

D.

The rights of the supreme commander [*obersten Befehlshabers*] of a state also include 1) the distribution of *offices*, which are salaried administrative positions; 2) the distribution of *dignities*, which are eminent Estates without pay, based on honor alone, that is, a division of rank into the higher (destined to command) and the lower (which, though free and bound only by public law, is still destined to obey the former); and 3) besides these (relatively beneficent) rights, the *right to punish* as well.

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

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Among *dignities*, not just those attached to an office but also that which makes its possessors members of a higher Estate even without any special services on their part, is that of the *nobility*, which is distinct from the civil Estate of the people and is transmitted to male descendants and by them to a wife born as a commoner, though if a woman born into the nobility marries a commoner she does not pass this rank on to her husband but herself reverts to the mere civil rank (of the people). Now the question is whether the sovereign is entitled to establish a nobility, insofar as it is an Estate intermediate between himself and the rest of the citizens that *can be inherited*. What this question comes down to is not whether it would be prudent for the sovereign to do this, with a view to his own or the people's advantage, but only whether it would be in accord with the rights of the people for it to have an Estate of persons above it who, while themselves subjects, are still *born rulers* [*Befehlshaber*] (or at least privileged) with respect to the people. The answer to this question comes from the same principle as the reply to the preceding one: "What a people (the entire mass of

subjects) cannot decide with regard to itself and its fellows, the sovereign can also not decide with regard to it." Now a *hereditary* nobility is a rank that precedes merit and also provides no basis to hope for merit, and is thus a thought-entity without any reality. For if an ancestor had merit he could still not bequeath it to his descendants: They must acquire it for themselves, since nature does not arrange things in such a way that talent and will, which make meritorious service to the state possible, are also *hereditary*. Since we cannot admit that any man would throw away his freedom, it is impossible for the general will of the people to assent to such a groundless prerogative, and therefore for the sovereign to validate it. The anomaly of subjects who want to be more than citizens of the state, namely born officials (a born professor, perhaps) may have crept into the machinery of government from older times (feudalism, which was organized almost entirely for war). The only way the state can then gradually correct this mistake it has made, of conferring hereditary privileges contrary to right, is by letting them lapse and not filling vacancies in these positions. So it has a provisional right to let these titled positions of dignity continue until even in public opinion the division into sovereign, nobility, and commoners has been replaced by the only natural division into sovereign and people.

Certainly no man in a state can be without any dignity, since he at least has the dignity of a citizen. The exception is someone who has lost it by his own *crime*, because of which, though he is kept alive, he is made a mere tool of another's choice (either of the state or of another citizen). Whoever is another's tool (which he can become only by judgment and Right) is a *bondsman*⁶² (*servus in sensu stricto*) and is the *property* (*dominium*) of another, who is accordingly not merely his *master* (*herus*) but also his *owner* (*dominus*) and can therefore alienate him as a thing, use him as he pleases (only not for shameful purposes) and *dispose of his powers*, though not of his life and members. No one can bind himself to this kind of dependence, by which he ceases to be a person, by a contract, since it is only as a person that he can make a contract. Now it might seem that a man could put himself under obligation to another person, by a contract to let and hire (*locatio conductio*), to perform services (in return for wages, board, or protection) that are permissible in terms of their quality but *indeterminate* in terms of their quantity, and that he thereby becomes just a subject (*subiectus*), not a bondsman (*servus*). But this is only a deceptive appearance. For if the master is authorized to use the powers of his subject as he pleases, he can also exhaust them until his subject dies or is driven to despair (as with the Negroes on the Sugar Islands); his subject will in fact have given himself away, as property, to his master, which is

impossible. Someone can therefore hire himself out only for work that is determined as to its kind and its amount, either as a day laborer or as a subject living on his master's property. In the latter case he can make a contract, for a time or indefinitely, to perform services by working on his master's land in exchange for the use of it instead of receiving wages as a day laborer, or to pay rent (a tax) specified by a lease in return for his own use of it, without thereby making himself a *serf* (*gelbae adscriptus*), by which he would forfeit his personality. Even if he has become a *personal* subject by his crime, his subjection cannot be *inherited*, because he has incurred it only by his own guilt. Nor can a bondsman's offspring be claimed as a bondsman because he has given rise to the expense of being educated; for parents have an absolute natural duty to educate their children and, in case the parents are in bondage, their masters take over this duty along with possession of their subjects.

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E.

On the Right to Punish and to Grant Clemency

I.

The *right to punish* is the right a ruler has against a subject to inflict pain upon him because of his having committed a crime. The head of a state can therefore not be punished; one can only withdraw from his dominion. A transgression of public law that makes someone who commits it unfit to be a citizen is called a *crime* simply (*crimen*) but is also called a public crime (*crimen publicum*);⁶³ so the first (private crime) is brought before a civil court, the latter before a criminal court. *Embezzlement*, that is, misappropriation of money or goods entrusted for commerce, and fraud in buying and selling, when committed in such a way that the other could detect it, are private crimes. On the other hand, counterfeiting money or bills of exchange, theft and robbery, and the like are public crimes, because they endanger the commonwealth and not just an individual person. They can be divided into crimes arising from a *mean* character (*indolis abiectae*) and crimes arising from a *violent* character (*indolis violentae*).

Punishment by a court (*poena forensis*) – this is distinct from *natural punishment* (*poena naturalis*), in which vice punishes itself and which the legislator does not take into account – can never be inflicted merely as a means to promote some other good for the criminal himself or for civil society. It must always be inflicted upon him only *because he has committed a crime*. For a man can never be treated merely as a means to the purposes of another or be put among the objects of rights to