# The German Constitution

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*Manuscripts from Hegel's Frankfurt and Jena years (1800–1802), not published in his lifetime; the title is the editors'. The edition prints four pieces: A the early drafts of an introduction, B the executed essay on the constitution, C parallel passages and D fragments. Translated from the German text of the Werke (vol. 1, "Frühe Schriften"). Headings in square brackets are the editors'.*

The figures between vertical bars, e.g. |93|, mark the beginning of a page of the printed edition, so that a passage can be found again in one's own copy.

In the notes, "*Editors:*" introduces a note by the editors of the German edition and "Hegel's footnote." one of Hegel's own.

*Cross-reference:* Hegel's first great text on the state, twenty years before the *Groundlines*: the Empire is no longer a state, because it lacks a common power. The concept of the state he wins here returns in § 257 ff.; on sovereignty § 278, on the estates element § 301 ff., on the relation of states § 321 ff. and § 330 ff. At each section the corresponding place is noted as a cross-reference. The German text is on the German side of this edition.

*(1800-1802)*

# A

## [*First Drafts of an Introduction to the Essay on the Constitution*]

### I.

### [*Preface*][1)]

1) *Editors:* This first draft for the essay on the constitution (Schüler no. 88) originated in early 1799 in Frankfurt (text in *Dokumente zu Hegels Entwicklung*, ed. Hoffmeister, pp. 282-88) and was heavily revised in Jena in spring 1801 (Ms. vol. 13, leaves 7-10 - Kimmerle no. 3 - Lasson pp. 137 f. and 3-13). The revised text is reproduced here - in places a compromise between the readings of Lasson and Hoffmeister.

*(1799/1801)*

Was the political result of the ruinous war which the German Empire had to wage with France to be no other for Germany than that some of its fairest lands, some millions of its children, should be torn from it, that, as compensation for the princes thereby losing out, their ecclesiastical fellow-estates should be annihilated, and that a heavy burden of debt should prolong the misery of the war even into the peace?

So many German patriots asked themselves at the time of the Congress of Rastatt. It did indeed follow from the whole course of that assembly that alterations in the condition and constitution of Germany were, or were to become, its subject; why the condition is so closely connected with the constitution that [Germany] was bound to be subjected to a thoroughgoing political relegation will become clearer afterwards. Since then the misery of those German lands that are at war with France has become so great that exhaustion demands nothing but rest at any price for the moment, without

|452| foresight for the future; with pain Germany had to see that [the hope of] stopping up the source of the evils, of an essential improvement of the defects of the German constitution of the state, [vanished].[2)]

2) *Editors:* The text of this paragraph can only be inferred. In the first version it read:
"So many German patriots asked themselves, and the sad certainty of seeing that no higher purposes are conceived or pursued has filled them with pain and has almost entirely torn from them the hope [of] stopping up the source of all evil, [of] an essential improvement of the defects of the constitution of the state."
The next paragraph was deleted - presumably already at the time of the writing in 1799:
"The following pages are the voice of a mind that unwillingly takes leave of its hope of seeing the German state raised up out of its insignificance, and that, before the final parting from its hopes, wished once more to recall vividly its ever weaker wishes and once more to enjoy in image its weak faith in their fulfilment."

[3)]Apart from the despotisms, i.e. the states without a constitution, no country, as a whole, as a state, has a more wretched constitution than the German Empire; this has become a fairly general conviction; and the war, ended by the continuing peace negotiations, has given everyone the liveliest feeling of it, or rather it has now become clearer that Germany is no longer a state at all. Lecture-room statisticians, whose official duty it was to classify the constitutions of states and to bring them into the classes of monarchy, aristocracy etc. laid down by Aristotle, never knew how to get along with the German Empire; Voltaire called its constitution outright an anarchy; this is the best name, if Germany is regarded as a state; but now even this name no longer holds, because one can no longer regard Germany as a state.

3) *In the margin:* Germany no longer a state

The edifice of the German constitution of the state is the work of past centuries; it is not borne by the life

|453| of the present time; the whole fate of more than one century is stamped upon its forms, and the justice and force, bravery and cowardice, the honour, the blood, the need and the well-being of long-vanished times, of long-decayed generations dwell in them; the life and the forces, whose development and activity are the pride of the present living generation, have no share in them, no interest in it and no nourishment from them; the edifice with its pillars, its flourishes stands isolated from the spirit of the time in the world.

4)There has come down to us the legend of German freedom, of the time, such as few countries had, when in Germany the individual, unbowed by a universal, without subjection to a state, stood for himself and had his honour and his fate resting on himself, in his own sense and character shattered his strength against the world or shaped it for his enjoyment - when there was as yet no state, when the individual belonged to the whole through character and custom and religion, but in his enterprise and deed was not restricted by the whole, but, without fear and without doubt of himself, was bounded by his own sense; indeed this condition, in which not laws but customs bound a multitude into a people, equal interest, not a universal command, presented the people as a state, was called German freedom.5) The circles of power which each created for himself according to character and chance, the possession he won for himself, these changeable things, the passing time gradually fixed, and as exclusive property wholly separated individuals from one another, concepts became that in which they were united, and makeshift laws began to rule.

4) *In the margin:* German freedom

5) *In the margin:* German public law is private law.

As cowardly and feeble as it is to call the sons of that condition abominable, unhappy and stupid, [and] to believe ourselves

|454| infinitely more humane, happier and cleverer, so childish and silly would it be to long back to such a condition - as if it alone were nature - and not to know how to esteem the condition in which laws rule as necessary - and as a condition of freedom. - The firm subsistence which those possessions gradually obtained brought forth a multitude of rights which, without unity, without principle, could form more a collection than a system, and whose inconsistencies and confused manifoldness required the highest acuity to rescue them as far as possible against their contradictions and here and there to bring unity into them.

Thus an edifice of the state has arisen, whose individual parts, every princely house, every estate, every city, every guild, everything that possesses rights with regard to the state, have acquired these for themselves, have received nothing allotted from the universal, from the state as a whole.

The state always had merely to confirm what was wrested from its power; the political power and right of the individual, as state official and citizen of the state, is not a share calculated according to an organisation of the whole; the duties of the individual or of his office are likewise not demanded in relation to it; rather, in Germany the individual member of the body politic owes his power in the state, as well as his rights and duties, personally to his family, his estate or his guild; and the estate, guild etc. has them from the accident of former times. The principles of the system of German public law are therefore not [to be derived] from the unity of a concept of public law, such as the concept of a monarchy, aristocracy, democracy etc. is, but are narratives of actualities, for possession was earlier than law, and it did not spring from laws, but what had been won by oneself was made into legal right. According to its original ground of right, German public law is therefore

|455| really a private law, and the political rights [are] a legal possession, a property.

As the private man A has inherited, bought, received as a gift the house a, a private man B a garden b etc., so a member of an estate or an office A possesses as property 6 peasants, B 600 peasants; as the private man C possesses a small shop, much cornfield, also vineyards, so the estate C or the office C possesses the high and low jurisdiction over 5 houses, the right to tithes over 100 villages, the position D has a piece of the power of taxation over 2000 citizens and a [right] to have a say in war and peace of all Germany, another [has] a piece of the power of taxation over a million people and nothing at all to say about the war and peace of all Germany. Executive, legislative, judicial, ecclesiastical, administrative power are mingled, divided and combined in the most lawless manner and mixed and separated in the most unequal proportions, just as manifold as the property of the citizens as private persons; and the ground of right of both is the same.

What state, then, should seem better organised than that in which every right to a share in public power[6)] has been determined most exactly, every circumstance relating to it has been the subject of the most protracted discussions? in which the solicitude for this political property has extended, with the most punctilious scrupulousness, to each and every thing, to the seemingly greatest trifles, e.g. order in sitting, walking and the like, titulature, with an infinite, admirable exactitude for the preservation of every right?[7)]

6) *In the margin:* [as it] is determined exactly, piece by piece, with regard to its extent, in the treaties etc., so too peace treaties of the Imperial Diet, house treaties, electoral capitulations, mandates of the imperial courts etc. have exactly determined the political property of every estate and place.

7) *In the margin:* Powers which according to the essence of a state stand under the direction of a centre, must be united in a supreme power (monarch and estates), military power, relations to foreign powers, the part of the finances that relates to this etc. – all this stands under no supreme power in law.

The share in public power which the individual has acquired for himself is thereby withdrawn from the power of the universal. To this power of the universal, to the monarch (emperor) and the assembly of estates (Imperial Diet), the necessary character, sovereignty, has thereby been left in a most feeble measure.[8)]

8) *In the margin:* From this side the German Empire is, like the realm of nature, inexhaustible in the great and unfathomable in the small, and it is this side which fills the initiated into the knowledge of the infinite detail of the rights with that admiration, that astonishment before the venerableness of the German body politic.
This endeavour to make public power a private property means nothing other than to dissolve the state, to annihilate the state as a power.

To the extent that each part not only has a share in the whole, but has also isolated itself, set itself outside the power of the state, to that extent is this independence assured to it as a right; and daily the parts strive to withdraw out of dependence on the whole, and far more, even beyond the limit that is sanctioned. The rights of separation from the whole which the individual estates have won for themselves are sacred, inviolable rights, on whose preservation the whole so-called edifice of the state rests, and the German edifice of the state means nothing other than the sum of the rights withdrawn from the state, rights which are preserved with the greatest conscientiousness and the most timid solicitude, and this justice is the principle, the soul of the constitution. Every judgement that from the concept and essence of a state …

## 2.

### [*Introduction*][9)]

9) *Editors:* Ms. vol. 13, leaves 1–4 - Schüler no. 91 (Frankfurt 1799/1800) - Lasson pp. 138–141

*(1799/1800)*

The ever-growing contradiction between the unknown which men unconsciously seek and the life that is offered and permitted to them and that they made their own, the longing of those for life who have worked nature up into the Idea within themselves, contain the striving towards mutual approach. The need of the former to gain a consciousness of what holds them captive and of the unknown which they demand meets the need of the latter to pass over out of their Idea into life. The latter cannot live alone, and man is always alone, even if he has presented his nature to himself, has made this presentation his companion and enjoys himself in it; he must also find what is presented as something living. The condition of the man, whom the time has driven into an inner world, can, if he wants to maintain himself in this, be only a perpetual death or, if nature drives him to life, only a striving to sublate the negative of the existing world, in order to find and enjoy himself in it, in order to be able to live. His suffering is bound up with consciousness of the limits on account of which he scorns life as it would be permitted him, he wills his suffering; whereas the suffering of man without reflection on his fate is without will, because he honours the negative, takes the limits only in the form of their rightful and power-holding existence as unconquerable and his determinacies and their contradictions as absolute, and sacrifices himself and others to them, even when they injure his drives.

The sublation of what is negative with regard to nature, positive with regard to the will, is not effected by force, neither by that which one does to one's fate oneself, nor by that which it experiences from outside; in both cases fate remains what it is, the determinacy, - the limit is not separated from life by force; alien force is particular against particular, the robbery of a property, a new suffering; the enthusiasm of one who is bound is a moment fearful to himself, in which he loses himself, finds his consciousness again only in the forgotten, not dead, determinacies.

The feeling of the contradiction of nature with the existing life is the need that it be removed; and it will be removed when the existing life has lost its power and all its dignity, when it has become pure negative.

All phenomena of this time show that satisfaction is no longer found in the old life; it was a confinement to an orderly dominion over one's property, a contemplating and enjoying of one's wholly subservient small world and then also a self-annihilation and elevation in the thought of heaven reconciling this confinement. In part the distress of the time has attacked that property, in part its gifts in luxury have sublated the confinement, and in both cases have made man the master and his power over actuality the highest. Under this arid life of the understanding there has grown, on one side, the bad conscience of making his property, things, into the absolute, and with that, on the other, the suffering of men; and no better life has this time breathed. Its urge nourishes itself on the deeds of great characters of individual men, on the movements of whole peoples, on the presentation of nature and of fate by poets; through metaphysics the limitations receive their limits and their necessity in the context of the whole. The limited life as power

|459| can be attacked with hostile power by something better only when this too has become a power and has force to fear. As particular against particular, nature in its actual life is the sole attack or refutation of the worse life, and such a refutation cannot be the object of an intentional activity. But the limited can be attacked through its own truth that lies in it, and brought into contradiction with this; it does not found its dominion on the force of particulars against particulars, but on universality; this truth, the right which it vindicates for itself, must be taken from it and given to that part of life which is demanded. This dignity of a universality, of a right, is what makes the demand of the suffering of the drives that come into contradiction with the existing life, clothed with that honour, so timid and as going against conscience. To the positive of what exists, which is a negation of nature, its truth, that right ought to be, is left.

In the German Empire the universality that holds power, as the source of all right, has vanished, because it has isolated itself, made itself into a particular. Universality is therefore only still present as thought, no longer as actuality. On what public opinion, more brightly or more darkly, through loss of confidence has decided, little is needed to make a clearer consciousness more universal. And all existing rights nevertheless have their ground solely in this connection with the whole, which, because it has long since ceased to be, has let them all become particular ones.

Either, then, one can proceed from the truth which even what exists admits; in that case the partial concepts contained in that of the whole state are grasped as universal in thought, and their universality or particularity in actuality [is] placed beside them; if such a partial unity [shows itself] to be a particular one,

|460| the contradiction between what it wants to be and what alone is demanded for it, and what it is, strikes the eye.

Or ...[10]

10) *Editors:* Rosenkranz (*Hegels Leben*, Berlin 1844, pp. 236 f.) reports on an – presumably lost – introduction to the essay on the constitution that differs from the texts reproduced here:
"In his essay Hegel asked whether the downfall of the German Empire must be ascribed to a lack of *bravery*, of *personal courage*. This view, he answered himself, is refuted by history, which on the contrary gloriously confirms the martial prowess of *individuals* everywhere, even in the army of the Empire. Consequently the misfortune must be laid to the charge of the dismemberment of Germany and of the bad leadership of the soldiers.
He asked further whether that downfall had perhaps sprung from a *national bankruptcy*. This, he held, was just as little the case, for with all the bad management of the individual states Germany does not yet know all those important problems which in other states arise from a *national debt*, whose treatment occupies the most distinguished minds and in which even small errors could bring the most terrible consequences in their train.
Finally he asked whether perhaps *lack of ethical life*, of *culture*, of *religiosity* could be the cause of the weakness. This, he replied, could least of all be said. Not in the *individuals*, then, *in the mechanism of the whole must the corruption lie*."

## B

[*The Constitution of Germany*]

### [Introduction]

Germany is no longer a state. The older teachers of public law, who in treating German public law had the idea of a science hovering before them and who therefore set out to fix a concept of the German constitution, could not agree on this concept, until the more recent ones gave up the attempt to find it, and no longer treat public law as a science but as a description of what exists empirically, without adapting itself to a rational idea, and believe they can give the German state nothing more than the name of an empire or of a body politic.

There is no longer any dispute as to under what concept the German constitution falls. What can no longer be comprehended no longer is. If Germany were to be a state, this condition of the dissolution of the state could not be called otherwise than, with a foreign scholar of public law, anarchy, if the parts had not again constituted themselves as states, to which not so much a still-existing bond as rather the memory of a former one still

|462| leaves a semblance of union, just as fallen fruits are recognised as having still belonged to their tree by the fact that [they] lie beneath its crown; but [neither] the place beneath it nor its shadow, which touches them, saves them from rot and from the power of the elements to which they now belong.

The health of a state reveals itself in general not so much in the calm of peace as in the movement of war; the former is the condition of enjoyment and of activity in separation, the government a wise domestic paternalism that demands only the ordinary of the governed; in war, however, is shown the strength of the connection of all with the whole, how much of them the state has set itself up to be able to demand, and how much avails what they may do for it out of their own drive and heart.

Thus in the war with the French republic Germany has experienced in itself that it is no longer a state, and has become aware of its political condition both in the war itself and in the peace which ended this war and whose palpable results are: the loss of some of the fairest German lands, of some millions of its inhabitants, a burden of debt on the southern half heavier than on the northern, which prolongs the misery of the war far into the peace, and that, besides those who have come under the dominion of the conquerors and at the same time of foreign laws and customs, many states will still lose what is their highest good, - to be states of their own.

But what the inner causes, the spirit of these results may be, how they are only its external and necessary appearances - to such a reflection the peace is suited, just as this reflection is in itself worthy of everyone who does not surrender himself to what happens, but cognises the event and its necessity and through such cognition distinguishes himself from those who, for the sake of their vanity,

|463| see only arbitrary will and chance, through which they persuade themselves that they would have conducted everything that has happened more cleverly and more fortunately; such a cognition is of importance for most only because they [can plume themselves] on it and on the judging of individual things with understanding that follows from it, not in order to learn from experience how to act better in a future case. For of those who in these great events act in such a way that they could direct them, there are very few; the others, however, have to serve the events with understanding and insight into their necessity. From the experience of the mistakes, however, which are the outbreak of inner weakness and imprudence, those who committed them do not so much learn - rather these only strengthen their habit of committing them - as the others, who get to know them and through this insight put themselves in a position to draw benefit from them, - who, if they are capable at all of doing this [and] are in the external situation for it, possess through both an insight which the thought of a private man can dispense with.

The thoughts which this essay contains can, in their public utterance, have no other purpose or effect than to promote the understanding of what is, and with it the calmer view as well as a bearing of it moderated in actual contact and in words. For it is not what is that makes us impetuous and suffering, but that it is not as it ought to be; but if we recognise that it is as it must be, i.e. not according to arbitrary will and chance, then we also recognise that it ought to be so. But it is difficult for men in general to raise themselves to the habit of seeking to recognise and think necessity. For between the events and the free apprehension of them they interpose a multitude of concepts and purposes and demand that what happens should conform to these. And when [it] is without doubt mostly otherwise, they pride themselves on their concepts,

|464| as if necessity ruled in these, but in what happens only chance, because their concepts are as limited as their view of things, which they apprehend only as individual events, not as a system of them governed by one spirit; and whether they otherwise suffer through them or merely find them contradicting their concepts, they find in the fact that they maintain their concepts the right to blame bitterly what has happened.

Above all, the passing of time has probably afflicted the Germans with this vice. In eternal contradiction between what they demand and what does not happen according to their demand, they appear not merely censorious but, when they speak merely of their concepts, untruthful and dishonest, because they place necessity in their concepts of right and of duties, but nothing happens according to this necessity and they themselves are so accustomed to this, partly that their words always contradict their deeds, partly that they seek to make of the events something quite other than they actually are, and to twist the explanation of them according to certain concepts.

But whoever wished to get to know what is wont to happen in Germany according to the concepts of what ought to happen, namely according to the laws of the state, would err in the highest degree. For the dissolution of the state is recognised chiefly by this, that everything goes otherwise than the laws. Equally he would err if the form[11)] which is taken from these laws appeared to him in truth the ground and cause of them. For precisely on account of their concepts the Germans appear so dishonest, to confess nothing as it is, nor to give it out for no more and no less than really lies in the force of the matter. They remain faithful to their concepts, to right and to the laws, but the events are not wont to agree with them, and so the side that has the advantage

11) *Editors:* The word is barely legible. Rosenkranz (*Hegels Leben*, p. 241): "Farbe"

|465| in it strives, through words, with the force of concepts, to adapt the two to each other. The concept, however, which includes the rest, is that Germany is still now in general a state, because it was formerly a state and the forms from which the animating element of them has fled are still present.

The organisation of this body, which is called the German constitution of the state, had been formed in a quite different life than that which afterwards and now dwells in it; the justice and force, the wisdom and the bravery of bygone times, the honour and the blood, the well-being and the need of long-decayed generations and of customs and relations that perished with them, is expressed in the forms of this body. The course of time, however, and of the culture developing in it, has cut off the fate of that time and the life of the present from each other. The edifice in which that fate dwelt is no longer borne by the fate of the present generation and stands, without share and necessity for its interest and its activity, isolated from the spirit of the world. If these laws have lost their old life, the present vitality has not known how to grasp itself in laws; each has gone its own way, has established itself for itself, and the whole [has] fallen apart, the state is no more.

This form of German public law is deeply grounded in that by which the Germans have made themselves most famous, namely in their drive for freedom. It is this drive that, after all the other European peoples had submitted to the dominion of a common state, did not let the Germans become a people submitting to a common public power. The obstinacy of the German character has not let itself be overcome to the point that the individual parts would have sacrificed their particularities

|466| to society, all united themselves in a universal and found freedom in common free submission to a supreme public power.

The wholly peculiar principle of German public law stands in inseparable connection with the condition of Europe in which the nations took part in the supreme power not mediately through laws but immediately. The supreme state power was among the European peoples a universal power in which each had a kind of free and personal share, and this free, personal share, dependent on arbitrary will, the Germans did not want to transform into the free share, independent of arbitrary will, which consists in the universality and force of laws, but have built their latest condition wholly upon the foundation of that condition of arbitrary will that was not contrary to law but lawless.

The later condition proceeds immediately from that condition in which the nation, without being a state, constituted a people. In this time of the old German freedom the individual stood for himself in his life and action; he had his honour and his fate resting not on connection with an estate but on himself. In his own sense and strength he shattered himself against the world or shaped it for his enjoyment. He belonged to the whole through custom, religion, an invisible living spirit and a few great interests. Otherwise - in his enterprise and deed - he let himself not be restricted by the whole, but bounded himself without fear and doubt only [by] himself; but what lay within his circle was so much and so wholly He himself that one could not even call it his property, but for what belonged to him in his circle, what we would call a part, and in which we would therefore also stake only a part of ourselves, he staked body and life and soul and salvation. The division and calculation on which our

|467| condition of laws rests, [so] that for a stolen cow it is not worth the trouble to gamble one's head, nor to set oneself openly with one's individuality against a tenfold and infinitely superior power (like that [of the] state), he did not know, but was completely and wholly in what was his. (To the French *entier* is "whole" and "wilful".)

Out of this self-willed doing, which alone was called freedom, there formed circles of power over others according to chance and character, without regard to a universal and with little restriction from what is called public power; for this was, as against individuals, almost wholly non-existent.

Time, as it went on, fixed these circles of power. The parts of the universal state power became a manifoldness of exclusive property, independent of the state itself and distributed according to no rule or principle. This manifold property forms not a system of rights but a collection without principle, whose inconsistencies and confusion required the highest acuity in order, upon occurring collision, to rescue them as far as possible against their contradictions, or rather required need and superior force in order to come to terms with one another; but above all, with regard to the whole, required the most special divine providence in order to maintain it barely.[12)]

12) *Deleted in the manuscript:* German public law is therefore a collection of private rights; every individual part of the state, every princely house, every estate, every city, guild etc., everything that has rights in relation to the state, has acquired these for itself; the state had at first no other function in this than to confirm that its power had been wrested from it.

The political powers and rights are not state offices calculated according to an organisation of the whole, the services and duties of the individual are not determined according to the need of the whole, but every single member of the political hierarchy, every princely house, every

|468| estate, every city, guild etc., everything that has rights or duties in relation to the state, has acquired them for itself, and the state, in such a curtailment of its power, has no other function than to confirm that its power was wrested from it, so that, when the state loses all power and yet the possession of individuals rests on the power of the state, the possession of those must necessarily be very unstable who have no other support than the state power, which equals zero.

The principles of German public law are therefore not to be derived from the concept of a state [in general] or the concept of a determinate constitution, a monarchy etc., and German public law is not a science according to principles but an urbarium of the most various rights of public law acquired in the manner of private law. Legislative, judicial, ecclesiastical, military power are, in the most lawless manner and in the most dissimilar portions, mingled, divided and combined, just as manifold as the property of private persons.

Through recesses of the Imperial Diet, peace treaties, electoral capitulations, house treaties, decisions of the imperial courts etc. the political property of each member of the German body politic is determined most carefully. The solicitude for it [has] extended with the most punctilious religiousness to each and every thing, and years of effort have been expended on seemingly insignificant things, e.g. titulature, order in walking and sitting, colour of certain furniture etc. From this side of the most exact determination of every circumstance relating to right, however trifling, the best organisation must be ascribed to the German state. The German Empire is an empire, as the realm of nature is [in] its productions, unfathomable in the great and inexhaustible in the small, and it is this side which fills the initiated into the infinite details of the rights with that astonishment before the venerableness of the German body politic and with

|469| that admiration for this system of the most thoroughly carried-out justice.

This justice, to maintain every part in its separation from the state, and the necessary claims of the state on its individual member stand in the most complete contradiction. The state requires a universal centre, a monarch and estates, in which the various powers, relations to foreign powers, military power, finances relating to these, etc. would be united, a centre which, for the direction, would also have the necessary power to assert itself and its decisions and to keep the individual parts in dependence on itself. Through right, on the other hand, nearly complete, or rather complete, independence is assured to the individual estates. If there are sides of independence that are not expressly and solemnly determined in electoral capitulations, recesses of the Imperial Diet etc., [then] they are sanctioned to them by practice, - a more important and more thoroughgoing ground of right than all the rest. The German edifice of the state is nothing other than the sum of the rights which the individual parts have withdrawn from the whole, and this justice, which watches carefully that no power remain to the state, is the essence of the constitution.

Let the unfortunate provinces, which perish in the helplessness of the state to which they belong, accuse its political condition, let the head of the Empire and the patriotic estates first hard pressed call upon the rest in vain for common cooperation, let Germany be plundered and insulted, - the scholar of public law will know how to show that all this is entirely in accord with the rights and the practice and that all misfortunes are trifles compared with the upholding of this justice. If the unfortunate manner in which the war has been conducted lies in the conduct of individual estates, of whom one furnished no contingent, very many

|470| instead of soldiers furnished only now levied recruits, another paid no Roman months, a third withdrew his contingent at the time of the highest need, many concluded peace treaties and neutrality agreements, the great majority, each in his own way, annihilated the defence of Germany, then public law proves that the estates had the right to such conduct, the right to bring the whole into the greatest danger, harm and misfortune, and because they are rights, the individuals and the totality must guard and protect most strictly such rights of being ruined. For this edifice of right of the German state there is therefore perhaps no more fitting inscription than this:

*Fiat iustitia, pereat Germania!*

It is a trait in the German character, if not a rational one, yet in a way a noble one, that right in general, let its ground and its consequences be constituted as they may, is to him something so sacred. If Germany as a separate, independent state, as all appearances suggest, and the German nation as a people altogether perishes, it will still afford a pleasing sight to see, among the destroying spirits, awe of right foremost.

Such a view would be afforded by the political condition and the public law of Germany if Germany were to be regarded as a state; its political condition would have to be considered a legal anarchy, its public law a system of right against the state. But everything agrees that Germany is no longer to be regarded as a united whole of a state, but as a multitude of independent and, in essence, sovereign states. But, it is said, Germany is an Empire, a body politic, it stands under a common head of the Empire, stands in the imperial union. These expressions, as legal titles, cannot by any means be infringed upon; but a consideration in which concepts are at issue

|471| has nothing to do with those titles, but from the determination of concepts it can become clear what significance those titles may have. To be sure, such expressions [as] "Empire, head of the Empire" are often taken for concepts, and they must be the makeshift in time of need.

The teacher of public law who can no longer call Germany a state, because otherwise he would have to admit several consequences that follow from the concept of a state and which he must not admit, helps himself, because Germany is yet again not to count as a non-state, by giving the title "Empire" as a concept, - or, since Germany is neither a democracy nor an aristocracy but in essence ought to be a monarchy and yet the emperor is again not to be regarded as monarch, one helps oneself with the title "head of the Empire" which he bears, even in a system in which not titles but determinate concepts are supposed to rule.

Through the quite general concept "head of the Empire" the emperor is thrown into one category with the former Doge of Venice and the Turkish Sultan. Both of these are likewise heads of the state, but the former the most restricted head of an aristocracy, the latter the most unrestricted of a despotism. And because the concept of a head fits the most various extent of supreme public power, it is wholly indeterminate and for that very reason has no value at all; it gives itself out as having expressed something and has at bottom expressed nothing.

In the scientific and historical [field] such meaningless expressions are to be avoided, even if the German character otherwise needs them in actual life as expedients. For given the obstinacy of the German nature in insisting absolutely on its will, or given divided and irreconcilable interests of states, if there is there in civil life, here in politics, for other reasons of some importance, nevertheless at the same time

|472| a union is also to take place, there is no better means than to find a general expression that satisfies both [parties] and yet leaves both parties to their will, whereby the difference continues to exist as before or, if one party really must give way, the admission of yielding is at least avoided by that general expression.

If for centuries the Germans have put themselves off with such general expressions, a semblance of union in which in deed no part has given up the least of its claims to separateness, then reflection on this, especially if it is to be scientific, must hold fast to concepts and, in the judgement whether a country constitutes a state, not knock about with general expressions but take into consideration the extent of the power that is left to what is to be called a state; and since on closer view it turns out that what is named in general public law are rights against the state, the question would be whether, notwithstanding this, a power still [accrues] to the state through which it is really a state. And on closer view of what is required for this, in comparison with the condition of Germany with regard to a state power, it will be shown that Germany can properly no longer be called a state. We go through the various principal powers which must be found in a state.

## I. The Concept of the State

*Cross-reference:* The core of the text. Worked out in the *Groundlines* in § 257 ff.; on sovereignty within § 278, on the relation of states § 321 ff.

A multitude of men can call itself a state only if it is united for the common defence of the whole of its property. It goes without saying here, actually, but it is necessary to note,

|473| that this union does not merely have the intention of defending itself, but that it, let the power and the success be what they may, defends itself through actual defence. For no one will be able to deny that Germany is united for its common defence according to laws and words; but we cannot here distinguish between laws and words on the one hand and deed and actuality on the other [side], nor say that Germany, though not in deed and actuality, yet according to laws and words defends itself in common. For property and its defence by a union of the state are things that relate wholly and entirely to reality, and what has only their ideality is anything but a state.

Plans and theories lay claim to reality insofar as they are *practicable*, but their value is the same whether they are in actuality or not; a theory of the state, on the other hand, is called state and constitution only insofar as it is actual. If Germany pretended to be a state and constitution, although the forms of these are without life, their theory without actuality, it would be uttering an untruth; if, however, it really promised common defence in words, one would have to ascribe to it the frailty of age, which, although it can no longer, still has a will, or dishonesty, which does not keep what it has promised.

For a multitude to form a state it is necessary that it form a common defence and public power. The manner, however, in which the particular effects and sides of the union that flow from this are present, or the particular constitution, is a matter of indifference for the multitude's forming a power. What belongs to this particular manner and way can be present in a highly manifold way, and in a determinate state itself a complete lack of rule and unevenness may prevail in this respect, and we must in our consideration separate the two

|474| from each other: what is necessary for a multitude to be a state and a common power, and what is only a particular modification of this power and belongs not to the sphere of the necessary but, for the concept, to the sphere of the more or less better, and for actuality to the sphere of chance and arbitrary will.

This distinction has a very important side for the tranquillity of states, the security of governments and the freedom of peoples. For if the universal public power demands of the individual only what is necessary for it, and restricts the arrangements for this necessary to be rendered to it to that, then in other respects it can grant the living freedom and the own will of the citizens and leave it a great latitude, just as the public power, which is concentrated in the government as a necessary centre, is the less looked at askance by the individuals who are on the periphery on account of what it demands as necessary and whose indispensability for the whole each can see, and does not run the danger that, if the necessary and the more arbitrary [are] subjected to the centre of the public power with the same strictness with which it is demanded by the government, the citizens likewise confuse the two with each other and, when they grow equally impatient with the one as with the other, bring the state into danger from the side of its necessity.

To that part of the actuality of a state which belongs to chance must be reckoned the manner in which the entire public power exists in a supreme point of union. Whether the holder of power is one or several, whether this one or the several are born to this majesty or elected, is a matter of indifference to the one thing necessary, that a multitude constitute a state; just as indifferent as, among the individuals subject to the universal public power, uniformity or

|475| non-uniformity of civil rights. Of the inequality of nature, of talents and of energy of soul - an inequality which produces a still more powerful difference than the inequality of civil relations - there is in any case no question. That a state should count among its subjects serfs, burghers, free noblemen and princes who in turn have subjects, and that the relations of these particular estates themselves as particular political members in turn exist not purely but in infinite modifications, hinders a multitude just as little from forming a public power as that the particular geographical members constitute provinces of various relations to the internal public law.

With regard to actual civil laws and the administration of justice, neither would equality of laws and of legal procedure make Europe into a state, any more than equality of weights, measures and money, nor does their diversity sublate the unity of a state. If it did not already lie in the concept of the state that the closer determinations of the legal relations concerning the property of individuals against individuals do not touch it as public power, which has to determine only the relation of property to itself, the example of almost all European states could teach us, among which the most powerful of the true states have altogether non-uniform laws. France before the revolution had such a manifoldness of laws that, besides Roman law, which applied in many provinces, Burgundian, Breton etc. prevailed in others and almost every province, indeed almost every city, had a particular customary law, and a French writer said with truth that whoever travelled through France changed laws as often as post-horses.

No less does the circumstance lie outside the concept of the state, by what particular power or according to what proportion of share of the various estates or

|476| of the citizens of the state in general the laws are given, likewise the character of the courts, whether in the various instances of the administration of justice, in relation to the members, it is an inherited one, or proceeding from the supreme power, or conferred by the citizens according to their free confidence, or by the courts themselves, what extent the district of a particular court has and whether it has been determined by chance, whether a common supreme instance exists for the whole state etc.

Equally independent of the state, and equally non-uniform, can the form of administration in general [be], then the institutions of the magistrates, the rights of the cities and estates etc. All these circumstances are only relatively important for the state, and for its true essence the form of their organisation is a matter of indifference.

The inequality of the levies of the various classes according to their material value, but still more the inequality of the ideal side, namely of the rights and duties herein and of their origin, is to be found in all European states. Just as little as the inequality of contributions to the expenditure of the state, arising from the inequality of wealth, hinders the state at all — the modern states, rather, rest upon it — just as little does it affect the state that the various estates of the nobility, the clergy, the burghers and the peasantry contribute unequally, and have in the diversity of the estates, quite apart from everything that is called privilege, the ground for contributing in different proportions, because the proportion cannot be determined according to the essential side of that of which a part is given up, namely not according to the side of labour, which cannot be calculated and is in itself unequal, but only according to the side of the product.

Other contingencies — whether the various geographical parts of a state are burdened differently, what transformations and subordinate systems the levies pass through, whether on one and the very same field a

|477| city has the land tax, a private person the ground rent, an abbey the tithes, the nobleman the right of the chase, the commune the right of pasturage, and so on, and the various estates and bodies of every kind form particular relations with regard to levies — all such contingencies remain outside the concept of public power, for which, as the centre, only the determinate quantity is necessary, while the heterogeneous manner of the inflow, with regard to its origin, is a matter of indifference; just as, in general, the whole relation of the levy may lie outside of it [sc. the state] and the state nevertheless be very powerful, if either, as in the old feudal constitution, [the vassal] in cases of need provides by personal services at the same time for everything that he requires in the service he renders to the state, and for the rest the state has in domains the source of its revenues — or, as it may also be conceived, that in the latter way expenses could be defrayed altogether, where the state would not even as a monetary power, which it must be in more recent times, be a centre of levies, but [that] which it takes in as a levy would, according to the actual relation of most levies, stand on an equal footing of particular right with others who, in relation to the state, are private persons.

In our times there may be among the members just as loose a connection, or none at all, with regard to customs, culture and language; and the identity of these, this former pillar of the union of a people, is now to be counted among the contingencies, the character of which does not prevent a multitude from constituting a public power. Rome or Athens, and also any modern small state, could not subsist if the many languages that are current in the Russian Empire were spoken within its circuit, nor, likewise, if the customs among its citizens were as different as they are in that empire, or as they and culture already are in every capital of a great country. The diversity of language and of dialects,

|478| the latter of which makes the separation at the same time still more irritated than complete unintelligibility, the diversity of customs and of culture in the separated estates, which makes human beings recognisable to one another almost only by outward shape — such heterogeneous and at the same time most powerful elements, just as in the grown-great Roman Empire the preponderant weight of force, so in the modern states the spirit and art of state organisations is able to overpower and hold together, so that inequality of culture and of customs becomes a necessary product as well as a necessary condition of the subsistence of the modern states.

That in religion, in that in which the innermost being of human beings expresses itself and in which, even if all other external and scattered things can be a matter of indifference, they nevertheless recognise themselves as in a fixed centre and only thereby would be able, despite the inequality [and] mutability of the remaining relations and conditions, to have trust in one another and to be sure of one another — that in this there should be identity at least, has likewise been found dispensable in more recent states.

Even in the chillier Europe the unity of religion was formerly always the fundamental condition of a state. People knew of nothing else, and without this first being-one found no other being-one or trust possible. At times this bond became itself so energetic that it repeatedly transformed peoples otherwise strangers and in national enmity suddenly into *one* state, which, not merely as a holy commune of Christendom, nor as a coalition uniting their interests and, for the sake of these, their activity, but as *one* worldly power, as a state, conquered at the same time the fatherland of its eternal and temporal life in the war over the Orient as *one* people and army.

Just as little as before and afterwards, in the division into peoples, the equality of religions prevented wars and bound them into

|479| *one* state, just as little does, in our times, the inequality of religion tear a state apart. Public power, as pure public law, has known how to separate itself from the religious power and its right, to obtain for itself subsistence enough, and so to arrange itself that it [the state] has no need of the church, and the church is again set in the condition of separation from it which it had in its origin from the Roman state.

According to the theories of the state, to be sure, which in our times have been set up partly by would-be philosophers and teachers of the rights of humanity, partly realised in monstrous political experiments, everything else — only the most important, language, culture, customs and religion, excepted — that we have excluded from the necessary concept of public power is subjected to the immediate activity of the supreme public power, [and indeed so] that it is determined by it, and that all these sides, down to their smallest threads, are drawn in by it.

That the supreme public power must exercise the highest supervision over the mentioned sides of the internal relations of a people and over their organisations determined by contingency and ancient arbitrary will, that they may not hinder the principal activity of the state, but that it must above all things secure this for itself and to this end is not to spare the subordinate systems of rights and privileges, goes without saying; but it is a great advantage of the old states of Europe that, in that the public power is secured for its needs and its course, it leaves to the own activity of the citizens of the state a free scope in particulars, in the administration of justice, in administration, and so on, partly with regard to the filling of the offices of officials necessary therein, partly to the conduct of current business and the handling of the laws and customs.

Given the size of the present states, the reality of the ideal according to which every free man is to have a share

|480| in the deliberation and determination concerning the general affairs of the state is altogether impossible. Public power must concentrate itself in a centre, both for the execution, as government, and for the resolving upon it. If this centre is secure for itself through the reverence of the peoples, and is hallowed in its immutability in the person of the monarch determined by a law of nature and [by] birth, then a public power can, without fear and jealousy, leave freely to the subordinate systems and bodies a great part of the relations that arise in society, and their preservation according to the laws, and every estate, city, village, commune, and so on, can enjoy the freedom of itself doing and carrying out whatever lies within its district.

As the laws concerning this have gradually emerged immediately from the customs themselves as hallowed usages, so [the] constitution of right, the institutions of the lower jurisdiction, the rights of the citizens therein, the rights of the administrations of the cities, the collection of the levies, partly the general ones, partly those necessary for the needs of the cities themselves, and the lawful use of the latter — everything belonging here has come together of its own drive and has grown up for itself, and since it brought itself forth it has also maintained itself.

The so extensive organisation of the ecclesiastical institutions has likewise not been made by the supreme public power, and the whole estate maintains and replaces itself more or less within itself. — The great sums which are spent annually in a great state for poverty, and the institutions of wide extent devoted to it, which reach through all parts of a country, are not defrayed by impositions which the state would have to order, nor is the whole establishment maintained and conducted at its command. The mass of possessions and revenues that belongs here rests on foundations and gifts of individuals, just as the whole establishment, its administration and activity is without

|481| dependence on the supreme public power; just as the greater part of the internal social institutions has made itself, through the free doing of the citizens, for every determinate extent of need, and their duration and life maintain themselves with this very freedom, undisturbed by any jealousy or anxiety of the supreme public power, except that the government partly protects them, partly restricts the luxuriant growth of such a part, whereby it would oppress other necessary [parts].

In the new theories, however, which have been in part carried out, the fundamental prejudice is that a state is a machine with a single spring, which communicates the motion to all the rest of the infinite wheelwork; from the supreme public power all institutions which the essence of a society brings with it are supposed to proceed, to be regulated, commanded, supervised, directed.

The pedantic mania for determining every detail, the unfree jealousy of the own ordering and administering of an estate, corporation, and so on, this ignoble carping at all own doing of the citizens of the state that would have no relation to public power but only some general relation, has been clothed in the garment of principles of reason, according to which not a farthing of the common expense that is made for the poor in a country of 20, 30 millions [may be spent] without [its] having been first not [merely] permitted but commanded, controlled, inspected by the supreme government. In the care for education the appointment of every village schoolmaster, the expenditure of every penny for a windowpane of the village school as well as of the village council chamber, the appointment of every gate-clerk and court bailiff, every village judge, is to be an immediate emanation and effect of the supreme government; in the whole state every morsel from the soil that produces it to the mouth is to be led along a line which is investigated, calculated, rectified and commanded by state and law and government.

This is not the place to set out at length that the centre, as public power, the government, must leave [that] which is not necessary to it for its destination, to organise and maintain the power, [that is,] for its external and internal security, to the freedom of the citizens, and that nothing must be so holy to it as to let the free doing of the citizens in such matters go on and to protect it, without any regard to utility; for this freedom is holy in itself.

But as for utility — if it is to be calculated what advantage the own administering of their affairs by the particular bodies, their administration of justice, their appointing to the offices that become necessary therein, and so on, bring — there are here three kinds of calculation: the one, which goes to the tangible, the money that the supreme public power obtains thereby, — the other, to the understanding and excellence with which in a machine everything is done at uniform pace, according to the shrewdest calculation and the wisest purposes, — the third, however, to the liveliness, the contented spirit and the free and self-respecting self-feeling which springs from the participation of the own will in the general affairs, so far as their branches are contingent for the supreme public power.

In the first, in the tangible, the state whose principle is the general machinery imagines itself without hesitation to have the advantage over the one which leaves the detail, to a great extent, to the rights and the own doing of its citizens. It is to be remarked in general, however, that that state, unless it imposes heavier impositions on the whole, cannot possibly have the advantage. For since it takes over all branches of administration, of the administration of justice, and so on, all the costs of these [must] fall upon it at the same time,

|483| which, if the whole is arranged according to a general hierarchy, must likewise be covered by regular impositions; whereas the state which, as regards what [is required] in these institutions, which go only to the contingent and the particular, such as the administration of justice, the costs of education, contributions for the support of poverty, and so on, leaves the costs too to these particulars that are interested in them, sees these costs defrayed without the form of impositions. Whoever needs the judge and the advocate, as well as an educator, or provides for the poor at his own prompting, pays here alone. There is no imposition; no one pays for a court, an advocate, an educator, a clergyman whom he does not need; just as, when [someone] is chosen by the members themselves for the lower magisterial offices, of the court, of the administration of the affairs of cities [and] corporations, [the one chosen] is paid by the honour that thereby befalls him, but must demand payment from the state, to which he would have to render service, because here this inner honour is lacking. Both circumstances — even if, in relation to the former, more money should be spent by the people, which is not to be believed — bring about: the first, the difference that no one spends money for something unnecessary to him, for a state need that is not general; the other, a real saving for all; both, that the people feel themselves treated there with reason and according to necessity, here with trust and freedom — a circumstance which makes up the difference chiefly of the second and third kind of calculation.

The mechanistic hierarchy, supremely intelligent and devoted to noble purposes, shows trust in its citizens in nothing, and so can expect none from them; — it holds itself secure in no performance whose command and execution it has not itself arranged, and so banishes voluntary gifts and sacrifices, shows the subject its conviction of his lack of understanding and its contempt for his

|484| capacity to judge and to do what would be conducive to his private welfare, as well as its belief in universal shamelessness; it can therefore hope for no living activity, no support from his self-feeling.

There lies in this a difference too great to be grasped by the statesman who takes into account only what can be calculated in determinate numbers, a difference which shows itself first of all in the prosperity, the well-being, the uprightness and contentment of the inhabitants of the one state, as well as in the dullness, the eternal turning over of baseness into impudence, and the poverty of the other, and which, in the greatest things, where only the contingent side of the event lies on the outside, makes precisely this contingency determinate and necessary.

The difference is infinite whether public power so arranges itself that everything on which it can count is in its hands, but for that very reason can count on nothing further, or whether, besides what is in its hands, it can count also [on] the free attachment, the self-feeling and the own endeavour of the people — an omnipotent, unconquerable spirit, which that hierarchy has driven away, and which has its life only where the supreme public power leaves as much as possible to the citizens' own care. What kind of leathery, spiritless life will be produced in such a modern state, in which everything is regulated from above downwards and nothing that has a general side is left to the administration and execution of the parts of the people that are interested in it — as the French republic has made itself — is, if this tone of the pedantry of ruling can continue, to be learned only in the future; but what life and what aridity prevails in another, equally regulated state, the Prussian, strikes everyone who enters the first village of it, or sees its complete lack of scientific and artistic genius, or does not regard its strength

|485| according to the ephemeral energy to which a single genius has known how to force it up for a time.

We therefore distinguish, in a state, not only the necessary, which must lie in the hand of public power and be determined immediately by it, from that which, though absolutely necessary in the social union of a people, is contingent for public power as such, but also hold that people to be happy to whom the state leaves much free hand in the more subordinate general activity, and a public power to be infinitely strong which can be supported by the freer and unpedantised spirit of its people.

That in Germany, then, the unfree demand is not fulfilled to know laws, administration of justice, the imposition and collection of levies, and so on, language, customs, culture, religion, regulated and governed from one centre, but that in respect of these the most disparate manifoldness obtains — this would not prevent Germany from constituting a state, if it [were] indeed organised as a public power …

## [II. History and Critique of the Constitution of the German Empire]

### [1. Military Power]

*Cross-reference:* § 321–§ 329, on military service and the estate of bravery § 325 ff.

The propagation of this warlike talent itself proves that these hosts of armed men are not idle; for centuries no significant war has been waged among the European powers in which German valour has not, if not laurels, always won honour, in which streams of German blood have not flowed.

With the multitude of its inhabitants, their warlike talents, the readiness of their lords to shed their blood, with its wealth in the dead as well as the living requisites of war, no country is more defenceless, none more incapable, not of conquering, but only of defending itself, than Germany. Not even the attempts at defence, the mere striving, is significant or honourable.

The military power consists, as is well known, of the military of the larger and smaller estates. As regards the latter, these armies, hosts, army corps, or whatever one wishes to call them, can usually be no more than police and parade soldiers, not warriors who know nothing higher than the glory of their army and service. The military spirit that lifts the heart of every warrior of a great army at the words "our army", this pride in his estate and service, the soul of an army, cannot thrive in the town guard of an imperial city, the bodyguard of an abbot. The kind of respect which the sight of the uniform of great armies awakens for the as yet unknown individual who wears it cannot fall to the uniform of an imperial city. "I have been 20, 30 years in this service" carries, in the mouth of the bravest soldier of a small estate of the Empire, an entirely different feeling and effect from that in the mouth of an officer of a great army, for the self-feeling of the man and the respect of others for him grows with the greatness of the whole to which he belongs; he shares in the glory which centuries have heaped upon it.

The insignificance of the isolated small military corps, through their small number, need not be increased still further by clumsiness and other unfavourable arrangements. It must have very great disadvantages that, at the outbreak of a war, the smaller estates first recruit their soldiers, often appoint the officers only now, and so send untrained people into the field; that one estate has to supply the drummer, the

|487| other the drum, and so on; that, because of the multitude of estates that send contingents together, there is inequality in arms, in drill, and so on, and the common soldiers are unacquainted with the officers; that every estate actually has the right to provide for its own victualling, so that the greatest disorder in the service and an obstructive overloading with civilians and baggage-train prevail, besides the unnecessary costs. According to the legal theory, a detached picket of twenty men of different estates in fact requires twenty separate commissaries of provisions, bakers, and so on. That the Imperial Register is several hundred years old, and so no longer corresponds to the present proportion of the size and power of the estates, and so occasions dissatisfaction, complaints and perpetual arrears; that territories occur in it whose geographical situation cannot even be ascertained any longer; and a hundred other circumstances are too well known not to be tedious if one cites them.

If now the insignificance of the military of the smaller estates already disappears when they assemble and concresce into an army of the Empire, the disadvantages mentioned and innumerable others nevertheless set the usefulness of this army in war below all the armies of the rest of Europe, not even excepting the Turkish, and the very name of an army of the Empire formerly had a peculiar misfortune. As the name of other armies, foreign ones too, awakens the thought of bravery and formidableness, so the name of the army of the Empire, when pronounced in a German company, rather cheered every face, awakened all the humours witty in accordance with station and propriety, and everyone dipped into the purse of his anecdotes about it, in order to contribute something. And when the German nation is held to be

|488| earnest and incapable of the comic, one forgets the farces of the wars of the Empire, which are performed with all possible outward earnestness but a genuine inward ridiculousness.

While the organisation of the army of the Empire, with all its consequences, has not improved at all, the feeling of the misfortune and the disgrace of Germany brought about by it has diminished the general mania for mocking at it, and only because in the last war much in regard to it, for example the victualling, was done contrary to right and constitution, could these troops be of some use.

Still more disadvantageous than all these circumstances of the condition of an army of the Empire is the fact that none is ever actually brought together; and in this the dissolution of Germany into independent states shows itself most visibly.

According to the theory of the fundamental laws the army of the Empire could be a formidable army, but the practice, this mighty principle of German public law, shows something quite different. If one sees, only too often, an enormous multitude of German soldiers in the field, it goes without saying that they are afoot not as an army of the Empire for the defence of Germany but for the lacerating of its entrails. What is called the German constitution is not only unable to prevent such wars, but rather makes them lawful and in accordance with right.

All the more inconsiderable is the German army when it is called out for the protection of Germany; for although the fivefold contingents of Brandenburg, Saxony, Hanover, Bavaria, Hesse already form armies in themselves, and united are a formidable army, and would make the clumsiness of the smaller contingents united with them disappear, they depend on something quite other than the laws of Germany, and their co-operation in

|489| its defence [is] quite as unreliable and contingent as the co-operation of any foreign power.

With the large contingents — not including the Austrian, which the Emperor, as monarch of other kingdoms, because of the weakness and unreliability of the army liable to service, is compelled to raise far above his obligations as an estate, and to let Germany enjoy the exertions and the extent of his other power — the Empire can count neither on their lawful strength, nor on their being furnished at all, nor on the estate which has also furnished its contingent not entering, in the midst of the war and at the most dangerous moments, into treaties of neutrality and peace with the enemy of the Empire for itself, and abandoning the attacked fellow estates to their own weakness and the devastating superior force of the enemy.

Although the right, by the laws of the Empire, of the estates to conclude alliances with foreign powers and to make the choice between foreigners and Germany is restricted by the clause "in so far as such alliances do not contradict the duties towards Emperor and Empire", this clause has been made ambiguous, or rather eliminated, by practice as a principle of right, and thus not merely the deed, but the votes of the estates in the Imperial Diet, can go to the effect that their other connections do not permit them to take part in the raising of a contingent of the Empire and in the payment of the contributions to the war.

This withdrawal of the more considerable estates from their share in the general defence places others in a condition of helplessness which compels them likewise to withdraw from need and danger, and thereby also from their obligations towards the whole. It would be altogether unnatural to demand that they should rely on a protection, and contribute

|490| to it, which, as all the world knows, protects nothing and is denied, lawfully and rightfully, by the right to conclude alliances. Under such circumstances it becomes necessary that the weaker place themselves under the protection of such powerful fellow estates as are friends with the enemy, and thereby likewise diminish the general mass of the common force; in which way those powerful estates then gain not only by sparing themselves their exertions, but also by procuring advantages from the enemy for their inactivity, and finally, in that they weaken the general mass at the same time by the contribution of those whom they compel under their protection, likewise draw profit from these for the protection afforded.

Even if several large contingents have in fact come together, the instability of their relations and the unreliability of their remaining together disturb the common activity. There is no free disposition over these army corps such as is necessary [for] the security of the execution of a plan of war, and the plan, not only of a campaign but of single operations, requires for its deed not so much orders as negotiations. Nor can it fail that the calculation enters whether the contingent of a single estate is used too much, others on the other hand spared, and the equality of right violated, just as in other relations of the state there was formerly dispute over the first place of danger and dissatisfaction over non-employment.

The jealousy of the various corps, which regard themselves as different nations, the possibility that they withdraw in the most critical moments — all these circumstances make it necessary that an army of the Empire, even one considerable in number and military substance, can produce no proportionate effect at all.

If the military weakness of Germany is neither a consequence of cowardice nor of military unfitness and unacquaintance with those skills

|491| which in more recent times bravery may not lack for victory, and if on every occasion the contingents of the Empire give the greatest proofs of their courage and military self-sacrifice and show themselves worthy of the ancient military glory of the Germans and their ancestors, then it is the arrangement of the whole and the general dissolution which cause the exertions and sacrifices of the individual men and corps to be lost fruitlessly and lay a curse upon them which, however well they may strive, ruins all effect and consequences and puts them on a level with a ploughman who would sow the sea or plough the rock.

### [2. Finances]

*Cross-reference:* On the levy to the state § 299, on the relation of resources and duty § 184 ff.

In the same case in which German public power finds itself with the military power, it finds itself with the *finances*, which, after the European states have more or less departed from the feudal constitution, have become an essential part of the power which must be found immediately in the hands of the supreme public power.

To the extreme of the arrangement of finance according to which every expenditure that a public office, down to the commonest village judge, catchpoll and lower still, or any public need limited to a village, requires, as well as every kind of revenue, flows up first as a levy to the supreme public power, and as state expenditure flows down again to the smallest branches of public activity, through all the intermediate links of laws, decrees, accountings and officials, of which no college is in anything a supreme instance — to this extreme the German lack of finance forms the other.

The great objects and problems of the state concerning the most just and least costly kind of levies, pressing on no estate more than another, public debts, public credit — these and other things, which in other states demand the expenditure of the greatest talents and in which errors have the most terrible consequences — these cares do not plague Germany. There is found neither, in general, the superfluous interference of the state in every public expense — but a village, a city, the guild of a city, and so on, attends itself to the financial matters that concern only it, under the general supervision but not under the commands of the state — nor yet [is there found] any arrangement of finance that would concern public power itself.

The ordinary finances of Germany are actually confined solely to the *chamber taxes*, which are paid by the estates for the maintenance of the Imperial Chamber Court. They are accordingly very simple, and no Pitt is required to direct them.

The regular costs of the other supreme court of the Empire are in any case borne by the Emperor. In more recent times a beginning has been made of founding a fund for this by the auction of reverted fiefs of the Empire.

Even on account of that sole arrangement of finance, the chamber dues, frequent complaints arise that they are badly paid, and remarkable for the characterisation of the German constitution is the ground on which Brandenburg does not pay the increase of them that was enacted several years ago: namely, because it is doubtful whether in such matters, as general contributions to the needs of the state, the majority of votes is binding on the individual. Where this is doubtful, that is lacking which alone constitutes a state: its unity in relation to public power.

According to the principle of the feudal constitution the *contingents* are paid by the estates themselves and provided with everything necessary. It has already been recalled above that the urgent need in the last war induced several estates to give up the exercise of the right in the last point and to take the advantageous way out of a private agreement with the head of the Empire concerning common victualling, just as smaller estates too made no use, this time, of their right to put their soldiers into the field themselves and came to terms with larger estates that these should see to the raising of the contingent incumbent on the smaller estates. One sees that — if in this there lay a dawn towards a transformation of the furnishing of contingents and delivery of their needs, to be attended to by the estates, into monetary contributions to the common centre, which would then take over what is to be performed and order it, and the beginning of a transition of the isolated and in a manner personal services into a genuine institution of the state in relation to the arrangement of war and finance and the transfer of the latter to the head, whereby the concept of a state alone is realised — this whole relation [has] partly concerned only insignificant estates, partly been a matter of passing accident.

As for the costs which are to be contributed, under the name of *Roman months*, for those sides of a modern war which are not satisfied by the furnishing of soldiers, the matter stands in just the same way as with the furnishing of contingents. According to the accounts of these, of the war-operations cash funds of the German Empire, it has been shown that about half of what was resolved upon came in. In the last months of the war before the opening of the Congress of Rastatt the public announcements of the cash holdings [gave] the whole sums of 300, 400

|494| gulden; and if in other states the holding of the supreme war chest, especially if it should be so small, is indeed not made publicly known, this announcement in the case of the German Empire has no further influence on the hostile operations of war and peace against the operation of the Empire.

The principles which prevail in this, that the resolutions of the majority have no binding force for the minority, that on account of other connections one cannot enter into the impositions of Roman months resolved upon by the majority, are the same as those which hold in regard to the duties of the estates concerning the military power.

If there formerly was, in regard to finances, a kind of state power in the *customs duties of the Empire*, levies on the cities of the Empire, and the like, those times were nevertheless so thoroughly remote from the Idea of a state and the concept of a universal that these revenues were regarded as the complete private property of the Emperor, and the Emperor could sell the revenues, while the estates — which is altogether incomprehensible — could buy them or make them into a pledge subsequently rendered irredeemable, just as immediate public power was also bought or taken in pledge, than which a stronger trait of barbarism of a people that forms a state cannot be found.

It cannot be denied, however, that the need to create finances for Germany has been felt from time to time, and proposals have been made to found sources of money for the Empire as a state. Because at the same time the estates could not be disposed to bring about this monetary power by laws requiring contributions, since thereby something similar to the arrangement as it is in a state would have come about, two things would have had to be united: to find a lasting fund for the state, and neither to burden the estates nor to bind them in any way [and] manner. Because the circumstance that the estates would be neither burdened

|495| nor bound was the most prominent, and the whole was thus less in earnest than a pious wish — with which kind of wishes the true, inwardly lying indifference to the object to which the wish relates, and at least the firm resolve to let it cost nothing, are wont to be hidden behind an especially patriotic-seeming manner and mien —, it is not to be doubted that, if the Empire were just then occupied with an arrangement of finance, in a company of honest citizens of the Empire the one who, for the good of the German Empire, put forward the wish that a mountain of gold should grow up in Germany, and that every ducat coined from it, which, when first spent, was not applied to the Empire, should at once run away like water — [that] such a wisher would be regarded as the greatest German patriot who had ever existed, because in the first moment they would have the feeling of not having to pay anything in this way before the reflection that by such a wish not a farthing comes into the treasury of the Empire, and, if the reflection really set in, they could nevertheless find expressed nothing other than what they themselves, notwithstanding their words, wanted.

Apart from this, earlier Imperial Diets have designated for the need of such a fund no such ideal, merely imagined sources, but, without any estate having to sacrifice anything of its own, real existing lands, actual realities, for the defraying of costs of the affairs of the Empire, as those huntsmen designated a real, not an imagined, bear for the payment of their reckoning.

Several hundred years ago a law was made that for the establishment of a fund of the Empire all those lands should be designated which have fallen into the hands of foreign nations, *if* the German Empire brings them back to itself; and in the wars themselves, in which the opportunity was therefore present for the German Empire to bring them

|496| back to itself, it has always known how to arrange matters so that it lost still more, and so enlarged the fund of the Empire. Accordingly the loss of the left bank of the Rhine too must be regarded from a more consoling side, namely as a way of the possibility of founding a financial fund of the Empire.

If such thoughts, thorough in their time — and one [can] be sure that, if a German teacher of public law were even now spoken to of the unhappy lack of finances, he would vindicate the perfection of this side too of the constitution of the German Empire with the way shown — were still capable of giving the German character, sanguine in such hopes, a hope in them in the present political condition of Europe and Germany, they nevertheless cannot be counted when it is considered whether Germany possesses the kind of power that in our times belongs to the essence of a state, a monetary power in fact and in the present time in which we speak.

Formerly there was a special way, when — not in a foreign war, but in one against a rebellious and outlawed estate — another estate had costs on behalf of the state, of bearing this general expenditure and compensating the latter. For when *executions* of declarations of outlawry and other decisions of the courts of the Empire, which is not always the case, were actually set in motion, the costs fell upon the losing party, if it loses, that is, not merely in right but also in war. The army of execution of the Empire in the Seven Years' War received no compensation for its trouble. That way of having the costs of execution paid was in older times a powerful spur sometimes actually to execute a declaration of outlawry, in that the executing party kept the lands of the executed party without further right or other closer accounting — as the Swiss came into possession of the greater part of the old Habsburg

|497| ancestral possessions, Bavaria into possession of Donauwörth, and so on.

A multitude which, through this dissolution of the military power and lack of finances, has not known how to form a public power, is incapable of defending its [sc. the people's] independence against foreign enemies. It must necessarily see it, if not all at once, yet little by little, go to ruin, be exposed in war to all plundering and devastation, must necessarily bear the main costs of it for friend and foe, must lose provinces to foreign powers, and, with public power over the individual members annihilated and suzerainty over the vassals lost, embrace within itself nothing but sovereign states, which as such behave towards one another according to power and cunning, of which the stronger expand and the weaker are swallowed up, and the more considerable are yet again powerless against a great power.

## [3. The Territory of the Empire]

The lands which the German Empire has lost in the course of several centuries make up a long and sad list. The teachers of public law, partly because the laws of the constitution and of the organisation of public power have altogether come to nothing [and] give little or nothing to treat of, must keep to the description of the signs that have become empty and meaningless, as insignia of what was, and of claims; partly these claims bring with them precisely the consoling emotion with which an impoverished nobleman preserves the last remains of his vanished ancestors — a consolation which has the advantage

|498| of remaining safe and undisturbed. As little as these paintings can raise objections against the present owners of their manors, so little have the claims of the German Empire in public law ever caused any minister apprehension of expecting a contradiction from him; both, the nobleman and the teacher of public law, can quietly abandon themselves to their innocent and harmless amusements.

If the teachers of public law still amuse themselves with setting out the claims of the Holy Roman-German Empire to Hungary, Poland, Prussia, Naples, and so on, it is to be remarked, on the political unimportance of such rights, that they concern not so much the German Empire as such, but rather the Roman imperial dignity, the head of Christendom and the lord of the world, and [that] the Roman Emperor and King in Germany, as his title declared, were separate in essence. The German Empire could have neither the interest, nor the will, nor later the strength to maintain what could be reckoned to belong to the supremacy of the Emperor, and such an unnatural union of lands, which their geographical situation as well as the individuality of the peoples separated — the less so since it neither would nor could preserve even those lands which were integral parts of itself.

Of the connection with the Lombard kingdom traces have been preserved even to the most recent times, but it cannot be regarded as an essential part of the German kingdom proper, the less so since it was a kingdom of its own, and the German membership of the estates of the Empire which fell to some of its states had long since lost its force.

But in regard to the lands essentially belonging to the German Empire and possessing and exercising membership of the estates of the Empire, almost every war of the Empire has ended with the loss of some of them.

This loss actually embraces two kinds: namely, besides the actual subjection of German lands to foreign supremacy and their complete severance from all rights and duties towards the Empire, it must be regarded as a loss for the state that so many lands, while they have remained in every hitherto legal and apparent relation towards Emperor and Empire, have nevertheless received princes who, in that they became or were members of the Empire, are at the same time monarchs of independent states. It is this circumstance which is apparently no loss, but apparently left everything as it was, yet has undermined the coherence of the state in its fundamental pillars, because these lands have thereby become independent of public power.

Without going back to older times, we give only a brief survey of how, from the Peace of Westphalia onwards, the impotence of Germany and its necessary fate in relation to foreign powers has manifested itself; naturally only its loss of lands in the peace settlements can be in question, for the damage through war is immeasurable for any specification.

In the Peace of Westphalia there was lost not only all connection of the United Netherlands with the German Empire, but also of Switzerland, whose independence had long since taken place in practice but was now formally recognised — a loss not of possession but of claims, which is in itself not significant, but important to the German Empire, which has often shown that chimeras of claims and rights, lacking all reality, are held by it to be higher than an actual possession. — So too Germany now formally ceded to France the bishoprics of Metz, Toul and Verdun, which it had already lost a century before. A real loss, however, for the Empire was the cession of the landgraviate of Alsace, namely so far as Austria had possessed it, and of the imperial city of Bisanz [Besançon] to Spain.

These lands went out of all connection with Germany, but several more than these remained, to be sure, in their legal and theoretical dependence, yet the fact that their princes were at the same time foreign monarchs laid the ground for their real separation in practice. To Sweden, namely, came Hither Pomerania and a part of Further Pomerania, the archbishopric of Bremen and the bishopric of Verden and the city of Wismar. To the Margrave of Brandenburg, Duke and afterwards King of Prussia, came the archbishopric of Magdeburg, the bishoprics of Halberstadt, Kammin and Minden.

Had the prince of Brandenburg not at the same time been a sovereign, this diminution of the number of German estates and their fusion into *one* mass would have produced only a slightly different effect, namely to form a state power which could now refuse subjection to German public power and offer it resistance, which the same, distributed among several, could not do.

Besides this diminution mentioned, several particular estates also ceased to exist, Schwerin, Ratzeburg, and so on.

Equally destructive for the German state was the circumstance that the German Empire, after foreign powers, both by force and when called in, had meddled in the affairs of Germany and laid it waste from one end to the other, and more or less dictated the peace, transferred to them in this peace the guarantee over its constitution and internal relations, and thereby acknowledged its incapacity to maintain itself as a state and its constitution, just as it abandoned its internal affairs to the interest of foreigners.

Other internal weakenings [were] the granting of privileges of appeal to several lands, in part also the permission of the choice of the court of the Empire before which the defendant wished to be sued, in that the defendant can by delaying the choice delay the course of the suit all the more; still more than all this the establishment of the

|501| right that not only in matters of religion, and indeed also in those which wholly concern the external condition of religion, its purely worldly side, but also in other matters concerning the whole Empire, the majority of votes in the Imperial Diet should not be binding — that the German Empire may no longer redeem its rights of sovereignty pledged to imperial cities, and so on.

In the next peace settlement, namely that of Nijmegen, which came about without a deputation of the Empire but was ratified by the Empire — and with it also its clause that on the part of the Empire no objection to it should be admitted —, the sovereignty of the Empire over the County of Burgundy was given up, and some tracts of land in northern Germany changed their lords, and in the south [there changed] the rights of garrison of France in German fortresses.

The German Empire, however, presents, besides its loss in peace settlements, phenomena quite its own, which did not easily occur in other states: in the deepest peace, namely after the peace settlement of Nijmegen, ten imperial cities of Alsace and other territories were lost to France.

The Peace of Ryswick was concluded in the presence of an Imperial deputation in such a way that this [was] not admitted to the conferences with the foreign envoys, but received communications at the discretion of the imperial envoy and was asked for its assent. This peace confirmed the French occupation of those lands, but in return acquired for the Empire an imperial fortress, Kehl, and contained the famous clause concerning the state of religion in the conquered lands returned by France, which gave the Protestant estates so much to do and helped to bring so much misfortune upon the Palatinate.

No Imperial deputation took part in the peace negotiations at Baden, and the conclusion of peace itself

|502| likewise brought about no immediate change for the German Empire; Austria received Breisach and Freiburg back.

This is properly the last peace that the German Empire has concluded.[13)] If, then, one looks in a tabular survey of the history of the Empire from the Peace of Baden to the Seven Years' Imperial War and finds neither declarations of war nor conclusions of peace, one would have to believe that Germany had enjoyed the deepest peace in this long period, while its soil has been as much as ever the scene of battles and devastation.

13) *In the margin:* NB see following page, Peace of Vienna.

The peace treaties which Sweden made after the death of Charles XII with Hanover, Prussia, Denmark and Russia deprived it [not] only of the place among the powers of Europe which had been extorted by its valiant king, but it also lost its power in Germany; yet German state power gained nothing by the latter circumstance, for the lands which Sweden lost passed to German princes, who took its place as a menace to Germany's unity.

In the Peace of Vienna Germany lost nothing but the connection with Lorraine, which was in any case slight; the ratification of this peace by the Empire did not come about.

In the War of the Austrian Succession Germany was the theatre of protracted devastation. Its greatest princes were involved in it; the armies of foreign monarchs fought one another on its soil, and yet the German Empire was in the deepest peace. The power which had taken the place of Sweden, Prussia, increased in size in this war.

Even more devastating, especially for northern Germany, was the Seven Years' War. The German Empire did, to be sure, make war this time too, and indeed a war of execution of outlawry, but its enemies did not even do it the honour

|503| of acknowledging that it was making war, nor of concluding peace with it.

The Peace of Lunéville, finally, has not only taken from Germany many rights of overlordship in Italy, but has wrested from it the whole left bank of the Rhine, and by itself has reduced the number of its princes and laid a foundation which will reduce the number of its estates by many more and make the individual parts all the more formidable to the whole and to the smaller estates.

A country one half of which in war either fights among itself or abandons the general defence and by neutrality leaves the other half to the enemy, must be torn to pieces in war and dismembered in peace, because the strength of a country consists neither in the multitude of its inhabitants and warriors, nor in its fertility, nor in its size, but solely in the way in which, through the rational connection of the parts into *one* public power, all this can be used for the great purpose of common defence.

### [4. Jurisdiction]

*Cross-reference:* The administration of justice in the *Groundlines*: § 209 ff., on the public character of legal proceedings § 224.

If, then, Germany in its war power and financial power forms no public power within itself, and for this reason must be regarded not as one state but as a multitude of independent states, of which the larger act independently even externally, while the smaller must follow some great train, and the associations which from time to time come about for some particular purpose under the name of the German Empire are always partial and concluded at the pleasure of the allies themselves, then these associations lack every advantage which the coalitions of other powers can have;

|504| for in such coalitions, even if they are not of long duration and, even while they last, in certain cases, as in wars, do not act with the success and emphasis they would if the very same power stood entirely under one government, the most serviceable measures and means are adopted with understanding for what is the purpose of the coalesced, and everything is arranged accordingly towards the purpose. The coalitions of the German estates, however, are bound by such formalities, restrictions and endless considerations, which they have created for themselves to this end, that all effect of the coalition is thereby paralysed, and it is already made impossible in advance to attain what it has set itself.

What the German Empire does as such is never an act of the whole, but of an association of greater or lesser extent. The means for attaining what the participants in it ordain, however, are not taken for this purpose, but the first and sole concern is that the relations of the allied which determine their separateness, and that they are not associated, be [adhered] to.

Such associations resemble a heap of round stones which join together into a pyramid, [which], however, because they are absolutely round and are supposed to remain so without fitting together, rolls apart as soon as the pyramid begins to move towards the purpose for which it was formed, or at least can offer no resistance. By such an arrangement these states lack not only the infinite advantage that a union of states has, but also the advantage of independence, that of being able to combine with others for individual common purposes: for in this case [they] have laid fetters upon themselves, by which every union is brought to nothing or is nothing already in its beginning.

Although, then, in this way the German estates have abolished their

|505| union and close to themselves the possibility of combining with understanding, according to need and necessity, for transitory, momentary purposes, the demand nevertheless exists that Germany shall be a state. The contradiction is set up of determining the relations of the estates in such a way that no state is either possible or actual, and yet Germany is absolutely to count as a state, it absolutely wants to regard itself as *one* body. This spirit has for centuries thrown Germany into a series of inconsistencies between its will to make a state impossible and the will [to be] a state, and [has] made [it] unhappy between the estates' jealousy of every kind of subjection to the whole and the impossibility of subsisting without this subjection.

The solution of the problem, how it could be that Germany is no state and yet is a state, results very easily [from the fact] that it is a state in thought and no state in actuality, that formality and reality separate, the empty formality belonging to the state, but the reality to the non-being of the state.

The system of the state of thought is the organisation of a constitution of right which has no force in that which belongs to the essence of a state. The obligations of each estate towards Emperor and Empire, towards the supreme government, which consists in the head in connection with the estates, are determined with the utmost precision by an infinity of solemn acts and acts of fundamental law. These duties and rights make up a system of laws in accordance with which the public-law relation of each estate and the obligation of its performance are established with the utmost precision, and only according to these legal determinations is the contribution of each individual estate to the universal to take place. The nature of this legality consists, however, in the fact that the public-law relation and its obligations are not determined by universal, proper

|506| laws, but that, after the manner of civil rights, the relation of each estate to the whole is something particular in the form of a property. Hereby the nature of public power is essentially affected.

An act that issues from public power is a universal one, and through its true universality it contains within itself at the same time the rule of its application. That which it concerns is a universal, equal to itself. The act of public power introduces a free and universal determinacy, and its execution is at the same time its application, just as its application, because there is nothing distinguishable in that to which it is applied, [must] be determined in the act itself, and no brittle and unequal material resists its application.

If the act issues from public power that every hundredth man of a certain age is to present himself as a soldier, or that a certain percentage of property or a certain levy is to be paid from every hide of land, then that about which it is decreed is quite generally men of a certain age, property or land, and there is no difference between man and man, property [and property], land and land; the determinacy which comes into the self-equal surface can be posited purely by public power. The hundredth man, the fifth per cent and so on are these entirely universal determinacies, which need no particular application in order to be introduced into the self-equal material; for no lines have been drawn which would first have to be erased or to which the determinate ones would have to be fitted - like the straight line on a tree trunk according to which it is to be hewn.

But if that to which the law is to be applied is itself manifoldly determined for this law, then the law cannot contain the rule of application completely within itself, but on the contrary there is for each particular part of the material a separate application,

|507| and between the law and its execution there enters the separate act of application, which falls to the judicial power.

A law of the Empire therefore cannot, as for a blank tablet, give the universal rule of the lines and divisions that are to be made in it, nor carry out the actual arrangement according to one and the same such rule; rather the material for which a law of the Empire is made confronts it in its peculiar determinacies, already given beforehand, and before its execution the possibility has first to be ascertained of how the particular line and shape which each part bears can fit with the one prescribed by the law, or how much obligation the universal law has for each. In the event of contradictions arising, a judicial power has to ascertain this, and with regard to this ascertainment it emerges, properly, that the ascertainment is indeed to take place, but that, first, it is so organised that little is possible for it to ascertain, second, that what it has ascertained theoretically is again not realised and remains an ascertainment in thought, and finally [that] the whole business of ascertainment is made only somewhat less than impossible by the fact that the particular determinacy which the material has stands to a universal law in the relation of a straight line to an arc of a circle, so that an incompatibility of this determinacy of the universal material of public power with a law of the same [exists] in advance. In this way the state of thought and the system of public law and of the laws of the state is the straight line; but that in which the state of thought is to be realised has the shape of a circular line, and one knows that both lines are incommensurable; and this circular shape does not make itself incompatible with the straight line de facto either; it does not bear the form of force, injustice and arbitrary will, but that it is this incommensurable

|508| line is likewise raised into the form of right: it acts rightfully in that it does not agree with public law, [and] lawfully in that it does not agree with the laws of the state.

So that the problem, how Germany is to be a state and at the same time no state, may be solved, it must, in so far as it would be a state, exist merely as a state of thought, but the non-being of the state must have the reality. In order then that the state of thought may be for itself, the judicial power, which would want to sublate the contradiction and apply to actuality what is only thought, thus to realise it and to make actuality conform to it, must be so constituted that its application too remains only a thought, and so the universal orders through which the country would be a state would be crippled in their transition into reality, and this transition itself would indeed itself be posited and ordained - for the orders have no sense at all if they do not have the purpose of being carried out -, but the act of transition too would again be made into a thing of thought.

The crippling of this transition can occur at each of its stages. A general ordinance is made, it is to be carried out, and in case of refusal judicial proceedings are to be taken. If the refusal to perform is not made the subject of judicial proceedings, the execution remains lying in itself; if it is made so, the judgement can be prevented; if it comes about, it is not complied with. This thing of thought of a resolution is nevertheless to be carried out and a penalty imposed, so the command is given for the execution that is to be enforced. This command again is not executed, so a resolution must follow against those not executing, to compel them to execute. This again is not complied with, so it must be decreed that the penalty is to be carried out on those who do not carry it out on him who does not carry it out, and so on. This is the dry history of how one stage

|509| after another, that is to put a law into effect, is made into a thing of thought.

If, then, it is for the judicial power to ascertain how the universal obligations of the Empire are to be compared with the particular rights of individuals, and a contradiction between them actually becomes the subject of judicial proceedings, it depends on the organisation which the court has, still without reference to execution, in its business of pronouncing judgement, whether the pronouncing of judgement [is] not already made difficult for it and - since the judgement, if it is not carried out, is in itself a mere thought - whether the arrangement is not such that even this thought does not come about, but that even this thought too remains a mere thing of thought.

With regard to the mere pronouncing of judgement, the organisation of the judicial power is already of such a kind that its essential side, which is under discussion here, that of making the universal ordinances of the state as state valid against individuals, suffers the greatest obstacles. In the judicial power of the Empire, the administration of civil justice and that administration of public-law justice are mixed together. Public law and private right are subject to the same courts. The courts of the Empire are the highest courts of appeal for civil disputes and for rights of the state. The extent of their judicial power over the latter, however restricted it otherwise is, in that the most important matters of this kind belong before the Imperial Diet, and much belonging here is also decided by arbitral instances, suffers infinite difficulties even merely as regards the pronouncing of judgement and is made dependent on a multitude of contingencies which become necessities for its ineffectiveness.

The combination of a civil and a public-law administration of justice has in general already the effect of so enlarging the volume of business of the existing courts of the Empire

|510| that they are incapable of dispatching it. It is acknowledged by Emperor and Empire and by the Imperial Cameral Court that the Imperial Cameral Court is even less than the Aulic Council equal to the volume of its business.

No evil seems capable of an easier remedy and [nothing] to be simpler [than] that, even if several separate courts were not to be set up, the number of judges of the existing courts should be increased and thereby both the dispatch of business immediately accelerated and a division of the same court into several sections [effected], and in this way several courts in fact set up. So simple a means, however, cannot possibly be carried out in Germany; it was indeed resolved, and the number of assessors of the Cameral Court raised to 50, but the German Empire was unable to raise the salaries of these judges. The number sank in the course of time to twelve and fewer, until it has finally come to twenty-five.

The official calculations show that the number of lawsuits brought each year exceeds by very much the number of those which it is possible to decide, even if the report on a single case lasts not, as formerly happened, several years, but still at times several months, just as then, too, in consequence of this and according to counts made, many thousands of cases lie undecided, and soliciting, even if its worst abuses fall away and Jews no longer establish a trade in this article, is a necessary evil; for given the impossibility of all the lawsuits brought being adjudicated, it is necessary for the parties to take every pains that their own obtain the preference of a judicial decision.

A thousand other collisions over the presentation of assessors, the *itio in partes*, have often put the Imperial Cameral Court out of action for several years, and without the

|511| Cameral Court deliberately delaying out of the principle of making the great feel its power, they of themselves obstruct the course of justice.

It is natural that, since in the Aulic Council, whose members are appointed by the Emperor, a multitude of these evils fall away, and also, for example, notwithstanding the right to it, no case of an *itio in partes* has yet occurred, and some forms [are suited] to promote right itself directly rather than to engage in delays of perfect formalities, in more recent times more and more justice is sought at the Aulic Council.

The need for an improvement of justice has always been too eloquent for one not to have been bound to think of it; but the manner in which the last attempt of Joseph II, to arrange a visitation of the Imperial Cameral Court, although in accordance with the laws of the Empire yet omitted for two hundred years, turned out, and the reasons why the parties dispersed with nothing accomplished, are in general no others than those of the condition of the justice of the Empire as a whole, namely that the estates do indeed associate for the administration of justice, but in this union will give up nothing of their existence towards one another, which [rests] on separation and lack of community, that [they] unite without yet wishing to have anything in common.

In this way the pronouncing of justice in and for itself is already hindered, without any regard to its execution. How it [stands], however, with the execution of these decisions of the courts of the Empire, if they were to relate to public law and to important objects of it, is well known. The more important matters belonging here in any case belong not to the courts of the Empire but to the Imperial Diet. With that they are immediately played away out of the sphere of right into that of politics; for where the supreme public power speaks, it does not make an application of the laws, but gives a law.

Besides this, things of greater significance, the possession of lands and so on, have also been withdrawn from this formality of the Imperial Diet, and by the electoral capitulation and other fundamental laws it is determined that such objects are to be decided not by the courts of the Empire and the supreme judicial power, but by amicable settlement of the contending estates among themselves, and if this does not succeed by amicable settlement, it necessarily takes place through war.

The Jülich-Berg succession affair was so little decided by way of law that it rather occasioned a thirty years' war. Thus in the Bavarian succession affair in more recent times it was not the courts of the Empire but cannon and politics that spoke. Even in matters concerning less powerful estates it is not the justice of the Empire that delivers the deciding judgement. It is well known that in the succession disputes of the Saxon houses concerning the lands of the extinct lines of Coburg-Eisenberg and Römhild 206 conclusa of the Aulic Council were issued and the most important points were nevertheless decided by settlements. Likewise it was seen that in the Liège affair the Imperial Cameral Court not only pronounced judgement and ordered execution and summoned several estates to it, but that these estates actually fulfilled this obligation. But hardly had the beginning been made when the most powerful estate among the executors was not content to be a mere executor of decisions of the Imperial Cameral Court, but went to work according to its own good intention and, when it did not get through that a decision be made by non-judicial means, gave up the role of executor as well.

If in such a delicate situation of a misunderstanding

|513| between prince and subject a mediation may be desirable, then on the other hand, when judicial pronouncements have been issued, by the fact that a mediation is still to be put in the place of execution, the whole standpoint of the moment to which the matter has matured is displaced, and through a seemingly good effect for the moment the essential principle of the constitution is dislocated, or rather it is revealed on such occasions that it was long since dislocated beforehand.

A distinction seems to have to be made here. It is too obvious that the relations of the powerful estates to one another are decided by politics. The smaller estates, on the other hand, seem to owe their existence absolutely to the legal bond of the Empire. There is no imperial city that would hold itself capable of resisting its great neighbouring fellow-estates, any more than a knight of the Empire believes he can maintain his immediacy against a prince either by himself or even through union with the rest of the body of the knighthood of the Empire. The matter speaks for itself, and it is superfluous to cite the fate of the knighthood of the Empire in Franconia; an attempt, and still less the success of an attempt, like that of Franz von Sickingen to conquer an electorate, no longer belongs among the possible things of the present time, just as associations of imperial cities or abbots could no longer achieve what they formerly could.

If the power of the individual estates - nor their power when they combine - is not what maintains them, then they seem to owe their existence as immediate and in a certain sense [in]dependent states to nothing other than the bond of the Empire and the legal constitution that came about through the Public Peace. The question now is, however, through what this so-called legal relation, and with it the subsistence of the knighthood, abbeys, imperial cities, counts and so on, is still maintained.

|514| Evidently not by its own power - for there is no state power present -, but likewise [through] politics. If politics is not regarded directly as the foundation of the existence of the less powerful estates, this happens only because in reasoning one stops at the bond of the Empire, which constitutes a middle term, as a foundation, and forgets by what this bond of the Empire is borne.

States like Lucca, Genoa and so on maintained themselves for centuries without a bond of the Empire, until they experienced the fate of Pisa, Siena, Arezzo, Verona, Bologna, Vicenza etc. etc. - in short, one could enumerate the whole geography of the cities, principalities, counties and so on of Italy -; the republic [of Venice], which seemed more powerful and had previously swallowed so many independent cities, was brought to an end by the arrival of an adjutant, who delivered the mere command of the general of a foreign power. These states, to which, while from the lottery of fate the several hundred Italian sovereign lands drew blanks, the few winning tickets of a somewhat prolonged independence had fallen, subsisted merely through the jealous politics of the larger states bordering on them, with whose power they had in previous centuries been able to engage in a struggle, but, without any external loss, had become quite disproportionately weak against them. But in the equal share of the booty, in the equality of enlargement or diminution, the jealousy of politics likewise finds itself satisfied, and in the combinations of interests arising from this, states like Venice, Poland and so on are lost.

The transformation of the law of the fist into politics is not to be regarded as a transition from anarchy into a constitution. The true principle has not changed, only its outward side. In the condition before the Public Peace the offended or the one lusting for conquest simply struck out. In politics, on the other hand, one calculates before one strikes, and for the sake of a

|515| small gain great interests [are] not put at stake, but where it seems that it can be made secure, [it is] not neglected.

Because the mass of the German states forms no power, the independence of its parts can be respected only so long as the advantage of other powers requires it and higher interests or also rights of indemnification and so on do not come into play. As regards interest, France, for example, when its armies had occupied half of Germany, could just as well as it abolished the independent states and immediate estateships in the Netherlands and in the lands of the left bank of the Rhine, which were afterwards ceded to France in the peace, also have abolished the constitutions of the lands on the right bank of the Rhine and, even if this shattering of the independence of so many principalities, counties, bishoprics, abbeys, imperial cities and free lordships could not have lasted, have plunged these lands thereby into still much greater misfortune, had not politics, namely consideration towards Prussia and the feared hindrance to peace and so on, and already the utility which an order once established has for the levying of contributions, which according to the official French newspapers[14)] have been levied *in small measure* in these lands, held it back.

14) *In the margin:* as the French newspapers report, one does not know whether in earnest or as mockery of misery

[15)]This transition from the condition of open force into

15) *In the margin:* From the feudal const. Germ. could pass over into a legal const., formerly not either and yet a state, always religion unites men, changed civil customs, raising up of industry, trade, cities, where each cares for himself, no glance at the whole, like the other.
But with this another bond necessary, power of the state, more incomplete, not possible on account of at least disproportionate enlargement of individual states, foreign powers, German estates of the Empire. Plurality, progress in peace treaties, Sweden, England, Prussia, northern barbarism of the Roman Empire.

|516| the condition of calculated force did not of course come about all at once, but on the contrary took place through a legal constitution. After the Public Peace one could indeed regard Germany more as a state than nowadays. Through the feudal constitution public power was splintered into very many parts, but because of the multitude of the parts individual ones were not powerful enough to oppose the whole. But as if fate had absolutely not destined Germany for such a condition, it soon overcame the weariness of lawlessness and the attempt at a firmer coherence through the Public Peace by the deeper interest of religion, which divided the peoples for ever.

## [5. Religion]

*Cross-reference:* The counterpart is the long Remark to § 270.

Amid all the storms of the lawless condition of the times of feuds, both with regard to the estates against one another and against the universal, a certain coherence of the whole subsisted. Although the fulfilment of obligations seemed to depend not only on the free will of the estates in general but on the wills of individuals, and the legal coherence seemed very weak, there prevailed on the other hand an inner coherence of minds. With equality of religion, and because the burgher estate, which had not yet risen, had not brought the great multiplicity into the whole, princes, counts and lords could regard one another as closer and sooner as a whole and accordingly act as a whole. There was no state power present opposed to individuals and independent of them, as in the modern states; state power and the power and free will of individuals was one and the same. But these individuals were rather of a will to let themselves and their power subsist together in one state.

But when, through the rise of the imperial cities, the

|517| burgher sense, which cares only for an individual thing without independence and without a view to the whole, began to become a power, this isolation of minds would have required a more universal, more positive bond, and when Germany, through the progress of culture and industry, was now thrust to the parting of the ways, either to resolve to obey a universal or to tear the connection completely asunder, the original German character, of persisting in the free will of the individual and resisting subjection to a universal, carried the victory and determined Germany's fate in accordance with its ancient nature.

In the course of time great masses of states and the dominion of trade and of wealth from industry had formed; the unruliness of the German character could not directly pursue the formation of independent states, the ancient free strength of the nobility could not resist the masses that had arisen, and above all the burgher spirit, gaining standing and political significance, needed a kind of inner and outer legitimation. The German character threw itself upon the innermost of man, religion and conscience, strengthened isolation from here, and the separation of the external as states appeared only as a consequence of this.

The original, never tamed character of the German nation determined the iron necessity of its fate. Within the sphere given by this fate, politics, religion, need, virtue, force, reason, cunning and all the powers which move the human race drive their mighty, seemingly disorderly play on the broad battlefield that is permitted them. Each conducts itself as an absolutely free and independent power, unconscious that they are all instruments in the hand of higher powers, of the primordial fate and of all-conquering time, which laugh at that freedom and independence. Even need, this mighty being, has not subdued the German

|518| character and its fate. The universal misery of the wars of religion and especially of the Thirty Years' War has rather developed its fate further and more strongly, and their results were a greater and more consolidated separation and isolation.

Religion, instead of separating itself from the state through its own schism, has rather carried this schism into the state and contributed most to sublating the state, and has so interwoven itself into what is called the constitution that it is a condition of rights of the state.

Already in the particular states of which Germany consists, even civil rights are tied to it. In this intolerance [both] religions have an equal share and neither has anything to reproach the other with. The Austrian and Brandenburg princes, in defiance of the intolerance sanctioned by the laws of the Empire, have esteemed religious freedom of conscience higher than the barbarism of rights.

The disruption through the separation of religion was especially strong in Germany, because the bond of the state was in no country so loose as in this one, and the dominant religion was bound to be all the more embittered against those who separated, because with religion not only the innermost bond of men was torn, but because with this in a certain way almost the only bond was torn, whereas in other states a multitude of connections still remained in their firmness. Because the community of religion is already a deeper community, that of physical needs, of property, of acquisition on the other hand a lower one, and the demand for separation is in itself more unnatural than the demand that an existing union remain, the Catholic church showed itself more fanatical, because its demand was in general directed to union and to the holiest of this union, and at most wanted to hear of grace and toleration, nothing of right, that is, of the fixing of the separation

|519| on which Protestantism insisted. Both parties finally agreed to exclude one another civilly and to surround and fortify this exclusion with all the pedantry of right.

The appearance is the same, that in Catholic countries civil rights are denied to Protestants and in Protestant ones to Catholics. Yet the ground seems different. The Catholics had the position of oppressors, the Protestants that of the oppressed: the Catholics [had denied] the Protestants, as criminals, free exercise of religion in their midst; for the Protestants, where their church was dominant, this ground falls away, as does the fear of being oppressed. The ground of Protestant intolerance could only [be] either the right of retaliation of the hatred and intolerance of the Catholics - which would have been too unchristian a motive - or a distrust of the strength and truth of their own faith and the fear of easy seduction by the splendour of Catholic worship and the zeal of its adherents and so on.

In the last century in particular this perpetual fear that the Protestant faith might be outwitted and stolen upon, this Zion-watchman's faith in its own impotence and fear of the enemy's cunning, was dominant and the occasion for entrenching grace with God behind unspeakable measures of security and bulwarks of rights.

This relation of right has been maintained with the greatest bitterness whenever it was presented by individuals of the opposing party as a matter of grace; and indeed grace is on the one hand lower than right, for right is determinate and that which is rightful has been made non-arbitrary for both parties, and grace is for right only arbitrary will. Through this clinging to pure, mere right, however, the higher sense of grace has also been obscured, so that for a long time neither party rose above right

|520| and let grace prevail before right. What Frederick II and Joseph did, the former against the Catholics, the latter against the Protestants, was grace contrary to the rights of the Peace of Prague and of Westphalia. It coincides with the higher natural rights of freedom of conscience and of the independence of civil rights from faith, but these higher rights are in the Peace of Religion and of Westphalia not only not recognised but excluded, and their exclusion most solemnly guaranteed by Protestants as well as Catholics, and from this standpoint one is so little to insist on these guaranteed rights that the grace that is spurned is infinitely higher.

Religion is a still more important determining ground of the relation of the individual parts of Germany to the whole; it has probably contributed most to tearing the union of the state asunder and to making this tearing asunder legal. The times in which religion split were too unskilled to separate the church from the state and, in spite of the division of faith, to preserve the latter, and the princes could find no better ally, in order to withdraw from the overlordship of the Empire, than the conscience of their subjects.

By virtue of the laws of the Empire gradually formed thereby, the religion of each country, of each imperial city, is determined by law, one being declared purely Catholic, another purely Evangelical, a third of parity. What, then, if a country were to violate the Peace of Westphalia so far as to pass from one purity into another purity or from parity into purity?

Equally fixed is the religion of the votes of the Imperial Diet, of the Cameral Court, of the Aulic Council, of the individual offices and posts and so on. Among these relations of the state determined by religion the most important is the so famous *itio in partes*, the right of the one or the other part of religion not to submit to the majority of votes. If this right were restricted to matters of religion,

|521| the justice and necessity of this right would be self-evident. The separation would be immediately harmless to the state, because it would concern only objects which at bottom are no concern of the latter. But by virtue of the *itio in partes* the separation of the minority from the majority is legitimated in every affair of state that has nothing at all to do with religion; over war and peace, the raising of an army of the Empire, taxes, in short over all the little that earlier times had still left over as the shadow of a whole, the majority of votes is not legally decisive, but even without any efficacy of politics the minority, which forms a religious party, can obstruct the activity of the state.

It goes too far when, as some do, this right is put in parallel with the right of insurrection, hallowed in some of the many French constitutions made during the past decade. For one must regard Germany as an already dissolved state and its parts which do not submit to a majority of the whole as independent states subsisting in themselves, whose separation, if they cannot arrive at a common conclusion, does not have as its inevitable consequence the dissolution of all social bonds and not always internal wars.

Yet while religion has completely torn the state asunder, it has in a wonderful way at the same time given the presentiment of some principles on which a state can rest. Since its schism tore men apart in their innermost essence and yet some union was still to remain, it must unite externally over external things, waging war and so on - a union which is the principle of the modern states. Precisely by the fact that the most important parts of public law were woven into the religious schism, two religions have been woven into the state and all political rights thereby made dependent on two or properly three religions[; indeed]

|522| the principle of the independence of the state from the church and of the possibility of a state in spite of the diversity of religions has been [so] acted against, but in fact [thereby], in that different religions are present and Germany is to be a state, it has been recognised.

More important is another separation, likewise brought about by religion and lying still closer to the possibility of the state. Originally, namely, the votes in the general deliberations and resolutions rested on the full personality of the princes; they had votes only if they appeared in person, and the prince of several lands otherwise separate had only *one* vote. Their person and their land, the personality and the capacity of representation of a land, did not appear separated. Through the religious schism this distinction emerged. To which side was a vote to adhere if the prince and his land were of different religion and if a vote was once counted, by the fundamental law of the Empire, to a religious party?

As state power he ought in general to be on neither of the two sides, but the times had not matured to this. At first, moreover, this was not reflected upon in this way either. The prince of Evangelical Palatinate-Neuburg, who became Catholic in the seventeenth century, was counted among the Catholic votes both at the Imperial Diet and in the courts of the Empire, whereas the vote of the Elector of Saxony, who at the close of the very same century[16)] changed his religion, remained Evangelical, as was also the case with the later changes of religion of the princes of Hesse [and] of Württemberg.

16) *In the margin:* the Westph. peace between the two

Although even before this only princes who had land and people to govern had seat and vote at the Imperial Diet, so that a land seemed inseparable from the concept of an estate at the Imperial Diet,

|523| this distinction between the personality of the prince and his representation of a land became more visible also with regard to the general German state, and all the easier if within the land this separation of the person of the prince and his subjects had already been constituted through estates of the realm. The Palatinate, which had no estates of the realm, passed over to the Catholic side without resistance, and the struggle of the Palatines with their Catholic princes over religious grievances has continued down to the most recent times, whereas in Hesse and in Württemberg the separation had already become legal through estates of the realm, and the religion of the land too [was] made to count in respect of the relation to the German Empire and set before the personality of the prince, who thus appears at the Imperial Diet not as an individual but as a representative.

Attention to this distinction, which religion occasioned, has now extended to other differences, and lands which have come under *one* prince have preserved separate votes for the prince, and here too it is no longer the unity of the individual that has been made the principle, as formerly, when even the ruler of several principalities had only *one* vote, or several princes among whom a principality was divided each had a vote for himself, and so it is not the personality but his capacity of being a representative that has been made the principle.

But as the nourishment of a healthy body, used by a sick body, would corrupt it still more, so this true and genuine principle, that the land gives strength and right of vote, brought into the condition of the German Empire, has contributed all the more to its dissolution.

## [6. The Power of the Estates]

*Cross-reference:* The estates element in the *Groundlines*: § 301 ff.; on the distinction of private right and public law § 278.

When in the course of time the change of customs, of religion, especially of the relation of the estates according to wealth, had brought about a separation with regard to the inner coherence subsisting through character and universal interests, external legal bonds were necessary in order to unite Germany, whose inhabitants ceased to be a people and became a multitude, into a state.

A theory of such unifying relations is that in which one part of German public law consists. The old feudal constitution could have passed over into such a modern kind of state, in accordance with which all the states of Europe that have not undergone an overthrow in recent times are more or less organised, if among the vassals individuals had not been, or been able to become, so overpowering. To be sure, the multitude of weaker vassals too can become a power by organising themselves into a firm body against the state, as was the case in Poland; and the splendour alone that surrounded the Roman Emperor would not have equipped him with sufficient power against this. But even though in Germany the minority is not subject to the resolutions of the majority, yet partly this right, founded in the *itio in partes*, always has a certain restriction, partly it is not a single vote but only a religious party that is capable of paralysing the activity of the whole, partly if in general the individual estate by itself too believes [itself] not subject to the majority - as Prussia, in refusing the increased Cameral contributions, set up the principle that it was still undecided whether the resolutions of the majority in matters of taxation are binding at all - and each estate by itself enters into peace treaties and treaties of neutrality, all these rights and relations are later, and it was conceivable that, if the Emperor had had, through

|525| the lands of his house, a sufficient state power and the individual vassals could not have swollen to overpowering size, the feudal constitution of Germany could have preserved the state. It is not the principle of the feudal constitution that cut off the possibility of Germany's being a state, but the disproportionate enlargement of individual estates that destroyed the principle of the feudal constitution itself and the subsistence of Germany as a state.

The power of these individual states has let no state power arise in Germany, and their enlargement has made it ever more impossible. The obstinate essence of the German nature in regard to independence has made everything that might serve for the erection of a state power and for the union of society into a state into a thoroughly formal thing, and has held just as obstinately to this formality. This obstinacy in regard to formality is not to be comprehended otherwise than as the resistance to the reality of union, which is averted by the assertion of that formal essence, and this immutability of the form is passed off as immutability of the thing.

As the Roman emperors, who put an end to the anarchy of the Roman republic and brought the Empire together again into a state, preserved all the outer forms of the republic intact, so, for the opposite purpose, all the signs of the German union of the state have for centuries been conscientiously preserved in Germany, even though the thing itself, the state, has vanished and has dissolved, not indeed into open anarchy, but into many separate states. The constitution seems to have suffered no change at all in the thousand years that have elapsed since Charlemagne, if the newly elected Emperor still now at the coronation wears the crown, the

|526| sceptre, orb, even the shoes, the coat and the jewels of Charlemagne. A more recent emperor is thereby presented so much as the same emperor that Charlemagne was that he even still wears the latter's own clothes. Although the Margrave of Brandenburg now keeps 200,000 soldiers, his relation to the German Empire seems not to have changed since then, when he had not 2,000 men of standing, regular soldiers, because the Brandenburg envoy now at the coronation, as formerly, presents oats to the Emperor.

This German superstition about the wholly external forms, about ceremonial, so ridiculous to other nations, is very well aware of itself; it is the appearance of the original German nature, of holding with untamed tenacity to self-willed independence. In the preservation of these forms the German forces himself to see the preservation of his constitution. Manifestos and state papers speak precisely the same language.

Above, mention has been made of the loss which Germany has suffered against foreign powers; but for Germany as a state it is to be reckoned as a still greater loss when foreign princes have become possessors of German lands of the Empire and thereby members of the German Empire; every enlargement of such a house is a greater loss for Germany's constitution of the state; it has maintained itself only because the Austrian house, which may be called the imperial house, has not been made strong enough by the German Empire to resist that principle of complete dissolution even in some measure, but has been put in a position to do so by the power of its other lands. Even against the union of several German lands in [only] *one* house in the most lawful way, by inheritance, Germany's constitution has no guarantee; on the contrary, since public power is treated throughout in the legal form of private property, there can be no question of opposition to such a union,

|527| which otherwise is more important in politics than family and private rights; Naples and Sicily have been separated from Spain, the right of this family to them has been recognised, and likewise Tuscany has been kept separate from the imperial house.

Just as the old Roman Empire was destroyed by northern barbarians, so too the principle of destruction of the Roman-German Empire came from the north. Denmark, Sweden, England and above all Prussia are the foreign powers to which their status as estates of the Empire gives at once a centre[17)] separate from the German Empire and at once a constitutional influence in its affairs.

17) *Editors:* Mollat reads "interest"

*Denmark* played in this respect only a transient and brief role in the first years of the Thirty Years' War.

The Peace of Westphalia in general consolidated the principle of what was then called German freedom, namely the dissolution of the Empire into independent states, diminished the multitude of such independent states, the only remaining possibility of a preponderance of the whole over the parts, and through their fusion into larger states strengthened the separation and conceded to foreign powers a rightful interference in the internal affairs, partly precisely by conceding to them lands of the Empire, partly by making them guarantors of the constitution.

At all times the measure by which one party in a state fighting within itself calls a foreign power to its aid has been held to be the greatest hostility and, if where the state dissolves there could still be any question of punishment, the greatest crime. In the deepest laceration of a state by internal wars, in this most terrible of all evils, there still prevails, in [all] the hatred

|528| of such hostile elements, a hatred greater than any other, the principle that together they ought nevertheless to make up one state; [and if] this connection should itself have to be brought about by tyranny, then what is holiest to human beings, the demand for connection, has still remained. But that party which calls foreign powers to its aid gives up this principle; it has now by its deed abolished the connection of the state, even if its knowing and true intention is no other than to find protection, through this foreign aid, against an oppression which it is incapable of resisting by its own power.

After, in the Thirty Years' War, the attempt of Denmark to become the saving genius of Germany had failed, and before Ferdinand's armies, without resistance and without contradiction, not only that which is called German public law but all laws whatever fell silent, the noble Gustavus Adolphus came forward almost with the reluctance of the German estates. His hero's death on the battlefield did not let him complete his role of being the saviour of German freedom of the state and of conscience. Gustavus sent ahead a declaration of this his intention, entered with the German princes into the most definite treaties concerning the general national cause, at whose head he placed himself from free and noble magnanimity, defeated the armies of oppression, freed the lands from the burden of them and from the still more oppressive burden of the religious rights torn from them; his camp was a church, he and his army went into battle singing the most fervent religious hymns. His arm, victorious for the restoration of religion and of the rights torn from [the] German princes, did not give back to the Count Palatine his reconquered hereditary states, kept other lands in its power and other plans in its head, which his death did not let him carry out and which the subsequent course of the war let his chancellor fulfil only so far that the foreign power received at the peace Western Pomerania and a part of Further Pomerania,

|529| the archbishopric of Bremen, the bishopric of Verden and the city of Wismar, which according to the theory remained dependent on the German Empire, but according to practice were separated from it and from its interest, so that Sweden, besides the political influence as a power, and this too as guarantor by law, also obtained a permanent legal influence as a member of the Empire itself.

So foolish are human beings, over idealistic visions of the disinterested rescue of freedom of conscience and of political freedom, and in the inner heat of enthusiasm, to overlook the truth that lies in power, and thus to believe a human work of justice and contrived dreams secure against the higher justice of nature and of truth, which however makes use of necessity to force human beings under its power, in defiance of all conviction and theory and inner heat. This justice, that a foreign power which a weak state lets take part in its internal affairs comes to possession in that state, manifested itself in the Peace of Westphalia also with regard to the duchy, afterwards kingdom, of Prussia; this duke received the archbishopric of Magdeburg, the bishoprics of Halberstadt, Kammin and Minden. Even if the House of Brandenburg had not, like the house that has now entered into the ducal dignity of Pomerania etc., been at the same time a foreign power abroad, the reduction of the number of German estates and their fusion into a power, even if entirely native, would [nevertheless] have had the effect of diminishing the power of the universal, because the parts formerly smaller now form a power capable of opposing itself to the power of the whole.

Sweden lost through the peace settlements which it was compelled to make, after the death of Charles XII, with Hanover, Prussia, Denmark and Russia, the meteoric place among the powers of Europe forced by its brave king, and with it also its power in Germany;

|530| German state power, however, gained nothing thereby, for already another centre of opposition to it was forming more and more, and into possession of the lands which Sweden lost in Germany there came neither immediately the German Empire, to serve as a fund for the treasury of the Empire, nor princes of its own, but princes who were already fellow estates and now stepped into the place of what was formidable to the unity of the state.

In the deep peace which the German Empire maintained while it was filled with general war, *Hanover*, which now had *one* prince with England, played a role which however remained without further result; there was no principle to maintain to which Germany's interest attached itself immediately. Neither political freedom nor freedom of conscience was to be defended, and in general Hanover did not afterwards raise itself to the rank of influence in Germany which Sweden and afterwards Prussia maintained; England's constitution and interests too remote did not permit Hanover, and with it the relation to Germany and England's political relation, to be amalgamated as the first Brunswick prince who ascended England's throne still did from natural attachment to his German relations, and the separation of the interests of England and Electoral Brunswick became most visible in the Seven Years' War, when France, with the project of conquering America and India in Hanover, thought itself so clever, but learnt through the outcome how little the devastation of Hanover did harm to the English nation. In this separation and thus in the lesser influence on Germany England's monarch has remained a German estate of the Empire.

In the same war Germany did not lose Silesia, but the power whose greatness is most contrary to the unity of the German state enlarged itself thereby and maintained itself in this in the Seven Years' War which afterwards sprang from this conquest. In

|531| this war the German Empire did indeed declare war on one of its fellow estates, but the latter did not do it the honour of recognising it. It does happen that a state with which war is actually being waged is not recognised; yet already by the deed, through the fact that war is waged with it, it is recognised, and it becomes so completely when peace is concluded with it; but to the German Empire the honour was scarcely done by its enemy of war being waged with it, and its war has not been recognised by a peace; for no peace has been concluded with the German Empire.

This war had in common with older ones the character of being an internal war of the German estates with one another. One part of the estates, in accordance with the resolutions of the Imperial Diet, let its troops join the army of execution of the Empire; another part, on the other hand, abstracted entirely from this relation to the German Empire and, as sovereign estates, allied itself with *Prussia*. No general interest counted any longer; an old jealousy of the Protestants towards Austria brought religion too partly into play, which found nourishment in the well-known zeal of the Empress for the Catholic religion, which had in part exposed her otherwise maternal heart to intrigues, whereby Protestants in her states were oppressed, and in some other circumstances, such as that the Pope had consecrated the sword of the Austrian commander-in-chief, etc. The part of animosity that came from this side, however, existed on both sides only as public spirit; the war itself concerned no such more general interest, it concerned only the private interest of the belligerent powers.

Since then the Prussian power has enlarged itself in Poland. The number of the estates of Germany has again been diminished by three, Bavaria, Ansbach and Bayreuth. The results of the war with France in this respect have not yet reached their full development.

Thus, on the one hand religion and the progress of culture,

|532| on the other hand the Germans, united not so much by the power of an external bond of the state as by inner character, and partly the superior power, hindered by no principle of the state, of individual estates, have dissolved the German state by leaving it no state power. The old forms have remained, but the times have changed, and in them customs, religion, wealth, the relation of all the political and civil estates, and the whole condition of the world and of Germany. Those forms do not express this actual condition; the two are separated and contradict one another and have no mutual truth.

Germany set out from a condition at the same time as almost all the states of Europe. France, Spain, England, Denmark and Sweden, Holland, Hungary have matured into a state and have maintained themselves so, but Poland has perished. Italy has divided itself up, and Germany falls apart into a multitude of independent states.

Most of those states were founded by Germanic peoples, and their constitution developed out of the spirit of these peoples. Among the Germanic peoples every free man originally, just as his arm was counted on, so also had a share with his will in the deeds of the nation. The princes, as well as war and peace and all works of the whole, were chosen by the people. Whoever wished took part in the deliberation himself; whoever did not wish refrained of his own free will and relied on the equal interest of the rest.

When, through the alteration of customs and of the manner of life, each became more occupied with his need and his private affairs, when the part of the free men incomparably greater in number, the proper estate of burghers, had to look exclusively to its need and to gain, [when] the states became larger, the external relations more entangled, and those who had to occupy themselves exclusively with them became an estate of their own, and the multitude

|533| of the needs of the free man, of the nobility, [increased], which had to maintain itself in its estate through industry and labour for the state, - [when] thus the national affairs became more foreign to every individual, the management of the national affairs gathered ever more narrowly into *one* centre, which [consists] in the monarch and the estates, that is, in a part of the nation, which partly as nobility and clergy speaks for itself personally, partly as third estate is a representative of the rest of the people. The monarch manages the national affairs, especially insofar as they concern the external relations with other states; he is the centre of state power, from which proceeds everything that according to the laws requires compulsion. The lawful power is thus in his hands; the estates have a share in legislation, and they furnish the means which the power receives.

This *system of representation* is the system of all the more recent European states. It was not in the forests of Germania, but it has issued from them; it makes an epoch in world history. The connection of the culture of the world has led the human race, after oriental despotism and the dominion of a republic over the world, out of the degeneration of the latter into this middle between the two, and the Germans are the people out of which this third universal shape of the world spirit has been born.

This system was not in the forests of Germania, for every nation must have run through its own stages of culture independently before it intervenes in the universal connection of the world, and the principle which raises it to the universality of dominion arises only as its peculiar principle applies itself to the rest of the unstable world. Thus the freedom of the Germanic peoples, when, conquering, they flooded the rest of the world, necessarily [became] a *feudal system*.

The holders of fiefs remained among themselves, in their relation to one another

|534| and to the whole, what they were, free people; but they acquired subjects, and thereby they entered at the same time into relations of duty to him whom they had freely, without duties, placed at their head or whom they had followed. These contradictory properties of a free man and of a vassal are united in this, that the fiefs are not fiefs of the person of the prince but of the Empire. The connection of the individual with the whole people now receives the form of duty, and his possession of a fief and of a power does not depend on the arbitrary will of the prince, but is rightful and proper to him and therefore hereditary. If in despotisms the dignity of a hospodar can have a kind of hereditariness, even this is an arbitrary will; or if such a hereditary power is connected with a more independent state of its own, like Tunis etc., then it is tributary and not, like the holders of fiefs, a partaker in the common deliberations. In these the personal and the representative character of the vassal are mingled; in the latter he represents his land, he is the man of it, at the head of its interest, he is personally one with it. Moreover, the people belonging to the vassal in many states have, besides being subjects, at the same time become burghers, or the isolated free people who did not become barons have united into burgher communities, and this estate of burghers has received a representation of its own as well.

In Germany that part of the estate of burghers which has for itself a representation in the general state is not at the same time subject, and the subjects have no separate representation in the general state; but they have it through their princes, and they have it again within the compass of the particular state which they make up, in relation to their princes.

In England the higher and lower nobility, with [the loss of] territorial lordship, has at the same time lost a degree of its character of being the representative of a part of the people,

|535| but the significance in the state has not on that account become wholly personal. The lord who has seat and voice in the council of the people is, by virtue of primogeniture, the representative of his great family; otherwise the younger son of the Duke of Chatham, the Chancellor of the Exchequer, is *Mr* Pitt. Personally the nobleman who is not the first-born comes up to the general barriers of the career, at which every commoner stands, and from which the course to the highest honours lies open to him as well as to the son of the duke through talents, character and culture, just as in the Austrian monarchy, for the external social tone, every well-dressed man is greeted "Herr von" and to everyone the way to the highest military and political offices lies open, and he who attains them is raised into the estate of the nobility, and is thus placed on an equal footing with it, outside the relations that involve a representation, as in England.

The misfortune of France must be sought entirely and solely in the complete degeneration of the feudal constitution and the loss of its true character; through the lapse of the assemblies of the Estates General, higher and lower nobility no longer appeared in the character in which its chief strength in the political organisation consists: that of being a representative[18]; its personality, on the other hand, was driven to the highest, revolting degree.

18) *In the margin:* just as the third estate too no longer has its own representation in operation and in the case of the new États Généraux no gradual transition had been made from the harsh old form to a more suitable one.

If the nobility, through prosperity, is removed from youth onwards from the dirt of trade and the exertions of need, and a free mind is preserved to it thereby as well as by the inherited carefree [disposition], unconcerned with things, and it is therefore more capable of martial bravery, which [gives up] all possession, all cherished property and habits of limitation and accustomedness

|536| to the totality of everything that exists, as well as of a more liberal handling of the affairs of the state and of a certain freedom in this, which is more independent of rules and can, according to circumstances, situation and need, trust itself more and animate the machinery of administration somewhat more freely, - if therefore the nobility personally finds a preference in all states, then [it] must, just because it is personal, [be] freer, that is, find itself in a possible competition, since in any case the artificial organisation of our states, which occupies so much and imposes unspeakable labour, also makes necessary the hard diligence and the skills and knowledge, to be won with toil, of commoners, and, given the other elevation and the importance produced in more recent times of this estate, the way must lie open to knowledge and skills that rise above [the] character.

This side, in which nature and most modern states, such as Prussia in part in civil business, England, Austria and other states on the other hand also in military respects, diminish the difference, has risen to the highest degree in France. The judicial posts as well as the military career have been opened to them [sc. the commoners] and the purely personal has been made the principle.

Representation is so deeply interwoven with the essence of the feudal constitution in its further development, together with the emergence of an estate of burghers, that it can be called the silliest fancy if it has been held to be an invention of the most recent times[19]. All modern states

19) *In the margin:* Through the transformation of the free into rulers the feudal constitution was established, that is, in the present lands a state in which the individuals, no longer each having an immediate will of his own in every national affair, [rather all] obey a whole founded by themselves and its individuations and branches, that is, a state and laws, a lasting, firm centre to which each has a relation arising mediately, through representation.

|537| subsist through it, and only its degeneration, that is, the loss of its true essence, has destroyed the constitution of France, but not it as a state. It came from Germany, but it is a higher law that the people from which a new universal impulse is given to the world itself perishes in the end before all the rest, and that its principle, but not it itself, endures.

## [7. The Independence of the Estates]

Germany did not develop for itself the principle which it gave to the world, and has [not] known how to find its preservation in it. It did not organise itself according to it but, in that it did not develop the feudal constitution into a state power, and wanted rather to remain wholly true to its original character of the independence of individuals from a universal, the state, it disorganised itself. It has fallen apart into a multitude of states whose manner of subsisting is settled among themselves by solemn treaties and guaranteed by great powers. This manner of subsisting, however, does not rest on its own power and strength, but is dependent on the policy of the great powers.

What true guarantee would remain to this existence of the individual states?

Since true state power is lacking to it, this guarantee could rest only on the venerableness of the rights in and for themselves, which, by a duration of centuries, by a multitude of solemn peace treaties, would have been raised to the impossibility of being touched, and it is in general the common tone to make the manner of the political subsistence of the individual states into a moral power and to plant their sanctity in people's minds, so

|538| that it would become something as firm and inviolable as the general customs or the religion of a people.

But one has often seen customs and religion themselves, even in the most recent times in France, attacked most harshly by commands and force, and if such highly dangerous attempts usually turn out to the ruin of their authors, or at least produce only a very ambiguous effect, nevertheless religion and customs themselves are exposed to the influences of advancing time and of an imperceptible alteration.

Besides this, however, customs and religion and rights of public law by no means stand on the same rank. If it is said that there can be nothing holier than right, then already with regard to private right grace is higher, which can give up its right, and so is the right of the state, which necessarily, in order to be able to subsist, cannot leave private right in its whole consequence; already the levies which it must demand are a sublation of the right of property. And political rights, insofar as they are to have the force of private rights, carry a kind of contradiction within them; for they would presuppose that those who had such fixed political rights against one another stood in a relation of right under an authority possessing force and power. But in this case the mutual rights would no longer be political rights, but private rights, rights of property.

Such a relation is supposed to be founded in the German constitution of the Empire. But on the one hand it is already a contradiction in and for itself that not only property but relations that refer immediately to the state should have the form of private right; and, because in Germany no state power is any longer present, the treatment of political rights as private rights, and the security and firmness of the former equal to that of the latter, also falls away, and [they] enter into the general rank of political rights.

One knows what venerableness these have in and for

|539| themselves. Every peace treaty – and peace treaties are the proper treaties on which the political rights of the powers against one another are founded – contains the main article that friendship shall obtain between the contracting powers. Besides this main article it contains the determination of the remaining relations, especially of those over which dispute had previously arisen. However generally the main article expresses the preservation of good understanding, it is clear of itself that this is not to be understood unconditionally.

The Turkish Empire almost seems to maintain its relations with foreign powers in the sense of being at peace with them in general until it is itself attacked, and only rarely has the other European policy succeeded in throwing it into a political war. Otherwise, however, the relation of states is so many-sided, every single relation determined in a peace has again so many sides, that with all exact determination of them in the relation infinitely many remain over about which quarrel is possible. No power attacks a stipulated right immediately and directly, but on some undetermined side differences arise, which then overturn the peace as a whole and, through the condition of war, now also make the establishment of the remaining determinate rights waver.

This sublation of the mutual political rights is only a consequence of the condition of war. The treaties and the relations determined in them would well remain standing, they are not immediately violated or directly attacked with open force, one does not play with the treaties; but if quarrel otherwise arises over points and circumstances not clearly settled, then everything else that treaties had previously established collapses.

Wars, whether one calls them wars of aggression or of defence – on which naming the parties never come to an understanding – would be called unjust only

|540| if the peace treaties stipulated *unconditional* mutual peace; and even if the expression of an eternal peace and eternal friendship between the powers does have this expression, it is to be understood with the limitation lying in the nature of the matter: before one side attacks or acts hostilely. No state can bind itself to let itself be treated hostilely or attacked and yet not to defend itself, yet to keep the peace.

The kinds of hostilities, however, have so infinite a possibility that they are wholly indeterminable by human understanding, and the more determinations, that is, the more rights are established, the more easily a contradiction of such rights arises. If one side pursues a right conceded to it as far as it is conceded to it, it will collide with some other right that belongs to the other side. Look at the mutual manifestos and state papers which, on the occasion of a quarrel of two states, contain the accusation of the conduct of the other power and the justification of one's own!

Each side grounds its own on rights and accuses the other of the violation of a right. The right of the one state *A* has been violated by state *B* in a right *a* that belongs to it, but state *B* demonstrates that it has maintained its right *b* and that this cannot be taken for any violation of the right of *A*. The public takes sides, each party asserts that it has the right on its side, and both parties are right, and it is precisely the rights themselves that come into contradiction with one another.

It is the philanthropists and moralists who decry politics as an endeavour and an art of seeking one's own advantage at the expense of right, as a system and work of injustice, and the politically gossiping impartial public, that is, a multitude without interest and without fatherland, whose ideal of virtue is the quiet of the

|541| beer-house, accuses politics of an insecurity in fidelity and of a lawless inconstancy, or is at least taking an interest and therefore mistrustful of the form of right in which the interests of its state appear. If these interests are its own, it too will maintain the form of right; but those are the true inner driving force, not this.

If the philanthropic friends of right and morality had an interest, they could grasp that interests, and with them the rights themselves, can fall into collision, and that it is foolish to set the interest of the state or, as it is expressed with the word more odious to morality, the advantage of the state, against right.

Right is the advantage of the one state established and conceded by treaties, and because in the treaties in general the different interests of the states are established, but as rights these interests are so infinitely many-sided, they must, and with them the rights themselves, fall into contradiction, and it depends only on the circumstances, on the combinations of power, that is, on the *judgement* of politics, whether the interest and right coming into danger is to be defended with the whole force of power, against which the other side can of course also adduce a right, because it too has precisely the opposite interest that comes into collision, and thereby also a right; and war, or whatever it is, now has to decide, not which right of the two asserted by both sides is the true right - for both sides have a true right - but which right is to yield to the other. War, or whatever else it is, has to decide this precisely because the two contradicting rights are equally true, and so a third - and this is war - must make them unequal, so that they can be united, which happens by one yielding to the other.

The venerableness and moral power of rights may

|542| stand firm and remain, but how should it be in a position [to] hold them? Partly because of the indeterminateness of the rights quarrel *can* arise, partly because of their determinateness contradiction of them *must* arise, and in this quarrel right must maintain itself by its power.

If it makes no sense that that which is called the rights of the German estates should subsist through their inner venerableness and as a moral power, and - because that contradiction takes place - no power to maintain them in the whole extent of their manifoldness can be present and is not present, then the condition would have to set in that a true, not merely passive but active anarchy were present, the genuine old right of the fist, which in the eternal quarrel over property so confused puts the stronger arm for the moment in possession and keeps it therein until the arm of the adversary has become stronger.

This condition, however, the public peace has immediately remedied, and has brought about among the smaller a condition of quiet which has its support in their impotence against the greater. As regards the more powerful, it has already been said above that the possession of the Jülich-Cleves inheritance occasioned the Thirty Years' War and that in this as little as in other cases, [e.g.] in the Bavarian succession, have courts decided. Otherwise, however, the number of disputed cases that have occasioned a war would seem very small against the infinity of disputed cases which would have to show themselves in the infinite entanglement of rights and which yet peacefully - have been settled? no! but rest. It is known in what endlessness and infinity of lawsuits the German nobility is entangled; how lawsuits were begun a hundred and several hundred years ago but have lain dormant, - still more, [what] infinite number of claims lie buried at rest in every princely, comital, imperial-city, noble archive, that is, rights which

|543| have not gone into fulfilment. If all these rights were suddenly to receive a voice, what a confused, infinite din would arise!

Claims are undecided rights. Their quiet has been imposed on them not by judicial decision - for they are not decided - but by the fear of right - for a claim is always better than a right denied, a possible lawsuit better than a lost one - and by the fear of the more powerful, who in an open feud going on in their neighbourhood would naturally have to take sides, from the more recent and more general ground of right of the security of their borders and their land, in which the not powerful, both those against whom this participation would be directed and those for whose benefit it was to come, would find no advantage. Thus the feuds have ceased, the public peace has established quiet, that is, it has brought the contradiction of the rights to silence, not to decision, and in the enjoyment of the object of right is that party which happens to be in possession - *beati possidentes!* - and over the possession no right has decided. So it is not a condition that puts in possession him who is in the right that preserves a certain quiet in Germany, like the condition of a state, but, given the astonishing difference in the power of the estates, their guarantee is fear and policy, not the venerableness of the rights themselves on which they depend, not an inner power of their own.

20)With this lack of a state power, necessary as has been shown - it is necessary because the object of this power, the unalterable preservation of rights, would be impossible - it is conceivable that the multitude of isolated estates, because they find themselves in the old condition, namely of co-operating towards a universal so far and

20) *In the margin:* If no legal agreement is to be expected, yet a voluntary one.

|544| when the individuals will, might return to the old conduct, if [even] otherwise they are in no lasting and standing association, in the time of a need or danger to come together freely and thereby to form out of their isolated powers, for the need that is at hand, a state and a state power, both inwardly, if their rights were attacked, and outwardly, if they were attacked in general or in a particular one of their members.

Such a determinate case was formerly attacks on the Protestant religion, an object which came not from an ambition wholly a matter of indifference to their subjects but from the most popular, most inward interest. There is no object which could have gathered the princes and their peoples round it so unanimously, so with forgetting of other jealousy, and so freely and zealously as this. Every other object touches the peoples themselves less, beside every other object other interests that are in conflict may recall themselves and assert themselves.

One knows, however, what an ignominious end the *Schmalkaldic League* came to. The whole League was filled with petty strivings of vanity and was so sunk in the enjoyment of self-complacency in itself and in the noble work, so satisfied before all deed, that the first blows scattered it like dust. Yet some members of the League had here still held themselves bravely and really let it come to battles, but the *Protestant Union* of the following century already proclaimed, by the trifles with which it occupied itself in its origin, the whole nullity of its essence, which revealed itself completely as soon as a work was to be undertaken.

As an inner association of this kind only the so-called *League of Princes* can still be regarded, which was directed against the conduct of Joseph II that seemed dangerous to many estates. The idea of this League of Princes appeared brilliant both through the prince who stood at its head,

|545| and through him against whom it was directed, also in that, through talented and altogether a multitude of writers on both sides, popular opinion was very much engaged in it. The public voice seemed to have a kind of significance; if the splendour of his deeds enveloped Frederick the Second, they had been done, and their result, Silesia in Prussian hands, state administration, religious and civil laws in the Prussian lands, was already present; if nothing more was to be expected from there for the rest of Germany, just as nothing had been done for it from there, a hope at the dawn of a far-embracing new German century interested still more. More than the occupation of public opinion and the stirring up of many hopes or apprehensions is not, however, to be noted of the German League of Princes. Since it did not come to deed and expression, nothing is to be said of its essentiality either. The independence of Brandenburg from the German Empire had long before been founded, and whether it would have received an increase or suffered a diminution through the League of Princes put into operation are possibilities about which nothing is to be said.

As regards free associations against foreign powers, such, when Germany did not lacerate itself internally but protected itself against a foreign enemy, had taken the place of the proper wars of the Empire. ([Joh. v.] Müller, [*Darstellung des Fürstenbundes*, 1787,] p. 70. League with William of Orange against Louis XIV, League of Augsburg 1686.) What princes and estates did was rather the free will of individual associations of circles than a lawful resolution, generally binding, of a body of state. Brandenburg still appears in connection with the Empire - but not for the sake of the obligations towards it -, yet acting independently, [its] chief purpose the Prussian royal crown.

The wars of this century were internal wars.

In the course of the last war against France, at the moment when Germany threatened to fall into danger, a common will [for] the defence of Germany seemed rather to be forming. Almost all German states took part in it, but one cannot name any moment at which all would have co-operated at once[21]. In the greater part of it, on the contrary, the most powerful of them separated from it.

21) *In the margin:* even with actual participation there was no real unity.

The experience since the Peace of Westphalia, in which the old independence of the parts of Germany - but under wholly altered circumstances - was established and Germany thereby prevented from becoming a modern state and having a state power, has taught that the spirit of the time has completely changed since that time when each individual too acted for the whole only [from] his own free will and consent, and that even in the most urgent needs, with interests concerning all parts in the most pressing manner, no common and united co-operation is to be expected.

In the Peace of Westphalia this statelessness of Germany organised itself. Writers like Hippolytus a Lapide have expressed the inner character and tendency of the nation determinately. In the Peace of Westphalia Germany gave up fortifying itself as a secure state power, and abandoned itself to the good will of its members.

This trust, which laid the general welfare of Germany in the free will of the parts, one may, if one wishes, regard as the effect of a spirit of honesty, of which the German nation so much boasts. It sounds fine when on one side state power dissolves and surrenders [into] the hands of the individuals and on the other side it is demanded, and in the demand also expected, that these individuals co-operate freely. The German

|547| estates that concluded the Peace of Westphalia would have believed themselves insulted by the mistrust if one had spoken to them of the possibility that with such a separation they would and could lose sight of the best of the whole and each act for his own interest, even if it did not agree with the general interest but contradicted it. The general connection, the obligations of the individuals towards the whole, the best of the whole is most solemnly acknowledged and safeguarded, and at every difference over this, even if it has broken out into the most terrible wars, each of the two parties has justified itself from the side of right by thorough manifestos and deductions.

Hereby the matter is played over from the sphere of the will and of one's own interests into the sphere of insight, and with the general will to act for the best of the whole it would be the understanding that would have to find out the mode of action most conducive to the general best; and if this is determined by the majority, then the minority would necessarily have to submit to it, - which, however, is not and cannot be the case, not only because no state power is present, but because the individual has the right, according to his own insight into the general best, to make alliances, peace, etc. If, upon the occurrence of disunion and war, someone really - necessarily a private person, for a minister cannot get to that - were so honest as to believe that the war had its ground only in the lack of general insight whether something was in accordance with the best of Germany, and held out to himself the hope of bringing about unanimity by working on this conviction, he would effect nothing further than making himself ridiculous by his good nature; he would rather have to seek to bring about the insight that a mode of action which was to be general would be in accordance with the particular interest of each individual.

It is a thoroughly acknowledged and known principle that this particular interest is the most important consideration; it cannot be regarded as standing in contradiction with rights and duties or morality, but on the contrary, every single estate *must*, as a particular state, not sacrifice itself to a universal from which it has no help to expect, but the territorial prince, [the] magistrate of an imperial city, has the sacred duty laid upon him to care for his land and subjects.

## [8. The Formation of National States]

*Cross-reference:* On the relation of states and on world history § 330 ff., especially § 349.

It is the Peace of Westphalia that fixed this relation of the independence of the parts. By themselves they would not have been capable of it; rather their league was scattered to dust and they themselves and their lands, without possibility of a resistance of their own, in the political and religious despot's hand of Ferdinand.

Gustavus Adolphus's expedition itself would, not with regard to his person - for he died at the height of fortune - but with regard to his nation, have been placed [in] a wholly equal class with the expeditions of his descendant Charles XII. The Swedish power would likewise have succumbed in Germany, had not Richelieu's policy, which Mazarin carried out in the same sense, taken up and sustained its cause.

*Richelieu* was granted the rare good fortune of having been held to be their greatest benefactor both by that state to whose greatness he laid the true foundation, and by that at whose expense it happened.

France as a state and Germany as a state had both the same two principles of dissolution within them; in the one he destroyed them completely and thereby raised it to one of the most powerful states, in the other he gave them all power and thereby sublated its subsistence as a state. In both countries he brought to full maturity the principle on which they were inwardly founded: the principle of France

|549| monarchy, the principle of Germany the formation of a multitude of states of their own. Both still had to struggle with their opposite [principle]; Richelieu succeeded in bringing both countries to their firm, mutually opposed system.

The two principles which prevented France from becoming *one* state in the form of a monarchy were the grandees and the Huguenots; both waged wars with the kings.

The grandees, among whom the members of the royal family also [counted], intrigued with armies against the minister. Sovereignty, to be sure, had long been sacred to the monarch and raised above all claims, and the grandees did not lead armies into the field to maintain a sovereignty for themselves, but to be, as ministers, governors of provinces, etc., the first subjects of the monarchs. Richelieu's merit of having subjected the grandees to public power in its first emanations, the ministry, has, regarded superficially, the appearance of ambition. Those who were his enemies seem to have fallen as sacrifices to his ambition; they protested, and quite probably with the greatest truth, in their revolts and conspiracies their innocence and devotion to duty towards their sovereign, and regarded resistance by arms against the person of the minister neither as a civil crime nor as a crime against the state. They succumbed, however, not to the person of Richelieu but to his genius, which bound his person to the necessary principle of the unity of the state and made offices of state dependent on the state. And in this consists political genius, when the individual identifies himself with a principle; in this connection it must necessarily carry off the victory. As the merit of a minister, what Richelieu did, namely to have given unity to the executive state power, is infinitely superior to the merit of having enlarged a country by a province or otherwise torn it out of distress.

The other principle threatening a dissolution of the state was [the] Huguenots, whom Richelieu suppressed as a political party; his procedure against them does not fall at all under the point of view of a suppression of freedom of conscience. They had armies of their own, fortified cities, alliances with foreign powers, etc., and accordingly formed a kind of sovereign state; in opposition to them the grandees had formed the Ligue, which had brought the French state to the brink of the abyss. Both opposing parties were an armed fanaticism and raised above public power. In destroying the state of the Huguenots Richelieu at the same time destroyed the right of a Ligue, and he dealt with the rightless and unprincipled remnant of it, the insubordination of the grandees. In the extirpation of the state of the Huguenots he left them freedom of conscience, churches, worship, civil and political rights, equal to the Catholics. Through his consistency as a statesman he found and practised toleration, which more than centuries later was asserted as the product of a more cultivated humanity and as the most brilliant merit of philosophy and of the softening of customs; and it was not ignorance and fanaticism of the French if in the war and in the Peace of Westphalia they did not think of the separation of state and church in Germany and made religion the foundation of a distinction of political and civil rights and asserted in Germany a principle which they abolished in their own country.

Thus France, England too, Spain and the other European countries succeeded in bringing the elements fermenting in their interior and threatening to shatter the state to quiet and to union, and, through the freedom of the feudal constitution which Germania [showed] them, in attaining to a centre determined by laws through freedom and gathering all forces - the properly monarchical or modern republican form, which however

|551| also belongs under the principle of limited monarchy, that is, one resting on laws, is here indifferent - and from this epoch of the development of the countries into a state dates the period of the power, of the wealth of the state and of the free, lawful prosperity of individuals.

With Germany, on the other hand, *Italy* has had the same course of fate in common, except that Italy, because greater culture already lay in it beforehand, brought its fate earlier to the development towards which Germany is going completely.

Over Italy the Roman-German emperors long maintained a supremacy which, as in Germany, usually had only so much force, and only then, when it was maintained by the emperor's own power. The craving of the emperors to keep both countries under their dominion has annihilated their power in both.

In Italy every point of it acquired sovereignty; it ceased to be *one* state and became a turmoil of independent states, monarchies, aristocracies, democracies, as chance would have it; the degeneration of these constitutions into tyranny, oligarchy and ochlocracy also came to light for a short time. The condition of Italy cannot be called anarchy, for the multitude of opposed parties were organised states. Notwithstanding the lack of a proper bond of the state, a great part nevertheless always united for common resistance against the head of the Empire, as the other part did to make common cause with him. The Ghibelline and Guelph parties, which formerly embraced Germany as well as Italy, presented themselves - with modifications which arise from altered circumstances of the times - in Germany in the eighteenth century as the Austrian and Prussian parties.

Not long had the individual parts of Italy dissolved the previous state and swung themselves up to independence,

|552| when they stirred the lust of conquest of greater powers and became the theatre of the wars of foreign powers. The small states, which as a power set themselves over against a power a thousand times and more greater, experienced the necessary fate of their fall, and beside a regret over it there stands the feeling of the necessity and of the guilt which pygmies load upon themselves when, setting themselves beside colossi, they are trampled down. The existence too of the greater Italian states, which had formed themselves by the engulfing of a multitude of smaller ones, thus vegetated on without strength and true independence, a ball in the plans of foreign powers; they maintained themselves somewhat longer by the prudence of humbling themselves skilfully and at the right time and of warding off, by constant half-submissions, the full subjection, which in the end, however, did not fail to come.

What has [become] of the multitude of independent states Pisa, Siena, Arezzo, Ferrara, Milan, of these hundreds of states, as every city was one, what of the families of the many sovereign dukes, margraves, etc., of the princely houses Bentivoglio, Sforza, Gonzaga, Pico, Urbino, etc., and of the countless knightly nobility? The independent states were swallowed up by greater ones and these again by greater ones, and so on; one of the greatest, Venice, has in our days been given its end by a letter of a French general, brought by an adjutant. The most brilliant princely houses have neither sovereignty nor even political, representative significance any longer. The noblest families have become court nobility.

In the period of misfortune, when Italy was hastening towards its wretchedness and was the battlefield of the wars which foreign princes waged over its lands, at once furnishing the means for those wars and being the prize of them, when it entrusted its own defence to assassination, poison and treachery

|553| or to swarms of foreign rabble, who were always costly and devastating to their paymasters and still more often dreadful and dangerous, some of whose leaders raised themselves to princes, when Germans, Spaniards, French and Swiss plundered it and foreign cabinets decided the fate of this nation, - in the deep feeling of this condition of universal wretchedness, of hatred, disruption and blindness, an Italian statesman grasped with cold composure the necessary idea of the rescue of Italy through its union in *one* state. With strict consistency he prescribed the path which both this rescue and the corruption and blind frenzy of the age made necessary, and called upon his prince to take up the sublime role of a saviour of Italy and the glory of putting an end to its misfortune, in the following words:

22)"If, as I have said, it was necessary that, in order to see the greatness of Moses, the people of Israel should be slaves in Egypt, that, in order to recognise the sublimity and courage of Cyrus, the Persians should be oppressed by the Medes, and that, in order to bring the excellence of Theseus to light, the Athenians should be dispersed, so now, if one wishes to see the greatness of spirit of an Italian, it was necessary that Italy should fall into its present conditions, that it should be more enslaved than the Hebrews, more oppressed than the Persians, more dispersed than the Athenians, without a head, without order, beaten, despoiled, torn apart, plundered, and that it should have to bear ruin of every kind. And although since then a trace has at times shown itself in someone such that one might have thought he had been appointed by God for

22) *Editors:* Hegel excerpted the following sections from the last chapter of Machiavelli's *Principe* from a French translation and enclosed them with his manuscript. (The German translation follows the edition of Lasson.) At the beginning of the excerpts Hegel remarks:
"Mach. addresses himself to Lorenzo de' Medici, speaks of the present favourable moment for conquering Italy, but is governed by the deep feeling that only thereby can its misfortune end."

|554| the redemption of Italy, it has nevertheless been shown that he was afterwards, at the summit of his ascent, rejected by fortune, so that Italy, left behind as though lifeless, still waits to see who the one might be who will heal its wounds, put an end to the devastations and plunderings of Lombardy and to the embezzlements and extortions in the Kingdom of Naples and in Tuscany, and let Italy recover from the wounds which have long since eaten into it ...

Here is perfect justice, for that war is just because it is necessary, and those arms are holy where there is no hope but in them ...

Everything has contributed to your greatness; the rest remains for you to do. God does not will to do everything, so as not to rob us of free will and of the share of honour that is to fall to us ...

And I cannot say with what love he [the liberator of Italy] would be received in all those provinces which have suffered from these floods from abroad, with what thirst for revenge, with what unshakeable loyalty, with what reverence, with what tears. What doors would remain closed to him, what communities would refuse him obedience? Where would envy set itself against him, what Italian would deny him allegiance?" -

One can perceive that a man who speaks with this truth of earnestness had neither baseness in his heart nor jest in his head. As for the former, the name of Machiavelli already carries in common opinion the seal of condemnation, and it has made Machiavellian and abominable principles synonymous. The idea of a state which a people is to constitute has been drowned out for so long by the blind clamour of a so-called freedom that perhaps all the misery which Germany [endured] in the Seven Years' War and in this last French war, and all the further development of

|555| reason and the experience of the French frenzy for freedom, are not sufficient to raise the truth that freedom is possible only in the lawful union of a people into a state to the belief of peoples or to a principle of a science of the state.

Even the purpose which Machiavelli puts first, to raise Italy to a state, is misjudged by the blindness which recognises in Machiavelli's work nothing but the founding of a tyranny, a golden mirror for an ambitious oppressor. But even if it is granted, then, [it] is said, the means are abominable, and there morality has wide scope to trot out its trivialities, that the end does not sanctify the means, etc. Here, however, there can be no question of a choice of means: gangrenous limbs cannot be healed with lavender water; a condition in which poison and assassination have become customary weapons tolerates no gentle counter-attempts. Life close to putrefaction can be reorganised only by the most violent procedure.

It is highly unreasonable to treat the execution of an idea drawn directly from the intuition of the condition of Italy as an indifferent compendium of moral-political principles, suited to all conditions, that is, therefore to none. One must approach the reading of *The Prince* directly from the history of the centuries that had elapsed before Machiavelli and the contemporary history of Italy, with the impression which that history has given; and it will appear not [only] justified but as a supremely great and true conception of a genuine political head of the greatest and noblest sense.

It would not be superfluous to say something of what is usually overlooked, namely of the remaining truly ideal demands which Machiavelli makes of an excellent prince and which have surely been fulfilled by no prince since that time, and not [even by] the one who

|556| refuted him. But what are called the abominable means which Machiavelli is said to have advised must be regarded from another point of view. Italy was to be one state; this still held as a principle at that time, when the Emperor was still regarded as supreme feudal lord, - and this universal Machiavelli presupposes, this he demands, this is his principle against the misery of his country. From here the procedure of *The Prince* appears from an entirely different side. What would be abominable if done by a private person against a private person, or by one state against another or against a private person, is now just punishment. Against a state, the bringing about of anarchy is the highest or rather the only crime; for all crimes that the state has to concern itself with tend towards it, and those who attack the state itself, not mediately like other criminals but immediately, are the greatest criminals, and the state has no higher duty than to preserve itself and to destroy the power of these criminals in the surest way. The exercise of this highest duty by the state is no longer a means, it is punishment; or if punishment itself were a means, then every punishment of any criminal would have to be called an abomination, and every state would be in the position of using abominable means, death, long imprisonment, for the sake of its preservation.

The Roman Cato the Younger has the privilege of being paraded by every clamourer for freedom, and he was the greatest promoter [of the plan] that sole rule should be conferred on Pompey, not out of friendship for Pompey but because anarchy was the greater evil; and he killed himself, not because what the Romans at that time still called freedom, anarchy, had perished - for the party of Pompey, with which he stood, was only another party than that of Caesar -, but out of obstinacy of character, which would not submit to its reviled and

|557| hated enemy, - his death was a matter of party.

The one from whom Machiavelli had hoped for the rescue of Italy was, by all [accounts], the Duke of Valentinois, a prince who, with the help of his uncle and by valour as well as deceit of every kind, had formed a state out of the principalities of the Dukes Orsini, Colonna, of Urbino, etc. and the lordships of the Roman barons. His memory and that of his uncle: - even if one wishes to deduct all deeds charged to them merely by rumours and the hatred of their enemies, their memory as men is branded before posterity, if posterity may presume to judge men morally, and the Duke and his uncle, but not their work, have perished. It is they who acquired for the Roman See a state whose continuance Julius II knew well how to use and to make formidable, and which subsists to this day.

If Machiavelli ascribes the fall of Cesare Borgia, besides political errors, also to the chance which threw him on a sickbed precisely at the most decisive moment of Alexander's death, we must on the contrary see in his fall rather a higher necessity, which let him neither enjoy the fruits of his deeds nor develop them into greater power, because nature, as is shown by his vices, seems to have destined [him] rather for an ephemeral brilliance and for a mere instrument of the founding of a state, and because therefore a great part of the power to which he raised himself rested neither on an inner nor on an outer natural right, but was grafted on the alien branch of his uncle's spiritual dignity.

Machiavelli's work remains a great testimony which he gave to his age and to his own belief that the fate of a people hastening towards its political downfall can be saved by genius. What is further remarkable, amid

|558| the misunderstanding and hatred against Machiavelli's *Prince*, in the particular fate of this work, is that out of a kind of instinct a future monarch, whose whole life and deeds have most clearly expressed the dissolution of the German state into independent states, made his school exercise on this Machiavelli and set moral chriae against him, whose emptiness he himself showed both by his manner of acting and expressly in his writings, in that, for example, in the preface to the History of the First Silesian War he denies the treaties of states their binding force when they no longer conform to the best interest of a state.

Otherwise, however, the more cunning public, which could not leave the genius in Machiavelli's works unnoticed and at the same time thought too morally to approve his princi[ples], but, well-meaning, nevertheless wished to save him himself, united this contradiction honestly and subtly enough to the effect that Machiavelli had not been in earnest about it, but that the whole [was] a fine persiflage, an irony, and one cannot refrain from complimenting this irony-scenting public on its subtlety.

Machiavelli's voice died away without effect.

## [9. The Policy of the Two German Great Powers]

[23)]Germany shares with the former Italy the fate of having been for many centuries the scene of internal wars, but also the scene of the wars of foreign powers, of being plundered, robbed, insulted, despised by friends, and usually diminished in peace. In this fate it is much later than Italy. Sweden is actually the first foreign power that rummaged significantly in its entrails and helped to shatter the preceding wavering system of union. From then on foreign powers decided Germany's lot. It had already earlier ceased to be formidable to foreign countries. From then on it ceased to settle its internal affairs independently for itself, to decide about itself; it has given its destiny out of its hands.

23) *In the margin:* How long is it since a war of the Empire was waged with general participation!

Germany's fate, however, differs essentially from the fate of Italy in that the states into which Italy had fallen apart were, through the condition of the world generally, still for a long time capable of asserting themselves even against far greater powers, or in that disproportionate extent had not made power likewise disproportionate; rather, as Greece was capable not only of withstanding the Persians but of defeating them, so in earlier times a city like Milan was able to defy the power of Frederick and to maintain itself against it, and still later Venice held out against the League of Cambrai. A possibility of small states resisting great ones has, however, now vanished entirely; and the sovereignty of the states of Germany was formed rather at a time when this possibility was no longer present. The states of Germany have therefore passed not from union into complete separation, but at once again into unions of another kind; the mass has not fallen apart into many pieces and so remained for a time broken up, but new nuclei have formed in the mass, around which the parts that tore themselves loose from the whole gathered into new masses.

Religion and independence as states were formerly the interests around which, as around centres, the German estates gathered; both centres formed their political system. These centres, however, have vanished. Religion has not only been preserved, but the spirit of the times has placed it beyond all danger;

|560| likewise the estates have put themselves in possession of independence, but alongside the Austrian power, against which the apprehensions under the name of a universal monarchy were formerly directed, the Prussian monarchy has formed, which, strong enough by itself, [maintained itself] in the Seven Years' War not only against the power of the Austrian but of several monarchies, and since then has grown greater still in Poland and in Franconia.

Through this power of its own Prussia has stepped out of the sphere of the common interest in preserving independence, and is therefore no longer to be regarded [as] the natural centre for the estates for the preservation of independence. It may desire the alliance of other estates, it is in this respect independent of the assistance of the German princes, it can protect itself by itself. The league of the German estates with it is accordingly unequal, for it needs it less than they need it, and the advantage must therefore also be unequal. Prussia can itself arouse apprehensions.

In the last war four political systems have shown themselves in Germany: the one the Austrian, the second the imperial, [the third] the neutral, the fourth the Prussian.

Austria has had no immediate assistance, [except] perhaps from a few small princes, [e.g.] the Bishop of Brixen, who lies in the midst of its states. It demands of the German estates assistance and common cooperation as the imperial house; and to the imperial system there have adhered all the less powerful estates, especially of southern Germany, which can preserve any independence only through the continued existence of a German Empire, above all ecclesiastical estates and imperial cities.

The third system is chiefly the system of Bavaria, Baden and Saxony, who – in political connection neither with Austria nor with Prussia nor with the Empire – have acted according to their particular interest with regard to war or peace or neutrality.

The fourth system comprises the estates of northern Germany, which, through the mediation of Prussia, concluded a treaty of neutrality with France and placed themselves under the protection of Prussia, which has undertaken the guarantee of the tranquillity of northern Germany.

After Prussia had made peace with France, several northern states adhered to this treaty of peace, and in terror at the French good fortune in arms in the campaign of '94 more than half of Germany united in this neutrality. When in the year '96 the French penetrated as far as Bavaria, the city of Nuremberg wished not merely to join this neutrality but to make itself entirely a Prussian territorial town, and it was occupied by Prussian troops, after a couple of years earlier Prussia [had] declared a part of its territory to belong to it on account of old claims and took it into its power, just as it also abolished the immediacy of many knights of the Empire in Franconia; and from the German Empire Nuremberg, like the knighthood, has therefore been unable to obtain any help.

The estates of northern Germany did not themselves undertake the guarantee of their neutrality in the form of the circle associations otherwise customary, and Prussia is not one of the members of this union but the head and the guarantor, and the estates contribute to the costs of the demarcation corps. No permanent federal council, however, is assembled; it assembled only at certain times, in order to deliberate and [to] resolve on the regulation and continuation of this measure and on the contributions to the costs.

The true political relation of the estates, however, came to light precisely

|562| when, at the close of the year 1800, the estates which were not assembled were minded to hold a new assembly, - this meeting and deliberation was refused them by Prussia, because Prussia, as guarantor of the tranquillity of the North, had to judge what measures were to be taken for it.

When the northern coalition against England's pretensions over neutral ships seemed about to come into war with England, Hanover, one of the principal members of the league, to which its neutrality was guaranteed, (together with other imperial cities) was occupied by Prussia.[24)] It had to disband its troops and take over the provisioning of the Prussian corps. The peace has been ratified by the estates of the German Empire, yet Prussia has had its ratification officially announced for itself directly in Paris.

24) *In the margin:* whereby Hanover had no support to expect from Germany.

The whole history of the war, the separation of northern Germany from southern, the particular acts of neutrality and peace of the former, while the latter languished under the most cruel misery and so saw itself wholly abandoned by the former, make it clear not only that Germany is divided into independent states, but also that their interest is completely separated, and if the bond of the state is loose as in the Middle Ages, yet no free union is to be expected. In the most powerful of all interests, when Germany was diminished by the lands of the left bank of the Rhine, when the one half was overrun and plundered by the enemies, no help was given, not only none in accordance with the union of the Empire, but none even voluntary. The other estates had separated themselves from all cooperation, and one part, even by placing its neutrality in the guarantee of a prince who was at the same time foreign, at the same time also gave out of its hands

|563| the right of cooperation, of rejoining for general cooperation, even the capacity of deliberating with its fellow estates about it.

Sweden, it is true, at the renewal of the war publicly offered to furnish its contingent. But it has been reported that Prussia did not wish to permit passage through the line of neutrality. Through the fact that Brandenburg not only in this war completely separated its interest from the interest of the German Empire and induced other estates likewise to separate theirs, and then put itself in the position of being able, as guarantor, to compel them legally and by its power to hold themselves separate, that it took from the knighthood of Franconia its immediacy and from the imperial city of Nuremberg a part of its territory, and at the moment of need accepted the complete surrender of the magistracy for occupation, afterwards occupied Hanover, which was in alliance with it for the tranquillity and security of northern Germany, disarmed it and laid upon it the requisition of provisioning, - through all these circumstances it has become clear, what had long been present, that Prussia is to be regarded not as a German prince of the Empire on an equal footing with the other estates, but as a separate, sovereign, powerful state, not as an estate that would be capable of accepting equal conditions with other estates in an association.

In general, more truth has come into [the] relations of the states through the last [war]. Insofar as the states stand to one another in the relation of power, the delusions about this have vanished, and this relation has manifested itself everywhere and been made valid, and the weaker states have been brought to the recognition that they cannot place themselves on a level with the greater. When a republic of Geneva conducted itself as a sovereign state and boasted εὐ̓χετο to be the first to send an envoy to the French republic and formally to recognise it, the relation of Geneva to

|564| France, when it was taken seriously, was soon determined otherwise; Bonaparte, on the other hand, made the republic of San Marino a present of a couple of cannon, because there was there no relation of which anything serious was to be made, other than an occasion to fill the mouth with the name of a respect for republics.

The republic of Geneva has vanished; the Batavian, Helvetic, Cisalpine and Ligurian republics, on the other hand, have their independence and tranquillity and, if one likes, neutrality guaranteed by a strong garrison.

Such are the relations which more powerful states form with weaker states according to the true difference of their strength.

The relations of Austria with Germany date from ancient times, and they would have to turn out quite differently if Austria laid aside the imperial crown and then, now entirely as a great sovereign power, entered into treaties of protection and guarantee with its neighbours, especially if it [let] it come to the test in times of need; in this advantage Austria stands far behind, in that Austria's relations are old [ones], whereas Brandenburg in peace need enter into no determinate relations, but in time of war can make conditions for those who are in need and weak and turn to it. Since nowadays everything is to be calculated, the conditions can be made 10 per cent less than those one fears from the enemy, or, because the enemy in general is something so indeterminate and one fears everything from him, every determinate condition seems less than the indeterminate one to be feared. One knows there, after all, the extent of one's loss, and this is already a great reassurance.

Formerly it was the popular opinion in the regions of the Rhine that, since of one state a part within the line of demarcation, the other outside it, stood under public and private contributions of the French, [when] the estates of the realm of both parts were now to come together for common settlement

|565| of the debts, the part that stood under French rule refused parity and equal participation, because it believed it would lose; this popular opinion may be unfounded, [yet] one always sees in general from it the judgement of the people.

[Brandenburg thus has the advantage that it][25] either has the more powerful as friends or, because it otherwise stands in no relations of alliance and protection, treats them as enemies, and in the case of a treaty of guarantee can cancel it at once, because it is only something determinate and particular like every political treaty and, according to the essence of political treaties, its cancellation is not faithlessness, which this war has taught most of all, in which so many treaties have been cancelled, tied again and cancelled again. The connections of Austria with the estates, on the contrary, seem [not] to stand in the rank of ordinary political treaties, but if it placed itself in the ordinary relation towards an estate of the Empire, as Prussia can, all the estates [would] feel themselves attacked in it. With Prussia it seems natural, as well as with France, etc.

25) *Editors:* supplied after Lasson

Through its power and through the appearance of this in the cases cited above, Prussia has stepped out of equal rank with the other estates. The pure interest of their political independence they can find only in themselves, and an association of them, a true league of estates, would be conceivable in this respect; but only conceivable, for in part the estates are themselves again so unequal among one another in power that they are incapable of a true equal union.

An abbey, imperial city, immediate nobility can fear much less to become the object of the lust for aggrandisement of the Austrian monarchy than of a less great power. The Prussian power, notwithstanding that it is a great monarchy, stands, in regard to this capacity of causing apprehensions

|566| to small estates and of exploiting small advantages, more on the line with less great estates, because, like France's, its statecraft is wholly calculating, its military power was disproportionate to its extent and therefore had to seek the sum of small advantages, - just as the French republic acted throughout according to general principles, pursued them with its power into the smallest details and suppressed all particular rights and relations under these principles, - and one could say, because its new policy has not proceeded from a royal, majestic principle but from burgherdom and stands, for example, towards the Austrian power in the relation of a burgher, who has laboriously acquired his treasures by his work from the penny up, towards the free nobleman, rich from forefathers, whose possession rests on his soil and remains the same even if in trifles he lets his household or neighbours have their way. His wealth is not a sum - the sum, however, is diminished by taking away particulars - but something abiding, unalterable.

The small estates, which must have the greatest apprehensions for their independence, can attach themselves with confidence only to a power whose policy and magnanimity are at once capable and inclined to protect their continued existence, and one has always seen the ecclesiastical princes, abbots and imperial cities attach themselves to the Emperor and observe their obligations towards him and the German Empire most faithfully.

Even if the more powerful estates of the Empire wished to unite among themselves and devised a way by which such a coalition should not have the fate of all coalitions, even if the union of their troops formed a power that could resist *one* great power, they would nevertheless never come into the position of having apprehensions of only *one* power, - for this one power would necessarily have to fear the participation

|567| of other powers against them; but against the agreement of several powers a union would be able to do nothing, both because of its lesser war-power and because of its scattered geographical situation. This situation has been formed according to a plan, like the extent of great empires. In military respect it is in itself utterly weak, and since the union would be something new, these states would also not be rich enough to gird themselves with rows of fortresses.

Their policy must, according to circumstances, attach them now to this, now to that greater power, and their fate must be the common fate of a weaker ally or of a weak enemy.

The fate of the German estates stands immediately between the policy of two great powers. Both are now alike in this, that the relation to Germany is chiefly a political one, and [indeed] the relation of Prussia even more than the relation of Austria, because this power at the same time bears the imperial crown and is thereby, from ancient times, restricted by the weight of infinitely many rights.

The remaining interests in which the powers were different have been equalised. Through the difference of these interests Prussia has become great, in that it attached itself to those opposed to the House of Austria or placed itself at their head; but time by itself has in part abolished the separateness of the interest of a large part of Germany from the Austrian interest, and in part separated Prussia's interest from the interest of the German estates.

A principal interest, at the head of whose defence [Prussia] appeared, was *religion*.

The German estates themselves, in older times chiefly Saxony and Hesse, and foreign powers, Sweden and France, had formerly championed this interest against the Emperor, and Prussia at that time played no part, or as Brandenburg only a subordinate one. In the Seven Years'

|568| War this interest still came to the fore, not so much on the side of the powers against one another as in popular opinion, and has not failed of its effect. A kind of mistrust always remained, and if the Protestants saw themselves not attacked as such, they still always feared the possibility; they still always credited the House of Austria with the will, the height of bigotry and an influence of the new, yielding pope, of the Jesuits and priests in general, as soon as it should be in a position to do so, and they saw in Prussia the guarantor and, if the case of need should really arise, the saviour of their freedom of faith and conscience.

The petty and, in its purpose, fanatical policy of the Jesuits has long since ceased to be the policy of the courts. Especially since the times of Joseph II this apprehension has vanished from the Protestants. The procedure of Joseph II was not merely the whim of a single monarch, which may die out again with his death[26)], but his successors have both retained these very principles, and they have also generally passed into the firm, universal mass of culture and principles of state.

26) *In the margin:* like the Edict of Nantes, Richelieu's relation, what [Emperor] Matthias did for the Protestants of his country

Also what was later still especially an object of interest of the Protestant part of the princes of the Empire, the relations of the Protestants in the Palatinate, the only remnant contradicting the principles of our time, has now been removed. The spirit of the times, the procedure of governments, which has become firm and turned into principles, has astonishingly diminished the importance of the *corporis evangelicorum* and with it also of its principal head.

The mania of the Catholic estates to procure the supremacy for the Catholic religion has fallen away, and with it also the crooked means which were formerly used to move German princes of the Empire to convert to the Catholic religion, and which aroused in the Protestants so astonishingly

|569| much fear and apprehension. The Catholic side no longer sets any value on it, because the state has already in itself learned to separate itself from the church, and experience has also shown that such means produced more bad effect of mistrust and increase of obstinacy than real benefit. Soon, with regard to religion, the person of the prince was separated from the country. Even if the prince became Catholic, the relation of the country to the Imperial Diet remained Protestant; indeed the prince, on his conversion to the Catholic religion, lost power in his Protestant country, not only because of the mistrust in general which arose from it, but the influence which a Protestant prince has over the church affairs of his country was taken from him by reversals and the like, and he is placed in the relation of the Catholic prince of a Catholic country, in which the church is wholly independent of the secular power in regard to its goods, the filling of offices and other arrangements, whereas the Protestant prince of a Protestant country is head and bishop at once. Catholic princely houses have also in more recent times again [become Protestant].

Because such means have fallen away on the Catholic side, the order of the Jesuits has been abolished, toleration has been introduced in the Catholic countries themselves, and civil rights have been granted to the Protestants, contrary to the narrow-hearted provisions of the Peace of Westphalia, the long lists which teachers of public law [gave] of the conversion of Protestant princes to the Catholic religion, the exposition of the cunning of the Jesuits, the depiction of the oppression and afflictions of the Protestants in Catholic [countries] have become historical objects of things past and no longer bugbears for the present.

Through the power of foreign assistance the Protestants have for longer been freed from the fear of seeing their faith suppressed

|570| by force, as indeed they have never thirsted very much for the martyr's crown. And that proselytising is no longer the system of a court has also in part freed them from the former mortal dread that this their faith might be taken from them by cunning and their conscience secretly conjured out of their pocket. The length of time alone has given them more confidence and assurance in the possession of the truth. It has long since ceased to be heard of that the Catholic confessor was regarded by the Imperial Diet as a *puissance* and that a demand could have been made on the Emperor about this on the part of the Imperial Diet.

If Berlin private writers have wished to reawaken this mortal dread among the Protestants by the dreadful noise of Jesuit-sniffing, such a thing is not only no longer a matter for the cabinet, no object of deliberations of the Imperial Diet, but appears merely as a silliness or else an outburst of a most narrow interest, of discord among the branches of the order of Freemasons.

Another interest was the rescue of what was otherwise called German freedom against what was called *universal monarchy* or afterwards also the oriental system.

Since for ten years the whole of Europe has fixed its attention on the terrible struggle of a people for freedom, and the whole of Europe has been in universal movement on that account, it cannot be otherwise [than] that the concepts of freedom have undergone a change and [have] been purified from their former emptiness and indeterminacy. German freedom formerly meant nothing other than the independence of the estates from the Emperor, [that is:] either slavery and despotism - or the abolition of the bond of the state; the older times knew nothing third.

Since Charles V the Spanish and Austrian monarchies have no longer been united, and for a century both have been possessed by entirely different families. Austria has lost great provinces, France and England have risen to an equal greatness of power, Prussia and Russia have formed; Austria has long since ceased to be the monarchy that would have had no equal in Europe. A *system of the European balance* has formed, that is, a system by virtue of which ordinarily all the powers of Europe take an interest in a war and each power is prevented from reaping the fruits even of the most fortunate war, either alone or [only in] proportion to the advantages it has won. Wars have in themselves so much altered their nature that the conquest of a couple of islands or a province costs efforts of many years, immense sums, etc.

The idea of a universal monarchy has always been an empty word. That it was not carried out, when the plan was conceived, shows the impossibility of its execution and thus the emptiness of this thought; but in more recent times there can no longer be any talk of it.

Notwithstanding this, Austria remains overpowerful in Germany, that is, more powerful than any German estate is, more powerful than many of them together. At the same time, however, Prussia has come into this very relation. Austria and Prussia stand on an equal rank with regard to a danger for the German estates. What was otherwise called German freedom would have to guard itself against both.

## [10. Civic Freedom and the Freedom of the Estates]

Of two principles - the danger to the Protestant religion and the fear [of] universal monarchy - by the seizing of which it has become possible for a state to obtain great influence in Germany, the former is no more; with regard to the latter, the desire to aggrandise itself at the

|572| expense of German estates, Austria and Prussia stand at least equal, if the former does not still have advantages.

It is visible, however, that through the ten years' struggle and the misery of a large part of Europe so much at least has been learned in concepts as to become less accessible to a blind clamour of freedom. In this bloody play the cloud of freedom has dissolved, in whose attempted embrace the peoples have plunged themselves into the abyss of misery, and determinate shapes and concepts have entered popular opinion. The cry of freedom will have no effect; anarchy has separated itself from freedom, and that a firm government is necessary to freedom [is] deeply engraved, but just as deeply that the people must cooperate in laws and in the most important affairs of a state. The guarantee that the government proceeds according to the laws, and the cooperation of the universal will in the most important affairs concerning the universal, the people has in the organisation of a body representing it, which has to grant to the monarch a part of the state levies, but especially the extraordinary ones; and as formerly the most essential, personal service, depended on free agreement, so now does money, which comprehends all other influence within itself.

Without such a representing body no freedom is any longer conceivable; all other indeterminacies, all the emptiness of the cry of freedom has vanished through this determination. It is not individuals who know it through learning, as a scientific concept, as a result of arbitrary study, but this determination is a principle of public opinion, it has become a part of healthy common sense. Most German states have such a representation; the estates of the realm of Austria, Bohemia and Hungary have given their monarchs free extraordinary contributions to the war with France.

The interest of this German freedom more naturally seeks protection with a state which itself rests on this system of freedom. The interests which were formerly dominant in Germany have in part passed away. Prussia can therefore no longer attach itself to them; no war of Prussia can any longer count with public opinion anew as a German war of freedom. The true, abiding interest, sharpened to the highest in this time, can find no protection with it. The estates of the realm of the Prussian provinces have lost their significance under the power of the royal might. A new and artificial system of levies has been introduced in the Prussian lands, which has been made valid also in the newly inherited lands that had privileges and levies according to old rights and custom.

Against this burden of levies in the Prussian states, against the suppression of privileges, the German subjects of Prussia can expect help neither from the Emperor nor from the courts of the Empire.

Besides the less powerful estates, such as the imperial cities etc., the estates of the realm of the German territories have, already because the hereditary imperial lands are themselves a state which is founded on representation and in which the people have rights, and especially because of the judicial help at the Aulic Council, a natural interest in looking to the imperial court and in expecting [from it] the support of that which the world now understands by German freedom.

This kind of freedom has naturally had to suffer the more, the more the other kind of German freedom has increased and the more the power of the state over the individual members diminished.

In the Peace of Westphalia the sovereignty, or at least the suzerainty, of the Emperor over imperial cities, which belonged to the Emperors and which in the course of time was pledged to the imperial cities,

|574| that is, to their magistrates, was declared irredeemable. The bailiff appointed by the Emperor, or whatever title he had in other cities, always had to keep the magistrates in a certain respect. They were [in] a kind of supervision under the eyes of a person independent of them, who by his connection with the head of the Empire had to have weight. Since in the Peace of Westphalia the freedom of the imperial cities was in one kind entirely secured, by the state power pledged to them becoming irredeemable, the other kind of freedom has suffered all the more; it is known into what burden of levies, neglect of the administration of justice, weight of debt, in general into what inner corruption so many imperial cities have sunk, in which the citizenry had no supervision over the administration and employment of public offices, no voice in the assessment of levies, in which the impositions and their employment, the filling of offices, have come wholly into the power and arbitrary will of the magistrates. Some have succeeded in freeing themselves from that German freedom of the magistrates by the help of the Emperor; others had already before the last war been plunged by the consequences of that system into great embarrassment and confusion of finances, which has been not a little increased by this war.

As regards the princely states, since the Peace of Westphalia the chamber dues, the costs of the contingents, of the embassies to the Imperial Diet, etc., have been shifted onto the estates of the realm.

27)The Council of Princes made in the year 1670 - [22] years after the winning of German freedom by the Peace of Westphalia - an advisory opinion of the Imperial Diet to the Emperor, in which the hitherto usual manner of delivering, according to treaties, the contribution to the

27) *In the margin:* Pütt[er] 2, pp. 271-73 ff. [*Historische Entwickelung der heutigen Staatsverfassung des Teutschen Reichs*, Göttingen 1786]

|575| costs of the state was to be abolished and it was to be left to the discretion of the princes what they should consider necessary for the needs of the country. This extension of the power of princes, by which the princes of that time would have abolished the whole principle on which the modern states rest, and what consequences? would have prepared for their descendants, - this extension of - if one likes - German freedom was prevented by Emperor Leopold, and the advisory opinion of the Imperial Diet was not ratified by him; he would in his German lands, Bohemia, Austria, have been equally entitled to abolish the rights of his lands. He would [further] have been entitled by the Imperial Diet, if only the nexus with the Empire of the Burgundian Circle, [still] always in a certain way subsisting,[28)] had been made valid, [to abolish] the rights of the estates there, which had degenerated into a despotic aristocratism, and to carry out that on which Joseph II foundered more than a century later.

28) *In the margin:* how did the Austrian Netherlands come to Austria? Their nexus with the Empire?

From the side of the interest of this German freedom the relation of the Emperor to Germany appears in another light, and his relation very different from the relation of Prussia. Through the power of time the great interest of the people has returned to its source, - as a need, which, however, has not yet found its satisfaction through a state organisation appropriate to it.

The principle of the original German state, which has been spread from Germany over the whole of Europe, was the principle of monarchy, a state power under a head for the conduct of the universal affairs and with the cooperation of the people through its deputies. The form of this has survived even in what is called the Imperial Diet; but the thing has vanished.

In the long wavering of Europe between barbarism and

|576| culture, in this transition the German state did not accomplish this transition but succumbed to the convulsions of this transition, the members tore themselves loose to complete independence, the state dissolved. The Germans did not know how to find the mean between oppression and despotism - what [they] called universal monarchy - and complete dissolution.

The struggle for German freedom meant negatively the endeavour against universal monarchy, positively it became a winning of the complete independence of the members. The territories stood by their princes in it, were one with them, but they had to find that in the sovereignty of their princes German freedom was not won; on the contrary.

At the same time, however, the tendency of the estates of the realm is first of all for their own territory; they have lost all relation to the whole. Formerly princes often held territorial diets before they went to the Imperial Diet, and deliberated in common with the territory. The contradiction that the estates of the realm are most against wars of the Empire and contributions to costs and at the same time owe their continued existence to the Empire, - the separation of Germany has nested itself universally in the spirit of the people; Bavaria, Hesse, etc. regard themselves as foreigners, the estates of the realm, which stand in immediate connection with the people, express this separation most and regard as foreign, as not concerning them, everything that the prince does in his connections; they want precisely to remain for themselves, like the Swiss in their neutrality. But the whole constellation of circumstances is not for remaining for oneself; there is no longer any neutrality for a weak state in the vicinity [of] or even between powerful ones, when these wage war, - or the neutral can remain so, that is, let itself be plundered and maltreated by both.

As much as for insight the interest of the territories and of the estates of the realm is bound up with there being a state power in Germany, so much has this interest in Germany become foreign to the territories themselves for action, - for Germany: whom does this country still concern, whence should a patriotism for this country come? What passive advantage the individual territories and also the estates of the realm have from Germany, they enjoy, recognise it, but do nothing for it; for it lies deep in human nature to interest oneself only in that for which one can act, for which one can co-decide and cooperate, in which the will can be. A kind of cooperation for the universal would have to be procured for the territories.

## [III. Proposals for the Reform of the Constitution]

*Cross-reference:* Who is to make the constitution is treated in the Remark to § 273.

If Germany is not, after some wars, to have the fate of Italy, of coming for its greatest part into the power of foreign powers, and the great majority of its estates that of becoming gradually wholly dependent politically on these great powers, of being gradually (and the smaller and ecclesiastical soonest) wholly swallowed up - [even if] some, two or three or the like, maintain themselves somewhat longer as states of the size of a circle or of a couple - if it is not to have this fate, it would have to organise itself anew into a state. The essential that constitutes a state, namely a state power, guided by the head, with the cooperation of the parts, [would have to be] established. Everything non-essential, dependence of the administration of justice, administration of revenues, religion, everything must be excluded from the necessary that belongs to a state.

A continued existence of the German Empire would be possible only in such a way that a state power were organised and the German people came once more into relation with Emperor and Empire.

The former would be brought about by all the military of Germany being melted together into *one* army. Every greater prince would be a born general in it, each would be the proprietor of a regiment of his own within it and would confer its commissions, or would have his own separate life guard and garrison for his capital. In the smaller estates, companies or smaller parts would be quartered. The Emperor would naturally have the supreme direction of this army. The costs of this army, which at present are for the most part paid by the estates of the realm – not, as formerly, by the prince out of his domains – would likewise be borne by the lands. These costs the estates of the realm would have to grant annually, and indeed they would unite for this purpose from all the lands together, which could hardly happen in such a way that some members of the existing estates of the realm were deputed to it – because some lands have no estates of the realm, and for quite small estates the costs would be too great – but, if for the purposes of the levying of troops it were already necessary that Germany be given a military division, each circle into smaller circles, quite independent of the remaining jurisdictions and sovereign rights, which would have nothing at all to do with the military division, then deputies could be chosen from the subdivisions according to the number of their inhabitants, who would have to grant the impositions for the maintenance of the state power.

These deputies would form for this purpose one body with the bench of cities of the Imperial Diet – this bench of cities has in any case suffered a further diminution through the loss of several cities, and it is the question whether it will not suffer yet other diminutions, to the own good of some of the smaller among them, in the business of indemnification – Hamburg too would have to be obliged to send its deputy. – The smallest imperial cities, of one or a couple of thousand citizens, have votes in the Imperial Diet, and a whole land such as Bohemia,

|579| Saxony has no vote at all. Such small imperial cities as still remain would have to let the districts lying round about them share in the quality of sending a deputy.

In any case one does not know what the bench of cities is supposed to signify. There are three colleges in the Imperial Diet, but the majority of votes does not decide; if the electoral and the princely college do not agree, the matter is left lying, and the college of cities gives no casting vote.

The whole change would be that the lands would now hand over directly to Emperor and Empire the money which they grant directly to the princes and contribute only indirectly to Emperor and Empire.

The Emperor would again be placed at the head of the German Empire.

It would be the question whether the knightly cantons would send deputies into the council of princes or into the college of cities. They would grant their charitative subsidies in common with the others, and as lords of dominions they would necessarily have to be associated with the princely college.

It would [further] be the question whether the princes would resolve to furnish a contribution in common out of their domains and other territorial revenues, or whether each would defray his regiment or his guard in part from these. Generally it would be open to each, over and above the general part that would be given to it by the whole, to contribute to the beauty of this regiment as much of his own as he pleased. In the former case, if the princes granted and handed over contributions from the domains to a common point, the knights would have to be associated with them; as indeed, in any event, originally true nobility, i.e. lords of dominions over immediate knightly estates, belonged wholly in the category of the princes and in their origin were not different from them.

The question would also arise whether in the electoral

|580| and princely colleges the princes, if they did not wish to appear themselves, should not let themselves be represented by princes of their house or at least by their most eminent vassals. In such an assembly the manner of proceedings too, the dictation of protocols, would not be applicable, but deliberation and voting would be oral, and the talents and the splendour of the representatives, if they were only from princely and the noblest families, would lend to such a princely assembly a lofty standing and aspect.

Even if all parts were to gain by Germany becoming one state, such an event has never been the fruit of deliberation but of force, and even if it [were] in keeping with general culture and the need of it were felt deeply and determinately. The common mass of the German people together with their estates of the realm, who know of nothing else than the separation of the German peoples and to whom the union of them is something wholly alien, would have to be gathered by the force of a conqueror into *one* mass, they would have to be compelled to regard themselves as belonging to Germany.

This Theseus would have to have magnanimity to concede to the people which he had created out of scattered peoples a share in what concerns all – since a democratic constitution, such as Theseus gave to his people, is in our times and in great states a contradiction in itself, the share would be an organisation – [as well as] character enough – even if he could not be assured, through the direction of the state power which he would hold in his hands, of not being rewarded with ingratitude as Theseus was – to be willing to bear the hatred which Richelieu and other great men drew upon themselves, who shattered the particularities and peculiarities of men.

If the sociable nature of man has once been disturbed

|581| and compelled to throw itself into peculiarities, then so deep a perversity enters into it that it now applies its strength to this disunion from others and goes on to madness in the assertion of its separation; for madness is nothing other than the completed separation of the individual from his kind, and if the German nation [even] is not capable of raising its obstinacy in the particular to the madness of the Jewish nation, that nation irreconcilable with others in sociability and community, if it [even] cannot arrive at this wickedness of separation, of murdering and letting itself be murdered until the state is shattered, nevertheless the particular and privilege and preference is something so intimately personal that the concept and the insight into necessity is far too weak to work upon action itself; the concept and insight carry with them something that so arouses mistrust against them that they must be justified by force, and then man submits to them.

# C

[*Parallel passages to the constitutional essay*]

## 1.

29)We can call a multitude of human beings a state only if they are united for the common defence of their property in general. It goes without saying, yet it needs to be remarked, that this union must not be an empty word; namely, this union for common defence must not be a union through which nothing is defended and the property is left to an enemy without attempt at defence, but through this union for defence an actual defence must come about. The arrangement for this actual defence is the state power; this must partly be sufficient [to protect] the state against internal or external enemies, partly to maintain itself against the general pressure of individuals. As regards the latter, each individual indeed wishes to live by means of the state in security of his property, but the state power appears to him, especially in a great people, as something alien, present outside him; he lets this which is to be found outside him look after itself, as he looks after himself, and his contribution towards so enormous a whole must seem to him so disproportionate that he does not hold it important, and so easily satisfies his conscience about his negligence.

29) *Hegel's footnote.* [before this, deleted:] The publicists themselves no longer venture to call Germany *one* state; but it is still, they suppose, *one* Empire, *one* body of state; and even these names are still too full of meaning for the slight relations in which the German lands stand to one another.

Against this natural centrifugal tendency of individuals the state must have power enough to maintain itself, and if otherwise only the state is organised at all and lays claim only to the duties prescribed by law, then order and strictness here take effect at first without further recourse to the proper power. But if the power of individuals is so great that they

|583| would be able to resist the state, and so find themselves in the possibility of becoming its enemies, [then] against them the same kind of power is required as against external enemies, just as the particular power against criminals does not in general deserve any special mention.

The unity of state power for the general purpose of defence is the essential of a state. All other purposes and effects of the union can be present in a most manifold and unitless manner. Even the manner in which the whole state power has passed over into a supreme public power and is to be found in the hands of those who dispose of it is wholly a matter of indifference to a people's forming a state; it is the same whether the supreme holder of power is one or several and is elected or born to this majesty – whether there is in general a uniformity for the individual parts of the state in this; the monarch of Russia has serfs among his subjects, citizens of cities that have municipal constitutions, free noblemen and princes who themselves again have subjects, and peoples so wild, still naturally free, that they scarcely know laws and government even by name; so too in every other European state the relation of the citizens to the supreme public power is most non-uniform. Every smaller whole contained in the general law, individual estates, cities, provinces, have their own constitution and rights. But inasmuch as all help to form one supreme power and obey one supreme power, they together make up a state.

As regards civil laws of the administration of justice, neither does the equality of laws and of justice make a multitude of human beings into a state, nor does their diversity sublate the unity of the state; if in the whole of Europe judgement were given according to Roman or some other law, Europe would not thereby constitute *one* state; just as little if they, i.e. all states, stood in a general connection with regard to the administration of justice and extradited criminals to one another.

It is likewise not necessary, for a multitude to constitute a state, that it stand under precisely the same civil and criminal laws. One can appeal here to the example of almost all European states, among which there are few that have a uniform legislation. France before the Revolution had a very manifold system of laws; in many provinces Roman law was valid, but whole provinces, indeed almost every city, had particular customary laws, the old Burgundian, Breton law etc.; a French writer said that whoever travels post through France changes laws more often

|584| than horses. The courts can have judicial districts of very different extent; whether here a nobleman, there a city court is the first instance, whether the highest instances are different, whether one highest instance is set up for a whole state, is a matter of indifference.

Just as independent of the state or non-uniform can be the appointment to judicial posts, to the city magistracies, village mayors, other offices of administration. Arrangements which concern these circumstances are only relatively important for the state, within a certain limit indifferent to its chief purpose; but one and the same power is ready to support the divergent pronouncements of divergent laws and to wield its force.

Just [as little] does a multitude cease [thereby] to belong to a state because its parts pay different levies. This inequality again occurs in almost all European states. Not to speak of the fact that the natural inequality of contributions to the expenses of the state, which arises through inequality of wealth, so little dissolves the state that states in fact rest upon it, there is almost universally a non-uniformity already in regard to the different estates; nobility, clergy, the estate of burghers and of peasants nowhere contribute in equal proportion; just as great a difference occurs, apart from the estates, in regard to the different provinces that belong to a state; the enormous difference in this in France generally and, for example, especially in respect of salt is well known. (In some provinces the price of salt was under 6 sous, in others over 12 sous.) Just as little is unity necessary in regard to taxes on houses and on landed estates; how different are not the levies through servitudes attaching to the estate, then ground rents and so on. Just as little may there be a connection in which treasuries these levies flow, whether on a field a nobleman has the right of hunting, the city the land tax, an abbey the tithes – if only there is a centre whose power is held together by a confluence – even though quite unequal; it can also be thought that the power of the state, in so far as it needs money, is fed by no contributions at all from the individual owners – in the feudal constitution the case occurred where the state as such needed no money and was very powerful – or, if money is necessary to it, it is conceivable that it defrays the expenses of the state through domains and is not even a centre for the levies, but that these, in the most manifold manner, as well

|585| in regard to the givers and their quantum as to the recipients, subsist separated from the state without any relation to it.

An equally loose connection, or none at all, may occur in our states in regard to customs, way of life, language etc. A small state, Rome in its origin or Athens, could certainly not have subsisted if within its walls Greek, French, German, Russian, Kamchadal, Kirghiz etc. had been spoken in thirty kinds of languages, or if at the same time as many customs had prevailed among its citizens as the customs of the Russian court nobility, of rich burghers, of Cossacks etc., or only as different customs as are present in every great city in the gradations of the estates ... [breaks off].

2.

Yet the disadvantageous consequences of the character of [this] part of the army of the Empire would for the most part fall away if only a true army of the Empire could be brought together; and in this the dissolution of Germany into independent states and its ceasing to be a state shows itself most visibly. According to the fundamental laws and according to theory the army of the Empire would be able to be a formidable host, but practice, this mighty principle of German public law, gives quite other results. Admittedly one has seen only too often an enormous number of German soldiers in the field, but in what manner? It goes without saying, not as an army of the Empire, but in internal wars, in the Thirty Years' War, the Seven Years' War, in which the forces that should have been used for mutual assistance destroyed themselves and Germany lacerated its own entrails; what is called the German constitution of the state is not only unable to prevent such wars, but they are rather, as will be discussed below, lawful and in accordance with right. All the more insignificant is the German army when the enemy is a foreign power; it then usually consists principally for the most part of the troops of the less powerful lands. The – quintuple – contingents of Austria, Brandenburg, Hesse, Hanover, Saxony, Bavaria and others form small armies in themselves, and united they would make up an army formidable in itself and would cause the clumsiness of the smaller contingents united with them to disappear. But because these great contingents depend on something wholly other than the supreme public power, their cooperation for the

|586| protection of Germany is unreliable. The Austrian contingent cannot be included here, for the Emperor, on account of the weakness or unreliability of the army of the Empire, is compelled to conduct the war as monarch of other kingdoms with far greater exertions than his obligations as an estate towards the Empire required, and to let Germany enjoy the extent of his power elsewhere. In the case of the remaining contingents, however, the duties as estates of the Empire and the care for the estate's own land, or other peculiar interests alien to the interest of Germany, come into collision; accordingly it can then happen that one estate furnishes no contingent at all, according to its own judgement and without regard to the duties as an estate of the Empire, another, when it has put it in the field, enters into peace or treaties of neutrality with the enemy of the Empire while the war is still continuing, withdraws in the midst of the most critical situations and leaves the attacked fellow estate to its own weakness and the devastating superior force of the enemy. If the laws of the Empire give the estates the right to conclude alliances with foreign powers and so to have a choice between them and Germany, and the legal clause, in so far as such alliances do not contradict the duties towards Emperor and Empire, has been made ambiguous or wholly eliminated by a chief principle of the German laws, and votes of the estates in the Imperial Diet can therefore go to the effect that their other connections do not permit them to take part in the setting up of a contingent of the Empire and the payment of the contributions to the war, then this relation brings about a condition of helplessness for other estates, and this effect again itself becomes the cause of increasing the weakness of the Empire. For because Germany will not give itself a constitution that would put it in a position to protect its members against external enemies, the estate that is in danger is wholly put into the state of nature, not only entitled but, by regard for self-preservation, obliged to look after itself as well as it can; it would be most unnatural and absurd to demand that it should rely on a protection which, as all the world knows, is unable to protect and is withheld lawfully and rightfully by the right of concluding alliances. It becomes necessary for the weaker to put themselves under the protection of foreign powers, which can make war and peace wholly independently, and to let neutrality and protection be guaranteed by them

|587| – which is all the more feasible since such foreign powers are at the same time fellow estates of the Empire, but, given the independence and peculiarity of their interests, really have only this name and so again draw new advantage from their inactivity. This protection granted is all the more unobjectionable because it originally concerns only a determinate object and so by its essence appears temporary, hence is not called protective lordship and is also not so named because in more recent times such names are avoided and each state is gladly left the title of an independent state, just as the French Republic too in its treaties with the Batavian and Cisalpine Republics did not call itself protectress; and if the articles of such treaties stipulate that it places armies in these states as garrisons and draws annual sums for this, which are not called protection money, yet the first article of such an agreement always contains the recognition of the independence of such a state.

Now if several great contingents have come together, the instability of their relations disturbs their common effectiveness. There is no free disposition over these corps of troops, such as is necessary for the certainty of the execution of plans of war, and the plan of a campaign, or perhaps of individual operations, requires for its enactment not so much orders to the troops as rather negotiations. It cannot fail that the calculation also enters whether a corps of one individual estate is used too much, others on the other hand spared, and equality of right violated. If the possibility that such a contingent may perhaps be withdrawn in the most important [moments] still comes into consideration, and the jealousy of the various corps, which regard themselves as different nations, then all these circumstances contribute to making an army of the Empire, even one considerable in number and in quality, unable to produce a proportionate effect.

The warlike weakness of Germany is therefore not [regarded as] a consequence of cowardice or of the military unfitness of its inhabitants; no one holds them either unwarlike or unacquainted with the skills which in more recent times contribute as much to victory as bravery. If on every occasion the contingents of the Empire have given the greatest proofs of courage and shown themselves worthy of their German name and of their ancestors, then the arrangement of the whole and the general separation are to blame for there being no blessing in those deeds and for the exertions and sacrifices of individual men and corps being lost fruitlessly.

[Finances]

The *finances* have in more recent times become a chief part of state power, because all European states have more or less departed from the feudal constitution; but since Germany's political relations, in regard to what is called constitution, are an old heirloom, and every alteration of them was only a diminution, Germany has had no finances to inherit, or has lost what could be so called; of the revenues of the German Empire, their relation to the expenditure, the manner of raising the necessary sums, public credit, public debts, there can be no question. These considerations of such enormous importance, which in other states demand the expenditure of the greatest talents, in which errors can have the most fearful consequences, all these cares do not plague Germany.

In the old pure feudal constitution that which now has the form of general impositions for defraying the expenses of the state had rather the form of the peculiar possession and rights of the supreme feudal lord, who out of his domains defrayed the expense of conducting the suzerainty, administration, administration of justice, embassies etc.; the few cases, captivity of the supreme feudal lord, endowment of the princes etc., in which an actual imposition was made, do not come into consideration here. The expense of war each vassal had to defray himself. In more recent times one has seen the other extreme of this absence of finances, namely every expense that a public office [requires], down to the humblest village judge, *juge de paix* and constable and lower still, arrive first as a levy at the supreme public power and flow back again as state expenditure into the smallest branches of public service, through all the intermediate links of laws, decrees and accounts.

In Germany not only does this public interference of the state in every small public cost not take place – the immediate estates, even the territorial towns in them, villages, look after, under general supervision but not according to orders of the state power itself, that part of the finances which concerns them directly themselves – but, because Germany has fallen apart into a multitude of independent states, there can also be no actual general finances. This lack of finances would,

|589| as has been shown above, not in itself prevent Germany from being a state, if only, in so far as financial arrangements are necessary in more recent times for common defence by a military power, [such] were present.

The chamber taxes, which are paid by the estates for the maintenance of the Imperial Chamber Court, actually make up quite alone the ordinary finances of Germany; they are accordingly very simple, and no Pitt is required to direct them; even about these chamber dues it is complained that they often come in badly, Brandenburg does not pay the increase which was decreed several years ago, etc. The regular costs of the other supreme court of the Empire, the Imperial Aulic Council, are in any case borne by the Emperor, and in more recent times a beginning has been made of founding a fund for this by the sale of escheated fiefs of the Empire. – The administration of justice has in any case no immediate relation to state power, and to what extent this administration of justice relates at the same time also to the organisation of state power, to the political relations, will be discussed afterwards. As little as two states whose monarchs formerly sometimes chose a third as arbiter for the settlement of their disputes, or in general had in the papal see a common court, were to be regarded as *one* state, just as little can what is called the justice of the Empire, and a financial arrangement that has reference to it, make Germany into *one* state.

According to the principle of the feudal constitution the contingents are paid and provisioned by the estates themselves; as regards the latter point, pressing need has caused many estates to relax the exercise of this right and to hit upon the advantageous expedient of making an agreement with the head of the Empire concerning common provisioning; thus smaller estates too have made no use of their right to put their soldiers into the field themselves and have settled with greater estates, which took care of putting up the quantum of military falling to the smaller estates. One sees, however, that if in this a dawn of a transformation of the contingents proper into sums of money, of a transition of the in a certain manner personal services into a modern financial arrangement and with it of a transference of the establishment and maintenance of the military power to the head of the Empire, shone through – that this whole relation has concerned only small estates and was a matter of passing accident.

For the costs of those sides of a modern war which are not satisfied by the furnishing of soldiers,

|590| the estates resolve money contributions under the name of Roman months. It has been shown by the accounts of these, of the German funds of the Imperial War-Operations Treasury, that about half of what was resolved has come in; in the last months of the war, before the opening of the Congress of Rastatt, the public announcements of what was in hand in the treasury gave the sum as 500, in the next month as 300 gulden, etc., and if in other states the balance of the war chest is indeed not made known monthly, this announcement in the case of Germany has no influence on the hostile operations against the operations of the Empire in war.

A more important side, however, is the principles that prevail and come to light in this. For it is in accordance with the laws of the Empire that in matters of imperial taxes in general the minority is not bound by the majority of votes, with the restriction namely, if the minority is Protestant. But even without this restriction Brandenburg does not pay the increased chamber dues, because it is in general undecided whether the majority has binding force; it has also already been mentioned above that in the levying of Roman months resolved by the majority in the last times of the war many estates did not engage, on account of other connections. One sees that, if Germany were a state, such principles would be utterly impossible.

Formerly there was also, in regard to finances, rather a state power; but these revenues of the Emperor, tolls, levies of the imperial cities, were universally regarded as the property of the Emperor; those times were wholly remote from the concept of a universal, of a state, of a power of it; the Emperors sold and, what is still more incomprehensible, the estates bought and took them as a pledge – later made irredeemable – just as the immediate public power too was bought or taken in pledge. A stronger trait of the barbarism of a people is not to be found.

It is not to be denied, however, that the need to create finances for Germany has been felt from time to time and proposals have been made to increase the sources of money of the Empire. Because at the same time the estates were not disposed to bring about this money power through laws for contributions, both had to be united, to find a lasting fund for the state and not to burden the estates. Because the latter circumstance stands out chiefly in the disposition, there is no doubt that one who made the wish that a mountain of gold might grow up in Germany, from which every

|591| ducat that was not applied to the Empire should at once run off like water, that such a wisher would be regarded by a multitude of honest citizens of the Empire as the greatest German patriot who ever existed, because in the first moment they would have only the feeling that they would have nothing to pay thereby, before the reflection that through such a wish not a farthing comes into the treasury of the Empire. Apart from this, earlier Imperial Diets on the contrary, in relation to the need of such a fund, designated no ideal sources but, without any individual estate having to sacrifice anything of its interest, true realities, actual lands, for defraying the expenses of the affairs of the Empire, like those huntsmen a real bear for the payment of their reckoning. For several hundred years ago a law was made that for the establishment of a fund of the Empire all those lands should be designated which have fallen into [the hands] of foreign nations, *if* the German Empire wins them back. Accordingly the loss of the left bank of the Rhine can be regarded from a more consoling side, namely as a possibility for the founding of such a fund.

Even if such thoughts, more thorough in their time, were not forgotten and the German character should be sanguine enough to set a hope on such hopes in the present political condition of Europe and Germany, they could still not come into consideration in the weighing of whether Germany possesses the kind of power that now belongs to the essence of a state, a money power.

30)Formerly there also often occurred a case in which individual estates had expenses and trouble for [the] general, namely in executions of declarations of outlawry or other decisions of the courts of the Empire; if they were actually set in motion, the costs fell upon the party defeated in right; naturally the party had to have been defeated not merely in right but also in war, for the army of execution of the Empire in the Seven Years' War received no compensation for its trouble from the estate against which it was directed. – In earlier times there was a powerful spur to actually execute a declaration of outlawry: the executing party retained, without further right to it, as compensation for its expense the lands or a great part of the lands of the executed estate. In this way the Swiss came into the possession of the greater part of the original lands of the House of Habsburg, Bavaria into the possession of Donauwörth, etc.

30) *In the margin:* Costs of execution

On account of this lack of military as well as of money power Germany cannot be regarded as a state, it is unable to defend itself, ...

3.

II.

A state from which the strength has been taken to defend itself against foreign states, which has no power either to wield the supreme administration of justice internally or to maintain its rights over the whole against the individuals who seize them for themselves, must necessarily [be] exposed in war to all plundering and devastation, bear the chief costs of it, which friend and foe incur, lose provinces to foreign powers, it must leave justice to politics and fate and, with state power over the individual members annihilated and suzerainty over the vassals lost, contain within itself nothing but sovereign states, of which, by the mere law of power and prudence, the stronger extend themselves and the weaker are swallowed up; such a state must fall into the condition before the Public Peace, only that this condition looks more peaceful through the altered character of men and instruments of force.

A. Fate of Germany against foreign powers

The lands which the German Empire has lost in the course of several centuries make up a long sad list; and the teachers of public law still pride themselves greatly on the great claims which Germany has, and adduce them with the same consoling emotion with which an impoverished nobleman preserves the paintings of his ancestors, the last remnant of his vanished greatness; both are disturbed equally little in their consolation. The claims of the scholars of public law have as yet awakened apprehensions in no minister, and for the paintings of the noble ancestors neither are the creditors greedy, nor does the owner himself come into temptation to sell them, because the price would stand far too far below the value; and those claims, like these pictures, moulder quietly together. Sometimes the owners give themselves the pleasure of dusting them and procuring for themselves innocent amusement in contemplating them.

If claims of the German Empire upon Hungary, Poland, Prussia, Naples etc. are still to be

|593| spoken of among the teachers of public law, then [there is] not a word to be wasted on their political unimportance. But in regard to the former state connection of these lands too it is to be remarked that they were not in connection with the German state, but with the Roman Emperor, in his former quality as head of Christendom, lord of the world etc., and that the connection does not concern the German state; that the Roman Emperor and king in Germany, as it is still separated in the title, was in essence separated; and the German Empire had neither the interest and the will nor the strength to maintain that which could be reckoned to the dominion of the Roman Emperor, and such an unnatural union of lands; yet it could and would not preserve as integral parts of itself those states which stood in an actual state connection with it.

The Lombard kingdom stood in closer relation to Germany, and traces of it have been preserved down to the most recent times, but these traces are still weaker [than the relations] in which the German estates stand with the Empire, and can therefore not come into consideration in regard to the state.

As regards the lands belonging essentially to the German Empire and possessing full standing as estates of the Empire, almost every war of the Empire has ended with the loss of such estates for it; this loss embraces two kinds; namely, apart from the subjection of German lands to foreign overlordship and their complete tearing away from all rights and duties towards the Empire, apart from this loss of Germany, it must be regarded as a loss for the state that so many lands, while indeed remaining in all their former legal relation towards Emperor and Empire, received princes who are at the same time monarchs of independent realms. It is this circumstance, which is apparently no loss, which apparently left everything as it was, [but] which has undermined the coherence of the state in its fundamental pillars, because these lands have thereby become independent of the executive power of the German state, of state power.

Without going back to earlier times, we wish to give a survey of how, from the Peace of Westphalia onwards, the impotence of Germany, its fate in relation to foreign powers and to the extent of its territory, has manifested itself; of what Germany's loss through the peace has been; for the damage through the war itself is too immeasurable for any statement.[31)]

31) *Editors:* There follows a survey of the German territorial losses.

4.

*d. political principle, in order to let the grandees feel their dependence*

II. Even if a definitive judgement has followed, execution is lacking; from this side anarchy is visible, no public power.

III. The sovereign rights of the princes indeed do not extend to war and peace – in more recent times also, according to practice – but to alliances with foreign powers; thereby the rights of the estates [become] objects of politics, in any case and by right. Just this tendency to independence makes all improvement impossible; well-founded pretext – bad justice, in order to withdraw from it; that tendency does not wish to remove the pretext; the Visit. under Joseph II. The estates, attacked, attacked the Emperor and Mainz, both therefore let it go; both became weary of it, because their indeterminate rights could lose through determination. A better justice would be fearful for the estates of the Empire, it makes void their politics, the sending of envoys to foreign powers, acquisition through political negotiations, the two stand in complete contradiction; what is a matter of right cannot be a matter of power, of influence etc. The estates indeed do not have the right of war with one another, but indirectly through alliances, the city of Münster thus brought under the bishopric.

IV. A very important circumstance, however, is the difference that obtains between public power and object of right; an object of right is a private property; public power cannot be private property; it flows from the state; there is no right to it save that of the state; its extent, the possession of it depends on the state, valid only in relation to it; no object of judicial treatment. Acquisition of private property is a matter of chance, of arbitrary will. Public power must stand in the closest connection with the whole; the state is the supreme master – even if only in one respect – of the defence of the laws, and against foreign parts however – yet in this, all right proceeds from it, it has to decide, not chance, not documents, and other titles of right. [...]

5.

[...] can, whereby the freedom of the judicial power is endangered. But the administration of justice departs wholly from its nature if public power is to become its object, because thereby it, which is essentially only a part of the state, would thereby be set over the whole, in whose arbitrary will it lies to submit to the part or not, and the whole is there where the power is; for power is the union of individuals. So long as the powers are not so organised that on the side of what is called administration of justice the power is at the same time also, this administration of justice is something purely theoretical, and it cannot, either in regard to lesser disputed relations of the estates among themselves, through the actual courts of the Empire, or in regard to the more significant ones and those relating to the obligations towards the whole, through the Imperial Diet, pass over into execution. The contradiction that lies in public power being regarded and treated as private property, centuries have strained themselves in vain to resolve. The fine theory that disputes which arise should be decided not by force of arms, for force cannot indeed decide over right, but by judgement and right, has been betrayed by practice, which has followed nature, and the relations of the more powerful estates of the Empire among themselves and to the Empire have been transposed, by the necessity of the matter, from the sphere of right into the sphere of politics. Great estates, which are at the same time monarchs of other states, are in any case in another relation towards one another and in regard to war and peace not under the law of the Public Peace. Smaller estates are indeed not to make war upon one another according to it; but through the right of alliance with foreign powers they are put, only by a detour, into this very relation, and as ally of a foreign state a bishop of Münster, for example, in the last century conquered the imperial city of Münster and transformed it into a territorial town. Matters of greater importance too, the possession of lands etc., have been formally made objects of politics by the electoral capitulation and otherwise; such objects are to be decided not by courts of the Empire and the supreme judicial power but by amicable settlement of the estates among themselves, and if it cannot be done by amicable settlement

|596| it is necessarily done by war. The Jülich-Berg succession matter [...]

6.

The arrangement of justice is therefore such that, when judgement is given in relations of public law, it cannot be executed, except when the interests concern an impotent estate; but if this is not the case, and usually it does not come to any judgement of right, it is decided according to power and the political relations.

That public power be present is the demand, and indeed it is not to be a mere thing of thought but is to have execution and reality; and that this execution be an actual execution, legal procedure is prescribed against him who refuses submission; but the realisation of this legal procedure is a thing of thought.

Chap.
Legality, that the exercise of the laws of the state does not come about

It was set out in the preceding chapter that the state remains a state of thought by the fact that legal procedure has no execution; the force of legal procedure is hindered by power, and one would first have to judge that this hindrance is something unlawful, and indeed, because it concerns the existence of the state itself and public power, the greatest crime, high treason and crime of injured majesty. Yet one would be mistaken if one wished to judge merely according to the concept; for resistance to the resolutions of public power has itself been raised into the form of legal right; action is taken lawfully when the state is prevented from being a state, inasmuch as the power that can resist it is legitimate.

That the state is only a thing of thought lies in this, that as state it has no power, but that power is in the hands of individuals, and to recognise power mutually through electoral capitulation and treaties of peace, and thus to make it legal, this has been, since the relation of the state to individuals became an object of treaties, the general tendency of the

|597| political character of Germany. In the working-out from crudity to culture it came to a question [of] which of the two, the universal, the state, or the individuals, would gain the upper hand; in most European countries the state has won a complete victory, in some in an incomplete manner, in none, with the pretension of being a state, so imperfectly as in Germany. The condition of barbarism consists namely in this, that a multitude is a people without at the same time being a state, that the state and the individuals exist in opposition and in separation. The ruler as a personality is public power, and the rescue against his personality is again only the opposition of personality. In a cultivated state there stand between the personality of the monarch and the individuals the laws or universality; the individual deed of the monarch concerns all, burdens or injures all or benefits all. But that the monarch be at the same time public power or that he have the highest power, that a state be at all, is equivalent. The contradiction that the state be the supreme power and that the individuals not be crushed by it is resolved by the power of the laws; it is the disbelief in the power of the laws, arising from a lack of wisdom, that wavers between the necessity of giving the state the highest power and the fear that the individual be crushed by it. On the solution of this task rests all the wisdom of the organisation of states; but the first thing is that a state be, the first thing therefore that the power of the state be the highest; immediately in this, however, lies also that laws are;

7.

## Religion

2. with regard to the general bond of the state, religion is an important determining ground of the relation of the individual provinces of Germany to the whole; the separation of religion has probably contributed most to tearing this bond of the state apart and to making this tearing apart legal, because the princes could find no better help for it than in the conscience of their subjects, or else because the times into which these religious separations fell were too unskilled to separate the church from the state and, despite the separation of faith, to preserve the state.

That the religion of each country, of each imperial city is legally determined, the one purely Evangelical, the other purely Catholic, a third parity-based (what if a country so violated the Peace of Westphalia and from purely Catholic became purely Protestant, or from purely Protestant purely Catholic, or from a parity-based one a pure one?), that the votes in the Imperial Diet, in the Imperial Chamber Court, in the Aulic Council are determined, that offices and embassy posts depend on it, that a large part of the Catholic votes, the archiepiscopal and episcopal, are most intimately interwoven with the ecclesiastical system, - these are legal determinations of relations of state according to religion, hallowed by the most solemn treaties and fundamental laws of the Empire; but they are slight evils compared with the legally so famous *itio in partes*, - the right of the one or the other religious party not to submit to the majority; if this right were restricted to religious matters, it goes without saying that this separation would have to be legal, and it would also be quite harmless to the state, because it would concern only objects that are none of its business. As it is, however, it has many sides that wholly annihilate relations in a state; first, a multitude of things are connected with religion, property, prerogatives of every kind, which through the connection with religion become church matters, the affair of a separate state. Whole states of Germany, an enormous mass of goods in Catholic and Protestant states, matrimonial matters, which according to the admission of the Protestants, as far as their own are concerned, are purely things capable of contract, whose relation is necess[arily] an object [of] contracts and requires a government, are withdrawn from the general state. Still more, however, and this is strong, the activity of the state can be completely checked in every general affair of state that has absolutely no reference to religion; on war and peace, taxes a[nd] o[n] the little that is left to the state, those of one religion can assemble and hinder everything that was to be decided by the majority. Brandenburg does not pay the increased Chamber contributions, for this reason. It goes too far when one, as some do, places this right in complete parallel with the right of insurrec[tion], which is sanctioned in the Robespierrean constitution. The difference is that the G[erman] E[mpire] has in its various parts, independently of the whole, governments; but if the state and the gov[ernments] and l[aws] rested on the resolutions of E[mperor] and E[mpire], then the two would have to be set equal.

c) in tearing the state apart, religion has however helped to promote

|599| another separation, at least some parts of it, and thereby given force to certain principles that are necessary conditions of the existence of a state. In that the Protestants wove their religious rights into the state, in that they made [the] most important parts of public law dependent on religion, 2 religions were nevertheless thereby interwoven into the state and thereby an independence of the state from the church was in part not at all established, but yet prepared; there always lies in it the principle, to which indeed in fact quite the opposite has been done, that, despite different religions, a state is possible.

Much more important for the state, however, is another separation, through which the concept of the state as a univ[ersality] was raised. The deliberations and resolutions of the Imperial Diet rested, especially when the princes still appeared in person, on the person of the prince; they voted and resolved as princes of their country; princes of different countries had yet only *one* vote; their person and their country did not appear separated in this, or the concept of distinguishing them as princely persons and as representatives of their country did not become visible. In the so important matter of religion, however, this distinction soon emerged; for how, if the prince and his country were of different religion? For his person the Catholic prince of a Protestant country was on the side of the Catholics; but his country, which was Protestant? Here the feeling of the distinction awoke also with regard to the general bond of the state. To be sure, as state power he should have been on neither side or on both sides. That was not possible, however, for those times; the prince of Palatinate-Neuburg, whose country was Evangelical and who became Catholic in the 17th century, was counted among the Catholic votes in the Imperial Diet as well as with regard to the Imperial Chamber Court. On the other hand, at the end of the same century, upon the change of religion of the Elector of Saxony, his vote remained Evangelical, as also happened in the foll[owing] [century] with other changes of religion, with Württemberg and Hesse. Although even before that only princes who had land and people to govern had seat and vote in the Imperial Diet, so that the country seemed inseparable from the concept of an estate in the Imperial Diet, this distinction only now became legal also with regard to the general German state; and the separation in this respect was found more easily and unsought where the separation of the interest of the prince and his subjects within a country had taken place and been previously established in accordance with the constitution by

|600| estates of the realm. The Palatinate, which had no estates of the realm, passed over without resistance to the Catholic party, and the struggle of the Palatines with their Catholic princes over religious grievances has continued down to the present day; in Württemberg and Hesse, countries in which the separation through e[states of the realm] had already taken place, the religion of the country was asserted with regard to its relation to the German Empire; this relation thus no longer remained personal, the person of the prince, and indeed the most personal thing of religion, has become indifferent, and he appears purely as representative. - This occasion of becoming attentive to this distinction was then extended from religion to other differences; namely, different countries that came under *one* prince have different votes, so the unity of the person of the ruler does not come into consideration, but only his quality as representative. Of a consideration which this representation has by its kind, namely to unite in itself a power capable of resisting the state, there is talk elsewhere.

8.

C. The feudal constitution has been destroyed in Germany by the independence of the vassals from the liege lord. The principle of the feudal constitution, that descent from a princely, comital, noble stock [gives] right to lordship over land and people, has been largely abolished by the introduction of primogeniture in the princely houses, and one of its most important consequences, the harmlessness of the vassals to the whole, has been lost; in its place has come greater power of the countries insofar as it is connected with the person of the prince, but at the same time does not so much leave their importance to his character and his individuality as raise it above the general state power.

Through the independence of the power of an estate from the whole of the state and the relation of the estates to one another as states, the condition of Germany in the relation of the estates against one another has in principle reverted to the condition before the Public Peace; in that condition the estates could act as sovereigns against one another, make war on one another, make alliances with one another, yet over all there still ruled a superior power, which now

|601| no longer even exists. On the other hand, another difference, relating not so much to principles and right as to prudence, has come in.

In the course of time, namely, the power of the states by which the smaller are surrounded has altered completely, the large countries have come to internal consistency and become states; among all European states there has thereby arisen such a connection that, inwardly pacified, they have leisure to turn their attention outward and make their weight felt with others.

A league of imperial cities in southern Germany waged successful wars against the allied princes and barons of the same; the fleets of the Hansa were formidable to the northern realms, they ruled the northern seas. A league of the nobility with Sickingen conquered electorates; Maurice of Saxony made the mighty Charles, Emperor of Germany, lord of Italy, Spain, Hungary, the Netherlands, Mexico and Peru, tremble and forced him to peace, and that without help from a foreign power, at a time when Charles was not otherwise occupied or in distress.

These times are past; to the example of Venice, which later maintained itself against the Ligue of Cambrai, or even of the Marquis de Brandebour and his resistance to the union of the greatest powers of Europe, no German estate of the Empire will wish to appeal or rely. The relation of power, even if the German estates have become more powerful, has altered completely; compared with the state colossi they have become pygmies; from their power as individuals they cannot hope for their preservation, nor any more from their union; politics has become too calculating in itself for each individual not to be able to perceive in his union either loss or at least lesser advantage than another has, and the jealousy of this coming second must separate them. Besides, however, the German estates would have to give up in a union precisely that which they aim at or for which they fought; namely they would have to submit to a universal, to laws of the union, set a power of the whole over themselves, and this is precisely what they strive against.

The very nature of the matter raises territorial lordship, sovereignty, above the sphere of the courts. The Peace of Westphalia expressly accepted foreign powers as guarantors; practice has decided all important cases by negotiations or war; laws of the Empire have established that such cases are to be brought before Emperor and Empire, and are thus to be decided by the legislative,

|602| not by the judicial power; the Emperor [has reserved them] for himself, for his supreme judicial power, that is, rather, for himself as the supreme member of state power, as representative of the state. The decision must be taken with the consent of the powerful estate, otherwise it resists through the masses, or has, like the weak one, the right to call foreign powers as guarantors to its assistance in support of what it calls its right, and [according to] the weight or fortune of arms and the interest that they have in it for themselves, the dispute is decided; without a trace of judicial proceeding.[32)] What before the Public Peace the fist and reckless daring, personal strength decided, is now decided by politics, that is, by the support of more powerful ones and the power of those who for the moment have the same interest, and by the favourable circumstances, that is, the momentary incapacity of those who [have] an opposite interest. In place of sudden striking out has come calculation of consequences; in place of personal courage, calculation of the adversary's forces; in place of the fist, calculation of the powers in general that would be for or against an interest. The difference is as when boys or old men play chess; or as between a tournament combat and the campaigns of a Fabius; there, with an equal thrust upon thrust, even at risk of life; all for the lady's thanks and for honour; here, circumspect and artful observation and outflanking of the adversary for years, all for possession. Neither over the feuds nor over the present political wrestling do judges sit in judgement.

32) *In the margin:* This jealousy of greater powers, their ability to concern themselves with foreign affairs, an ability the German Empire does not have; where has the German Empire undertaken a mediation or prevented a war by its weight, had influence on peace?
This jealousy has preserved Parma, Modena, Genoa, Lucca, even S. Marino, but in years it can break, and these states have no imperial bond, no Chamber Court etc.

The Peace of Westphalia is one of the most important fundamental laws concerning the possession of each estate; what power is it that would maintain it and the other laws of the Empire and treaties of peace.

In the Peace of Westphalia itself it is conceded to all who would be aggrieved in the rights established by it to put themselves in possession by self-help; to be able to do this, one must have power enough for it, - attack or self-help becomes a matter of calculation and of politics.

# D

[*Fragments for the essay on the constitution*]

## 1.

[*An outline*]

Germany no longer a state.

a) is no improvement to be hoped for in peace? Public law has passed over into priv[ate] law.

b) what is essential to a state?

not equality of religion etc.

c) no supreme power is in Germany
α) distribution of public power
is hereditary, and judicial, courts
β) Power. 1. Military [power]
2. Finances
3. War and peace

d) α Jurisdic[tion]

## 2.

[*Territorial sovereignty and power of the Empire*]

... to enter into their origin and legal foundation; such inquiries usually have the purpose of finding that result about which interest has already decided.

Territorial sovereignty, the pride of the German estates, the pride of their subjects of belonging to a particular state, is with regard to the whole the principle by which it is torn apart, the one is incompatible with the other; but it has so many enticing charms, it was so much supported by the character of the people, that every estate overlooked that this separation is the pit it digs for itself, that the more it makes progress in its striving to isolate itself, the more it loses in strength, that every gain is an enlargement of the danger. - The striving of the estates of the Empire presents the spectacle of a crowd that throws itself upon a frozen stream, from the ice of which each strives to tear away as much as possible

|604| for himself, unmindful that the more he enriches himself, the more he hastens his own and everyone's ruin. If this drive to isolate is the only moving principle in the German Empire, then Germany is in unstoppable sinking into the abyss of its dissolution, and a warning against it would show indeed zeal, but at the same time the folly of an unnecessary effort. Should Germany's course not still be at the parting of the ways between Italy's fate and union into *one* state? There are chiefly two circumstances that give hope for the latter, two circumstances that can be regarded as a tendency against its dissolving principle.

Formerly, on the one hand, the territorial sovereignty[33)] of the prince or the city merged with freedom, especially religious freedom too, on the other the connection of the Empire...

33) *In the margin:* there lay in it political and religious freedom

3.

[*Military power*]

enemy of the Empire, the third a treaty of neutrality etc. and leaves the attacked fellow estate without help to the devastating superior force of the enemy and to his own weakness; one estate votes in the Imperial Diet that his connections do not permit him to take part in the raising of an army of the Empire and the payment of the Roman months for the war; are there for an estate of the Empire more sacred connections than its feudal duties towards the Empire? But no! The laws of the Empire give the estate of the Empire the right to conclude alliances with foreign powers; it has thus legally the choice between connection with the Empire and foreign powers. The Empire will not give itself a constitution by which it would be strong enough to protect its members against foreign enemies; the estate that is in danger is thereby put into the state of nature and is entitled and obliged to provide for itself as well as it can; it would be most unnatural to demand that it rely on a protection that, as is known to the world, is unable to protect and is legally and by right refused through the right to conclude alliances, hence not to furnish the protecting contingents; it becomes necessary for the weaker to place themselves under the protection of foreign powers,

|605| which is the more feasible because these foreign powers are at the same time fellow estates of the Empire, but, [in respect of] their interest and independence, are called fellow estates only. This protection granted is, because it is sought only temporarily, no protectorate; also not because in more recent times such a name is avoided and gladly to each the title of an independent state is left, as France too in its treaties with the Cisalpine and Batavian Republics did not call itself protector, although it places armies in these states as garrisons and draws annual sums for it, which are also not called protection money, and the first paragraph of such an agreement always contains the recognition of the independence of the other state.

This warlike weakness of the German Empire is, as is clear from what has been said, not a consequence of cowardice of its inhabitants. The Germans are not an unwarlike nation, nor unacquainted with the skills that in more recent times contribute as much to victory as bravery; but also in this unhappy war the contingents of the Empire have on various occasions [by] the greatest proofs of courage and bravery shown themselves worthy of their forefathers. But there is no blessing in it. Through the impotence and weakness of the whole, because not all estates work together towards the whole, all exertions and sacrifices of individual men and corps are lost (Ehrenbreitstein). One could bring under this point of view everything that has happened in this war, how always the consequences of individual operations that were expedient in themselves were [thereby] annihilated again by the Empire not supporting those consequences …

4.

[*Finances*]

Since the German constitution is an old heirloom, the German state has had no finances to inherit, and in more recent times it was not allowed to arrive at making arrangements concerning them.

In the pure feudal constitution the supreme liege lord has domains for defraying those costs that the (leadership) overlordship causes him; expenditure for war every vassal has

|606| to defray himself; state revenues are wholly superfluous. In the most recent times the other extreme of a lack of finances has been seen, namely that every expense that a state office [requires], down to the office of village judge (*juge de paix*) and still further down, flows as levy first to the supreme public power and as expenditure from it back into the smallest branches of the public service. The supreme direction of the state over finances has become a mania, to tie everything required for the service of a public power however insignificant, in however small a compass, to the supreme power, to let no village provide for the pay of its beadle. This care of the state is superfluous and for that reason becomes harmful; when a power does not let a community do something that it can and will itself perform, which stands in no relation to the whole, this superfluous interference appears as a tyranny.

In the German Empire not only the immediate estates but also the provincial towns in principalities, even villages for the most part themselves provide [for] the finances that concern themselves, provide for the pay of their magistrates, courts etc., all under supreme supervision; and because [the] purpose of those expenditures is so restricted and [they] rest in any case on old tradition and are small, the state does not need to interfere in any other way, it being concerned only with the universal; should they hinder this universal, be too great and make the contribution for the state difficult, then the state would have to see to it.

Only those expenditures and receipts interest the state that concern its power with regard to the upholding of what the laws pronounce, and to security against foreign enemies.

As to that power for upholding the laws, provision is made for it in the individual estates by their own power; the general state usually has nothing to do with it, each estate becomes master over its criminals; not always over rebellion, and then one is compelled to address the neighbouring estates, and these (as in the Liège affair) then gladly lend a helping hand; more powerful estates (at that time Prussia) may indeed not want to be content to be mere executors of judicial rulings, but believe themselves important and judicious enough to proceed in it according to their understanding and good intention, that is, to play the matter out of the judicial into the political sphere; in the latter the matter might often be

|607| better arranged, if the power is judicious and fair, especially in the dispute between subjects and princes, where usually *Iliacos intra* [etc.] and the judge has to pronounce only according to cold right; but with that the whole standpoint of an executor, the whole principle of the constitution is displaced, the foundation pillar of the bond of the state shattered, or rather it is only revealed on such occasions that it was already shattered beforehand. In such cases, therefore, where the laws are to be exercised only against private persons, they cannot be exercised by the state but by the estate; at a pinch probably also in rebellions, because the interest of the princes in them is common.

Quite otherwise is it when the pronouncements of the laws are to be upheld against estates; in this respect no sufficient state power is organised; on the contrary the laws are so constituted that the laws cannot be upheld; an insignificant estate must indeed crawl to the cross before a significant one, and that probably also in the case when not the laws but only the claims of the powerful one have spoken; but where would be the state power that would uphold the laws against the powerful estate, the executive power that would put into actuality against a powerful one the rights of the weaker as recognised by the judge?

Execution ordinance.

How do the proposals for remedying these evils run; to enforce execution against a prince who has over 200 000 men under his command?

Through the fact that the contingents are paid and fed by the estates themselves, military affairs become wholly independent of a supreme power; if they had only to deliver the men, the state would be independent of their negligence. For it could provide itself with men.

But thus, with regard to external defence, there is a supreme power in Germany a) neither according to right b) nor according to practice. What express right still left to the state, the famous, all-powerful principle of practice has abolished.

C. One should have thought the estates' own advantage would have moved them to hold Germany together as a state, since the subsistence of each single one rests wholly on the preservation of the whole as a united one. But against the state the natural reaction to separate oneself sets in; as with levies generally. All wish and demand administration of justice and government, all find levies necessary, all demand [them],

|608| all pledge themselves to them; but each individual seeks to exempt himself from them as much [as] possible, he puts his contribution out of relation with the whole, regards his advantage as separated from the universal, and so there is always with indirect impositions an enormous shortfall against what they should bring in. So too it has gone in Germany with public power; all estates demand protection from the German Empire, call for its help, demand that the German Empire protect them, acknowledge, especially the smaller, that without the whole they cannot maintain themselves; but at the same time each seeks from public power as much as possible. The estate's own advantage is the general maxim, and in place of a constitution [has] come politics. Instead of the coherence of the Empire, to maintain it as the highest, one's own advantage. First the power for it had to be procured. This was done by alliances with foreign powers, these alliances have become legal. Enlargement of one's own power, troops in themselves insignificant, except with Brandenburg - alliances among themselves, seems still the best! - Only two things seemed possible, crudity knew only, after the abolition of living together and common action, the relation of boundless domination of public power, of blind power and servile submission. The way out under common fixed laws unknown, but practice has triumphed over lawless domination, but at the same time abolished all social connection, abolished tyranny through anarchy and made the latter legal. Tyranny stands above anarchy, for in it the connection to *one* state at least remains.

This detachment from the supreme public power has occurred intentionally; but the consequence, anarchy and deprivation of security, was not seen; clumsy.

34)Enlargement of the states through inheritances, especially connections of the same with foreign ones. This circumstance is the deepest blow to the state; nothing is thereby violated in the constitution, in right; no foreign prince among those who still make up Germany (with the Italian fiefs it is different) has abolished the bond of the Empire. The German Empire has reserved all its rights. But the change is astonishing. The relation of the power of the estates to the polity is wholly changed, and such a thing is called a revolution, which, without a jot needing to be changed in public law, has crept over it and overturned it completely. With

34) *Editors:* the following paragraph in the margin

|609| England it is another matter, for the supreme power of England and Hanover are not united, through separation of the ministries. The king could indeed unite them; he has the highest state power, to conclude war and peace, to make alliances, administration of the treasury, command over the armies in both. But only the administration of the treasury, not the granting. Besides, under George I the interest of both was united. Had he been more fortunate, he would have snatched to himself the role of Prussia. But England's interest is against France, hence with Austria. Then it would have been against both and would not have maintained itself. [The] role [of Prussia was] counter-power against the Emperor and protection for lesser ones; thereby [it set] itself in the place of the imperial power in a part of Germany.

b) an unintentional dissolution of the state seems, on the part of the peoples, to have been religion; the princes knew what they did, as shows through everywhere, the peoples honestly and sincerely for religion, and honestly and sincerely they thought not of others; national enmities engendered at the same time by war and plunderings and mutual hostilities.

This separation of religion has become astonishingly important; in other countries nationality, the state, has nevertheless won out over the enormous disruption, in Germany too unskilful to maintain this. [There remained] for the Emperor no other means than to make princes of the Empire, because he did not win more votes. Blindly or intentionally the state has been made to perish. The Emperor was only Catholic, himself a party, not state as in France, the Austrian monarchy; and so then the Protestants too only party. One did not speak of foreign influence; if they wished, they could.

Anarchy made legal by the *Corpus Evangelicum*, not merely religious matters, also taxes and other matters, so also in the Imperial Chamber Court and Aulic Council *itio in partes*. Manifest use of religion. Because political rights were bound to religion, both parties have through it torn themselves away from state power; for the separation of both parties has torn the bond.

That a state now be possible, the separation of religion and politics is necessary; it is not for the supreme power to have a power over religion, God forbid, but precisely no power over it, no rights with regard to it; only then is the supreme power possible for the defence of the internal and external.

D. Confidence and obedience towards the supreme power necessarily impossible under the separation of states in Germany. That

|610| people to which the Emperor belongs, be it Austria or Bavaria or Brandenburg, its language and that of the [peoples] surrounding it is not even understood by others. In this respect of confidence the difference of right is an astonishing source of estrangement; [how he] who is less burdened with levies, the freer, exalts himself over the serf, the other [feels] envy and soon hatred, increased by the mutual wars, still more by this war. The South German, plundered, cannot look without envy at the calm of the North German, not without anger at being abandoned by his fellow Germans in such need and misery. The North, seeing that it is so clever, shrewd and so fortunate, looks down on the South German.

E. Progress since the Peace of Westphalia.

Civil wars in England for two royal families.

Estates of the realm, decline of their power …

5.

[*The judiciary*]

In the German Empire there are no state officials - hereditary stewards etc. The burgher demands security of property and administration of justice, as few levies as possible - he lets the state take care of everything; the official too, his connection, his relation to the whole etc., he seeks his bread. Formerly every free man wanted to share in it. Now *one* class, in which the duties of the state have become private rights. In this separation from the state lies the possibility of forming a state.