theory of right within the limits of pure reason, but its entire ultimate purpose. For the condition of peace is the only state in which the property of a large number of people living together as neighbours under a single constitution can be guaranteed by *laws*. The rule on which this constitution is based must not simply be derived from the experience of those who have hitherto fared best under it, and then set up as a norm for others. On the contrary, it should be derived *a priori* by reason from the absolute ideal of a rightful association of men under public laws. For all particular examples are deceptive (an example can only illustrate a point, but does not prove anything), so that one must have recourse to metaphysics. And even those who scorn metaphysics admit its necessity involuntarily when they say, for example (as they often do): 'The best constitution is that in which the power rests with laws instead of with men.' For what can be more metaphysically sublime than this idea, although by the admission of those who express it,

it also has a well-authenticated objective reality which can easily be demonstrated from particular instances as they arise. But no attempt should be made to put it into practice overnight by revolution, i.e. by forcibly overthrowing a defective constitution which has existed in the past; for there would then be an interval of time during which the condition of right would be nullified. If we try instead to give it reality by means of gradual reforms carried out in accordance with definite principles, we shall see that it is the only means of continually approaching the supreme political good—perpetual peace.

A brief appendix follows in which Kant, in a reply to an anonymous review,[21] comments mainly on the theory of private right, but also repeats his views on the sacredness and inviolability of civil constitutions and again denies absolutely any right to rebellion.