Section I.

The right of a state.

§ 43.

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

§ 44.

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

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*b republic in the broad sense

c The English terms “municipal law” and “international law” might be used here, if it were kept in mind that Kant’s concern is only with a priori principles. However, given the meaning of Recht specified in AK 6: 229, it seems preferable to continue using this term throughout: das öffentliche Recht or “public right.”

d Although Kant continues to use Gesetzgebung and Gesetzgeber, which were translated in Private Right as “lawgiving” and “lawgiver,” he is now discussing a condition in which there are positive laws. Hence “legislation” and “legislator” seem appropriate.
some deed that makes coercion through public law necessary. On the contrary, however well disposed and law-abiding human beings might be, it still lies a priori in the rational idea of such a condition (one that is not rightful) that before a public lawful condition is established individual human beings, peoples and states can never be secure against violence from one another, since each has its own right to do what seems right and good to it and not to be dependent upon another's opinion about this. So, unless it wants to renounce any concepts of right, the first thing it has to resolve upon is the principle that it must leave the state of nature, in which each follows its own judgment, unite itself with all others (with which it cannot avoid interacting), subject itself to a public lawful external coercion, and so enter into a condition in which what is to be recognized as belonging to it is determined by law and is allotted to it by adequate power (not its own but an external power); that is, it ought above all else to enter a civil condition.

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

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

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

Factum

§ 45.
follow of themselves from concepts of external right as such (are not statutory), its form is the form of a state as such, that is, of the state in idea, as it ought to be in accordance with pure principles of right. This idea serves as a norm (norma) for every actual union into a commonwealth (hence serves as a norm for its internal constitution). Every state contains three authorities within it; that is, the general united will consists of three persons (trias politica): the sovereign authority (sovereignty) in the person of the legislator; the executive authority in the person of the ruler (in conformity to law); and the judicial authority (to award to each what is his in accordance with the law) in the person of the judge (potestas legislatoria, rectoria et iudiciaria). These are like the three propositions in a practical syllogism: the major premise, which contains the law of that will; the minor premise, which contains the command to behave in accordance with the law, that is, the principle of subsumption under the law; and the conclusion, which contains the verdict (sentence), what is laid down as right in the case at hand.

§ 46.
The legislative authority can belong only to the united will of the people. For since all right is to proceed from it, it cannot do anyone wrong by its law. Now when someone makes arrangements about another, it is always possible for him to do the other wrong; but he can never do wrong in what he decides upon with regard to himself (for volenti non fit iniuria). Therefore only the concurring and united will of all, insofar as each decides the same thing for all and all for each, and so only the general united will of the people, can be legislative.

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

\(1\) (also im Inneren)

\(4\) Or “powers” [Gewalten]. In §43 and §44 Kant used Macht (potentia), which was translated as “power.” He now begins to use Gewalt (potestas). But once he distinguishes the three “powers” or “authorities” within a state, it is only the executive authority that has “power” in one sense, i.e., it is the authority which exercises coercion.

\(6\) Herrschergewalt (Souveränität). In this initial distinction of the three authorities within a state Kant specifies that “sovereignty” belongs to the legislative authority. Subsequently he introduces, without explanation, such a variety of terms that it is not always clear which of the three authorities is under discussion. I have used “sovereign,” without noting the word used, only when Kant specifies Souverän. When “sovereign” is used for Herrscher or Beherrscher, a note is provided. Otherwise I have used the more general “head of state,” except for passages that might indicate that one (physical) person has both legislative and executive authority.

\(1\) no wrong is done to someone who consents
ing among the people any superior with the moral capacity\(^1\) to bind him as a matter of right in a way that he could not in turn bind the other; and third, the attribute of civil independence, of owing his existence and preservation to his own rights and powers as a member of the commonwealth, not to the choice of another among the people. From his independence follows his civil personality, his attribute of not needing to be represented by another where rights are concerned.

The only qualification for being a citizen is being fit to vote. But being fit to vote presupposes the independence of someone who, as one of the people, wants to be not just a part of the commonwealth but also a member of it, that is, a part of the commonwealth acting from his own choice in community with others. This quality of being independent, however, requires a distinction between active and passive citizens, though the concept of a passive citizen seems to contradict the concept of a citizen as such. – The following examples can serve to remove this difficulty: an apprentice in the service of a merchant or artisan; a domestic servant (as distinguished from a civil servant); a minor (naturaliter vel civiliter); all women and, in general, anyone whose preservation in existence (his being fed and protected) depends not on his management of his own business but on arrangements made by another (except the state). All these people lack civil personality and their existence is, as it were, only inherence. – The woodcutter I hire to work in my yard; the blacksmith in India, who goes into people's houses to work on iron with his hammer, anvil and bellows, as compared with the European carpenter or blacksmith who can put the products of his work up as goods for sale to the public; the private tutor, as compared with the school teacher; the tenant farmer as compared with the leasehold farmer, and so forth; these are mere underlings\(^2\) of the commonwealth because they have to be under the direction or protection of other individuals, and so do not possess civil independence.

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

\(^1\) Vermögen

\(^2\) Handlanger
follow that they also have the right to manage the state itself as active members of it, the right to organize it or to cooperate for introducing certain laws. It follows only that, whatever sort of positive laws the citizens might vote for, these laws must still not be contrary to the natural laws of freedom and of the equality of everyone in the people corresponding to this freedom, namely that anyone can work his way up from this passive condition to an active one.

§ 47.
All those three authorities in a state are dignities, and since they arise necessarily from the idea of a state as such, as essential for the establishment (constitution) of it, they are civic dignities. They comprise the relation of a superior over all (which, from the viewpoint of laws of freedom, can be none other than the united people itself) to the multitude of that people severally as subjects, that is, the relation of a commander (imperans) to those who obey (subditus). — The act by which a people forms itself into a state is the original contract. Properly speaking, the original contract is only the idea of this act, in terms of which alone we can think of the legitimacy of a state. In accordance with the original contract, everyone (omnes et singuli) within a people gives up his external freedom in order to take it up again immediately as a member of a commonwealth, that is, of a people considered as a state (universi). And one cannot say: the human being in a state has sacrificed a part of his innate outer freedom for the sake of an end, but rather, he has relinquished entirely his wild, lawless freedom in order to find his freedom as such undiminished, in a dependence upon laws, that is, in a rightful condition, since this dependence arises from his own lawgiving will.

§ 48.
Accordingly, the three authorities in a state are, first, coordinate with one another (potestates coordinatae) as so many moral persons, that is, each complements the others to complete the constitution of a state (complementum ad sufficientiam). But, second, they are also subordinate (subordinatae) to one another, so that one of them, in assisting another, cannot also usurp its function; instead, each has its own principle, that is, it indeed commands in its capacity as a particular person, but still under the condition of the will of a superior. Third, through the union of both each subject is apportioned his rights.

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

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

§ 49.

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

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

Finally, neither the head of state nor its ruler can judge, but can only appoint judges as magistrates. A people judges itself through those of its fellow citizens whom it designates as its representatives for this by a free choice and, indeed, designates especially for each act. For a verdict (a sentence) is an individual act of public justice (iusstitiae distributatitiae) performed by an administrator of the state (a judge or court) upon a subject, that is, upon someone belonging to the people; and so this act is
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invested with no authority to assign (allot) to a subject what is his. Since each individual among a people is only passive in this relationship (to the authorities), if either the legislative or the executive authority were to decide in a controversial case what belongs to him, it might do him a wrong, since it would not be the people itself doing this and pronouncing a verdict of guilty or not guilty upon a fellow citizen. But once the facts in a lawsuit have been established, the court has judicial authority to apply the law, and to render to each what is his with the help of the executive authority. Hence only the people can give a judgment upon one of its members, although only indirectly, by means of representatives (the jury) whom it has delegated. – It would also be beneath the dignity of the head of state to play the judge, that is, to put himself in a position where he could do wrong and so have his decision appealed (a rege male informato ad regem melius informandum).

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

GENERAL REMARK

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

A.

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

6:318

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

The well-being of the commonwealth is the supreme law. The saying seems to stem from Cicero De Legibus 3.8, Salus populi suprema lex esto.

\*werktätig vermünfteln

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