

[These *draft translations* are part of an ongoing effort to translate both editions of *Proudhon's Justice in the Revolution and in the Church* into English, together with some related works, as the first step toward establishing an edition of Proudhon's works in English. They are very much a *first step*, as there are lots of decisions about how best to render the texts which can only be answered in the course of the translation process. It seems important to share the work as it is completed, even in rough form, but the drafts are not suitable for scholarly work or publication elsewhere in their present state.

The present volume, *The Justice Pursued by the Church*, poses some special challenges, as it won't be possible to produce a particularly finished translation of this commentary until quite a bit more work is done on *Justice* itself — and particularly on the 1858 first edition. As a result, this draft is perhaps a bit less polished than some others at the same stage, but it has been important for me to engage with the text before continuing with the revision of the main work, and I think it may be of use to others to make the draft available at this stage. — Shawn P. Wilbur, translator]

THE JUSTICE
PURSUED BY THE CHURCH

APPEAL
OF THE JUDGMENT RENDERED BY THE
TRIBUNAL DE POLICE CORRECTIONNELLE
OF THE SEINE,

JUNE 2, 1858

AGAINST

P.-J. PROUDHON.

BRUXELLES,
LIBRAIRIE DE L'OFFICE DE PUBLICITE
1858

FOREWORD

I am accused, in France, of several offenses that I allegedly committed, by means of the press, in France; after a conviction pronounced by the Seine criminal police court, and a confirmatory judgment, rendered by default, by the Paris Court of Appeal, the case, upon my opposition, must be appealed again, before the said Court, in next November 1858. All this has happened in France: and I publish my defense abroad.

This requires explanation.

For seven years, French liberties have been disappearing quietly, one by one... I don't want to accuse anyone here: in fact I would have to accuse too many people.

Thus, to speak only of what concerns me, press offenses were, before December 2, submitted to the jury. It was a guarantee given to the country by previous constitutions that, under the pretext of repressing defamation, obscene publications and other misdeeds of this kind, committed through the press, the government did not infringe on the liberty to write, recognized by all the French people. — The decree of February 17, 1852 changed this jurisdiction: press offenses are now the responsibility of the correctional police. The philosopher, the man who ventures into the darkness of prejudice in search of truth, now assimilated to vagabonds and nocturnal rowdies, for whose expedition police courts are enough, has lost the guarantee that he could find, against the ill will of the government, in the conscience of the jury.

A special procedure, preserved by the legislation, itself not very gentle, of 1835, had existed since 1819 for the prosecution of these offenses. Nothing was more natural. Since, through a restriction of the liberty of citizens, in the interest of the power alone, a whole category of political offenses was created, under the name of press offenses, the guarantees had to extend both to the jurisdiction and to the procedure. — This protective procedure has been removed: prosecution now takes place in the ordinary manner. Nothing is more natural even, from the point of view of December 2: since the citizen who publishes his opinion, an opinion disagreeable to those in power, is assimilated to the disturbers of public peace, he must be treated like them. Despotism has its logic, as well as liberty.

The newspapers had the ability to report on the debates, something that was only common law. — The decree of February 17, at the same time as it subjects to common jurisdiction and common procedure offenses that the legislator of 1819 had deemed exceptional, offenses of political creation, that is to say arbitrary, brings them down, as for the publicity of debates, BELOW common law: in matters of the press, newspapers are prohibited from reporting. Apart from a hundred spectators, all of whom can still be chosen by the president of the court, the citizen whom the authorities pursue for the expression of his thoughts is judged behind closed doors: as required by the legislation saving the December 2. From the negation of the principles that, in 1819, had governed the laws on the press, we have fallen into the judicial violation of the common law; the exception, all of favor, which was made in establishing these laws, is now all of disfavor: what do the learned jurisconsults, princes of the empire, MM. Troplong and Baroche, say to that?

At least, you think, these exceptional offenses are clearly characterized, rigorously defined; the penalty, wisely measured, retains nothing arbitrary. — No, as we will see in this memoir, nothing is more vague than the political crime committed through the press; nothing more elastic than the law; nothing that gives more scope to passion, to vengeance, than the penalty. In political matters, the courts strike: the judgment is only for the form. It would be better to have a war council.

A chance of salvation remained for the accused, the possibility of publishing, before the hearing, a memoir. Under the terms of the law of 1819, the memoir, the written defense, which suits so well the citizen prosecuted for a writing, cannot give rise to a new prosecution, and nothing limits publicity. A way was found to cancel this warranty as well. The prosecution on one side, the judges on the other, reserve, I was told, the right to assess whether the brief addressed to them, which naturally is not made for them alone, would not be a disguised *publication*: if yes, they will seize, prosecute, at the very least suppress it.

Determined to use the means reserved for me by the law, it was in vain that I asked the Parisian printers to lend me their ministry: “We are unofficially informed,” they told me, “that everything that comes out of your pen is dangerous: we will not print anything for you, without authorization from the public prosecutor’s office.”

On this I ask the Attorney General, M. Chaix-d’Est-Ange, for a declaration stating that art. 23 of the law of May 17, 1819 protects the written defense, and that the printing is safe for the printer. To demonstrate my moderation, I offered to limit the edition of my Memoir to a thousand copies, even a hundred, if the Attorney General so required. I was wrong to thus offer a discount

on the privilege of the defense: the law is complete in its nature, and wants to be fully supported. M. Chaix-d'Est-Ange made me aware of this: — “I will indeed refrain,” he told me, “from giving you such a declaration, even less of setting a number for you. You have your right, as we have ours. Besides, the prosecution is not alone; the court also has its initiative. It is up to you to consult and act, at your own risk.”

So, clear refusal. I would not have asked for anything better, in fact, than to *take the risk*, if I had found a printer who was willing to take the risk with me. But no: I was forced to come to Brussels.

And now that I am printed in good and beautiful Belgian characters, I am not much further along in this regard. The Minister of the Interior, today M. Delangle, on whom the entry of my Memoir into France depends, also has his initiative; it may be that he judges the distribution of my printed material to be inopportune, especially since, by this distribution, I would have the appearance of placing myself under the protection of opinion: something entirely in the spirit and according to the principles of our public right, but which, under the regime of authority that we are working to subintroduce, constitutes a sort of attack on judicial omnipotence. Will the minister grant, from respect for public opinion, the authorization I request? I hope so, because this arbitrariness must have an end: but I am not sure; I even have particular reasons to doubt it.

Two months ago, I brought, from Belgium to Paris, through customs, seventy-five copies of a pamphlet that I had published five years previously in Brussels. On their arrival in Paris, although this pamphlet only discussed metaphysics, although a first dispatch, in 1853, had already been authorized, the seventy-five copies were seized, and when I presented myself to claim them, I was told, on the part of the minister: “That with regard to books introduced into France (not, note this, as contraband, but under the cover and faith of customs), the government reserved, either to deliver them to the recipient, or to return them to the senders, or finally to tear them up and pulp them.” This last option, regarding a philosophical pamphlet in which the government is not attacked, was quite simply a violation of public faith and international right: it is the one that was adopted for my seventy-five metaphysical pamphlets.

Thus, before I distribute my Memoir to my friends and my judges, I must submit it for acceptance by the Minister of the Interior, without prejudice to the prosecution to be carried out by the prosecution and the animadversion of the court : is it clear after that, that the so-called press judgments are simply acts of political policing?

Thus, for the writers whom the administration refers to the courts, the jury being abolished, the procedure of 1819 suppressed, the report suppressed, the brief, if necessary, suppressed, we are back to the secret procedure: is it clear, despite the ostentation of imperial speeches, that the *human mind*, in France, is outlawed?

This is what press legislation has become in our country; this is subsequently what the liberty to write has become; and since everything fits together, this is what all our liberties have become. We can judge the whole by the parts, *ad una dice omnes*. In all spheres of government, whether it concerns electoral or municipal organization, the legislative body, public works, the newspaper regime, etc., there is always the same perpetual forgetting of the principles, the same exceptions to

common right, the same inconsistency in the laws, the same contradictions, the same arbitrariness.

The public, which does not know how to examine things in depth, and which moreover lacks the time and knowledge to do so, imagines that despotism is only a restriction of liberty. And as it is said that the restrictions to which liberty is subject are the effect of exceptional, temporary circumstances; as in any case liberty interests it, and rightly so, less than conscience, the public resigns itself. But what would it think if I were to demonstrate to it, point by point, that any regime of pure command, such as the one we are subject to, does something other than restrict liberty, that it results in a constant, systematic practice of injustice?... I will come to that one day: for the moment, I will stick to my business.

A few words now about my work.

I have written this Memoir as I would have written it, I will not say under the Republic, suspected of license, but under the reign of order of Louis-Philippe, with all the respect that justice commands, but also with all the liberty of a citizen who knows himself to be the peer of his judges, who sees only his representatives in the civil servants of the State, and who feels his own right.

I believed that at the moment when I claimed, for my justification, the benefit of the principles recalled at the head of the Imperial Constitution, it was appropriate that I use, for the expression of my thoughts, and without regard to prostration in which fell the minds, of the frankness that these principles grant me, and I used it. I have acted like the proprietor who is disturbed in his enjoyment, and who, while exhibiting his title, make an act of ownership: I acted as a free man and a citizen.

What did I want anyway through this liberty, which was I dare say decent as well as generous? I make no secret of it: to set an example for others, and block the path to despotism, by forcing it, in the name of its own principles, to drop its mask of legality.

The Constitution of 1862, art. 1st, “recognizes, confirms and guarantees the great PRINCIPLES proclaimed in 1789, which are the basis of French public right.”

If the Constitution is established, as it says, on *principles*, it forms a regular whole, a harmonic edifice, which borrows nothing from the reason of the prince, all the parts of which are coordinated on *principles*, the interpretation regulated by *principles*, the application directed with a view to *principles*. There are, in such a constitution, no stipulations outside of the principles, no reserved cases, no solutions of continuity, no cracks through which arbitrariness can slip in. All this is implied in the notion of *principle*; universal reason wants it, and for seventy years the work of the legislators has tended to conform to it.

If the Constitution is established on *principles*, it cannot itself deviate from these *principles*; and everything in the Constitution, and even more so in the imperial decrees, senatus-consultes, laws and ordinances intended to regulate the operation of the Constitution, everything in the judgments of the courts, rulings of the courts, etc., is in contradiction with the *principles*, all of this is void in its own right, a work of lies, which cannot be applied by force.

If the Constitution is established on *principles*, unlike the old monarchical Constitution which was established on faith, authority, which we constantly invoke in our political assemblies and our courts; the reason of state, of which serious jurists are not ashamed, in administration and justice, to substitute for right, means nothing: it is immorality. We must stick to the *principles*, to their logical deduction, outside of which there is only abuse, extortion of the civil servant, prevarication of the judge and tyranny of the government.

Pleading against the Church, whose establishment rests, as everyone knows, on something other than on *principles*; against the Church, which recognizes neither political nor economic rights to the people, and for whom the reign of liberty is the reign of the devil; against the Church, which through its theology has perverted morality, and whose occult influence causes the reason of magistrates to stumble; forced to explain myself before judges, honorable without a doubt, but subject to the pressure of the power, and more accustomed to applying the letter of the laws than to going back to *principles*: I had to, in my defense, do what neither the court nor the public prosecutor, in such a case, would have done by their own movement for anyone, exposing the *principles* and developing their economy. It is not my fault if my defense sometimes took on the appearance of a lesson.

No, unless I deny the *principles*, there is no court in France capable of giving a semblance of legality to my conviction; there is no prosecutor, so fertile in columns that render his devotion to the Church and to Caesar, from which a refutation of this Memoir can emerge. So my fear is not to reappear before Justice, however threatening a first judgment and confirmation may have made it to me; my fear is that the public, from whom all justice and all sovereignty emanates, will not be able to obtain permission from the minister to read my defense.

The *principles*, such is the thought that governed the writing of this Memoir: it is with the same thought that we must today all together formulate the demand for our liberties and our rights. I could have, while defending myself, used recrimination, carried out reprisals, reproached, denounced, accused; neither the occasion, nor the motive, nor the material was at fault for me. I discarded these trifles; I remained constantly on the defensive, wanting to owe my justification only to *principles*: it is also through *principles*, not through vain declamations, that we will put an end to this shameful state of things, the primary cause of which was our own infidelity to *principles*.

Based therefore on the principles of 89, on the legislation of 1819 and the Constitution of 1852, I want, for my written defense, full freedom and full publicity: otherwise, no, as the Cortes of Aragon said to the King of Spain.

I want, since the friends of the Empire continually lull us with the hope of freedom, the trial of my book to at least serve to judge the true intentions of the government. The decree of February 17, 1852 abolished newspaper reporting: I do not ask that the court depart in my favor from observing this decree, although it is a violation of common right. But no law opposes the publicity of the written defense: it is this publicity, implicitly guaranteed by the law of 1819, that I demand. The ban on my Memoir or its seizure can only result from good pleasure, nor can it be explained except by extra-legal considerations, and the government would thus confess its contempt for

principles; it would admit that the *principles*, that is to say reason, justice, morality, opinion, are for it, like corruption itself, instruments of rule: we would know where to stand once and for all on the secret thoughts of the Empire and the aim of its policy.

THE JUSTICE
PURSUED BY THE CHURCH

IMPERIAL COURT OF THE SEINE.

APPEAL

OF THE JUDGMENT RENDERED BY CORRECTIONAL
POLICE TRIBUNAL OF THE SEINE

JUNE 2, 1858

On April 22, a work entitled *Of Justice in the Revolution and in the Church, New Principles of Practical Philosophy, addressed to His Eminence Monsignor MATHIEU, Cardinal-Archbishop of Besançon*, was published by Garnier Frères, Paris booksellers. by P.J. PROUDHON, 3 vols. large in-18, with this epigraph taken from the Psalms: *Misericordia et Veritas obviaverunt sibi; Justitia and Paz osculate sunt.*

On April 27, an order was given by the public prosecutor's office to seize the said work: the seizure was carried out the next day.

From the 22nd to the 27th, in five days, there certainly was not time to read the 1,700 compact pages, the reading of which M. the imperial prosecutor de Cordoën and the lawyers in charge of the decision all declared, during the debates, to have found difficult: it would have taken, for this reading and for a reasoned report, at least six weeks. The author had counted on it: The public, he said to himself, reading at the same time as the prosecution, opinion will have time to produce itself, and its manifestation will stop the prosecution...

But *the Spirit blows where it wants*, says Wisdom. Inspired, I cannot help but believe, by the Church, the public prosecutor no longer needs such a long time today to unmask the thoughts of the sophists, uncover their plots and confuse their doctrines. Since the case was only called on June 2, thirty-five days after the seizure, and since after thirty-five days of reflection the public prosecutor persisted in his requisitions, it must be admitted that he had serious reasons for this: these are the reasons that we will have to examine.

To this first act of the prosecution, the author of the incriminated book responded, on May 11, with a strongly motivated *Petition to the Senate*, requesting the revision of the Concordat of 1802, in other words, a new regulation of the relations between the Church and State. Basically, this petition was only the consequence of the work itself.

Before formulating his request, the author had to consult and prepare the opinion; it was for this purpose that he had written his book: the proceedings initiated by the public prosecutor forced him to refer the matter to the Senate, before the public itself was informed. Published on May 17, in 1,000 copies, the *Petition to the Senate* was considered by the public prosecutor as an

aggravation of the offense or offenses discovered in the body of the work that it served as an annex, and seized it in turn on the 23rd.

On June 1, appeal of the author to the Senate with a second *Petition*, filed, like the first, at the secretariat of the respectable assembly, but which was not made public, and which could not even be read. at the hearing. It will be found, along with the first, in this memoir.

On June 2, the two proceedings combined, four accused appearing at the bar, namely, the author, the bookseller, the printer of the book and that of the petition, judgment of the correctional police court which sentenced: Proudhon to three years of imprisonment imprisonment, 4,000 francs fine, suppression of his work; Garnier, bookseller, one month in prison, 1,000 francs fine; Bourdier, printer, fifteen days in prison, 1,000 francs fine;¹ Bry, printer, to fifteen days in prison and a 200 franc fine.

The public found the author's condemnation excessive. But, if we reflect that the offenses noted by the prosecution both in the petition and in the book were seven in number; that as a repeat offender, the author, once found guilty, and without mitigating circumstances, could not be sentenced to a penalty less than the maximum; that thus, depending on the nature of the offense recognized by the court, the sentence could go up to ten years in prison and a fine of 12,000 francs; if, I say, we reflect on this set of considerations, and if we pay attention to the time, to the environment, to the point of view in which the judges inevitably found themselves placed, we will perhaps agree that the court still made proof of indulgence, and for my part I thank it.

Yes, and I say it with frankness: although I am an appellant, while convicted, I am not even talking about the innocence of my intentions, but about the right that I had to write the things that I am accused of having written, and to write them as I wrote them, I do not think I have any reason to complain about my judges. I found the investigating magistrate, M. Rohault de Fleury, despite his decided impassivity, full of consideration for my person; I pay tribute to the ironic spirit of the honorable president of the 6th chamber, M. Berthelin, who, while exerting too much discretionary pressure on the defense, strove to be courteous and gracious as much as a man of the world; I was touched, more than I can say, by the moderation of expression that M. de Cordoën, imperial prosecutor, put into his indictment.

There is, I know from experience, no deeper antipathy among men than that which the idea of atheism arouses in a religious soul. Let us not bargain with words: for M. de Cordoën, I am an atheist. But it is sweet for me to recognize it: the charity of his soul, passing through his voice, tempering his words, was at the level of his piety, at the level of the horror that my lack of religion inspires in him. And this is also one more argument in favor of my system: when above the believer I never cease to find man, how can we expect that in the face of this supremacy of human feeling I should be concerned about supernatural influences?...

What I complain about is the fatality of the time, which did not allow judges who were still Christians, judging a non-Christian philosophy, to see things otherwise than with the

¹ At the time of going to press, I learned that the public prosecutor had appealed, at a minimum, Garnier's conviction and that his sentence was increased by the court to 4 months in prison and 4,000 francs in fine.

preconceptions and habits of their Christian understanding; it is from this invincible illusion, which, by the most pitiful of sophisms, making them identify the cause of the Church with that of justice, placed them face to face with a system to which the separation of justice and religion serves as a basis, in a sort of moral and intellectual incapacity. What I complain about, in a word, is that, as a result of the deplorable confusion, established by the president as a principle, of public morality and religious morality, we were not allowed, my compatriot and friend Maitre Gustave CHAUDEY and I, to present the defense of the book as we had prepared it, as only it could respond to the accusation, as finally as it would have seemed worthy of the case and the majesty of the court.

We thought we could presume, based on the content of the work and the known resolution of the author, what the defense would be, a daring manifestation of the most reprobated ideas and a full-throated charge against the Church; and we promised to put a stop to this excess. This is how we believed we could, without harming the liberty of the defense, and despite the persevering protests of the lawyer, confine the pleadings to the narrow circle in which the prosecution had pleased to confine itself, and where it was impossible for the defense to move.

It resulted from this that if the case was judged, it was not pleaded: because I cannot call plea the fragments of argument to which the intolerance of the honorable president ended up reducing the defense, and although I come to appeal, justice is still to learn the first word of the case.

May my first judges forgive me: their apprehensions, very respectable in themselves, deceived them. All we wanted, my defender and I, by taking up the question from a little higher level than the public prosecutor had done, was to present considerations of pure right, from which, independently of the irreproachability of the passages incriminated, we would have highlighted the irregularity of the accusation and the monstrosity of the trial.

What a kind of religious terror prevented us from saying, I am trying today to write; and may the Court surround me with the same good will that I encountered in the first instance! I have no doubt then that, better informed than the court could have been, it would shrink from a condemnation whose consequences would tend to be nothing less than denying the legitimacy of the entire Revolution, and undermining our social Constitution.

The offenses attributed to me in the summons are seven in number:

1. Outrage to public and religious morality;
2. Attack on the rights of the family;
3. Apology for acts classified as crimes or offenses;
4. Lack of respect for the laws;
5. Disturbance of the public peace, by the excitement of citizens to contempt and hatred of one another;
6. Propagation of false news in bad faith;
7. Outrage and derision of a religion recognized by the State.

Of these seven offenses, the 2nd was abandoned at the hearing by the public prosecutor, the 7th dismissed by the court. But nothing prevents the prosecution from reproducing them before the

Court:,and as they have neither more nor less basis than the others, I do not see, in truth, why it should not reproduce them.

To this accusation so complicated, so serious, I respond, placing myself on the ground and in the letter of the accusation: has.

a) That of all these offenses, the 1st and the 7th, *affront to morality*, and *affront to religion*, forming what I will take the liberty of calling the PRINCIPAL of the indictment, and which moreover fall one within the other, result solely from a false qualification; by this I mean that assuming in the incriminated passages the existence of a crime, this crime would be other than that which the first judges, misled by their intellectual optics, saw.

b) As for offenses No. 2, 3, 4,5, 6, forming what I call the *accessory* to the accusation, I say that these five offenses have even less reality than the first two, being themselves the product both of the false qualification that made them imagined, and of a completely erroneous, not to say arbitrary, interpretation of the passages.

c) I add that even in the event that the prosecution had seized the real offense for which the publication of the book *Of Justice in the Revolution and in the Church* could provide the pretext, and in the event that this offense were possible, and in if it were proven, the situation would be such, in the present case, that the repression of this offense would become impracticable, given that it would inevitably lead, on the part of the judges, to an excess of power: their decision, whatever it was, having to undermine either the *principles* of 89 invoked at the head of the Imperial Constitution, or the rights of the Church recognized by the laws of the Empire. So that, before administering justice, it would be necessary for the court and the public prosecutor to wait for and even provoke a decision from the sovereign authority.

This is what, in the closed field of pleadings, and from the point of view of the texts under which I am accused, I have to answer.

But let's say it straight away, and frankly:

What is being pursued here, under the borrowed names of affront to morality and religion, attack on the family, lack of respect for the laws, disturbance of the public peace, propagation of false news, etc.; what one wants to repress is a vehement denunciation of the Catholic Church, the main organ of religious thought, which the author of the book *Of Justice* accuses of being, in its doctrine and in its practice, outside of morality. This is the real thought of the trial. In this regard, the public prosecutor and the first judges, through a psychological phenomenon that will be explained, were able to delude themselves, to sincerely believe that, when they were only the instruments of ecclesiastical vengeance, they were protecting morality and the laws. The public conscience was not mistaken; the public only saw the Church; and such is the power of the truth that the offense against the Church, barely disguised under the terms of *affront to morality* and others, is the only offense that emerges from the considerations of the judgment.

It is therefore with the Church, or better said to the spirit of the Church, still present in our revolutionized society, that I have to do; it is this spirit that I want, condemned or absolved, to exorcise forever.

Ten years ago, when I had the honor, for me unparalleled, of being part of the national representation, four petitions arrived one day from the four corners of France, requesting my expulsion from the assembly for reasons of atheism. One of the most moderate of my colleagues, citizen Brillier, was responsible for reporting these strange petitions. I don't know what happened to this report.

Today, as in 1848 and 1849, the accusation of atheism weighs on me. — “You offend our religious morality,” M. Attorney General Chaix-d’Est-Ange said to me, in a visit I had the honor of making to him for the publication of my memoir, “when you claim that the Church, while it blesses the spouses, does not know how to distinguish marriage from cohabitation. Attacking religious morality, you attack, *ipso facto*, public morality, you attack the family, you fail to respect the law,” etc.

Such is the confusion that, at all levels of the judicial hierarchy, obsesses minds. Opposition to the Church, the denial of the Christian faith, is seen as an indicator of immorality. In the final analysis, it is always an enemy of order and property, a criminal, who we believe we strike in an *enemy of God*. There is no point in protesting against this absurd induction, contrary to all the principles of our society. They answer me, like Caiaphas to Jesus Christ: Yes, you assault morality by attacking our traditions; what need do we have for other proofs than your own blasphemies? *Quid adhuc egemus testibus? Ecce nunc audistis blasphemium.*

It is time to put an end to this outdated zealotry. Whether I truly am, as they say, or whether I am not an atheist, this is the secret of my conscience; what is certain, at least, is that under the terms of our laws and constitutions I have the right to be; I have the right, I say, to be an honest man without believing in God, by remaking my soul in the image of this ideal legislator who among us is called the REVOLUTION. Slander as much as you like: you will not succeed today in making people believe that the citizen who, faithful to the principles of this Revolution, seeks, outside of religious ideas, the foundations and demonstration of morality, who of this high point of view dares to judge the Church and censor the Gospel, can be assimilated to the libertine for whom sacrilege is the seasoning of immorality.

PRINCIPLES OF CRITICISM TO FOLLOW IN THE DEBATE;
GENERAL FACTS THAT DOMINATE IT.

I. In all times and among all peoples, common sense has distinguished *Religion* and *Morality* from one another. Although they emanate from a common source, which is consciousness, they are not therefore identical things, and the expressions that are used to designate them are not synonymous either.

Religion, one like speech, despite the innumerable diversity of its forms, resolves itself into *Respect for Divinity*.

Morality, too, despite the no less great variety of its institutions, is resolved in JUSTICE, that is to say in *Respect for human dignity*.

The common notion of *Respect*, regardless of the subject to whom the respect is addressed, is therefore the fundamental relationship that unites, where they appear united, Religion and Morality. This is how they bear witness to each other: nothing gives a higher idea of the dignity of man than the relationship he conceives between himself and the divine Being; as also nothing shows better the high value of the religious idea than to have made it the sanction of Justice.

But let us be careful.

Any conception of the absolute, by the very fact that it is a conception of the absolute, carries within itself a contradiction. Because of the sanctioning effectiveness attributed to it, Religion, respect for the gods, takes precedence over Justice, which is only respect for man. Worship therefore tends to subordinate law; the minister of the Church to take precedence over the magistrate; religion to replace, to supplant morality. Now, as human conscience cannot abdicate, there is a reaction of the moral sense against the religious feeling that diminishes it, and we see Justice, respect for humanity, after having, for long centuries, grown up under the wing of religion, tend for its part to separate itself from it, to seek its constitution in the independence of its nature, and claim for itself alone the honor previously rendered to the Divinity.

Such then is the religioso-juridical evolution, of which one of our most learned philologists gave the formula:

“Religion will first of all be a cult without morality; later a morality only, with or without worship.” (BERGMANN, *Les Scythes*, in-8th, Colmar, 1858.)

That is to say that, Justice no longer borrowing anything from faith and worship, religion will have passed entirely into Right; respect for God will have become identical to respect for man; in simpler terms, there will be no more religion.

The history of societies, considered from this point of view of the development of the moral sense, is nothing other than the manifestation of this law.

Let the Gentlemen of the Court follow me without fear: I will not afflict their piety. I know that I have no conversion to make among them, and I will not allow myself to try to dazzle them with paradoxes. All I ask at this moment is to be able to freely express how I was led to this revolutionary faith that I oppose to the faith of the Church; how and with what thought I conceived my book; how, by publishing this book as it is, I believed I was exercising a right and fulfilling a duty.

II. Let us take a quick look at the parallel history of religion and morality.

Religion first appears as fetishistic, or rather zoomorphic; that is to say that it conceives its God as a living essence, whatever may be the external symbol, tree, stone, fountain, star, bull, serpent, etc., of the Divinity. In this state, Religion is reduced to a crude superstition, almost entirely devoid of morality, against which, for this reason, the initiators of right, the first founders of societies, ultimately rebel.

The immoral consequences of zoomorphism appear in particular in bestiality, — practiced in Egypt as a religious act, and condemned by Moses: *Qui coierit cum jumento morietur*, — in rape, cannibalism and promiscuity, proscribed by Orpheus and Abraham.

Fetishism therefore passes, defeated by Justice.

But, in leaving behind zoomorphic immorality, man does not thereby cease to be religious; he is content to raise his ideal; he makes his God like him; in other words, from fetishism or zoomorphism religion passes to anthropomorphism, the first degree of which is polytheism. In this new form, religion becomes moralized; it is morality itself, placed under the protection of the gods, gods of the country, gods of the family, gods of the home, gods of property, etc.

And the homeland, the city, the State, finally named, are organized by a divine pact (berith, διαθήκη, testamentum, fœdus); civilization, united, so to speak, conjugally with God, sets off.

Then again, after centuries, religion, at first holy and pure as well as poetic, reappears as immoral: it is like the Sothic year, which, first discovered by Egyptian observers, but too short by six hours, found itself after 1460 years having retrograded the calendar by an entire revolution of the sun. Indeed, Humanity always advancing in the knowledge of truth and right, while religion remains stationary like its ideal, it seems to gradually retrograde, and become again what it was originally, immoral.

The immoralities of polytheism were forcefully denounced by the ancient philosophers, by the prophets, the apostles, and the Fathers of the Church. The most famous martyr in this fight against paganism was Socrates. The facts that motivated him were among others: slavery, the antagonism of races and castes, sacred prostitution, pederasty, human sacrifices, the divinization of all vices.

The ancient monotheism, the highest form of anthropomorphism, is itself denounced as immoral by Jesus Christ, who however, out of respect for Moses, is content to accuse the Pharisaic *traditions*, the cause, according to him, of all evil (SAINT MATTHEW, chap. v et seq., xv, etc.) But it is easy to see that these *traditions* are nothing other than the logical, rigorous deduction of ancient dogma, applied to a civilization that had surpassed it: so the reformer, after having attacked the official teaching, pressed by his adversaries who oppose to him the texts of the law, ends up saying that this was once settled in the past because of the *hardheadedness* and *impurity of the hearts* of the Israelites! Allow me a citation.

The Pharisees asked themselves this question: If it is permissible for a man who has taken an oath by Jehovah not to provide food for his old father (*munus quodcumque ex me tibi prosit, whatever I give you serves you!*), to perjure himself? And they decided doctorally in the negative; that God being infinitely exalted above man, the oath by Jehovah, even for an unjust thing, should prevail over the fear of parricide. Jesus maintains, on the contrary, that such a religion is immoral

and false: which, in the court of conscience, is absolutely certain. But, the Pharisees object, Jesus believes in God, since he calls himself his son and his messiah: how then does he make respect for God agree with respect for man? How, after having ruled out parricide, does he save the honor of Jehovah? This is what we are going to see.

III. Condemned for their native immorality, which was made more and more flagrant by the progress of enlightenment and right, polytheism, Mosaism and all the ancient cults had to give way to a more moral religion, since man, while claiming his right against his gods, was not yet to the point of abstaining from all religion.

This new, regenerative, or better said, regenerated, cult was Christianity. What is Christ? A *mediator*, incarnate of the Holy Spirit, God and man together, whose dual nature will be the safeguard of divine honorability and human honorability.

Christianity, in a word, between Divinity and Humanity which had become antagonistic, was a transaction, a fusion.

Such was the solution to the problem so energetically posed by the Pharisaic school. — God, said the Galilean, is too high; compared to him, man is an earthworm; and Justice in such a religion remains crushed. There must be a middle term, in the person of which God and man united can no longer separate. And this is how Jesus refutes the argument of the Pharisees relating to the oath: I am God made man, he told them. He who refuses food to his father is guilty of parricide against myself, that is to say against God, which is worse than being guilty of simple perjury towards him. Your decision therefore errs at its core; your religion falls.

Is it not always the same thought, which governs fetishism, polytheism and Christianity in turn? The closer religion approaches Humanity, the more it becomes moralized; it will be perfect when it has become identical and adequate to the law of humanity; when, instead of worshiping the god-man, we cultivate the pure man... Such is the summary of forty centuries of history and thousands of volumes written on the gods.

But, you say, who prevents religion, which has become Christian, semi-human, from now walking in step with Justice? How, through this admirable mystery of the dual nature of Christ, could religion not become incessantly more and more moral, which implies this consequence, foreseen by Christ and his apostles, that Christianity will become with time the only religion on earth, and that its duration will have no end, *cujus regni non erit finites*? What is the need to change again and break this beautiful union of divine nature and human nature?

Ah! May no word of blasphemy escape me here. It is because in Christ, man alone advances, while God remains immobile; it is because, theology having consecrated this immobility, there is inevitably, and whatever the theologian says, a split in the will of the Word; as a result, a split in belief; ultimately, a split in the herd. Let's leave behind the symbolism: let's get to the facts.

IV. All the most illustrious writers of our time, the very ones who were the pillars of failing Christianity, have pointed out this double and mysterious tendency, which takes society and the Church in opposite directions.

De Maistre was the first: for this enlightened person, the Revolution is a *satanic work*, a conspiracy of infernal powers against the reign of the Man-God. But the seduction, he assures, will only be temporary; the head of the serpent will be crushed; the faith of Christ will triumph over philosophy; the Church, purified by persecution, will rise more gloriously, and the sons of Saint Louis will ascend, never to descend, to the throne of their fathers. For a moment the Restoration seemed to justify de Maistre's prophecy: thirty years since then have continued to worsen the evil.

The author of *The Genius of Christianity* is much less reassured than the author of *The Evenings of Saint Petersburg*. Doubt took hold of his soul; he cries over Jerusalem, without hoping that she will convert; his only consolation, in his sadness, is to regard himself as the last of the royalists and the last of the Christians. Sometimes a revolutionary breath passes over his face: but the future is dark; he prefers to the honor of celebrating, like Virgil, the new century, that of closing an era which will never be renewed.

After de Maistre and Châteaubriand, the impassive observers appear, whose cold reason calculates the intensity and progress of the phenomenon.

“In our times,” says M. Guizot, “through the course of events, through reciprocal faults, religion and society have ceased to understand each other and to walk in parallel. The ideas, the feelings, the interests that now prevail in temporal life, have been, every day, damned, condemned, in the name of the feelings, the ideas, the interests of eternal life. Religion pronounces the anathema on the new world and keeps itself separate from it; the world is close to accepting the anathema and separation.” (Extract from the *Revue française*.)

What M. Guizot, in his doctrinaire wisdom, attributes to *reciprocal faults*, to the poorly directed *course of events*, is, in my opinion, the effect of the very necessity of things. After eighteen centuries of turmoil and heartbreak, the Christian religion was declared in its turn, by the French Revolution, to be insufficient in terms of morality, and Justice was freed from all theological auxiliaries, on pain of corruption.

Mr. Demogeot, in his *History of French Literature*, a work adopted by the University and crowned by the Academy, does not hesitate to make this liberation from Justice the condition of the new society.

“The creation of the new society,” he says (page 258), “of the political and secular society, can only be achieved under the influence of the ancient idea of a universal morality, independent of particular forms of worship and heir to the general tradition of humankind.”

It is certain that the first people to philosophize about morals tried to establish morality outside of faith, just as they tried to explain the world outside of cosmogonic legends. But this was only an isolated speculation, of which the French Revolution alone was able to make a social reality, by rejecting from its program any idea of public worship and state religion, that is to say precisely by separating itself from the *general tradition of the human race*. The independence of morality is not, in the human race, an *inheritance*, as M. Demogeot says; it is a *conquest*.

Here finally is the revolutionary trumpet, more terrible than that of the last judgment, which sounds the death knell of the Church:

... “No one doubts the power of Voltaire or the strength of Rousseau; no one dares to assert that the ideas proclaimed by the Encyclopedists cannot keep in check all the policies of the old society; no man disputes the rebellion of industry and science against theological and feudal Europe. There is not a riot, not a battle, not a treaty, which is not an attempt, a test, a truce or an accident of this merciless war of philosophical justice against that of the religions.

“So what were the first acts of the Revolution in 1789? It attacks the divine right of Louis XVI, forcing him to take seriously this title of first employee that Joseph II attributed to himself in words; it condemns him to present the balance sheet of the Christian monarchy before the States General, like the manager of a limited company; it causes the disappearance of the two orders of the clergy and the nobility, which supported it in the name of the God of Charlemagne, and it finally gives rise to the great negation of the republican form, to annihilate the past of monarchical France.... Everywhere we overthrow the altars, church property is confiscated, the nobility is abolished, the unique cult of Reason is proclaimed, the *Encyclopedia* takes its place in the *Moniteur*, the unique revelation of Voltaire, who mocks all the gods, or that of Rousseau, who attributes universal enslavement to them.” (Ferrari, *History of the Revolutions of Italy, or Guelphs and Ghibellines*, volume IV, page 475.)

A kind of anti-Christian enthusiasm possesses the world. When our soldiers, armed ostensibly for the independence of Turkey, but in reality to wrest the East from the domination of the schismatic Russians, mounted the assault on Sevastopol, did they intone the psalm *Exaudiat*? They sang the *Marseillaise*.

A similar event, which the *Gazette d'Augsburg* reports as most scandalous, happened in Ostrowo (Duchy of Posen), on May 3, the anniversary of the proclamation of the Polish Constitution of 1791:

The students of a Catholic gymnasium having been taken, that day like the others, to the church, to hear mass, sang, in the middle of the divine office, instead of the religious hymn designated by the teacher, a song of another kind, probably a political song, and sang it so loudly that they drowned out the sounds of the organ and the service had to be suspended.

Signs of the times: just as, twenty centuries ago, society was moving towards the elimination of paganism, so today it seems to be moving towards the elimination of Christianity. And on what facts, on what grounds is this revolutionary elimination based? By what defection from morality has the religion of Christ in turn deserved the wrath of consciences!

The trial is now being heard. Society and the Church no longer get along; and it is because they stopped getting along that the Revolution took place, a Revolution whose object, as always, is to save morality, compromised, depraved by the religious institution.

V. The principles of right that the Revolution reproaches the Church for disregarding, and which it affirms, are numerous; Let us limit ourselves to citing the following:

1. Immanence of justice in man and citizen, and progressive development of right, in theory and application, through the sole energy of conscience;
2. Equality before the law, tending to equality of social conditions and the leveling of fortunes;
3. Certainty of the social economy, or of a science of the distribution of work and wealth, according to the double principle of justice and equality before the law;

4. Political sovereignty of the people, and substitution, in the Government, of the reason of right for the reason of Church and the reason of State;

5. Theory of marriage, considered as a natural organ of justice, having the effect of realizing in the person of the woman the religious idea and of freeing love from voluptuousness;

6. Organization of public reason, through freedom of discussion and the opposition of individual reasons;

7. The sanction of justice found in justice itself, which has become identical and adequate to the sovereign good.

8. *Transitional provision*: Universal tolerance of religions, left to the free will of each person, under the express condition of respect for the rights, laws, institutions and principles of the Revolution.

Such is the summary of the morality inaugurated among us for seventy years, the basis of our public right and our private morality, which can be considered as a declaration of decline for Christianity, whose dogmatics and discipline reject it, according to us revolutionaries, essentially.

By these maxims, the Revolution declared itself independent of any transcendental hypothesis, superior to any mystical faith; it professes, in the words of Bergmann, *a morality without worship*. The fact is not new in history: more than three hundred years BC the reformer of China, Confucius, embarked on this path; and if the Chinese nation, which has been ahead of us in so many things, ultimately seems to have remained behind, this is due to other causes.

Are these maxims false? And when we glory in the sublimity of our juridical sentiment, must we see in it only a suggestion of pride? Then we must overthrow all our constitutions, erase our codes, return to the *status quo* of 1788, reintegrate this system of *divine right* and ecclesiastical suzerainty that was the official existence of France for fourteen centuries.

On the contrary, have I slandered the Church, by supposing it to be hostile to principles that would be the purest of its religion? Let it declare it; let it sign this profession of moral faith already admitted, at least implicitly, by all the neo-Christians; and I renounce my appeal, I accept with joy, in reparation for the injury I have done to the Church, my sentence of three years of imprisonment.

VI. The principle of right changed, everything changes: the state of people, the relations of the interests, the form of government, politics, public spirit, philosophy, and even literature. The collective being is renewed from top to bottom, in all its faculties and manifestations; the individual regenerates in his own image. By making a clean slate, the Revolution made the commitment to build the world anew. It will undoubtedly be a long-term task: Christianity was not even completed in eighteen centuries.

To confine ourselves to the subject of the trial, let us consider the new situation created for the Church and free thought by the Revolution.

In the past, the Church was mother and mistress of society; now she is just a member, I would almost say an accident.

By the faith of Christ, society was enveloped in the Church; it is the Church that is developed in society.

Public morality having religious morality as its criterion, the spiritual leader of society, its supreme leader consequently, was outside the nation, outside the country, outside the State: it was the Pope. Currently it is religious morality that will be required to be regulated by public morality, so that, the spiritual leader once again becoming, as in ancient times, the same as the temporal leader, the bishop will in fact be subordinate to the magistrate.

Formerly, the prince received his legitimacy from his fidelity to the laws of the Church; he was supposed to be a tyrant, if he was not orthodox; the pope, or the bishops, who had given him the holy anointing, could excommunicate him and release the subjects from the oath of fidelity, thus themselves giving the signal for insurrection. Today, divine right no longer constitutes the legitimacy of the prince; it is not the Church that consecrates it; they are no more than a simple magistrate, who can be tried and condemned by the jury if they break the law. — What am I saying? What was once called *prince* no longer even exists, except in name, as a monument, or as an official style.

The Church even loses its right of censorship with regard to free thought, since, in the new society, faith being subordinate to reason and subject to control, any ecclesiastical censorship of a book whose publication is protected by law may give rise to a call to order from the magistrate. Objects of universal research, science and philosophy are public law, social institutions; they no longer depend on the decisions of a council or a divine vicariate, nor on any revelation.²

The Church, finally, once depositary of doctrine, organ of right, rector of morals, today derives its right from the Revolution that protects it, subsidizes it, assures it tolerance and even respect. The Church is the subject of the Revolution; it is its citizen; it is one of its establishments, a provisional establishment, if you like, and precarious, but an establishment that, given the irreconcilability of the doctrines, has no reason to exist apart from revolutionary authorization, outside the concordat.

The inversion is complete: this emerges even more from the new position given to the philosopher.

VII. In the society prior to the Revolution, the philosopher, the historian, the novelist, the poet, could be legally, constitutionally prosecuted for their *principles*: so that the writer, by the mere fact of his thought, was in contradiction with religion, that is to say in open revolt against the law.

² A foreign newspaper, *Le Nord*, speaking of M. Cousin, observed that no work by this philosopher had been included in the *Index*. It is first of all a sad merit for a philosopher emerging from the Revolution, who, it is said, once pushed revolutionary sentiment to the point of Marat's admiration, to have succeeded so well in reaching agreement with the Pope. But how does the Pope, who signed the Concordat, and whom our soldiers alone protect against the insurrection of his own subjects, allow himself to be included in the *Index* of French writers? According to the Bill of Rights, all philosophical research, even when it ends in error, is worthy of encouragement; consequently, any censorship of a French book, by the Congregation of the *Index*, is a violation of the Concordat, an insult to the Revolution.

Socrates may well protest, through his heroic death, his respect for the laws. His philosophy shakes the religion of the gods; it is the condemnation of the established regime; it doesn't matter if he is right, if he does not have the authority: he must die. This is atrocious; but I repeat, this is legal, constitutional, and in a sense, moral.

Jesus also protested in vain, before Pilate, that his kingdom is not of the temporal order, that he has nothing to do with Caesar, whose empire he recognizes. His doctrine is in contradiction with that of the official doctors recognized by Caesar; his morality, declared by himself to be *complementary* to that of Moses, is an accusation against Moses; by placing himself above the temple, the Sabbath, and circumcision, he changes the basis of society; he is a destroyer of the Judaic religion, protected by Caesar: he must die, *crucifigatur*.

The apostles may say, for their excuse, that *it is better to obey God than men*. This so-called excuse is the very admission of their revolt. Do they pride themselves on knowing the order of God better than the successors of Aaron, Annas and Caiaphas? Let them be stoned, flayed, sawn, crucified!

All the martyrs follow this example: they will undergo the same treatment, even if it means being avenged later by the Church when it has become the strongest.

In fact, as it had been persecuted, the Church in turn becomes a persecutor; the persecution that it had suffered, for three centuries, from the pagans, it returned, for fifteen centuries, to the free thinkers.

What nomenclature! What a line of scaffolds and pyres!... Oh! I no more accuse the Church of Christ than I accuse that of Jupiter: I unite all these martyrs in the same love; their blood, shed throughout the earth, was the blood of the new alliance, promulgated by the Revolution: *Hic est sanguis foederis quod pepigerunt patres nostri, anno 1789*.

In 1762, J. J. Rousseau published *Émile*, a treatise on education and morality. The magistrate, responsible for ensuring respect for the established order, Omer Joly de Fleury, could say to J. J. Rousseau:

“We are Christians; we only exist through Christ: our entire society is permeated with Christianity. France is the *elder son* of the Church. The King is honored to be called *very Christian*. Our monarchy is the work of the episcopate. Our political constitution, our laws, our morals, everything in us flows from the Gospel, the institutions of the Church and messianic regeneration. However, your book is the negation of the divinity of Jesus Christ, the authority of the Bible and divine right. By overthrowing our faith, by the negation that you make of revelation, of miracles, of the fall of man, of the redemption of Christ, you overthrow our society. You are guilty of felony, treason to the public faith, first and foremost. Your book will be burned by the hand of the executioner, and you, citizen of Geneva, who pays for the hospitality of France by destroying its social contract, you will be put in the Bastille...”

What could Jean Jacques have replied? The conclusion was awful; but the argument is without reply, and Rousseau could even less respond to it since he himself was half-Christian.

I now say that the Revolution abolished this regime. It wanted the most incessant, the most independent production of ideas to be the very basis of the Constitution. Since 1789, writers have

no longer been prosecuted for their ideas: they can only be prosecuted for *offenses against morality, attack on the family, lack of respect for the laws, defamation, insult, intolerance*, and other similar acts.

Accused as I am at this time, Jean-Jacques Rousseau could respond:

“You are no longer in the communion of Christ: your spiritual life does not subsist on your faith; it comes from your reason. This free thought, so condemned since Jesus Christ, you have sworn to regard as Humanity in perpetual constitution of itself: this is now what right is for you, what morality is. This is what the public reason of the French people consists of, in its highest and most complete manifestation. Far from the free-thinking foreigner, who sits in your home, being able to be accused by you of undermining the constitution of the country, he serves, through his free thought, this essentially mobile and perfectible constitution. Not that the constitution approves any doctrine: it only accepts ideas under the benefit of inventory; but it lives from the emission and discussion of ideas. This is where it draws its authority and strength, and this is why its protection is acquired for them.

So M. Chaudey was right, at the hearing, when, reviewing the innovators of which Humanity prides itself, he pointed out that the Saint-Simonians, accused of contempt of morality, had lost their way in their defense, by declining the competence of the judges, established by the Revolution. Every new idea belongs by right to the Revolution and must undergo its control. By placing themselves outside the law and institutions of 89, these founders of a new cult narrowed the field of liberty; they displayed the intolerance of their dogma, and regressed towards the old regime.

That religious souls follow this strange revolution with concern mixed with terror, I understand, and I readily sympathize with their pain. But, however respectable their sadness may be, it should not prevent them from recognizing that the inversion that has officially taken place between free thought and religious thought has changed, in the same direction and to the same extent, the relations of Church and State; and until a counter-revolution has officially reestablished the *status quo* before 89, the new law must be respected.

VIII. Of course, such transformations are not accomplished instantly; they require a more or less long period, a series of generations. For a long time, religious thought will therefore remain jumbled with philosophical thought, the Revolution with Christianity: there will even be thinkers who will make a synthesis of this mixture and deduce from it the identity of the Revolution and Religion. What does it matter? Mutual tolerance of opinions is one of the fundamental articles of the new law; philosophy and progress no longer have anything to fear. This is why the Revolution, patient because it feels invincible, has reached out to the ancient faith, and signed a peace treaty with the Church, the *Concordat*.

But if the Church tore up the pact, rebels against the Revolution;

If, as the *Univers religieux* does, in its name, every day, it declared the principle of the Revolution false, its morality impure, its power illegitimate, all the rights it has consecrated illusory;

If it treated the head of state as a usurper;

If it incited citizens to contempt of revolutionary institutions, denying free thought in the name of faith; legality in the name of predestination, tolerance in the name of the infallibility of councils and popes; calling the philosophers of the Revolution impious, immoral, enemies of God and society:

The Church would become highly reproachable; it could be denounced by the citizens as offensive to public morals; the public prosecutor should bring charges against this disobedient, refractory Church, as devoid of morality as it is of science, whose fanatical teaching creates an incessant danger for society, whose newspapers and pulpits resound daily with imprecations against the Revolution. Brought before the courts, it would be deprived by a just judgment of the respect, protection, salary and influence that the Concordat had guaranteed it.

These are the principles, too often forgotten, that officially govern French society, a society at this time half liberated, half Christian, deriving in part from its immanent justice, in part from its religion.

As the Revolution reveals itself and extends its conquest, the Church groans and protests; it does more, preferring death to transformation, it tries to engage in combat one last time.

Hence this kind of tearing, which since the beginning of the century has made up our religious history: after the Concordat of 1802, the captivity of the Holy Father, after the re-establishment of the *State Religion*, the re-expulsion of the Jesuits; after the missions of 1825-1826, the profanations of 1830 and 1831. Then, on an increasingly broad scale, after the atheism of 93, the deism of 94; after materialist philosophy, spiritualist and eclectic philosophy; after the anarchy of the Directory, imperial silence; after the socialist demonstrations of 1848, the repression of 1852.

Will we be fooled by this dualism for long, victims of our own contradiction? I am not the one who would dare to set myself up as a prophet and say: Tomorrow there will be no more Church, no more religion. Religion, like Justice, has its principle in the human soul; it has on its side the ancient possession and, to a large extent still, the confidence of the people. Willingly, in spite of it, the legislator must reckon with it.

But, as M. Guizot said, *religion and society have ceased to walk in parallel*. What one seeks, the other rejects; and as it is not possible for the legislator to separate himself from society, it results that within this society the revolutionary institution is constantly gaining ground over the religious institution. Conciliation is thus accomplished by an indefinite reduction of ecclesiastical authority and an increasingly greater preponderance of reason over faith: why should the Church, instead of madly resisting providential action, not seek not in the very concentration of its element, an equivalent of this authority which it has lost for good?....

This quick glance at the movement of religions and at the cause that determines it was essential to my defense: you will judge it immediately.

FIRST PART OF THE ACCUSATION:

AFFRONT TO PUBLIC AND RELIGIOUS MORALITY;
AFFRONT TO RELIGION

§ 1. *Necessity of a distinction between religious morality and public morality.*

Religion and morality are therefore fundamentally distinct; the first essentially stationary, the second eminently progressive: antagonism cannot fail to break out between them, and we arrive at this result:

Any progress in Justice obtained outside of the expectations of the established cult is an affront to this cult; any Church convinced of backwardness in morality, instead of justifying itself, itself accuses its adversaries of assaulting morality.

So that society finds itself divided between two moralities: the morality of its tradition, which is that of its Church; and the morality of its aspirations, which is that of its reason.

This is universal history.

Anytus and Melitus, excellent citizens, whatever has been said, very honest conservatives, accuse Socrates of corrupting religion and morals; the Sadducees, pure Mosaicists, accuse the Pharisees of offending the law by their Persian novelties, — and what novelties! — belief in angels and the immortality of the soul; the Pharisees, in their turn, considering themselves as having become infallible by a possession of five hundred years, reproach Christ for seducing and demoralizing the people; the emperors and their state councilors accuse the Christians of attacking, through their execrable superstition, — the phrase is from Tacitus, — the constitutions of the Empire, the family and property; the colleges of Druids accuse Rome of perverting Gallic morals by establishing the formulas of right in Gaul and prohibiting human sacrifices; the Christian Churches accuse each other of immorality and impudence; the Arabs are fleeing us in Algeria, they are massacring us in Jeddah, because of our corrupting institutions; all of Christianity finally unites today to accuse philosophers and revolutionaries of trampling on morality as well as religion.

On the seizure by the published prosecutor of a book in which the morality of the Revolution is elevated far above that of the Church, the Seine criminal police court could not escape this law. Here is its judgment:

The court, given the connection, joins the two instances:

With regard to the work entitled *Of Justice in the Revolution and in the Church*,

Whereas in all matters, even in religious matters, everyone has the right to freely express their opinion and to discuss that of others, but on the condition of respecting the laws that have established the limits of a lawful controversy; as it is the right and the duty of justice to take action when the discussion, going beyond the limits of wise moderation, takes on the character of violence and degenerates into a crime;

“Whereas Proudhon recognizes himself as the author of a work entitled *Of Justice in the Revolution and in the Church, New Principles of Practical Philosophy*, a work which he acknowledges having published in the early part of 1858;

“As throughout this work, and in particular on pages 259, 858, 438 and 451 of volume 1; 85, 59, 447 and 540 of volume 2; 187, 209, 299, 316 and 320 of volume 3, during the presentation of his doctrines, which he himself describes as antitheistic, and which tend, according to his expression, to eliminate “God as useless,” Proudhon does not hesitate, when speaking of Christ, to call him the “putative son of God,” represents religion as “fulfilling an immoral mission,” writes that it is established “outside of justice, of which it does not possess the notion,” that its flock “is composed exclusively of the rich;” that “the poor leave her because she is a stepmother to them,” that she has “degraded man and that she corrupts mores”; that he reproaches the Church for “stupidifying the nation instead of educating it,” for “depraving the worker,” for “practicing mercantilism,” for “making money from everything,” and for “enriching itself through capture and fraud;” that he compares her to the “adulterous woman who has lost her feeling and her immorality,” says “that her goal, that is to say her paradise, is a robbery and the god she serves the demon;” that finally he announces to her that “she will be condemned by the indignation of the dissident sects.”

As he pursues with his outrageous sarcasm the practices and prayers of the Church, in particular the Sunday prayer which, according to the interpretation which he attributes to the Church of its terms, “would be a tissue of stupid, contradictory, even immoral and impious ideas, an incomprehensible gibberish”; that he maintains that the Church, “by undertaking to reform love, has distorted the institution of marriage, desolated hearts and inflamed lust;” that he claims “that she did not distinguish marriage from cohabitation, being ready to bless everything, provided that her blessing was asked;” that he adds that, since the establishment of Christianity, “adultery has lost its gravity and has multiplied;” that he even affirms that adultery, designated by him under the most cynical name, “has become for the Church the corollary of marriage, and that as such it is a Catholic institution;” that finally he represents the ministers of religion “as accustomed to espionage, having the profession of betrayal, and having become the enemies of the human race;” that he points them out as being the cause of household disorder, “where they bring disunity, adultery and incest;” that he dwells on what he calls “their sacrilegious bawdiness”, and ends by affirming that “the shames of Caesarism have been equaled by those of theocracy;”

Whereas, at the same time, on page 447, Proudhon declares “the solemn ceremony of civil marriage ineffective,” proclaiming the intervention of the magistrate “useless from the point of view of morality, and wondering whether morality in love, that have not been able to define and safeguard the words prostitution, cohabitation, marriage, would not be better ensured, as the communists claim, by unlimited freedom than by all legal formalities.”

Whereas these culpable proposals, presented in the most violent and insulting tones, have the aim and result of offending in the most painful way the religious beliefs for which the law commands respect; that by producing them in his book, Proudhon violated all the rules of permissible controversy, and that he, first and foremost, committed the crime of AFFRONT TO PUBLIC AND RELIGIOUS MORALITY.

If the Court had limited itself to saying that, in the passages pointed out by it, I have slandered, I have insulted the Church, a respectable corporation, recognized by the State; by falsely and deliberately attributing to it a bad morality; that this is an offense all the more serious because, if the imputation were well founded, the Church would find itself, in fact, in a state of flagrant felony against the Revolution, which means against the country and the government; if, I say, the court

had seen in my words a defamation, I would understand its reproaches and I would defend myself as it would be appropriate for me to do.

But when it says that it is I who, by this denunciation of the Church, have outraged public and religious morality and ridiculed religion, I no longer understand it and I am forced to recall it, first of all to the principles, then to the formal texts of my publication.

The principles are:

That society has had to, on several occasions, reform its religion, because its religion had become immoral;

That if, by acting in this way with regard to its most cherished beliefs, society has sometimes placed its morality in its religion, sometimes its religion in its morality, however it has never confused and identified these two things;

That the distinction became especially manifested by the French Revolution, which created a public and private morality, diametrically opposed to the old ecclesiastical morality and even to all kinds of Church and mysticism;

That if nevertheless the legislator of 1819 believed it necessary to bring together public morality and religious morality in the same text, in this he only followed the general prejudice that considers religious perfection as identical to moral perfection and rejects the idea of an immoral religion;

But it is up to the judge to reestablish the distinction, especially since it is a book whose aim is precisely to draw a parallel between *religious morality* and *public morality*.

Having said that, what should the court do?

Examine, first, to what extent the difference alleged by the author of the book in question was founded; then, what consequences he drew from the contradiction, true or false, of the two moralities, whether to overthrow and offend them both, in which case he would actually be guilty of *contempt for morality*; or whether to elevate one at the expense of the other, in which case he could only be guilty, depending on the nature of the texts, of *insult or defamation* towards the supporters of the morality condemned, since it is repugnant for a recognized morality to be *insulted* by the judgment that qualifies it.

As for religion, which I am also accused of having assaulted by my *Petition to the Senate* and ridiculed, it is exactly in the case of morality, and the same rules of judgment are applicable to it.

According to the principles of theology, religion exists, it has been revealed to us from above to serve as a support for morality, which, according to theologians, cannot do without this higher sanction. In this respect, theological speculation has gone so far that instead of simply deducing morality from the knowledge of man and his faculties, and then using religion to make man respect the precepts of morality, it claimed, on the contrary, to deduce it, in theory and application, from the knowledge of God and his attributes, so that right and duty have become a revealed thing, an integral part of theology.

This is how Bossuet, Bourdaloue, Fénelon, following the example of the Fathers, never fail to link their instructions to a dogma; they would not have believed themselves to be Christians, they would have feared falling into immorality, if they had admitted for a single moment the hypothesis

of an independent morality, pure of any theological conception. And it is also for this reason that Cardinal Maury, in his *Essay on the Eloquence of the Pulpit*, places Massillon, despite the perfection of his style, below these three sermonizers: morality, observes Cardinal Maury, seeming for Massillon, it is more a matter of conscience alone and arises less directly, less necessarily from dogma.

This is, moreover, the tendency of all religion. Where religious thought arises, at first as a simple auxiliary, it soon tends to make morality in its own image: we can be convinced of this by the example of the religions of Brahma, Buddha, Zoroaster, and Mohammed.

However, conscience does not abdicate itself for this. It also reveals a morality: *natural* morality, because it is of the essence of every living being to spontaneously produce its mores; *rational* morality, because in its practical deductions it uses no other instrument than reason; morality above all *perfectible* because the science of good and evil, like any other science, is for the natural man the fruit of experience.

If therefore it happens, through the progress of time which develops all things, that natural and rational morality appears superior to religious and revealed morality, it will be necessary to conclude: from the point of view of the Church, which draws everything from its dogma, that religion is false, since it leads man into temptation; from the point of view of the Revolution, which tolerates cults without worrying about their intrinsic truth, that religion has become a cause of depravity. In all these aspects, religion, caught in dogmatic moral error, cannot be outraged by the criticism that demonstrates its non-morality; it is simply impure.

Let us apply these principles:

Have I, in the first place, outraged *public morality*, this natural, reasonable morality, which the progress of civilization has developed among us and which everyone recognizes; the morality whose definitive advent is due above all, in my opinion, to the Revolution?

By expounding on this morality, have I corrupted it, distorted it, diminished it, desecrated it? Did I ridicule it, trample it underfoot? Have I said like so many others, believers or disbelievers, that it is nothing, that it does not oblige the conscience, and has no other value than that which it draws from the support of bayonets?

To this question, the conscience of my judges, as well as that of my readers, answered: No, there is no outrage against *public morals* in the book *Of Justice*. Far from it, this entire book is an affirmation, a glorification of this morality. We would rather criticize it for rigor than for laxity.

But, it is said, I have offended religious morality by maintaining it inferior, in principle and practice, to public morality; I offended religion by tracing the principle of this corruption to its dogma.

To which I respond, as I have already done, that we do not outrage a false morality by calling it false, since, morality having reality only through its purity, that would be to insult a nonentity. And I add that we also do not insult a religion by accusing it of having produced a wicked morality; since religion only exists, by its own admission, to serve as a guarantee of morality, the

moment it perverts it, it loses its respectability; it is no longer me who insults it, it is the religion itself that reveals its turpitude.

I confess that if, by discussing religion and submitting to analysis the dogmas of the faith, I had violated, as the Tribunal says, all the rules of permissible controversy; if, apart from the qualifications that I had the right to express, I had indulged, towards religion, in invective, insult, derision, I would have deserved a just reprimand. As long as religion retains its influence in consciences, however defective its morality appears, however regrettable its influence, it is entitled to consideration; it is respect for humanity itself that commands it. But, far from having to reproach myself for having breached decorum in this, I can say that Christianity, subjected to such an attack, had never been surrounded with so much consideration; perhaps it had never seemed so great, so sublime: in this respect, I will later need a few quotations to remove even the shadow of a reproach.

The whole difficulty therefore consists in knowing if really, today as in the first year of our era, religious morality has fallen below conscience; if it is contrary to public morality; if the Church, if Christianity, has been definitively overtaken by the Revolution.

This is my whole defense. Why did the court not allow me to provide this proof? Why did it reject, with a sort of obstinacy, the distinction between the two moralities?

The Tribunal, through its president M. Berthelin, maintained that the legislator of 1819 having united the two adjectives, *public* and *religious*, on the same noun, MORALITY, the question should in no case be split; from which it followed that, the two moralities being confused, even more, made jointly in solidarity with Christian honor, the accused, who, in fact, had only been able, through his criticisms, to undermine the consideration of the Church, found himself, thanks to the confusion admitted in principle by the court, convicted of *outrage to morals*.

God forbid that I accuse the first judges of having lacked good will: it is quite the opposite that I experienced. Much less would I accuse them of having lacked intelligence: there was only one voice around me about the president's quickness of mind.

But this is the first time, I dare say, that such a cause has been brought before a court; the question is as vast as it is new; the idea of a contradiction between religion and morality seems so blasphemous, monstrous, that it becomes, so to speak, immoral; no legislator has even dared to express the hypothesis; public reason has retreated from this problem. On the other hand, the articles of law that repress all insults and defamation, whether against corporations and individuals, or against institutions and laws, are numerous, complicated, confused; nothing is easier, in the state where religious prejudice holds back intelligence, than to confuse all these crimes; finally, as I said at the beginning of this memoir, we feared certain discrepancies on the part of the defense that we were determined to repress, and which with each word we believed we saw emerging.

And yet, we must endure this terrible distinction: it is the right of the accused to produce it; it is the duty of the judge to hear it. All human logic, all the science of law and judicial practice, is based on the faculty of distinguishing and analyzing: nothing can limit the right of defense in this area. Suppress this faculty, you create a darkness in the understanding and in the conscience; you

confuse the innocent and the guilty, good and evil; you create at the same time what you want to destroy, the spirit of libertinage, immorality.

When God created the world, did he do anything other than distinguish the world from its infinite substance? And when he created the human soul, did he do anything other than distinguish this particle of his all-powerful breath, *divinæ perticulam auroe*? Theology has dared to distinguish three hypostases in the divine essence, the Father, the Son, the Spirit. Why should we not distinguish in our conscience morality from religion? Never will a higher, more virtuous, more fruitful thought be conceived in the human understanding; and there will never be a more certain one, even if it goes so far as to put us on the same level with God.

In summary, I say:

In the passages pointed out by the judgment, there is not, there cannot be, any outrage either to public morality or to religious morality, precisely because the author, after having distinguished and compared them, energetically took sides for the first against the second.

There cannot be any outrage against religion either, because religion being united with its own morality, the author, after taking sides against the one, had to take sides against the other, or else fall into contradiction and hypocrisy.

Let us therefore begin by establishing the difference between the two moralities, a difference that forms the basis and the whole of the book: we will then come to the passages that served as a pretext for the condemnation.

The moral principle of the Church can be stated in two words, which have become conventional: *Divine right*.

The moral principle of the Revolution, the antithesis of the first, can be expressed by the opposite term: *Human Right*.

We wonder how, in morality, the divine and the human can be antagonistic? This surprises, confuses, seems absurd. Perhaps this comes from the fact that we have not yet been able to understand the law of God: this is the opinion of those who, affirming revolutionary morality and retaining the religious idea, speak of regenerating Christianity or of substituting another religion for it. For me, without failing to respect the Divinity, the notion of which, immanent in our souls, is undoubtedly reserved for other purposes, I say that any religion, necessarily having the principle of subordinating respect for man to respect of God, thereby excludes the idea of a perfect morality, since morality is nothing other than the constitution, in itself, of human dignity. Now, there is no dignity for man if it comes from him, in whole or in part, by borrowing; hence no Justice.

Thus, 1) in what concerns *Persons*:

God, according to the Church, being the subject and author of all Justice, right having its source in the divine conscience, man has no rights by himself; he only has duties; he only possesses rights by a constitution from above, which prescribes to all men, in view of God, to respect one another.

Hence these mystical systems of resignation to the will of God, of annihilation in God, of subordination to Providence, etc.; systems that all, sacrificing the right of man to the Justice of God, produce, by limiting the divine reign, the regime of castes and social distinctions, and result in the negation of morality itself.

Hence also the spirit of arbitrariness that reigns in the courts that divine right inspires.

If all justice emanates from God, or, as is commonly said, from the king his representative, it follows that the magistrate responsible for applying the law is above and outside the public conscience; it does not fall under the collective jurisdiction of citizens; it is not subject to their control; his judgments are not intended to be the expression of their judgment; they are the expression of royal, divine authority. So the procedure tends to free itself from any rules; all guarantee is removed from the accused; the investigation, the hearing, becomes secret; the defense is circumscribed, mapped out by the accusation; it is forbidden to leave the circle in which it pleased it to confine it; he accused can only, like Job, perform an act of penance, adore the wisdom of the judge and implore his mercy.

The forever abominated type of this judicial constitution is the *Holy Inquisition*.

The Revolution, starting from a contrary idea, arrives at completely opposite consequences.

Man, according to the Revolution, is the very subject of right: hence this immediate consequence, that, as he was, by his religion, a sinner, a serf, and liable to justice, which is equivalent to saying punishable at will, he is rendered, by virtue of his autonomy, free, sovereign, and a justicier.

But man, subject of right, is not unique, like the God of Religion. So Justice, immanent in every individual, but surpassing individuality, soon appears as the general conscience that unites, identifies, subjects to its jurisdiction all members of the social body, communing in the same Right. Hence *duty*, an expression than no longer means anything other than the very reciprocity of Justice.

From this entirely human conception of right and duty results in practice a system of political and social institutions, the opposite of that previously generated by the religious idea: equality before the law, freedom of discussion, universal suffrage, etc. And as we have seen divine right manifested above all in the forms of justice, it is also in judicial institutions that the new principle manifests itself with the most energy.

Justice emanating from the universal conscience, the judge is no longer supposed to be anything other than the organ through which it is expressed. All precautions are taken so that his judgment is, as much as possible, adequate to what the judgment of the country would be, if, by hypothesis, the country attended the debates, and without passion, without any other interest than that of law, with with full knowledge of the cause, it was called upon to render its verdict.³

³ These precautions are of two kinds, *objective* and *subjective*.

Among the first, we will include: absolute freedom of defense, oral and written; the publicity of the debates, the possibility of reporting by the press, the institution of the jury, the degrees of jurisdiction, the control of opinion. Among the latter, we distinguish: the formalities of procedure and instruction, careful observation of the laws of nature and the spirit, the rules of interpretation.

We can judge the liberty of a nation, the security of citizens, the morality of the government, by the way in which justice is administered there: and as, with justice such as the Revolution wants, all despotism, all corruption is impossible, we can say that where despotism reigns, where freedoms are suspended and sacrificed, where morals are corrupted, where society is in decadence, the real culprits are the magistrates.

Nothing, therefore, is more opposed, more contradictory, in what concerns personal law, than the Church and the Revolution. From this first point of view, I have the right to say that religious morality and public morality are not similar. The demonstration of this proposition occupies, in my book, 148 pages: it was certainly worth mentioning to the audience. The court only wanted to hear the Church's complaint; and because the Church denies, today as in 1789, the rights of man and citizen, I am guilty of contempt of morality!

2) In what concerns *Social Economy*:

I will only cite one fact, Property.

In the religious system, property has divine right as its principle, as can be seen, first by the Mosaic legislation, then by the examples of the primitive Church and the Episcopal Church, the first communist, the second hierarchical or feudal.

In Rome, the principle of property was *usucapion* or *first occupancy*, that is to say a brute fact, foreign in itself to the notion of right, which had to be legitimized.

Nowadays, we have given birth to the property of labor, something more respectable than usucapion, but which, in the final analysis, falls within usucapion, as proven by Title XX of the Civil Code, of *Prescription*.

Now, if jurisprudence sticks to one or the other of these hypotheses, and the property is compromised; it remains an act of usurpation, a product of privilege and force. The atheist, who does not recognize divine right; the heretic, who denies the authority of the Church; the reasoner, who asks the reason for the fact, and who offers to reimburse the costs of the work; the worker who asks how by working he fails to possess; all these men can deny, and they deny without reply, that property, which is nothing for them, exists.

What, for its part, does the Revolution say?

It declares Property a *right of man*: this requires explanation. By itself, property is a power of egoism, which pushes man, if he encounters no obstacle, to appropriate everything that surrounds him, men and things, and to assert his domain over the universe. Under these conditions, property, the faculty of unlimited absorption, *per fas et nefas*, remains a brute fact, a product of human absolutism, an act of force.

But man owes respect to man, by virtue of the definition of *Human Right*: Peter's tendency to appropriation is limited by Paul's tendency to the same goal; these two tendencies balance each other, and would soon result in the leveling of properties, if nature and liberty did not constantly change the conditions of balance. It is this egalitarian conclusion, the principle of which is mutual respect, that makes property a legitimate thing. Usucapion thus becomes a moral fact; the unlimited faculty of possessing and acquiring, except with respect for justice, itself becomes a

force of production and a power of order. But remove this legitimization by right and by the tendency towards equality, and property remains what nature made it, a manifestation of egoism, a pure usurpation, a theft.

Nothing is more different than these two theories, the exposition of which covers 164 pages in the book *Of Justice*. Strange thing! The proprietors, stunned by the noise of 1848, call on religion to their aid, divine right! They do not see that outside the Revolution, property becoming immoral, they are lost.

3) With regard to the *political order*:

I do not need to remind you that in all ancient societies, established on religion, the State has divine right as its basis. Divine right was the principle of government in France until 1789.

Certainly divine right is better than the right of force. But divine right presupposes Faith; as soon as faith is shaken, or only as soon as there is doubt about the fidelity of the interpreter, right, and consequently the State, is in danger. There is no need for me to dwell on the disadvantages of divine right, which has become, as far as the political order is concerned, synonymous with *absolute government*.

The Revolution denies this apotheosis of power; it rejects all authority prior and superior to man himself. This is what the Church constantly reproaches it for, when it says, not without reason, that the Revolution is *anarchy*.

How then, on this dogmatic anarchy, will order be established?

M. the Imperial Prosecutor would not dare call himself a supporter of divine right: he would be lying to his institution, and would be an enemy of the Emperor. Now, if the Imperial Prosecutor is not a supporter of divine right in politics, would he, who accuses me of contempt of morality, tell me on what is our political morality based? All subjection of man to man carries with it an idea of degradation: how will obedience to the magistrate become, for the free man, not only a duty, but an honor? How, by virtue of this obedience, is the citizen more than the man?

This is because the Revolution conceived social power in the same way that it conceived property. In its eyes, power is a force *sui generis*, like the faculty of acquisition; strength inherent in the collective, much as property is inherent in the individual; brute force by itself and fatal, but it becomes highly moral, consequently respectable, through the reciprocity of right that unites the members of the body politic.

In the same way, in fact, that the members of the community all contribute, through the relationship of their activity, to the production of this superior force, which makes up the life and wealth of society; likewise, they must all be, through the reciprocity of their rights, directors and beneficiaries. And as all justice emanates from their common conscience, so all law of the State emanates from their common will.

Hence these terms of *Political Constitution, Social Pact, Balance of Powers, Ponderation, Election*, etc., by which are expressed, in a still very imperfect manner, the participation of each citizen in production, in management and for the benefit of public power.

Always therefore human right, respect for man, taken as the principle of political and economic morality, against the Church which, invariably starting from divine right, arrives everywhere at consequences that human conscience, the Revolution, rejects. Government is illegitimate and immoral, according to the Church, if it does not come from God, that is to say, if it is not absolute. On the contrary, according to the Revolution, government is immoral and illegitimate if it is not derived from popular consent; and it will be all the more moral, legal and just, as, by a more exact balance of powers and rights, each citizen will have a more equitable share in its management. Is it not clear that here the Church and the Revolution anathematize each other? The author of the book *Of Justice* devoted 156 pages to demonstrating this antagonism: four times as many would have been necessary. There, as everywhere, there was reason for the Court to recognize a mitigation of the offense. Why does the judgment not mention it?

4) With regard to *Labor*:

It is curious to see how, among all peoples, religious fantasy, by pushing the mind to inert and passive contemplation of itself, constantly results in a horror of labor, consequently in the condemnation of the laborer. This is the origin of conventual parasitism, which has not yet stopped infesting the East and the West.

The man who, by principle of spirituality, has become accustomed to distinguishing, as two substances of different origin and destination, his soul and his body; who, giving everything to the first, that is to say to fantasy, frees himself, as much as it is in him, from bodily concerns, this man soon comes, because of his very uselessness, to consider himself an elite nature, and to regard people of labor and industry as subjects predestined to serve him.

The spiritualist believes that, since matter cannot of itself give anything to the spirit, reason in man is the fruit, not of sensitive experience, but of supernatural communication. He believes that it is a divine *Word* or *Logos* that originally lit the torch of the idea in us; and, as there is nothing better for man than reason, thought, idea, he concludes that it serves the idea to rid it of empirical suggestions, of the distractions of material life and the tribulations of labor.

From there, to dividing society into two castes: one that devotes itself to contemplation, the other to labor, the first sovereign, the second servant, there is only one step.

More than 600 years before Christ, Lao-tzu, a Chinese sage, concluded, by virtue of his idealist metaphysics, in favor of non-activity. He founded a sect whose supreme maxim is that everything is vanity, except doing nothing. What a beautiful edifying text!

Long before Lao-tzu, Buddha, the great reformer of the Brahmanical religion, taught the doctrine of *nirvana*, that is to say of absolute annihilation and immobility. Buddhist monks fill the east; like ours, they knew how to support their *far niente* on the pretext of religion, and consolidate it by the grabbing of land and capital. Wherever they settle, the land is converted into church property; the settler loses his independence; there is no greater cause of misery. What, however, did they find in their devout contemplation? Nothing: the Buddhist monk is the ideal of stupidity.

Everyone has heard of the monastics of Mount Athos, who spent the day staring at their navels. What were these monastics? Souls sunk into God, who, chin on chest, enjoyed the uncreated light and all the clarity of Tabor. This beautiful contemplation did not prevent the Turks from taking Constantinople; and it will also take something else to make them leave.

What are the fakirs, the dervishes, the hermits, the stylites, all these madmen, who make it their business to devote their lives to meditation and prayer? Souls without bodies, which is exactly the same thing as bodies without souls, the last level of degradation to which a human being can descend.

And do we not see our contemporary spiritualists, the very ones who claim that Christianity has had its day, that it is dead, apparently because it no longer has enough virtue to make its monks worship, conclude in their turn against labor, representing it as the seal of original prevarication, the obstacle to the contemplative life, and demanding a religious renovation that more and more places the men of execution at the service of the men of meditation, the producers at the mercy of the lazy?

The Revolution cuts this madness short: it teaches us that man is his own word, his own revealer; that his reflection is a reflection of his industrious spontaneity; that laboring and praying, that is to say learning, are all one for him; so that the true scholar, the noble and holy man par excellence, is the laborer.

The laborer, among the ancients, crushed by a so-called spiritualist superstition, could not claim, in the name of right, his legitimate share in the profits of agricultural-industrial exploitation. He can now, thanks to the right established by the Revolution, thanks to this natural philosophy, whose certain methods have found the secret of subjecting the digger and the man of genius to a common measure. To the institutions of *Charity* that Catholicism glorifies, which, among all peoples, have their corollary in the convents, the Revolution opposes the RIGHT OF LABOR.

What I have just summarized in two pages, I developed in the book *Of Justice* in 130: the Court saw only an incitement of the citizens to hatred of each other. The monastic world will be very much obliged to it.

5) With regard to the *Family*:

In religious terms, marriage is a divine institution; by this I mean that its reason for being, superior to the essence of humanity, is in the prescription that God has made of it; its authenticity therefore and its morality, is in the blessing of the priest.

But a benediction received has no determining virtue in itself: it is simply an act of faith. What distinguishes, in the eyes of the Christian, marriage from cohabitation? Nothing other than the sacrament given by the Church, that is to say an opinion, a myth. So theology has never understood the essence of marriage: sometimes it only sees it as a civil contract, that is to say a market; sometimes a natural fact, a means of reproduction for the species, a remedy for fornication for people, all sanctified by the curial blessing.

The Church's inability to distinguish marriage from concubinage and fornication is evident from the fact that it readily blesses clandestine marriages, not admitting, in principle, that the sacrament of God needs any sanction. social.

Here again the Revolution gives us completely different ideas.

Just as it does not admit personal existences outside of society, rights and duties outside of universal justice and reciprocal respect, so it does not conceive of the normal union of man and woman, moral and sociable beings, outside the family and the city. The sanction of families and the magistrate is therefore required for the formation of the marital bond: outside of this necessary sanction, there is only clandestinity, that is to say, concubinage, fornication, prostitution, in a word, impurity.

And why must society intervene, in such a direct way, in the marital union? What positive interest is there?

This is because society lives above all on justice, and marriage, if we delve deeper into the respective qualities of the sexes and the play of their relationships, appears to be the productive and conservative organ, not only of the species, but of justice, of the moral sense itself. This is why marriage is a pact formed both internally and externally: internally, by love; externally, by the mutual respect that the parties owe each other, and by that which they owe to their families and to society; respect so powerful, so close to the ideal, that it alone would be enough to produce love where love does not exist, just as it is enough to direct it and even to impose silence on it, where it is distracted from its legitimate object.

It is through marriage, finally, that woman, inferior to man by her constitution and inevitably his prey, becomes his worthy companion and his equal: equal, I say, for all things that directly concern justice; subject only for those where the action of natural forces offers the family, the city, a resistance to overcome, a victory to obtain.

Marriage therefore, being, by its principle and its purpose, the very organ of human right, the living negation of divine right, is in formal contradiction with theology and the Church; it only survives, it only has power and dignity to the extent that it moves away from them; with them, it inevitably falls back under the law of idolatrous and passionate love, it deviates from justice and becomes concubinage again. Nowhere is the opposition between public or civil morality and religious or ecclesiastical morality manifested with more force than in marriage; never had the family been so completely analyzed and better defended than in the book *Of Justice*: fascinated by its religion, the court saw in the 306 pages devoted to this important subject only a perpetual outrage to morals.

6) In what concerns *Education, Ideas, Liberty, Progress*, together 590 pages, the author of the book *Of Justice* engaged in the same investigation, and everywhere he arrived at the same result.

This result, truly prodigious and seemingly paradoxical, is in a few lines:

That the notion of justice, considered in its principle, is not the same in the Church and in the Revolution;

That the more we pursue the deduction of the principle on both sides, the more we see the two doctrines separate in their consequences;

And as human conscience never hesitates about good and evil when they are simultaneously presented to it, the conclusion is that Christian morality, being in turn behind the legal movement and insufficient for the direction of society, Society and the Church go in opposite directions to each other, and man seems to turn his back on God.

7) In vain we protest, and we wonder how the notion of God, adequate to that of sovereign justice, of sovereign perfection, of sovereign good, can be in contradiction with the progress of humanity. The author of *Studies on Justice* responds that this contradiction does not come from the divine Essence, in whatever way it is conceived, since nothing that exists can be bad in itself; it comes from the preliminary consideration that we make of this Essence, in things where reason prescribes us to consider ourselves above all,

And it is not, adds the writer, an offense to the Divinity to thus decline its jurisdiction; it is to show its greatness in the perfection of its works, which, considered from the high point of view of justice, must all find in themselves their sufficient reason and their sanction.

Man makes himself unworthy of his Creator, he offends him, when, to practice goodness, he needs to remember at every step a superior and vengeful justice; when, to withstand the blows of adversity, he must call on compensation from another life. This is not the true hero: for him, justice and happiness, iniquity and misery, are synonymous. The true religion of God, as much as the care of his own dignity, forbids him from seeking anything beyond.

It is because we wait for justice to come, that we have spent so long achieving it on earth, and that we weaken in the face of tyrants;

It is because we always count on ulterior goods that we are miserable here below;

It is because we have, for this life and for the next, a false idea of beatitude, that we disdain the true happiness that comes to us from justice, and that we succumb to the blows of iniquity and to the vain tribulations of nature.

Which is better, from the point of view of practical morality and the glorification of the Supreme Being, dreams of faith and its softening hopes, or this energetic *atheism*, since we are desperately wanted to be atheists?...

The theory of *moral sanction*, presented only in fragments, contains, in the book *Of Justice*, 122 pages: it forms the conclusion of this long work, whose fundamental, unique thought consists of demonstrating, article by article, in theory and in application, the difference that exists between these two things, which the legislator of 1819 voluntarily united, *public morality* and *religious morality*. Nearly 1,700 pages were written to establish this difference. The Court, having to pronounce on the guilt of the author, accused of contempt of *public and religious* morality, owed it to itself to report it: but its side was made up; nothing could divert it from the path it had laid out for itself. We will now see, by examining the passages, whether its judiciary was successful.

§ 2. — Examination of the passages in question.

My entire defense can be reduced to a syllogism.

Major premise. Religion and Morality, although they frequently appear united, are however not identical; they differ essentially and can even, by this diversity of their nature, find themselves in a state of complete antagonism. The entire history of religions and the moral development of humanity demonstrates this.

From this it follows, first of all, that the morality given by religion is not the same thing as the morality given by pure conscience; that then, as a result of the immobility that is characteristic of dogma, the first is always, and more and more, behind the second; that finally there comes a day when religion must reconstitute itself from top to bottom on the data of morality, or fade away before it.

In all that has gone before, it has been my aim to establish this proposition, and I hope to have done so to the satisfaction of the reader.

Minor premise. By virtue of this fundamental distinction, he who, comparing religious morality to public morality and measuring the distance that separates them, finds that the incompatibility has reached its height, and says so; he could well, through his criticism, be guilty of insult or defamation, either towards people attached in good faith to their religion, who believe they find there guarantees for their virtue, and whom he would accuse of hypocrisy, or towards the Church, organ of religion and minister of worship, which he would accuse of deliberately corrupting public morals: he cannot be guilty of contempt of morality, for having, in the name of public morality, qualified, as it deserved, the so-called religious morality.

Conclusion. As I only expressed this distinction and drew the consequences, without placing the blame on corporations or individuals, I am not guilty. This is what the court will now judge.

First passage; Volume I, page 253:

After having recalled the principles of the Church on the possession of land and the distribution of wealth, cited its acquisitions, its operations, its small industries, its traffic, of which I produce numerous and authentic examples, and which I maintain to be irreconcilable with the priestly ministry, I continue:

Will you tell me, Monsignor, by which *direction d'intention* you justify your daily practice?

What! here is a corporation spread over the entire surface of the empire, disposing of unknown resources, marching as one man, for which there are no secrets; this corporation is paid for a function, which has been devolved to it without sharing, and it secretly exercises another, which paralyzes the nation, which strips it and places it in vassalage! From the point of view of the spiritual constitution of the CHURCH, which has received, with the keys of heaven, the power to bind and to loose, that is to say, to define what is good and what is bad, there is no doubt that this insidious invasion of the clergy into the secular domain seems to you a holy and glorious work. But from the point of view of the universal conscience, such conduct is dishonest. And since the end cannot be separated from the means, since the two form a connected and interdependent whole, how

do you expect me, who has no other guide than reason, without admixture of any revelation, not to say that your end, that is to say your Paradise, is a robbery, and the God you serve the Devil?

This is the first passage noted by the prosecution, and cited by the court as *insulting to public and religious morality*.

Certainly it is up to the courts to qualify the writings as the facts; but what is not up to them is to qualify them arbitrarily, against the formal meaning of the words.

Who is attacked in this passage? The *Church*, perhaps the religious *corporation*, the priestly *constitution*, which I accuse of following, without knowing it, a false morality; to combine, by virtue of this morality, with the spiritual functions that are vested in it without sharing, temporal enterprises from which priests must be excluded, and, by means of this accumulation, to engage in a monopolization of movable and real estate wealth, with the aim, not, let me be understood clearly, of providing for the enjoyments of the clergy, I do not accuse the private lives of the ecclesiastical gentlemen, but of bringing about a revolution in the current social economy, among others terms, a return to the old regime.

The Church alone, that is to say religious morality, is at issue here: let me be accused, if you like, of having attacked the Church; far from opposing it, I ask for it.

Have I attributed false facts to the Church? Have I slandered it, attributing to it plans for counter-revolution that only exist in my brain? In this case, I fall under the scope of article 13 of the law of May 17, 1819, § 1, which says:

Any allegation or imputation of a fact that harms the honor and consideration of the person or body to which it is imputed is defamation.

So, as these are charges against a body *having a public nature*, and as there was a denunciation on my part to the Senate, I will ask, under the terms of article 25 of the same law, that the public prosecutor inform and prosecute.

But don't let anyone talk to me about insulting morality: it is I who defends morality, it is I who avenges it; and it is the Church that, corrupting it, makes of its own Paradise *armed robbery*, and of the Divinity that it adores the *devil*.

But if defamation against the Church does not exist any more than contempt of morality, will we at least find, as the court claims, that I have exceeded, in my controversy, the limits of a wise moderation, and that my sentence is offensive? In this case again I can be accused of insult, an offense provided for by art. 13 of the law of May 17, 1819, § 2:

Any outrageous expression, term of contempt or invective, which does not contain the imputation of any fact, is an insult.

And once again I will defend myself on this head, by showing that the controversialist who describes a wicked morality, an impious dogma, as happens every day in the Congregation of the Holy Office, and among us in the public prosecutor, however severe it the qualification may be, does not offend anyone.

This is my response, as firm as it is categorical, to this first passage; and it will be the same for all the others. For, I can say, the system of accusation, despite the multitude of offenses that it

imputes to me, is invariable. I am ostensibly reproached for imaginary crimes, crimes for which it is impossible to find in my book the substance or the pretext, while deep down I am punished for another that is not articulated, that no one denounces, that we would perhaps not dare to express. I ask that the prosecution be as frank as the defense, that they say what they want, without prevarication or allegory; otherwise I declare myself slandered, and I protest.

But any impatience on my part would be misplaced here. Our magistrates, the honorable president M. Berthelin made me very aware, are not motivated by any malice; as free-thinking as myself, they hardly believe in the authority of the Church; only they are frightened by the ascendancy of the Revolution. In the meantime, the habits of their education, the traditions of their extinct faith, the old relations of the palace with the Church, regain the upper hand; religion, for them, is the principle, the sanction, the quintessence, the poetry of morality; the Gospel, the supreme code of morality; the Church, the minister par excellence of morality. To discuss religion, to suspect the Gospel, to censor the Church, in their judgment, is to outrage morality itself. In this they are the expression of conscience as the Church had made it before the Revolution. Just as devout immorality, that of Tartuffe for example, causes all the more horror as it seems to clash more with religion; in the same way the disbelief of the philosopher scandalizes all the more because it claims to be allied to perfect morals. In twenty-five years, this strange concern will make you smile; today it is almost invincible.

Second passage; Volume I, page 358:

The parallel between the economic doctrine of the Church and that of the Revolution completed, I end with these words:

It is the misfortune of his destiny that pushes man to accuse his religion and his God. Do you not see at this moment that your herd consists exclusively of the rich, and that those who leave you are the poor? It disappears, answered me one day a peasant whom I had known to be very assiduous at the offices of the church, and to whom I expressed my surprise at his lack of devotion. Yes, it disappears, and much more quickly, I fear, than is necessary for the happiness of our nation. O holy Catholic, Apostolic, Roman and Gallican Church, Church in which I was brought up, and which received my first oath! It was you who made me lose faith and trust. Why, instead of a mother, did I find in you only a stepmother? Why, spouse of Christ, the redeemer of the proletariat, have you made an alliance with the enemies of Christ, the exploiters, by fair means or foul, of the proletariat? How did you become an adulterer, if you had ever been legitimate?

Where then is the outrage against morality?

It displeases the court that I say that the Church, through the consequences of its economic theory, loses the confidence of the poor, and that its flock is *made up exclusively of the rich*; it displeases it that I call it an *adulterer!* So be it: it may be an attack on the consideration of the Church; it is not an outrage on morality. Let me therefore be accused once again of having, by this passage, which is not without a certain return of tenderness, offended the Church, my first spiritual mother; and I will defend myself, first by insisting on the facts, of which I possess bundles; then by saying that my whole desire, expressed a few lines above, page 357, is to see the

Church return to the truths that its theology has made known to it; that on this condition she *will always be queen*; that *the hearts of the people will remain with her*; that there will be no more *heretics* or *atheists*.

What! It is when I cry over the Church, as Jesus Christ once wept over Jerusalem; when I call her back to Justice and urge her to convert, is it then that, not content with accusing me, *in petto*, of offending the Church, I am reproached, *in foro*, of insulting morality?... — Precisely, I am told, and this is the key to the enigma, the Church, depository of divine oracles, cannot be called back to repentance without the entire system of faith being shaken, without morality being put in danger; for it is written, *The gates of hell shall not prevail against it!*... To this argument, drawn from social necessity and the indestructibility of religion, I would have nothing to respond if we were in 1788; after 1789, the public prosecutor was prohibited from producing it.

Third passage; Volume I, page 438:

After having presented the theory of the Church in matters of government, and recounted, according to the most considerable authorities and the most authentic facts, its practice, I conclude:

O priests! will you never be able to cast your eyes on yourselves, descend into your consciences, and there, in the silence of your religion, examine your faith?

You are men too; and, I have no doubt, for I accuse neither your intentions nor your life, many among you are people of honor and virtue. It is therefore to what is best in you that I appeal. Consider what a terrible situation your dogma places you in. Under cover of a gospel of peace, brotherhood and love, you are, for the enslavement of peoples, brought up in chains, accustomed to espionage, and your job is to betray. It is not in your hearts, nor in your breviary; but it breaks out throughout your history and results invincibly from your theology. What is honest, generous and holy in you is only one more means of success for your immoral mission, and it is by the principle of conscience, by thinking of saving souls, that you have made yourself the enemies of the human race. You resemble the adulterous woman spoken of in the book of Proverbs, who has lost even the feeling of her fornication. "She ate," said the Sage under the veil of a metaphor to make Juvenal tremble; "she rinsed her mouth, and then she said: I didn't do anything! *Comedit, et tergens os suum dicit: Non sum operata malum.*"

If the prosecution had been aware of its own thinking, if the idea of an incorruptible religion, of a spotless Church, the palladium of morality, had not disturbed its judiciary, and if it had accused me of offending, by this final exhortation, the entire body of the clergy, I would respond that on the contrary I have demonstrated, by this very passage, an immense charity towards the clergy. Am I therefore the first to denounce the political doctrines of the Church, the spirit of its seminaries, the secret police of its bishops, the denunciations to the tribunal of penitence, the arbitrariness in the distribution of benefits, the servitude of lower clergy, lack of accountability in administration, etc., etc.? And when, despite this sad notoriety, I appeal to the conscience of the priest, when I conjure him, by his own virtue, to return where a law higher than his leads the multitudes, can we say that I excite hatred and contempt for the priest?

But to reproach me, with regard to this same passage, for insulting morality! In truth, it makes the ears ring.

Fourth passage; Volume I, pages 451 and 452.

The fourth Study, from which this passage, as well as the preceding one, is taken, has as its subject the *State*, the political order. The political theory of the Church, deduced from theology, exposed; the government practice recounted, remained to show the disastrous influence of this practice, of this theory, on public morals. After numerous examples, coming to the question of marriage, I recall that in Italy, a country placed under the direct domination of the Church, *mixed marriages are illegitimate*, and that in France it is not up to the clergy that marriages contracted only in civil law, *coquettish* women and *bastard* children are not declared *void*. It is against this exorbitance, which I do not hesitate to call immoral, of ecclesiastical authority, that I rise:

But who are you, militia of Christ, to consecrate my marriage? What do conjugal society and your celibacy have in common? Why do I need, in order to become the companion, the support, the counsel of a woman and her children, your blessing and your faith? THE MARRIAGE CONTRACT IS THE SOCIAL CONTRACT PAR EXCELLENCE: what more is needed than the sanction of family and society? You want to confess my wife: that's enough for me to drive her out as an infidel; to catechize my children: that's enough for me to refuse to recognize them. When politics, harmony, hygiene itself, command the crossing of languages, ideas, geniuses, religions, as well as races, you, in the interest of the Church, claim to prevent it! Back! Any intervention of authority between husband and wife, between the father of the family and the children, is a dissolution. What domestic Justice has joined you shall not separate. Suspension of conjugal dignity on grounds of religion, *suspension of morality*.

The apostrophe is harsh, I do not disagree with this: but how is it possible to find an offense in it?

It is not an offense of *contempt for morality*: since on the contrary it is I who accuse the *militia of Christ*, by its absurd declarations of illegitimacy and nullity in the matter of marriage, of suspending morality.

Nor is it an offense of *defamation* against the Church: since the Church congratulates itself, is rightly honored by what I reproach it with, of preventing mixed marriages, and of declaring null marriages contracted only in civil terms.

It is not even a crime of *insult*, since all the vivacity of the apostrophe consists in the antithesis between the matrimonial morality of the Church and the matrimonial morality of the Revolution, and there is no a word that is for the clergy. So what did the prosecution see in this passage, and what do they claim? Sad thing to say: concerned about the idea, so long dominant, and in which so many citizens are brought up every day, that there is no morality outside the Church, no marriage outside the sacrament, the prosecution thought they saw in my words a disapproval of marriage. The passage was simply taken by the public prosecutor in the wrong direction. This is how religious prejudice and fanaticism discover, in the simplest things, offenses and crimes. By becoming a man of the Church, the magistrate loses his judicial sense. Please distinguish the two moralities, and compare them: you will know afterwards when and how there can be an outrage against morality.

Since we are here on this subject of marriage, I will quote without interruption all the passages that relate to it, and which, in principle, served at the same time to accuse me of contempt of morality and of attacks on the family.

Fifth passage; Volume II, pages 447-448.

One, in the freedom of his loves, surrounds himself with loyalty, delicacy and honor; some other, in his marriage, is impure, governed by ambition and avarice. What is a marriage that has married you so badly, while alongside we encounter lovers whom concubinage unites so well? Obviously, people who get married do not know what they are doing; but the legislator, the priest, the mayor, do they know any better? What is the use, therefore, of the intervention of the magistrate? What can be the usefulness, from the point of view of morality, of this convention so universally adopted, of marriage? Morality, Justice in love, which these words of prostitution, concubinage, marriage, could not define and safeguard, corresponding to more or less honorable situations, but in reality to completely arbitrary arrangements, would it not be better assured, as the communists claim, by an unlimited liberty than by all the legal formalities?

I admit, when I see myself accused, for having written these lines, of contempt for morality and, what is worse, an attack on the family, that I am tempted to deny the accusation and take the public prosecutor's office to task. What will become of Justice if we persist in giving it religion as a criterion?

Do you want to know how the double crime of contempt of morals and attack on the family was discovered in my second volume?

The publication of the book *Of Justice in the Revolution and in the Church* was made on April 22; the seizure ordered on the 27th. In five days, it had not been possible to read with sufficient attention the 1,700 compact pages of which the work is composed; someone had gone through them superficially; by chance, they came across page 447 of Volume II, reading there a parallel between marriage and cohabitation where preference is given to neither, which ends with this extraordinary question: *Would it not be better to stick to the free love?* The examiner said to himself: Good! Attack on the family, insult to morality! And the passage thus denounced was later maintained in the report of the investigating judge, who did not look at it more closely; in the investigating judge's report, he returned to the summons; and here it is now cited throughout in the judgment, to the eternal scandal of those who will not be able to read the book, suppressed by the authority of justice.

Now, may the court please take note of the explanation that I am going to give it, and then reread it.

The passage in question is taken from the eighth STUDY, *Conscience and Liberty*, chapter III, the purpose of which Study is: 1) to establish the distinction between good and evil, and consequently to refute Pyrrhonism insofar as it attacks morality; 2) to give a demonstration of free will.

In order to establish the distinction between good and evil, which theology, note this point, declares impossible to obtain by the forces of reason alone, and which it only recognizes by virtue

of a divine declaration, the author begins by examining at length (from page 445 to page 451) the theological objection, which consists of saying that between good and evil, setting aside the order of God that alone gives morality to our actions, there is no distinction.

It is then that, developing the theme of the theologians, he asks, speaking on their behalf: What difference exists, in itself, between marriage and cohabitation; why is polygamy, once tolerated, condemned today; how is it that the interest on money, legitimate at 5 percent, is no longer at legitimate at 6 percent; what makes stock trading immoral, etc., etc.?

There is the *objection*: — an objection that does not express the author's thought, since it is produced precisely against his system; — an *objection* that, on the contrary, expresses the thought of the Church, since according to the Church, were it not for the order of God or the revelation of the forbidden fruit, there would be no difference between marriage and cohabitation, and the shortest course would be to remain in free love; — an *objection*, finally, that the author then refutes in the most complete manner, first in this same Chapter III where it is presented, then in Studies X and XI, Volume III, where he deals more specifically with marriage and family.

Will it offend morality now to tell the magistrate that if he wants, when reading a book of philosophy, to have a clear-sighted, sincere, just mind, the first condition for him is to strip himself of all religion?

Sixth passage; volume III, page 187:

We are at the beginning of the tenth Study. The author will present the rational theory of marriage, in opposition to the revealed doctrine, according to which, were it not for the decree of God, who wanted to sanctify the union of man and woman by a sacrament, there would be no difference between marriage and cohabitation. It was then that this reflection escaped him:

The Church has always prided itself on possessing on love and marriage, as on education and so many other things, an exceptional morality. The multitude believed it, without going to see, even if it meant encountering the most appalling miscalculations in practice. As for me, surprised to see, under a so-called perfect law, immodesty in progress, I wanted to put the law itself through a cheesecloth; and I affirm that Christianity, when it undertook to reform loves and to regulate marriage, only succeeded in distorting the institution, defrauding hearts and inflaming lust. Christianity has nothing of the conjugal sacrament, nothing of the principle and object of the family; it did not even retain what was bequeathed to it by its authors. Ah! Christian hypocrites, who accuse philosophers of incontinence, do you believe that we were going to leave intact around your forehead this usurped halo?

The last sentence is a reprisal for that of the Sieur de Mirecourt, my so-called biographer, who, slanderously accusing me of a shameful act, took the liberty of saying, speaking to myself, about my reputation as a continence:

Do you believe, lying sectarian, that we are going to leave this usurped halo intact around your brow?

Of all the accusations that have ever been raised against Christianity, none is more painful to the Church than that which I formally charge it with: ignoring marriage. So I understand that it

would be sweet for it to have me condemned for contempt of morality precisely on the point where I accuse it of having disregarded morality the most.

But, once again, accusing the Church, even in the most biting terms, of having *distorted the matrimonial institution* is not, whatever the summons says, attacking the family; Nor, whatever the first instance judgment says, does it attack morals. At most it is unpleasant to the Church, which is said to know best what legitimate love is. Have I therefore slandered the Church by raising this charge against it? Let someone sue me for slander, if you like: then, as it is a question of a doctrine and a teaching body, we will examine the Gospel, the apostles, the Fathers, the casuists, the whole tradition; and we will see who came closest to the truth, on this delicate matter: the Civil Code that I defend, or the catechism that the clergy would like to put in its place. But what am I saying? The public prosecutor will never dare start such an investigation: he is too Christian for that.

Seventh passage; volume III, pag. 269:

A singular thing, which no one seems to me to have noticed, but which emerges brilliantly from the history of the Church and from all its discipline, the Church, less advanced than paganism, has never distinguished marriage from concubinage. For it, it is all one. It blesses spouses, it blesses concubinaries, as it blesses all things; it used to bless the sheets of the nuptial bed, which the bride and groom carried with them to the Church; it once blessed free love; if it dared, it would bless it again. Whether we marry, or whether we are content to sleep together, such distinctions, all of temperament, convenience or interest, do not concern it; just ask its blessing, and all will be for the best. The Church, in a word, which, on all other parts of social philosophy, has carried theological speculation so far, the Church has remained, on the question of marriage, in pure naturalism; it literally has no religion.

Once again, to what does this passage do wrong, to morals or the Church?

Yes, I will tell the Court, I maintain, as the court recalls in its considerations, that the Church blesses indiscriminately, without distinction between cohabitants or spouses; that the doctrine taught by the apostle Paul, on the rights and duties of spouses, offends Justice and shocks modesty; that neither he nor any of his successors knew what marriage was; I support it, and I prove it by the discussion of the texts, by history, and by the practice of the Church until the Council of Trent.

If I have slandered the Church, punish the slander; for this, start yourselves, president and advisors. by examining the matter and verifying the evidence. Well! What, just yesterday, the public prosecutor, in a case that received widespread attention, was obliged to take charge of the defense of public morality, of the morality of the Civil Code, endangered by a concubine supported by the Church, who, for a blessing received in a foreign country, claimed the rights of a legitimate wife in France; and today it is me who, going back to the principle of this contradiction between faith and the law, and deducing the consequences, am accused of contempt of morality, of an attack on the family!

No, no, the prosecution will not be able to fool me. Let M. the imperial prosecutor, while energetically defending true principles, surround with his respects a religious corporation that

violates them; I have no reason to control his words. As for me, I declare, a Church that treats my wife as a concubine because she was married only before the municipality, and which demands the honors of marriage for a concubine who has only received the blessing of the priest, this Church, I say, has lost its moral sense: it takes a strange hallucination of the mind not to see it.

Eighth passage; Volume III, page 299:

Consequence of Christian marriage: the introduction into the household of a third influence, which energetically testifies to the cohabiting nature of this marriage.

Among the ancients, no one could enter the family: the gynaeceum was walled up; neither priest nor magistrate had anything to do with it.

In Christianity, it is quite another thing: the priest confesses the woman; he is her spiritual husband; to him the soul, the conscience, the heart; to the husband, genitor, the body. He and She are no longer unanimous, that is to say, they do not form one spirit in two separate bodies; they are two, on the contrary, as Genesis says, in one flesh.

Thus the Church, after having branded love and dishonored, without understanding it, the cult of Venus, separates the wife from the husband, in spite of God's order. Instead of initiating the woman to Justice through the husband, the father or the brother, as the Roman marriage wanted it and as nature wants it, she claims to instruct her herself, through the director. As in the Fourierist household, the husband, a carnal lover, will fill the wife's belly; the priest, spiritual lover, will fill the spirit. So that Christian marriage could be defined as a mystical cuckoldry: Hoc est magnum sacramentum!

Let us immediately cite the ninth passage, volume III, page 316:

It is especially since the establishment of Christianity, and thanks to the development of chivalrous mores, that adultery, one of the greatest crimes in the eyes of the ancients, has lost its gravity and has multiplied in such a deplorable manner. I don't need to explain the reason: it is all in that fatal word, duty. When love, in its ideality, has been separated from marriage, and when, on the other hand, one of the spouses, through impotence or otherwise, neglects their duty, infidelity becomes excusable for the other, *si impos*. Hence the ridicule that attaches to the deceived husband, the blame reserved for the jealous, the reprobation that falls on the vindictive. Cuckoldry becomes the corollary of marriage; in this respect, we can say that it is of catholic and apostolic institution. It is part of the marital pact, it enters the church with the bride and groom, it comes back with them, it sits at the table, it watches over the hearth; it is the god Lare that brings, among his herds, every wife. All the erotic literature and banter sings it; the sages take their part in it: he is the patron of a brotherhood that embraces all those on whom the Church has pronounced the conjungo, the understudy of the Hymenee, its good genius, its fortune. If the husband can boast of any advantage, it will be, at best, a vain and dubious priority.

Whereupon the Court will consider and say:

Whereas Proudhon adds that since the establishment of Christianity, *adultery has lost its gravity and has multiplied*; that he even affirms that adultery, designated by him under the most cynical name, *has through the Church become the corollary of marriage*, and that as such it is a *Catholic institution*; that he represents the ministers of religion as being the cause of household disorder, where they bring disunity, adultery and incest;

Whereas by these guilty propositions he has violated all the rules of permissible controversy, and he has, first and foremost, committed the offense of contempt of public and religious morality.

What then is this way of reasoning: *Whereas Proudhon, by accusing the Church of disregarding the laws of marriage and the family, has committed, first and foremost, the crime of contempt of public and religious morality?* Will someone ever tell me how the reproach made to the Church for not knowing morality is an offense to morality?

The thought of the trial arises here despite all the reluctance. We do not want to allow secular reason to censor ecclesiastical reason; we do not want it to be said that the Church, conspiring against the Revolution, insulting its principles, its institutions, its morality, is itself devoid of morality; and as we do not admit that the Church, supposedly immaculate like its Virgin, can be accused, by a simple citizen, of adultery, obliged to justify itself before the courts, we avoid the difficulty, by transforming the attack on the Church into an attack on morality.

For it is not enough that the Church be avenged; she must, like Caesar's wife, not even be suspected. Cato, accused seventy-nine times, and seventy-nine times triumphing over slander, was all the more glorious: the Church, if its virtue were even allowed to be brought into suspicion, would be lost.

This explains the dialectic of the court. Nothing would have been easier for it, if, resolved as it was to take no account of the facts, it had only wanted to avenge the Church, impose silence on the author, and put an end to a dangerous controversy, — nothing, I say, was easier for it than to apply here article 13 of the law of May 17, 1819 on defamation, and to say, for example:

“Whereas Proudhon imputes to the Church the placing of *divine right* above *human right*, two *termes de guerre* that, notwithstanding the declarations of the Revolution and the definitions of the Church, have no real meaning in any language and are only suitable for agitating minds;

“Whereas from this so-called subordination of the *human* to the *divine*, attributed to the Church, Proudhon draws conclusions that tend to do nothing less than represent the latter as systematically hostile to human dignity, to liberty, equality, property, all the principles of the Revolution and all the rights it consecrated; — as he goes so far as to claim that the Church, blinded by its religion, knows nothing about the social economy, nothing about the political order, nothing about philosophy and work, nothing even about marriage, as it confuses, according to him, with cohabitation; and that in its practice, as in its theories, it is opposed to the rational laws that form the basis of our civil, political and domestic right;

“But whereas, information gathered and verification made, it is just the opposite that is the truth; as the Church, signatory of the Concordat, has continued to show itself, since 1802, as a religious observer of the new institutes; as, whatever its ancient dogma and its now abrogated traditions, it has always faithfully submitted to the common right; as it does not regret its former domains, and does not at all dream of creating new ones; as it is not true that it seeks donations, opens subscriptions, gets involved in traffic and banking; as it is also wrong to attribute to it, in matters of government, illiberal ideas and retrograde tendencies; as in matters concerning marriage, finally, nothing is more edifying than its casuistry, more exact than its definitions, more

in harmony with civil legislation than its theology, better inspired than its tolerance, more discreet than its ministers, etc., etc., etc.

“Declares the author of the book *Of Justice* guilty of defamation.

Why didn't the Court take this turn? Ah! It is because, by similar considerations, the court would have declared the subordination of religious law to revolutionary law, and because it did not want to commit the Church to this extent; it is because it would have loudly affirmed the Revolution, and because it did not want to commit itself on this point either; finally, by proclaiming voluntarily, for the benefit of the Church, and by virtue of the Concordat, the definitive agreement of the two moralities, religious morality and public morality, it would, in fact, have invalidated and, so to speak, brought to naught the first, which the religion of the tribunal essentially rejected.

And the Court was right a thousand times over, from the Church's point of view. Faced with a condemnation thus motivated, if the Church for its part did not protest, I would have decided, however certain I was of the truth of my assertions, to remain silent; too happy to see the antagonism between reason and faith end, with this decision worthy of a caliph, I would have abandoned my book and taken refuge in the clemency of the emperor.

Tenth passage; Volume III, pages 320-321:

But you know better than I, Monsignor, how far you are from this ideal. What incontinence afflicts the clergy throughout the centuries of its history! What sacrilegious lasciviousness! Take the age of feasts or that of gnosis; take that of the martyrs or the solitaries; that of Theodora, Gregory VII or the Turlupins; go down to the schism of Avignon, to the Council of Constance, to that of Trent; push, if you will, as far as the Jesuits; it is always the same base of secret, hypocritical and atheistic debauchery; always the same felony of the priest with regard to the woman, the child, the family, humanity.

By reason of his character and of the authority entrusted to him, the crime of the priest is a compound of incest, adultery and rape; everything the imagination can conceive of that is most horrible is united in the libidinous priest. Oh! You speak of the incontinence of philosophers, of whom the most daring hardly exceed the limit of that concubinage that you once blessed; but you, do you not have scandals among your Levites and even in the choir of your cathedrals?...

Rest easy, Monsignor; I know your sorrows, and *it is not I who will cause the crime of a few monsters to fall on the whole body of the Church*. I will therefore not go, retracing the course of the ages, recalling here and there the old turpitudes of the cloisters, the trade in castrati of the new Rome, nor the sordidness of its cardinals and its popes. I pass over in silence the gallantries of the reverend fathers of Paraguay, and the concubinage of priests throughout Spanish America; I will not even quote you, on this side of the Atlantic, nor this bishop, recently dead, who became the sole father of a company of national guards; nor this priest who, in full view of his parishioners, has ten living children from his three daughters; nor that other, whose story you could tell, who was not long ago forced to leave the country and died in prison after having spoiled, I am told, more than one

hundred and fifty children of both sexes.⁴ I leave in my file these stories of priests, vicars, chaplains, nuns and sisters of charity, with which the contemporary chronicle is teeming; let us draw the curtain on these sacristy cravings; on this hospital lust. All this is worn out, and there is no time to laugh. The shames of Caesarism have been equaled by those of theocracy; the two powers have nothing to reproach each other for: the profaned sanctity of marriage condemns them with the same judgment. »

There is no doubt that the public prosecutor, and the court after him, after reading this piece, saw a defamatory intention in it; the writing of the judgment further testifies to this. Why then, instead of simply concluding the offense of *defamation*, did they use this same passage to accuse

⁴ It is a question here of a man named BONNOT (François), whose description, issued by the imperial prosecutor of Vesoul, I have in front of me. — “On March 9, 1857, says the *Journal de la Haute-Saône* of March 14, at seven o'clock in the morning, M. the imperial prosecutor at the seat of Vesoul arrived in Sorans, canton of Rioz, with M. the investigating judge, to inform against M. François Bonnot, aged fifty-one, former minister of the parish. For some time the most unfortunate rumors had been circulating about the conduct of this priest, who was accused of making his sacred ministry serve the most revolting acts of morality. The investigation was quick to justify these accusations, and to demonstrate the existence of numerous attacks committed, over several years, on young male children, most of them under the age of eleven. An arrest warrant was immediately issued and sent to Besançon, where the accused had been for several days. The latter had been charitably warned the day before the arrival of the magistrates, and he hastened to flee. Steps were taken to discover his hiding place. The accused was already sentenced for indecent assaults by the Dijon criminal court to three years in prison, and placed for fourteen years under the supervision of the high police.”

My particular information adds that Bonnot, having found refuge in Switzerland, was requested by the French government, that there was extradition, and that, arriving in the prisons of Besançon, Bonnot died suddenly. It was the Archbishop of Besançon, Mgr MATHIEU, who, despite the previous conviction suffered by Bonnot and his fourteen years of surveillance, committed the imprudence of sending this sodomite to the commune of Sorans; it was again Mgr. Mathieu who, informed of Bonnot's new attacks, refused for a long time to carry out any investigation, and paralyzed the action of justice. The disbelief of Mgr. Mathieu towards this infamous Bonnot proves the prelate's innocence of heart: but do we know what he exposed himself to by this untimely obstinacy? It was said, a horrible thing, that it was the cardinal who, after the prosecution had been decided, had made Bonnot escape; then, when he was sent back to France by the Swiss police, who poisoned him. The mores of the Archbishop of Besançon, I have written somewhere, are those of an angel: but what virtue would resist slander, when this has as its basis the clumsiness of virtue?...

Sodomy, this *sin that*, according to the catechism, *cries to heaven for vengeance*, wreaks incredible havoc on the French clergy. At the same time as proceedings were being carried out against Father Bonnot, we surprised in the same diocese, in Vesoul, an Father N***, chaplain of the college, in romantic relationships successively with two regiments, one of Cuirassiers, the other of spearmen. A sort of *crystalline* epidemic having broken out among the soldiers of this garrison, the surgeons of the regime, and then the courts, soon discovered the author of the disease. An extremely disgusting correspondence was partly seized, partly stolen by unofficial friends; the culprit put into retirement in Dôle, then, for further misdeeds, interned in a holy house in Strasbourg.

In another department, the Somme, if I remember correctly, a story very similar to that of Abbé Bonnot took place, less than two years ago, before the Assize Court; and we saw a large troop of children, boys and girls, attended by their fathers and mothers, parade, unfortunate witnesses, under the gaze of the jury.

me of *contempt of morality*? By what right do they make ecclesiastical honor the cause of morals? How am I myself immoral, that is to say, in the species, immodest, incestuous, adulterous, sodomite, because I thought it necessary, in a few quick lines, to recall lust, incest, and all the abominations of which a certain number of priests have been guilty in all eras?...

I want to show once again how lightly my accusers, I should perhaps say my denouncers, have read my book. By grouping on one page the acts and deeds of *a few monsters* of whom I am careful to say that I do not bring solidarity to *the entire body of the Church*, what did I want to prove? The immorality of the entire Church? The Court may have believed it, despite my express declaration; and he will have seen in the reserve that I expressed only an oratory precaution, a perfidious way of making the opposite of what I say understood. But, apart from the fact that such an interpretation of my thoughts is completely gratuitous, in the thesis that I maintain against the Church it would be absurd.

I say that the Church has not understood the essence of marriage, which is Justice in Love; that in place of this true notion, there was formed an erotic idealism analogous to that of the pagans; that as a consequence of this idealism, it exaggerates the virtue of continence to the point of compromising the much more precious virtue of chastity; so that if, on the one hand, we can say that the heroes of continence are found in the Church, we can affirm that there too are found the monsters of lust. Such propositions are of interest to the doctrine; they have nothing to do with

personnel of the clergy. We can find them worrying for the Church: they contain neither outrage to morality nor defamation.⁵

Moreover, and since even my historical quotations are incriminated, I am going, for the edification of the court, to cite something much more extraordinary, and which will show, better than any dissertation, how false and dangerous is the teaching of the Church on this whole matter of marriage and modesty.

I read in the *Vie de saint Louis de Gonzague*, by Father Céprari, of the Society of Jesus, published this very year, 1858, in the BIBLIOTHEQUE DES ÉCOLES CHRÉTIENNES, *Ad Majorem Dei Gloriam*:

Page 11, that this young saint consecrated by vow, to the Blessed Virgin, *from the age of nine*, his virginity;

⁵ Here is an extract from a letter written by an employee of the French consulate in Portugal to one of his friends.

“If you understood Portuguese, I would send you the order from the Archbishop of Braga, forbidding ecclesiastics from entering, during daylight hours, brothels and gambling houses. This good archbishop has imagined changing the system of confessionals. Before him, there were boxes that hid the confessor and the penitent; and the ecclesiastics had made brothels of them. Now they are up to date and placed in the middle of the church: the number of confessions is reduced by 50 percent. The Bishop of Porto said to me the other day: If they were content with just one mistress, and lived peacefully at home, I would not show myself ridiculously difficult. But imagine that, the other day, the priest of San Tirso was saying his mass, when a woman rushed in, holding a child in her arms, and cried out, placing him on the altar: Here is your child! — Fortunately, added the prelate with a sigh, they do not indulge TOO MUCH in sodomy.”

The writer continues in this tone for four large pages.

Well! you will ask me, does this prove that the Church teaches bad morality? The bishops of Porto and that of Braga, as well as the archbishop of Besançon, are honest people, and their catechisms formally condemn fornication and pederasty. What does the crime of a few monsters do to Christian morality? I responded to this objection in 306 pages. I have never claimed that the Church teaches sodomy and adultery: I have only said and I maintain that, by the way in which it explains marriage, by its theory on love, and by the idealism that forms the basis of religious morality and which constitutes: the conscience of the devotee, the practice of chastity is made a hundred times more difficult, not to say impossible. No, once again, it is not a premeditation of immorality that I accuse the Church of; moreover, it is not on the entire body of the clergy that I cast suspicion: it is an erroneous doctrine that is so erroneous that it is sufficient, in my opinion, for the priest to make it a habit of meditation, so that he exposes himself to the ever-present danger of impurity.

According to statistics, Rome is of all the countries of Europe the one that provides the most foundlings. Most of these children are the work of priests, who naturally have an interest in hiding their origin, but whose paternal heart refuses to *lose* them, so it is forbidden in Rome, under the most severe penalties, to spy on the people who are going to drop off the children. Well, it was in Rome that the cult of the Spotless Virgin was inaugurated two years ago: what do you say about this mixture of Christian charity, ideal purity, and incontinence without remedy? Throughout Italy, the women most devoted to the Virgin are the most prostituted: do you believe that there is hypocrisy or sacrilege on the part of these unfortunate people? A thousand times no: these women, like these priests, are slaves to the ideal; their consciousness was formed by the ideal; their moral ideas have no other basis than this vain poetry of religion. And they perish, for lack of a more real justice, for lack of an elevated person of their sex and of humanity.

Page 12, that from that moment he showed a great aloofness towards people of the same sex, only spoke to his mother's women with downcast eyes; moreover, he did not like to meet alone, even with the Marquise his mother, so that if, while he was talking with her, the other people present withdrew, he would give rise to some reason to also withdraw. If he was obliged to stay, we saw him immediately blush.

Page 134, that later, at the age of twenty-one, having come to see his mother, he did not dare allow himself to kiss her and received her on his knees; that he demanded that one of his companions be present all the time he spoke with her, and that it took an order from the Father General for him to agree to grant this poor old mother a one-on-one meeting.... "

The Court will perhaps end up understanding my thoughts, when I tell it that this Jesuitical modesty, taught in Christian schools, and which earned a young madman the honors of canonization, is a thousand times more abominable in my eyes than all the acts of lust and *buggery* to which I alluded on page 320-321 of my 3rd volume: because the crime committed remains individual and does not really have any consequences, while an impure morality is the very seed of crime.

If the Church, if the Jesuits had ever known the nature of these three things with which they are too concerned, marriage, chastity and love, they would thereby know that in every honest family the sexual horror between the mother and the son is equal to the tenderness that unites them; that early continence is an indicator of early corruption; and that the finest praise they could have given their Louis de Gonzague, from the point of view of chastity, was not to show him alarmed, from the age of nine, in the presence of his mother; it would have been to show him candid and calm, at twenty years old, among young women and at balls.

No, I say, the Church does not know what modesty is: we have proof of it in the history of all its ascetics. It does not know what marriage is: we recently had proof of this in the Pescatore affair, to which I previously alluded; we have further proof of this in the story of this colonel who, pursued by an intriguer playing the betrayed and dying woman, was married to her, *in extremis*, without publication, without witnesses, outside of any civil formality, by a priest of the diocese of Paris who did not doubt for a moment that he was doing a good and holy thing.

The Church does not know what family is; it understands nothing about this organic whole, this life, this consciousness, that makes a single being of the father, the mother and the children. The family, according to the Church, only exists through faith; and what faith has formed, faith can dissolve, as the following fact, recounted and confirmed by all the newspapers, shows us:

"There exists in the city of Bologna (States of the Church), a Jewish family by the name of Mortara, made up of the head of the family, a former and honorable merchant, his wife and six children. Two years ago, one of the children, aged four, suffered a very serious illness: the servant baptized him in secret. Very recently, this woman confessed the fact to a parish priest who hastened to reveal it to the Inquisition. On June 20, five gendarmes, led by a monk from the Inquisition, raided Mortara's house, telling him that he had a Christian child, and that they were coming to claim him. Upon the parents' refusal and despite the mother's cries, he was torn away by force and sent to Rome, where he was placed with the foundlings. The parents have no news; the mother went crazy. The fact is known throughout the city of Bologna.

Dare I say all my thoughts? Let us dare, because our public and domestic morals, which I am accused of insulting, are at stake; the sanctity of marriage, which I am accused of degrading by advocating bigamy and cohabitation, is at stake: the family, whose rights, it is said, I am infringing upon, by protesting against the scandalous interference of the priest in the household, is at stake.

It is because the Church knows nothing about chastity, nor about marriage, nor about the family, that our magistracy, which was, like each of us, raised by the Church, and which, in believing that it applies the laws of the Revolution, only follows the Church; It is for this reason, I say, that our judiciary hesitates regarding the true meaning and the scope of these things, as we can be convinced by reading its daily judgments.

In the GRATTE affair, reported by the *Gazette des Tribunaux* of July 18, we hear the public prosecutor, represented by M. Jolly, call, on several occasions, adultery an *offense: the offense of adultery*. It is true that the penal code seems to authorize this qualification, by imposing a simple prison sentence against the adulterous woman. As for the husband, unless he introduces his accomplice into the marital home, the offense does not even exist. But the same penal code places adultery in the category of *attacks*, which, in the habits of the language, carries something more than the offense; and art. 324, it declares the murder committed on the wife (I suppose that the reciprocal is true and that after the word *wife*, we must add *or husband*) caught in the act of adultery, *excusable*, which implies, in the act of adultery, a seriousness greater than the simple offense. It was up to the magistrate, the organ of society and morals, to interpret the penal code in a more dignified manner. What stopped him? The weakness of the Christian feeling that governs souls, the lightness of morals that followed and ended up prevailing even in the courtroom. The indulgence of some of our magistrates for sinners has become proverbial. Roman law was terrible for adultery: the Roman legislator had a higher idea of marriage than we do. The Church, which does not distinguish marriage from cohabitation, which places Mary, the good girl, above Martha the housewife, *optimam partem elegit*; which makes Christ the spiritual husband, the true husband of the woman; the Church was the first to teach us to laugh at adultery and to make fun of unhappy spouses. *Offense of adultery*: three months in prison.

Let M. the Imperial Prosecutor Jolly deign to look at the two Studies that I have made, from the point of view of the revolutionary idea, on *love and marriage*; and he will learn, in this truly superior school, that adultery is a crime, a triple crime, against the betrayed spouse, against the family, and against society. He will further convince himself that if adultery, which has become a peccadillo among Christian nations, has not yet been restored among us to its dignity as a crime, it is because there exists a powerful party that has not renounced the exercise of seignorial rights; it is because the multitude, elegant or ragged, is still understanding that the first of rights and the holiest of duties, for the citizen and for man, the great precept of the new law, which contains and summarizes all the others, even the right to insurrection, is the refusal of prostitution.

This question of marriage and family, which people dare accuse me of having outraged, is close to my heart. I have the right, since my principles are being put on trial, to compare these principles to those that inspire our courts.

In its issue of July 17, the same *Gazette des Tribunaux* reports on a much more scandalous affair: I am talking about the will made by M. Marquis de Custines in favor of a M. SAINTE-BARBE, *his best friend, who had not left him for thirty years*, and that as a reward for his services, M. de Custines established him as his *universal legatee*. The will was referred to the first chamber of the Seine, chaired by M. Benoît-Champy, by Me Berryer, pleading for Madame de Brezé, sister of the deceased; Me Marie, former Minister of the Republic, defended the legatee. There is capture here, said Me Berryer, shameful capture; and he cited as proof, with the well-known reputation of M. de Custines, an erotic correspondence between him and M. Sainte-Barbe. On the pleadings of M. Marie, lawyer for the said Sainte-Barbe, and the conclusions of MM. Chaix-d'Est-Ange, attorney general, and Pinard his substitute, the court, despite the facts denounced by M° Berryer, and without even deigning to read the correspondence, rejected the request of Madame de Brezé request.

The lawyer Marie, the public prosecutor, the Court following them, reasoned in this way: Even if the facts alleged by the plaintiff family were established, it would not follow that the Marquis de Custines, at the time he wrote his will, was deprived of reason; that he did not have the right to name his friend Sainte-Barbe as universal legatee, and that the latter was ineligible to inherit. That is all that could be said in this difficult case by the wisdom of our jurists, avengers of the rights of the family and the sanctity of marriage. How much Me Marie, whose domestic life is so pure; how much M. Pinard, who had shown himself so powerful in the Pescatore affair; how much the court, so happy to avenge the family each time a clear law authorizes it, must have blushed in their souls at having to maintain what they considered to be the right in such an odious circumstance!

Now, and unless appealed, there is *res judicata*. The judgment must receive its execution; and I in no way intend to invalidate here the respect due to it. The risk of error, on the part of the courts, is one of the burdens of society, to which justice itself commands everyone to submit. I even want to believe that M. Berryer's suspicions were unfounded, and that the correspondence he cited was pure childishness.

But if the public prosecutor, if the court had studied, at a higher school, the maturity of marriage and the constitution of the family; if they had analyzed the character and effects of pederasty; if they had meditated on this frightening subject, with what the ancients have left us, the recent revelations of Doctor Tardieu, they would have understood that there was serious matter for examination, and they would not have, to their great regret, substituted the *right of the catamite*, I ask forgiveness for this blasphemy, for the right of the family.

The testament, by its principle, by its object, by its essence, they would have said, is the last act of jurisdiction of the head of the family: whether it establishes the natural succession of the family or it disposes in favor of an adoptive family, the will always involves the family; it presupposes it, he calls it, he is its sanction and sanctification. Now, supposing that the facts denounced by Me Berryer according to the correspondence between Custines and Sainte-Barbe are true, can we say of the first that after having fallen out with his natural family, he made another in the person of his friend Sainte-Barbe?...

I ask the question, and I let my readers mull it over in their consciences.

As for me, destroyer of the family and property, my opinion, studied at length, is that Justice is nothing other than the faculty (feeling or notion) of which the family itself is the organ; that as there is, in general, no thought without a thinking organ, likewise there is no Justice outside the family, let alone no right against it; that consequently, far from being able to say, as the court implicitly did, that the crime of sodomy does not destroy the effectiveness of the will made by the incubus for the benefit of the succubus, quite the contrary, by sodomy, the greatest outrages against love, marriage and the family having been committed, justice radically destroyed, the incubus and the succubus are placed outside all human law, as if in perpetual crime of treason against humanity. According to these principles, it was necessary to examine whether the facts denounced by Me Berryer were true; which I do not intend to prejudge in any way.

The Court did not think in the same way. Why? This is because in its eyes, right is not the product of a faculty specific to man, manifested organically by marriage and the family; right, communication of the divine order, inherent, by this order, to the human will, right is a kind of arbitrariness, which must follow its course, unless another arbitrariness prevents it. — *You attack the family by attacking the Church*, M. Chaix-d'Est-Ange told me, when I asked him for authorization to publish my memoir. — Which, I could have answered him a few days later, I attack the Custines family and Sainte-Barbe, the unisexual family, as Fourier called it, a family that you do not like, M. Attorney General, we know that well, but that your jurisprudence encourages.

A few days before the Custine trial, the court of appeal had to rule on an offense of another kind. An individual, over forty years old, was surprised, in a local carriage, when he committed a public outrage on the person of a minor girl. The criminal police court sentenced this individual to six months in prison; and he appealed for judgment, maintaining, not without reason, that, the carriage being closed and the curtains lowered, the contempt had not been PUBLIC. What does the court say about this? The magistrates felt the vice of the law; their conscience as men shouted to them that they had to take action. The court therefore decided that, the car being driven in a public place, the door being able to open, at will, from the outside, and the eyes of passers-by entering the interior, the place of the scene must be considered public, therefore attack was public.

But of the corruption of a minor, who, withered for the rest of her days, is worth less than if she had died; of the attack on the family, outraged in one of its members; of the crime against society, for which it is important to ensure respect for feminine virtue; of all these great things that we know so well to find when it comes to a socialist writing, not a word. Similar considerations, in a court judgment, could have provided grounds for cassation. By law, the pursuit of girls over the age of eleven is permitted. Provided that the deflowering is physically possible, there is no crime: the murder of the soul, the consumption of which presupposes a certain degree of discernment in the young person, precisely because of that counts for nothing. Is the carriage or is it not a public place? Unless the crime is left unpunished, that is the whole question. If the thing had happened in a cabinet, with the lock drawn inside, there would be no more doubt: according to the obligatory decision of the court, there would have been no outrage. And the young advisors,

taking the judgment literally, could then have said to themselves, with complete security of conscience, like the gods of Homer, when Vulcan shows them Venus and Mars surprised in his nets: This fellow is really fortunate!...

But what am I doing? I focus on specific facts, as if, the court will forgive me, our judicial decisions, on whatever matter they relate, do not all betray, at most, this theoretical and practical insufficiency of right in which we raised the Christian Church. I would have a lot to say if I wanted to cover everything. A few lines, which will emerge later from the depths of my defense, will suffice for my purpose. I do not forget that, if I have much to reproach, after all I must justify myself: for the moment I do not propose anything more.

Eleventh passage; volume II, page 35:

Amen. — A Hebrew word meaning truly. What! Truly, this string of mystagogical, incomprehensible ideas, *I speak of the Lord's Prayer according to the Christian interpretation; this apocalypse, this gibberish, that would be the summary of my faith, the rule of my reason, the support of my virtue, the pledge of my immortality! O Father, who art in heaven! Truly, if I were a Christian, I would recite to you seven times a day the prayer that Christ, your putative son, taught us, only to obtain from you the understanding of it.*

Here again, the Court saw an outrage against morals. It was especially scandalized that "I would not have feared, when speaking of Christ, to call him the *putative son* of God."

If one were to say, outrage to the Lord's Prayer interpreted by Catholic theologians, outrage to the *Pater* of the *Jardinière*, okay. This would make sense, and I would respond, as Me Chaudey does, first, that I have every right to interpret the *Pater Noster* differently from Catholic theologians; then, that if I spoke poorly of their interpretation, I gave the most magnificent praise to the Lord's Prayer, according to my way of hearing it. But *outrage to morality!* This falls into fetishism.

As for the expression *putative son*, which would perhaps constitute an offense to the divinity of Jesus Christ, but would therefore no longer be within the jurisdiction of the courts, I have long searched for how these two words, literally translated from Saint Luke, chap. III, v. 23, *ut putabatur filius*, could have been offensive: here is what I think I found.

According to a rabbinical tradition, Jesus, whose supernatural conception Christians celebrate, would be the adulterous son of Mary, who had him from a soldier named Panter. Alluding to this tale, I would like to say that Christ, believed to be the son of God, was quite simply a bastard.

One must have a perverted understanding and an extinguished moral sense to read and judge an author in this way. In chapter II, Study V, from which this passage is taken, I endeavor to show that Christianity as a whole is a symbolism of consciousness, in which the idealized soul becomes God; humanity, laboring and suffering, Christ; prayer, the song of Conscience, etc. The interpretation of the Lord's Prayer, which I propose in place of that of the Church, is established on this foundation. And when at the end I say of Christ, the putative son of God, I mark with a final line, using the evangelical expression, the opposition between religious faith, which names Christ putative son of Joseph, *ut putabatur filius Joseph*, and philosophy which sees in Christ, very

legitimate son of Mary and Joseph, only a typical expression of humanity, names him, on the contrary, putative son of God. This is what we call a *retort* in rhetoric: it is unpleasant for me to be able to defend myself only by showing the lack of erudition of my denouncers.

Twelfth passage; Volume II, pages 59-60:

Since the expedition to Rome in 1849, the great nation seems to have taken it upon itself to bring about the counter-revolution over the globe: to begin with, it puts on a frock, takes off its shoes, shaves itself, hoods itself, becomes Jesuitized. In the latest meetings of the medical board, it has been noticed that the number of young people who cannot read has increased. At the same time that the condition of professors and schoolmasters is diminished, the endowments and salaries of the clergy are increased; we deliver up teaching, the future, to a corporation that in 1851 numbered 82,000 subjects, and whose income, in property, casuel, allocations from the budget of the communes and the State, reaches at least one hundred million francs.⁶

With a staff of 82,000 agents, which in twenty years will have doubled;

With an income of 100 million, which will triple;

With the privilege of primary instruction, the adulteration and repression of higher education, the gagging of the press, the censorship of books, the sorting of libraries, the corruption of the teaching body;

With the complicity of the bourgeoisie and the support of four hundred thousand bayonets,

The Church, in twenty years, will have done with emasculated and tamed France what she has done with Italy, Spain, Ireland, what she is doing with Belgium, a stupefied nation: a society composed of proletarians, privileged people and priests, which, no longer producing either citizens or thinkers, devoid of moral sense, armed only against the liberties of the world, will end up raising against it the indignation of the dissenting races, and be dragged through the mud of history.

Certainly, the speech is harsh for the Church: why must I have to reproach the Court for having, certainly against its intention, changed the terms and distorted the meaning?

The Court makes me say (see above, page 150, the considerations) that *I announce to the Church that it will be condemned by the indignation of dissident sects*, which would be, I admit, a serious outrage... to the Church.

I said on the contrary, speaking not of the Church, but of the French nation, that if, abjuring its principles of 89, it allowed itself to be educated by the Church, the day would come when, "a

⁶ We read in the Annals of the Propagation of the Faith, delivery of last May:

"In the 1856 report, we congratulated ourselves on an unexpected increase in our revenue. The year 1857 gave us even happier results: the figure of alms collected reached the sum of 4,191,716 francs 27 cents and exceeds by 286,648 francs 56 cents the total of the previous financial year."

This last word is worth raising: it reveals, in the clergy, a whole fiscal organization. Budget for the propagation of the Faith, for the conversion of the infidels; budget for worship and churches; budget for small seminaries; budget for the Ignorantins; budget of convents, etc. Fiscal year 1856, fiscal year 1857, fiscal year 1858.

Thus, the chapter of foreign missions alone produces for the Church, year after year, in pennies and centimes, four million. What is saddest is that these four million francs represent at least eight millions of imbeciles, who believe that the missionaries carry out conversions in China, in Tonquin, in the United States, in Oceania, etc., and that the Faith makes progress among the savages.

nation destitute of moral sense, armed only against the liberty of the world, it would end up arousing against itself the indignation of dissident races (not *sects*), and being dragged through the mud *of history*.” This is how we inadvertently substitute the Church for the nation; by inadvertently replacing the word RACE with that of *sect*; by deleting, out of pure forgetfulness, the final word of the story, which makes the plural *gemonies* a pure metaphor, I was made to address to the Church the biggest insult that a crude and furious writer could throw in the faces of his adversaries.

This little correction made, I resume my refrain, but it is not my fault. In the passage that I have just reported, I clearly see the imputation made to the Church, I look in vain for the outrage done to morality...

Let the court, I implore it, not imagine that by persisting, as I do, in releasing the secret, more or less unconscious thought of the accusation, I want to defy the Church, to throw myself into an unequal, impossible struggle. I have no intention of bringing recriminatory action against the clergy, I only intend to plead against them in the court of public reason, and only think here of my justification. But, to make the magistrates understand the full scope and dangers of this incredible trial, I must show where the prosecution will have to go, if it wants to be logical and sincere with me.

You accuse me of moral outrage because I myself accuse the Church of degrading, through its false teaching, the spirit and character of French youth. Pardon! M. Imperial Prosecutor, you take *the name of a port for the name of a man*. If I am guilty of any crime, it can only be the offense of defamation: accuse me on this count; I will answer you, and you will see what will follow.

Yes, it is the nature of any Church, whatever sect or religion it may be, to be obscurantist, rich, and greedy for power. I said it, because it was my right as a critic, seeking the influence of religious dogma and the ecclesiastical spirit on morals, to say it; I repeat it, because it is my duty at this moment to affirm the right of criticism, attacked in my person, and in doing so, I am acting morally.⁷

Thirteenth passage; Volume II, page 540:

Oh! I understand, Monseigneur, that you do not like liberty, that you have never liked it. Liberty, which you cannot deny without destroying yourself, which you cannot affirm without destroying yourself still, you dread it as the Sphinx dreaded Oedipus: it came, and the riddle of the Church was answered; Christianity is no longer anything other than an episode in the mythology of the human race. Liberty, symbolized by the story of the Temptation, is your Antichrist; liberty, for you, is the Devil.

⁷ Holland, a Protestant country, is of all the States of Europe where there are the fewest illiterates. We must not believe that people are any more enlightened because of this. Books have been made for its use that are so stupid, so bigoted, that it has become disgusted with reading and prefers to get drunk. The Protestant Church also has its BIBLIOTHÈQUE CHRETIENNE, like that of the famous MANE, of Tours, *Ad majorem Dei gloria*, isn't that curious?

Come, Satan, come, slandered by priests and kings! Let me embrace you, let me clutch you to my breast! I have known you for a long time, and you know me as well. Your works, oh blessed of my heart, are not always beautiful or good; but you alone give sense to the universe and prevent it from being absurd. What would justice be without you? An idea, an instinct perhaps. Reason? A routine. Man? A beast. You alone prompt labor and render it fertile; you ennoble wealth, serve as an excuse for authority, put the seal on virtue. Hope still, exile! I have at your service only a pen, but it is worth millions of ballots. And I wish only to ask when the days sung of by the poet will return:

You crossed gothic ruins;
Our defenders pressed at your heels;
Flowers rained down, and modest virgins
Mingled their songs with the war-hymn.
All stirred, and armed themselves for the defense;
All were proud, above all the poor.
Ah! Give back to me the days of my childhood,
Goddess of Liberty!

The Court, despite the observations presented by the defense and the cheers of the audience, persisted, in its judgment, in reporting this passage as outrageous for morality. I would really like to respond that this persistence of the court is an outrage against common sense: but I am accused; modesty makes it a law for me to hold my tongue.

Everyone at the audience wondered how, after having said that the Church does not like liberty, that it has made liberty the devil or Satan, I could have committed a crime by invoking, in a transport of enthusiasm, this *Satan*, this *slandered*, this *outcast*; how did a *metonymy* become an outrage against morality?

It is up to me to reveal this secret. In a trial like this, there are things that are said, written, printed, which are for the public; and there are things that are not said, which are read, as they say, among the worthy, and which are for the initiated.

The outrage against morality, public and religious, consists here in the fact that, through infernal rhetoric, I dared, in an apostrophe to liberty, to use the language of a man who gives his soul to the world, of all blasphemies the most horrible, according to Christian ideas, then, in that I seem to applaud the festivals of Reason, of scandalous memory, and to wish for their restoration.

The pact with the devil, the festivals of Reason, in which a half-naked woman, wearing a red cap, a pike in her hand, climbed onto the altar in place of the cross: the religion of peoples never conceived anything more abominable, and it is sacrilegious to play with these horrors.

But, if I am an atheist, I do not believe in the devil and I care even less about the cult of Chaumette: the impiety that is attributed to me has no meaning in my mouth; placed at the end of a theory of free will, it is in bad taste.

So what did I mean by this strange figure?

I admit that I was far from expecting all this noise, and that nothing humiliates me more than the poverty of mind of my readers. Nothing is more terrible than liberty, since, through it, evil is made possible. But nothing is more precious than liberty, since without it the universe remains

inexplicable; Justice, pure instinct, loses its merit; reason is a mechanism; man, a beast; I should have added, and that would no doubt have helped to make me understand, God, become Destiny, a petrification. Let us therefore ardently embrace liberty, since it is the coefficient of Justice, since without it we do not exist, and since the most heroic moment of our life is the one when, like the French people in 93, we feel the freest. But let us not forget that this liberty is the Satan, without whom we would never commit evil.

Alas! I feel all too well today the truth of this antithesis, since by investing it in its most energetic and exact expression, I could not help but offend the faith of some of my readers. But for nothing in the world would I want to be like them; I would be afraid that such a sensitive faith would have made me lose reason, justice and liberty.

I have finished examining the passages, thirteen in number, in which the prosecution believed to find the offense of *contempt of public and religious morals*.

Of these thirteen passages, nine (these are the 1st, 2nd, 3rd, 6th, 7th, 8th, 9th, 10th and 12th), contain the attribution to the Church of erring in morality, and the qualification of its errors; an imputation and qualification that, exclusively relating to sacramental doctrine and practice, do not affect the personnel of the clergy, with regard to whom I have made formal reservations, even sympathetic ones. The four other passages (4th, 5th, 11th and 13th) are disguised, taken in the wrong direction; the end of the 12th passage has even undergone material alteration.

§ 3. — *Outrage to Religion.*

The offense of contempt of morality ruled out, and I doubt that after reading this memoir the prosecution will have the courage to reproduce it, perhaps we will fall back on the offense of contempt of religion, thus provided for by the law of March 25, 1822:

“Anyone who has insulted or made a mockery of the religion of the State, or any other religion whose establishment is legally recognized in France, will be punished by imprisonment of three months to five years, and a fine of 300 francs to 6,000 francs.”

First of all, what is the meaning of this article?

It is possible, thought the legislator of 1822, that one of the religions recognized in France is erroneous in its dogma, and consequently in its morality; this is all the more possible since the said religions recognized in France do not agree with each other, and anathematize each other. It is even possible that all religion in general, considered from the high point of view of Justice, is essentially faulty, and that the truly good man must make it a point of honor to rid his conscience of it. However, until religion has been removed from the number of institutions, it must be, notwithstanding the right of free discussion, respected, without regard to sect, as an expression of individual conscience, and protected by the State.

Have I failed to comply with this prescription?

As it is not always easy to distinguish criticism from derision and invective, I will observe, first of all, that if the law has surrounded religion with respect, it is because it has considered it, with vulgar reason, as a support for good morals; so that the offense of contempt would be

singularly attenuated if the non-morality of religion became manifest, especially if this offense had been committed during a polemic initiated against religious dogma in the very interest of morality. In this case, I say, the judge could not, without injustice, treat in the same way the offense resulting from an excess of zeal for morals, and the offense caused, if I dare say so, by the zeal for debauchery.

But I do not think I need to place myself under the benefit of this mitigation. The idea of contempt is unacceptable, in a discussion as serious, as sustained as that which fills my three volumes. A writer does not give as much importance to what he insults; satire is brief by nature, irony and insult soon exhausted. If a few traits of this kind had escaped me, I would repudiate them as absurd, contrary to the thought of my book, and in bad taste.

What, in fact, is this general thought, from which I am convinced that I have never deviated, and which, apart from the qualifications that I had the right to make, should protect me from all intemperance of language?

It is that religion is the primitive form in which Justice arises in consciousness; it is a symbol of Justice; that thus, and until Justice appears in its pure essence, religion is entitled to all the respect that we owe to it; that in this respect, finally, Christianity, our ancient state religion, is the most complete, the most marvelous monument that has emerged from the depths of humanity. Allow me a few quotations on this subject, in order to show, by my own example, what difference there is between the man who has renounced religion to follow only Justice, and the impious man who, knowing nothing of either, uses sacrilege as an incitement to immorality.

In Volume I, on page 35: after having blamed modern attempts at religious renovation, I say:

I would never have contested the authority of the Church, if, like so many others who make themselves its competitors, I admitted the necessity of a supernatural guarantee for Justice. I wouldn't have this strange presumption, assuming that the idea of God is indispensable to morality, to believe myself more capable than the Church, more capable than the human race, which has labored there for more than sixty centuries, of deducing in theory and realizing in practice such an idea. I would have bowed before such an ancient faith, the fruit of the most learned and the longest elaboration of which the human mind has given the example; I would not have admitted for a moment that insoluble difficulties in the order of science retained the slightest value when it came to my faith; I would have thought that this was precisely what made up the mystery of my religion, and for having drawn a few metaphysical threads, I would not have thought myself a revelator. Above all, I would have feared to shake in others, by imprudent attacks, a guarantee which I myself would have declared necessary.

The assertion will seem paradoxical, but I can say it, because this is the truth. Never, no more today than in my earliest childhood, have I been a despiser of religion. The day I stopped finding God and Justice in worship, I found humanity there.

In the same volume, on page 92, protesting against the impieties attributed to me by an inept biographer, I say again:

No, Monsignor, and I want you to take note of it, I have never expressed myself on the Christian religion, which was that of my fathers, *Deus patris mei*, nor on any religion, with this indecency, which would have only dishonored my pen. I have always respected humanity, in its

institutions, in its prejudices, in its idolatry, and even in its gods. How could I fail to respect her in Christianity, the most grandiose monument of her virtue and her genius, and the most formidable phenomenon in history? To insult, in words or gestures, a religion! Only a man brought up in the principles of Catholic intolerance could come up with this stupid idea.

There follows an allegory of the loves of the mind and of Religion, and of their rupture, an allegory which, by the very poetry that I have put into it, shows how sincere and deep my respect for religious things is. This passage is too long for me to quote: I prefer to refer my judges to it.

Further down, page 164, after summarizing the mission of Christianity, I exclaim:

Oh! Christianity is sublime, sublime in the majesty of its dogma and in the chain of its deductions. Never was a higher thought, a more vast system, conceived, organized among men. I, who see in it only a creation of universal remorse, I cannot help saluting in it the genius of humanity, which for the salvation of itself has imposed on itself this long expiation. And I swear here that, if the Church succeeds in overturning the new thesis that I oppose to her, and against which she will find no argument in her tradition, because the enemies she fought in the past, like those who attacking it today, borrowing its principle from it, were to be condemned by the consequences; if, I say, the Church gains this victory against the Revolution, I will abjure my philosophy and die in her arms.

Is this outrage, derision? The entire work is written in this style, to the point that it seems to every soul that pious, but more devoted to Justice than to piety, that by passing with me from the Gospel of Christ to the Gospel of the Revolution does not change its doctrine, it only speaks another language. My commentary on the *Pater Noster* was considered an outrage against morality. Here are some passages from this impious criticism, which we were careful not to quote:

Volume II, page 28-29:

An appeal to sovereign perfection, an act of submission to the eternal order, of devotion to Justice, of faith in its reign, of moderation in desires, of regret for faults committed, of charity towards one's neighbor; recognition of free will, invocation to virtue, anathema to vice, affirmation of truth: the morality of forty centuries is summed up in these humble and moving words, which Christian tradition attributes to its Man-god.

What pains appeased, courage strengthened, resentments vanquished, doubts vanished, by the recitation of this prayer, more accessible to hearts than to minds! When the poor, debased, lazy liar approaches us, prayer on their lips, such is the grace of this truly evangelical word that we feel drawn, despite ourselves, to alms. *Pater noster!*...

I would have to quote this entire chapter, one of the most mistreated in my work.

We are talking about contempt of religion. Is this serious? The science of religions has killed libertinism these days. Philosophical respect for religions, the only one commanded by the law of 1819, begins with Dupuis, the author of the *Origine des cultes*. Fréret, like Spinoza, is still disdainful. Voltaire takes the heroic side of derision, often obscene: if Voltaire makes us smile, it is because we refer in thought to these difficult times, when the mind, devoid of knowledge, but irritated by clerical extravagance, had only the audacity of satire and the joys of license to defend itself from religious obsession. This is why I dared to say that Voltaire was the true epic poet of modern times, not certainly for having created the *Henriade*, but for having produced *Candide* and

the *Pucelle*. Now everything is over: in the morality declared by even the most religious writers independent of faith, irreverence for worship has given way to its interpretation. And this interpretation of religious symbolism forms the basis of modern beliefs, as I say again, volume III, page 602-603:

As far back as the memories of the human race reach, sixty centuries beyond the Trojan war, according to a tradition collected in the temples by ancient writers, we see Religion serving as a figure of Justice; it takes the place of moral science, supplemented by the poetry of worship which the practical reason of peoples is unable to define, and this figure, this poetry, expression of the primitive conscience, is still today and will be for many centuries after us the most attractive study of the philosopher.

What is this adoration, *religio*, of a sovereign Being, if not a representation of Justice, that is to say of respect for Humanity? God is all at once, on the one hand, human nature infinitely elevated and idealized; on the other, the concept, in no way absurd although indemonstrable, of a cosmic consciousness, as one would say of a universal Humanity.

What are these divine trinities that we see emerging from all mythologies, if not the first categorization of the human soul, individual and collective, in its fundamental powers? The Revolution did not fail to reproduce it in its famous motto; no philosophy of the nineteenth century could detach itself from it.

Aren't your angels those collective forces that the economy reveals to us, and whose balance is the object of public right and the right of peoples?

What can I tell you more? Is not your grace that faculty of the ideal that nature has placed in us to serve as a perpetual excitation to Justice? Your sacraments, family and society initiations? Your original sin, a parable of the state of nature, from which civilization frees us every day? Your cult of the Virgin, an allegory of marriage? Your resurrection, the incessant refreshment of the species, in which are eternally preserved the forms, temperaments, characters, ideas and affections of the deceased? The older Humanity gets, the more love accumulates in its entrails: what more touching idea can you have of your destiny, Christian whom death terrifies? Your hell and your paradise, finally, do not do you not find yourselves entirely in the sanction, penal or remunerative, that accompanies vice and virtue? You teach it yourself in your theology: the true penalty of the damned is the penalty of DAMNATION; by what materialism do you add to it the pain of *feeling*?

Ah! certainly, to this way of thinking about religion, it is reasonable to believe that we would much prefer the pranks of the regency, briefly brought back into fashion by the false liberalism of 1814 to 1830. Béranger died an edifying death : he who, separating morality from religion, sees in the latter only a dead language, he will never be *reconciled*. What religion, what Christianity ever had that was deepest and most poetic, becomes, without effort, without plagiarism, the covering of our revolutionary ethics; these are, in truth, our origins, our antiquities, our traditions. Polytheism, Magism, Druidism, Brahmanism, Buddhism, Christianity, all these metaphysico-theological systems, given birth by the dream of the absolute and the ideal, are ultimately only the archeology of Justice, the apocalypse of Revolution. From religion we take up and assimilate everything, the idea, the myth, the feeling, the soul, in a word; we leave to the Church only the dead letter, the mummy. If it is a crime against religion to also affirm its metamorphosis, we must make a law that defines it: certainly, there is neither derision nor outrage for it.

SECOND PART OF THE CHARGE

APOLOGY FOR ACTS QUALIFIED AS CRIMES OR OFFENSES; ATTACK AGAINST COMPLIANCE WITH THE LAWS; DISTURBANCE OF PUBLIC PEACE BY THE EXCITEMENT OF CITIZENS TO CONTEMPT AND HATRED OF EACH OTHER; SPREADING FALSE NEWS IN BAD FAITH.

There is missing from the criminal investigation code, touching on the way of interpreting and qualifying the words, writings and actions of the accused, a chapter similar to Section V, Chapter III, Title III, Book III, of the Civil Code, on the interpretation of conventions.

If this important chapter, as important in itself as the 643 articles that currently make up the code of criminal procedure, had existed, the accusation against which I am forced to defend myself would become impossible; the public prosecutor would not have had the latitude, in the first place, to transform the purely doctrinal imputations that I myself address to the ecclesiastical corporation into an outrage against public and religious morality; then, he would not have burdened this first offense, entirely his invention, with four other offenses no less serious, but the reality of which results solely from the torture and mutilations that he inflicted on my work.

The Code of Criminal Instruction, following the example of the civil code, would have said for example:

1. In a piece of writing we must look for the general thought of the author, rather than stopping at the literal meaning of the terms.
2. Passages capable of two meanings should be taken in the sense that best suits the subject of the book and the conclusions of the writer.
3. All the chapters, sections and paragraphs of a work are interpreted by one another, giving each as a criterion the meaning that results from the entire work.
4. When in a passage, the writer has allowed himself, in order to explain his thoughts, a comparison or an anecdote, he is not supposed to have wanted to present the comparison as a real fact, nor to guarantee authenticity of the anecdote.
5. The objections that an author proposes, and the conclusions that he draws from the theories of his adversaries must not be attributed to him as if they were the expression of his own thoughts and feelings: on the contrary.

Warned by these rules of wisdom, the magistrate would no longer be exposed to falling into mistakes like those which caused me, on the part of the corr. police court. nelle, three years in prison. I'm getting into this.

§ 1. *Apology for facts qualified as crimes or misdemeanors.*

The judgment reads:

Whereas on page 309 of Volume 3, regarding a woman sentenced for bigamy by the Assize Court to two years in prison, the defendant Proudhon strives to justify this woman, by denying the

fact that what she has committed is a crime, and proclaims “that despite the Church and the penal law, this woman is innocent and worthy of respect;”

That it is obvious that in this passage Proudhon defended an act classified as a crime by criminal law, and committed the offense punishable by the decree of July 27, 1849.”

Here is now the incriminated passage which forms the fourteenth part of the accusation:

On July 10, 1855, the Assize Court of the Seine sentenced a woman convicted of bigamy to two years in prison in the following circumstances:

Abandoned by her husband, she had found a lover who, having taken her to his country and wanting to honor her union, married her. Everything urged the unfortunate woman to marry: the abandonment of her first husband, the wishes of the lover and his family, the proprieties of society, which, thanks to Christianity, no longer accepts concubinage, even modesty. There is more: this woman who is accused of bigamy is in reality monogamous, and the more, to convince her, we insist on the circumstances that determined her to celebrate a second marriage, the more, in spite of the Church and of the law that imitates it, I proclaim her innocent and worthy of respect.

What is her crime? Did she live simultaneously with two husbands? No: abandoned by the first, she attached herself to the second by a loyal, if not legal, commitment. It is against legality, not against love, justice, reason, modesty, that she has sinned. Now, what is this legality? A violent state, created by theological speculation, which leaves no middle ground for the abandoned woman between an alleged bigamy, declared a crime, and licentiousness, which leads to exclusion from society. As if Justice consisted in creating impossible situations, instead of taking hold of those created by the reason of times and things, to raise them little by little by the application of right!

Let us apply our rules.

The expressions in this passage that shocked the judges are the following: *More, in spite of the Church and of the law that imitates it, I proclaim her innocent and worthy of respect.* And further down: *Now, what is this legality? A violent state,* etc.

Have I, with these words, apologized for the crime of bigamy? The court says so; I deny it with all the energy of my consciousness. And this is not on my part one of those vain denials, to which one can oppose the saying: *Every bad case is deniable;* because if we want to take the trouble to illuminate this passage as a whole, in particular through Studies X and XI, Volume III, pages 181 to 486, does not reject polygamy, bigamy, fornication and divorce.

Did I even claim that in this case there was no crime, that the woman in question had done well to remarry, and that the Assize Court was wrong to condemn her for bigamy? — Again no. It is in my book, Volume II, Study VIII, chap. III, pages 444 to 464, that, for the first time perhaps, the protective theory is exposed, that, whatever the law, as long as it is admitted in good faith as the expression of Justice, it must be respected.

What then, ultimately, is the meaning of this passage in which it is as impossible to discover an approval of bigamy as a reprimand of the jury?

The criticism of *a violent state*, CREATED BY THEOLOGICAL SPECULATION, *which leaves no middle ground for a woman abandoned by her husband*, between a remarriage, declared *bigamy* by the law, and consequently *crime*, as long as the first husband is living, and *libertinism, leading to exclusion from society.* To criticize a state of affairs, to criticize even a legal state, a law, is not to

apologize for crime: otherwise it would be necessary to say that any repeal or modification of laws, by legislative authority, is an apology for crime.

Now, I indicate this *middle term* myself, and this is what motivates my criticism; this middle term is what the *Lex Julia* called *concupinatus*, which Christianity hastened, from its origin, to adopt, and which it later confused with marriage; what the public conscience, stronger than the law, notes and tolerates, without however equaling it to marriage, and why I invoke a special legality.

It is therefore always the vengeance of the Church, author of this false morality, of this painful legality, that we pursue, by accusing its adversary of having apologized for a crime, as above in accusing him of moral outrage.

What! I ask, out of respect for marriage, for the law, for Justice, that we put an end to a tragic situation, by creating a legal state for cohabitation, a decent refuge for separated or abandoned women; and I am accused of apologizing for a bigamist woman! But let us therefore also accuse the Assize Court which, in condemning this woman, nevertheless recognized in her favor the existence of attenuating circumstances. Indeed, the crime of bigamy is punished, according to the penal code, with forced labor, and the court only imposed *two years in prison*; it would have been content with two months, without article 46 of the penal code, which placed a limit on leniency.

Is it not true that the jury, the court, the public prosecutor thought as I speak: deep down, this woman, betrayed, abandoned, but honest in her morals, is innocent. But the law exists; it must be respected: let us apply the *minimum*.

§ 2. — *Attack against the respect due to the laws.*

Let us hear from the court:

“Whereas on pages 519, 523 and 529 of Volume 2, he commits the most blatant attacks against the respect due to the laws; as, in fact, he does not hesitate to write that society does not have the right to punish the guilty, maintains that the assassin before his judges can tell them that he rejects their code because he does not believe in their God and in their society, in which he has not received his share, that he does not admit the existence of a legal bond between men, that they do not have the right to judge; that, if he killed a man, it was because he was at war with him, that against him only force could be used, and that he despised it as much as punishment and justice;” that Proudhon finally “criticizes the penal code, its categories of offenses and the terms of its division of penalties into afflictive and infamous” which, according to him, “makes the legislator and the judge go hand in hand with the scoundrels whom they pursue, and proclaims what he calls the appalling arbitrariness with which sentences are distributed and applied,” and that he ends by saying “that a person condemned to death demonstrated in the commission of his crime more moral sense than the judges showed in his conviction.”

If I had to deal with the Holy Inquisition, my answer would be: Slander! And I would strip naked for torture. But I owe my thoughts to men who are not of the Church, to magistrates armed with the Justice of the Revolution: this is why I will explain myself with calm and confidence.

In a country of theocracy, where morality and all laws emanate from revelation, where the penal sanction is nothing other than the execution of divine vengeance, I understand that there is impiety, hence lack of respect to the laws, to present against criminal legislation the following *objection*, which I put into the mouth of an assassin.

Fifteenth passage; Volume III, page 519:

In the state that we find the question today, there is not a murder who could not say to his judges: "I don't believe in your God or your society, in which I have not received my portion. I reject your code, and I declare you incompetent, your police and your executioners. There is nothing in common between you and me; and even when I admit with you the existence of a legal link between men, you do not have the means to establish the authority that you attribute to yourself over my person. You do not have the right to strike me, the right to blame me, the right to charge me, and not even the right to interrogate me; my conscience, since you speak of conscience, eludes all your attacks. It is possible that I have killed a man; I was at war with him, as I am at this time at war with you, as you are all with one another. There you are, banded together against me, and you have the strength: use it, if that pleases you, as I have used it myself. But no hypocrisy, and above all no outrage: I scorn, along with your chastisements, your Justice and your blame."

Yes, I said, I understand that in the system of the Church such an objection implies irreverence, since the law, according to the Church, emanating essentially from divine jurisdiction, the penal sanction emanates from it in turn, and that denying theology is the same as denying Justice.

But we are not in the presence of the holy office; French law is independent of any religious faith; the Penal Code has nothing in common with the sacred penitentiary; every man has the right, by the principles of 89 and the constitution of the empire, to call himself an atheist. M. Berthelin and M. de Cordoën were kind enough to tell me themselves that they neither discussed nor reproached my opinions.

I therefore have the right to speak out against the learned jurists who reason today, in Paris, about the sanction of right, as if they were in Rome, professors appointed by the Holy See, for the teaching of canon right; and I am surprised that an imperial prosecutor, a magistrate of the Revolution, reproaches me for this perfectly legitimate *objection* as a lack of respect.

Ah! No doubt if my book as a whole was only a work of skepticism; if I did not affirm, in this book, as much as I deny; if after overthrowing in turn both the system of divine right and the system of the Revolution, in everything that affects persons, property, the State, education, labor, ideas, liberty, progress, family and marriage, leaving behind me only ruins, I ended this enterprise of destruction with an irony on Criminal Law; no doubt one could say that, in the form of an objection, I gave my true thoughts and brought the culmination of my offenses.

But this is the opposite of what I did: my book begins with a protest against the moral skepticism that afflicts our time (Volume I, *Prologue*, pages 1 to 68), and which has its origin in theology itself (Volume II, *Study VIII*, page 413 to 464); from start to finish, I never cease to affirm law, right, duty, Justice, and to determine their principles; and I end with a final Study, Volume III, pages 487 to 608, in which the problem of criminal sanction is finally resolved.

In such a dogmatic work, it is absurd to take the objections that the author poses as an irony of skepticism; and if the prosecution, which so clearly noted the objection presented on page 519, had looked more closely, it would have found the answer on page 525. I will return to this later.

But here is where the public prosecutor's concern is betrayed with even greater force.

Sixteenth passage; Volume III, page 523:

By virtue of the moral solidarity that unites men, it is rare that an act of prevarication is entirely isolated, and that the prevaricator has not had as an accomplice, direct or indirect, society and its institutions. We are all, more or less, guilty towards one another, and what Job said was not true: *A sinner before God, I am innocent before men*. In that community of conscience, Justice being reciprocal, the sanction is also common; the reparation must be as well. What are the causes, the pretexts, is you wish, which have led the accused? What injustice, what privilege, what favor has provoked it? what bad example has been given? What omission, what contradiction of the legislator has troubled his soul? Of what grief, either on the part of society, or on the part of individuals, does he complain? What advantage, dependent on the public will, do they enjoy which he does not enjoy himself?... That is what the examining judge must seek with at much care as the very circumstances of the crime or offense; for it is necessary that the accused hear him say it: if society demands satisfaction of him, is it ready to do right by him itself, in the measure that it will be found just by the tribunal of the arbitrators, by the jury. Every criminal pursuit implies a recriminatory action, and, if Society will not lead the way, the accused can say to his accusers: "All of you who are assembled here to judge me, you are not better than me. Confess yourselves first, and I will confess in my turn; repent, and I am ready to satisfy."

Many people will ask how the prosecution could see this as a lack of respect for the law? It is up to me to teach them.

Earlier I reported the principal *objection* that can be made against the reigning doctrines in matters of criminal Right, an objection based on the culprit's lack of religion. Now, admitting the right to judge and punish, I seek the *conditions* of judgment and punishment; and I say that the first thing to do is to ensure that nothing, from the outside, on the part of men, directly or indirectly, has served as a provocation. And since, in my opinion, provocation, to a degree as low as one might wish, ALWAYS EXISTS, I conclude that the *balance* of the offense and the reparation must be made accordingly. This is what we call *extenuating circumstances*, of which I am giving the general philosophy here.

Now, in the system of the Church, based on the principle of divine right and authority, things do not happen like this. The source and sanction of all righteousness is in God; men owe nothing to each other except by virtue of divine command, and only have to respond directly to God; and as the Church, or society, is the authorized representative of God and the organ of the law, it follows that investigating, at the same time as the guilt of the accused, the degree of complicity of the Church would be to fall into an insulting contradiction to the Divinity and the law. *Forgive us our debts as we forgive them to our debtors*, says the Christian to God in the Lord's Prayer: this excludes any kind of mitigation coming either from the vice of the law, or from society or the Church. It might as well be said that the man accused of a crime or offense has the right to put

God himself on trial. Based on this principle, which has become a habit of mind for so many centuries, the prosecution therefore accuses me of having wanted, at the expense of the law, to exonerate delinquents and criminals, by putting the accused and the accusers in the same bag.

In simpler terms, the public prosecutor professes, on the question of the right to punish, the Christian theory; and because I contest the truth of this theory, for which I substitute the theory of the Revolution, he accuses me of lacking respect for the laws.

But I respond to the public prosecutor, with the *Declaration of the Rights of Man and of the Citizen*, the first and most essential of all our revolutionary acts, that, Right being the innate prerogative of man, Justice being immanent in our species, moreover subject to failure, we owe each other a reciprocal account of our faults, as I say in the interpretation that I have given elsewhere of the Lord's Prayer: *Let us acquit one another*.

To find an offense in this is to reproach me for having made the exact commentary on the legislation that has governed us since 89; it is to put the Revolution on trial.

We understand at this time the speech that I put into the mouth of a scoundrel without religion, a speech to which it is impossible, in the system of the Church, to respond. We will also understand the following which, starting from the principle of the reciprocity of Justice, destroys the objection, and leaves the guilty party without excuse.

Volume III, page 525:

A child has committed a fault. The father, as careful of the dignity of his child as of his own, prepares to pick him up. What will he tell him? Let our forensic scholars consult their own hearts, here is what they will find there:

My son, we brought you into the world, your mother and I, in the sanctity of our love. You were not conceived but we were already thinking of you as the third partner of our common conscience, the continuator and heir of our justice. To make you a bed of virtue, an inheritance of honor, I have worked, I have labored without measure; I have weaned myself from pleasure, abstained from voluptuousness; I have endured, without harming others, many injustices; I have kept my soul safe through the most appalling scandals; I applied myself, finally, to always appear before you as I wanted you to be. What have I done to you that could have authorized you to commit this ugly deed, which wounds my heart and covers me with shame? What bad example have I given you? Speak, so that I recognize my fault, and that before asking you for satisfaction, I humiliate my white hair before your youth. Do you know that, on the path you enter, there is no way out but parricide? He who grieves his father's conscience will be led sooner or later to take his life, in order to free himself from his reproaches. I don't mean to humiliate your pride, I don't want to insult you or stigmatize you; but, guilty towards our domestic conscience, you can only be reconciled with it by reparation: it is this reparation that I ask of you, as I am ready to repair my wrongs, if I have deserved some blame from you. I wanted, by giving you existence, to produce a man: what you have done is a bestial act. It's up to you to see at what price you think you'll win back my tenderness, or if, from now on, I have to proceed with you as with a stranger, an enemy.

With regard to any culprit, the judge fulfills, in the name of society, the office of this father. He will be the father of the Gospel, who kills the fatted calf when his prodigal son returns to repentance; he will be a Brutus, if he has to deal with a hardened and desperate scoundrel.

Why, with regard to the two pages in question, 519 and 523, did the public prosecutor not cite this one?

Seventeenth passage; Volume III, page 529.

The right to demand reparation for the crime and misdemeanor thus established, the objection resolved, the conditions of reparation determined, a final question arises, that of knowing what this reparation consists of.

There are two systems on this, that of corporal punishment and humiliation of dignity, against which I speak out; — that of moral reparations, which is mine. Always the same parallel deduction of two philosophies, one that, in the name of God, afflicts guilty man and treats him as a slave; the other that raises him up, and after each fall carries him higher, as if the repair added to his nobility. It is in the middle of this discussion that we find these lines:

This would be the place to criticize our Penal Code, its categories of misdemeanors and crimes, its division of penalties into *afflictive* and *infamous*, a division that makes the legislator and the judge go hand in hand with the scoundrels they prosecute; finally the appalling arbitrariness with which these penalties are distributed and applied. Some on whom the law imposes a light correctional penalty should be excommunicated from the human race; some condemned men have shown, in the perpetration of their crime, more moral sense than their judges have shown in the condemnation.

The prosecution's citation ends there. I regret that he did not think it necessary to report the nine lines that follow: the court would have guessed my answer.

We find here at every step the trace of the theological and materialistic spirit that presided over the drafting of this code: theory of the transcendence of the moral law and of the divinity of its sanction; theory of the original indignity of man and of the necessity of expurgating it, by abuse exercised on his body, on his soul and on his whole person. No idea of the juridical community, of the reciprocity of satisfaction, of the nature of the payment called for by the debt of the crime... Let it suffice for me to have laid down the principles...

I first thank the court for not having for a moment supposed that I wanted to insult the judiciary, by using phrases like this: *Division that makes the legislator and the judge go hand in hand with the scoundrels they prosecute;* or like this other: *Some condemned men have shown, in the perpetration of their crime, more moral sense than their judges have shown in the condemnation.*

The Court only thought of the law, accused by me of producing effects such that the legislator and the judge, the most respectable thing society offers, seem to descend to the level of scoundrels, and that the one who pronounces the condemnation sometimes seems endowed with less moral sense than condemned.

Once again, thanks be given to the court, justification has been made.

To say that the penal code is still marked by barbarism, how does such a proposal attack the respect due to the law? Who is the criminal lawyer who, for three centuries, has not made such complaints heard? Was Beccaria put on trial for having protested against torture, which, given in

the presence of the judge, made him a sort of colleague of the executioner? How then could I be guilty in my turn, by taking up the thought of Beccaria, by saying that these *afflictions* and *infamies* awarded by the code dishonor the character of the magistrate, in the same way that torture dishonored him in the past? The magistrate is a father; the penalty of the Middle Ages made him a torturer; ours makes him a minister of affliction and shame. Who is more careful to respect the law and the honor of the magistrate, the one who cries for reform, or the one who demands the *status quo*?

I will tell the truth as it appears to me: I promised that my defense would be the confession of my thoughts.

It is the theory of divine right that, denying to man all justice, all proper dignity, treating the sinner as a depraved soul, introduced into morals, as a penitentiary, this system of abuse and stigmatization without which the repression would seem to many people to be illusory, even insulting to divine majesty. Human dignity taken into consideration even in the person of the scoundrels, say those whom I call transcendentalists! Have we calculated the scope of such a principle? Soon, we would have to believe that the legislator who awards a punishment thereby fails to respect the law, that his law is a mockery of the law!...

God save me from any imprudent words, but I cannot help saying that our system of repression, as it was once inspired by the Church and as the Revolution has left it, is far from being as respectful of the law as one could imagine, a formula for justice and truth.

I notice, for example, that the press is ruled with a series of laws, of very different origin and thought and in the confusion of which the judge, the lawyer, as well as the litigant have difficulty recognizing themselves: law of 1814, law of 1819, law of 1822, law of 1835, law of 1848, law of 1849, law of 1852. Each government has made its own, because of its particular ideas and the needs of its defense, and without therefore repealing previous laws. Would this be legislation, when it is not even logic?

Looking at the penalty laid down in these laws, I find that the legislative government has reserved such latitude that repression becomes entirely discretionary: thus contempt of public and religious morality is punishable by imprisonment that can go from one month to one year, a ratio of 1 to 12; — lack of respect for laws, 1 month to 2 years, ratio 1 to 24; — attack on the family, 1 month to 3 years, ratio 1 to 36; — the arousal of citizens to hatred of each other, 15 days to 2 years, ratio 1 to 48; — defamation against individuals, 5 days to one year, ratio 1 to 73: fines to match. What esteem of itself, I ask, has a law that leaves its organ so arbitrary?

I asked the honorable investigating judge, M. Rohault de Fleury, what was the precise line of demarcation between the various offenses that were imputed to me, for example, between contempt of religious morality, provided for in law of 1819, and contempt of religion, provided only by that of 1822; — between the attack on the family, which neither the legislator of 1819 nor that of 1822 had thought of, but which the legislator of 1848 was able to discover very well, the outrage against public morality, which had been contented first; — between all these outrages and the lack of respect for the laws, added by the legislator of 1849?

M. Rohault de Fleury was unable to answer me. "These offenses," he told me, "are part of one another; it depends..." However, the punishments are not the same: they differ from 15 days to one year, 2 years, 3 years, 5 years, so that depending on the category in which it is appropriate to place an accused, it may be sentenced to fifteen days in prison or five years, ratio 1 to 130, and be sent to a central prison. It depends!...

Thank heaven, the judges look at it more closely than the legislators, witness this bigamist woman, whom the assize court, in its indulgence, punished with only two years in prison. But will I be accused of disrespecting the laws, because I think of the laws exactly what my judges think of them?

§ 3. — *Disturbance of public peace, by the excitement of citizens to contempt and hatred of each other.*

I consider this charge to be the most dangerous of all, firstly, because there is none to which it is so easy to find appearances; then, because, based on the nature of my publications, it is up to the court to say that I have been, for twenty years, in the flagrant and perpetual offense of stirring up hatred. Let us first quote the terms of the judgment:

Whereas striving, on pages 285, 309 and 444 of Volume I of his book, on pages 268 of Volume II and 14 of Volume III, to sow disunity between the classes of society, Proudhon claims "that the bosses get along, that entrepreneurs are joining forces, that companies are merging, that the 15,000 owners of the thirty thousand houses in Paris that serve to house a million men, are ransoming and encumbering work, starving the workers, that society is groaning under a regime of privilege and monopolization where everything is arranged for inequality;" that he compares "the worker to the serf of the Middle Ages attached to the soil;" that he affirms "that if the workers go on strike, the only way they have to have their demands accepted, they are transported without pity, doomed to fevers of Cayenne and Lambessa;" that he claims "that the army is a Church freed from all human rights and duties, whose morality is summed up in this word: the *instructions*," whose conscience is the order of its leader, and whose intelligence is at the end of his bayonet; that further, he points out "to public contempt the army, which is the homeland of honor, by saying that it is the home of treason and cowardice, and that he ends up proclaiming that in the presence of this social organization, where everything is false, nothing can restrain the insurrection, since the worker hates the one who exploits him;"

That in these passages Proudhon obviously sought to disturb public peace by exciting contempt and hatred of the citizens against each other.

The law of August 11, 1848, which created this type of offense, was handed down in circumstances that we all remember.

The right to work had been posed against capital;

The proletariat rose up, in April and June, against the bourgeoisie;

Economic questions, subordinating all others, even those of universal suffrage and the republic, had invaded public thought and occupied almost the entire tribune and the press.

The Constituent Assembly made the most generous efforts to stop this antagonism, and prevent it from degenerating into a social war. We rejected, as seditious, the distinctions between the bourgeoisie and the people: we wanted everyone to become owners, capitalists, bosses or at least partners, just as everyone prided themselves on being workers.

It was then that the law of August 11, article 7:

“Anyone who seeks to disturb public peace by arousing contempt or hatred among citizens against each other will be punished by imprisonment of fifteen days to two years (ratio 1 to 48), and a fine of one hundred francs to four thousand francs (ratio 1 to 40).

Today the situation is significantly improved; it even seems to me that it would be in the interest of the imperial government to say that it has changed completely.

The working bourgeoisie, and that is the immense majority, have no more hatred against the worker than the worker has hatred against them; as for the army, which became hostile to the republicans following December 2, we cannot say that it is hated by the people, who, by *seven million* votes, sanctioned its work, and, after the Crimean war, applauded his achievements.

Under a strong power, when calm reigns in the minds and in the streets, when the multitude no longer reads, one could suppose that the moment was favorable to resume, among bourgeois, the discussions which had for an instant passionate the people, and that it would be so important to resolve before he becomes passionate again.

This is what I dared to do: to my misfortune, the court did not hear it that way. Let us see what bothers it.

Eighteenth passage; Volume I, page 285:

Let the bosses get along, let the entrepreneurs coalesce, let the companies merge, the public prosecutor can do that much less about it as the governmental power pushes for the centralization of capitalist interests and encourages it. But let the workers, who have the feeling of the right that the Revolution has bequeathed to them, protest and go on strike, the only means they have of having their claims admitted, they are chastised, transported without pity, doomed to the heat of Cayenne and Lambessa. Was the serf of the Middle Ages otherwise attached to the soil?

Nineteenth passage; Volume I, page 309:

What! There are thirty thousand houses in Paris, owned by twelve to fifteen thousand proprietors and used to lodge more than a million souls; and it depends on these fifteen thousand proprietors, against rhyme and reason, to ransom, squeeze, if not expel, a million inhabitants! to encumber labour, products, commerce, in consequence of ruining the bosses, and starving the workmen! We no longer work, we no longer earn, people cry out on all sides, except to pay the rent!... No, that is not possible: the Code and tradition have understood nothing of this, the economists lied, the Church is absurd.

This is the excitement to hatred.

A few months before the publication of the book *Of Justice*, there appeared in Paris, with the permission of the authority, a pamphlet in-32, with this title, *Pourquoi des propriétaires à Paris?* The author made a very strong critique of property, of its disadvantages, of the harshness of the

proprietors; and he concluded to make the entire built property a joint stock enterprise. Naturally, since the pamphlet had appeared with the permission of the authority, the public prosecutor did not pursue it. But why had the authority allowed the publication of this brochure? Was it just something agreed upon between the author and the police, with the sole aim of showing how far, under the paternal government of December 2, the tolerance of those in power and its respect for ideas goes? That would be sad. I prefer to believe that that day the public prosecutor, dreaming neither of religion nor of the Church, found that the sponsorship of the 30,000 houses in the capital was an idea like any other, and that it was necessary to move on. The public prosecutor was right; why didn't he do the same towards me?

Ah! Why? You will see. This is because the author of the pamphlet was only pursuing one business; while I speak of RIGHT, PRINCIPLES, EQUALITY, which is very different. RIGHT, in the mouth of a socialist, is an attack on order; PRINCIPLES are the complete opposite of religion, and EQUALITY outrages morality. That is where we are.

Let us first note, from a legal point of view, the innocence of the two passages incriminated by the public prosecutor.

According to the spirit that presided over the drafting of the law, it would be necessary, for there to be offenses of incitement to hatred in these two passages, that the circumstances in which the publication of the work was made were analogous to those in which the law itself was made; the accusation would have to signal an agitation in people's minds, a beginning of antagonism between citizens. Now, when was the population calmer? The times are far away: a head of school who would try today to animate the workers against their bosses would very much resemble a Caius Gracchus who would have come, in the time of Commodus or Caracalla, to rekindle the ancient hatred of the plebeians and nobles. They would have said he was crazy; they wouldn't have put him on trial. M. Ferrari, the recent historian of the *Revolutions of Italy*, declared himself highly Ghibelline: is there a Guelf today who demands the proscription of M. Ferrari? Yes, when I look back to the year 1848, before and after the disastrous days of June, I am of the party of the workers against the bourgeois; to make it a crime for myself, after ten years, is as if I were being reproached for having said, in another place, that I am a *sans-culotte*. Who cares, in 1858, about Marat, Hébert, Momoro, and their gangs? Who cares about the Luxembourg processions?

But I sense that the Court would not be satisfied with this explanation, which is all about sound policy and fairness. I would seem to plead extenuating circumstances too much, and it is not for such reasons that I am accustomed to defending myself. The law is general, justice severe; I am suspect: what do I have to say?

With the respectful frankness that I provided in my previous responses, I will try to satisfy the seriousness of the accusation. Too bad for me if, while thinking I am justifying myself, I only plead the aggravating circumstances against myself.

Since the Revolution, equality has reigned, as a rule, in our laws; there, it makes no respect of persons or classes: article 414 of the penal code, relating to coalitions of masters and workers, is proof of this:

Imprisonment of six days to three months, and a fine of sixteen francs to three thousand francs, will be the punishment for: 1) any coalition between those who employ workers, tending to unjustly and abusively force the lowering of wages, if there has been an attempt or start of execution; 2) any coalition on the part of the workers, to at the same time stop labor, to prohibit labor in a workshop, prevent going there and staying there before or after certain hours, and in general to suspend, prevent, bid for the work, if there has been an attempt or start of execution. In both cases, the leaders or motive forces will be punished with imprisonment of two to five years.

This is what the law says; and I find it all the wiser because it does not take into account the difference in positions, which generally makes the poor more excusable than the rich: it has already considered the boss and the worker as equals, and it applies the same punishment to them.

In *practice*, it is something else. The principles of authority and divine right always reign, and neutralize equality. I read in the *Stock Market Speculator's Manual*, a compilation based on the most authentic documents, pages 413 and 414:

Compagnie générale des Omnibus. — This company, incorporated in anonymous form on February 22, 1855, for a period of thirty years, results from: 1) the merger of the various omnibus companies assigned to the service of the capital; 2) the privilege which was granted to it, by decree of August 5, 1854, to perform this service alone. To complete the monopoly, it purchased from M. Loubat the right to operate an omnibus system on rails, of which the assignee was the inventor. — Capital 12 million; loan, 8 million.

Compagnie impériale des voitures de Paris. — Founded on August 18, 1855, under the company name E. Caillard et Cie, Duration, sixty years; capital, 40 million, represented by 600,000 paid-up shares, including 75,000 intended to reimburse the former car entrepreneurs, dispossessed or subsequently merged according to the privilege granted to the Imperial Company by the prefect of police.

I pass over in silence the mines, the forges, the blast furnaces, the factories, the docks, the inland waterways, the railways, everything that is merged. Two or three examples will suffice.

Certainly, association is a licit thing; but, so that equality, desired by art. 414 of the penal code, existed between the workers and the masters, it would be necessary, when it is formed, by authorization of the government, a merger of companies, such as the *Compagnie Générale des Omnibus* and the *Compagnie Impériale des Voitures de Paris*, that the coachmen and other mercenaries employed by the said companies were authorized to also form a company or union, for the defense of their interests: otherwise the law is evaded, to the detriment of the workers.

Very recently, the newspapers told us that the Canal du Midi affair, that is to say the sale of this canal to the railway company of the same name, was over. At the same time the public was informed that the navigation rate on this canal was high in proportion to that of the railway. So that to ensure the railway monopoly, the Company was awarded the canal monopoly. This is very good, since with competition from the waterway, the railway, which was so desperately wanted, cannot survive. But have we liquidated at the same time the interests of shipowners, commission agents, mariners, boat builders, shippers, of all those who had an advantage in maintaining the

good market for navigation? Until we do this, there will be a violation of economic balance, the creation of a monopoly, inequality, injustice.⁸

I add that this injustice is an evil all the greater because it is impossible for the government, on the path it is taking, to prevent it; since, on the one hand, the industrial movement of the time and the government's policy pushed for mergers, and, on the other, if workers were authorized to form unions in their turn to defend their rights, it would almost be organizing social war.

Not content with denouncing this situation, as is the duty of every economist, I dared to foresee its disastrous consequences. The principle of equality is in the law, I cried; of the law he passed into minds and hearts. Now, if the tradition of the past, based on selfishness, resists, what will come out of the conflict? And this was my response.

Twentieth passage; Volume II, page 268:

What could hold back the insurrection?

In feudal times, the worker was convinced of his inferiority; he believed in the providential nature of his condition, he carried in his heart respect for nobility, love for royalty, the religion of the priesthood. These feelings, which made him take his fate patiently, today no longer exist. The worker hates or suspects everything he accuses of *exploiting* him, that is, everyone who is not a worker like him.

Unless there is an amicable settlement, the battle is forced. And victor or vanquished, labor will impose the law on capital: for what is in the logic of facts always arrives; against right, there is nothing in the world more useless than victory.

The Court saw this passage as a provocation to revolt. I would like to point out to the court that it has once again made a serious mistake, by failing to comply with the rules of interpretation indicated by the civil code, namely, on the one hand, that the consequences that an author deduces from the principles of his adversaries, precisely in order to show the absurdity of their principles, must not be imputed to him as if they were the expression of his own thought; on the other hand, that the thought of an author must be sought, not in the literal sense of the terms, disregarding what precedes and follows, but in the whole of the work and its conclusions.

If the court had followed its rules of logic, which are at the same time rules of right, it would not have accused me of stirring up hatred.

Certainly, I say it again, because it is an honor for me to say it again, and by saying it again I believe I deserve well from Justice and my country: Unless we soon manage to make the French nation what I said that the Church, through its system of education, tends to make it (see above, page 207, *twelfth passage*), we march, through the opposition that reigns among us between the principles and practice, toward class war; and when I am accused of instigating this war, I demand acknowledgment of the efforts I am making to prevent it.

⁸ On his trip to Cherbourg, the Emperor speaking to the body of engineers of Brittany, in Saint-Brieuc, I believe, said to them: "I want the canals to work like the railways, and simultaneously contribute to the prosperity of the country." How will the canals work if we make them dependent on the railways? The first condition of existence and operation, for an industry is liberty.

The chapters from which the three incriminated passages are extracted are entirely devoted to the exposition of the means of reconciling, through the means of right, antagonistic interests: — (Volume I, STUDY III, chapters V and VI, pages 260 to 360; — Volume II, STUDY VI, chapters V and VI, pages 208 to 268). The prosecution has not looked into it, because, it says, it does not concern itself with principles; in fact, it only looks for crimes. But without worrying about the principles, it had to verify whether or not the offense was involved in the principles, since, if it happened that this offense was, in the author's mind, that of the state of affairs, there was therefore reason, no longer to pursue the writer, but to award him praise.

The book *Of Justice in the Revolution and in the Church* is from start to finish only a plan of general conciliation, a draft peace treaty between the classes, and it is accused of inciting hatred! Why didn't we still quote this place from Volume III, page 548: “

Do you undertake, Monsignor, while we preach to the proletarian, to preach to the bourgeois on your side? It would be a great edification for the world, and peace would soon be made. I said in 1849 before the Court of Assizes of the Seine, that socialism was the *reconciliation of all antagonisms*. This reconciliation, I give you today its formula; it has nothing that can justify the opposition of the living soul: it is the return to Justice, to balance.

In 1849, I was sentenced, for my ideas of conciliation, to three years in prison; in 1858, I was again sentenced to three years in prison. Lamourette, who tried to reconcile the Jacobins and the Gironde, was guillotined. Could it be that, by the nature of things, when we talk about peace to people who hate each other, we irritate them? Or would it not be rather that at the bottom of my system of conciliation lies this theory, deduced from the purest thought of the Revolution: That men, equal before the law, are destined to become so again, and progressively, in their conditions and their fortunes; that for this it is necessary, first of all, to give everyone, with equivalent education, sufficient means of labor, then to make an exact balance of services and products; that this is the absolute right of producers and consumers; but that what opposes this egalitarian reform, what for thousands of years has systematically disrupted the balance and kept society in servitude and misery, is the theocratic and feudal spirit; it is the Church.

Twenty-first passage; Volume III, page 14:

We live under a regime of privilege, coalition and monopolization, where everything is arranged for inequality, where consequently everything is false: industry is false, commerce false, property false, improvements false; there are false balances, consequently false accounting, false accounts, scandalously exaggerated or depreciated services, fictitious products, revenues taken from capital and consumed twenty years in advance.

Let us reduce this proposition to its simplest expression. I maintain that, by a multitude of causes of which I only indicate a few here, and which all have their source in the organic inequity of the established system, there is not a fortune that is not above or below of the figure that justice, if justice were done, would assign to it. And since the number of those affected by the deficit is much more considerable than the number of those whose fortune exceeds the average, it follows that things are arranged as if the mass of humans were predestined to misery, in the interest of a

minimal fraction of aristocrats. This is mathematically obvious, and I challenge the prosecution to deny it. In what way would I be particularly guilty for having dared to say it?

If I had claimed, as the Court seems to believe, that *this regime of privilege, where everything is false*, is the product of a Machiavellian combination, of which the government would be the leader, the class of capitalists and big owners the culprits, agents and beneficiaries, I would understand that I could be accused of slander against the government and the bourgeois class, and consequently of stirring up hatred. I would be free to show my regret, and the court would not refuse me forgiveness.

But, — and I fear that this is precisely what makes my position bad, — this was not my thinking; like all the others, this passage has been diverted, for lack of a method of interpretation, or rather for lack of an exact notion of justice, of its true meaning,

For me, in STUDY IX from which this passage is taken, it is a question of determining by what causes the nations now advance in civilization, grow in wealth, population and power; sometimes they retrograde and die out. This is the problem of *Progress*, in a word, for which I seek the solution.

In order to find this solution, you have to look at society. from all points of view: science, art, politics, industry, etc.

From the point of view of Political Economy, I say that there is no progress, because if, on the one hand, industry, the force of production, seems to make vast developments; on the other, distribution is in complete anarchy; equilibrium, balance, either between values or between services, does not exist anywhere.

And why doesn't the balance exist? Because, as I said earlier, although the Revolution established, in the law, the principle of this balance, namely the equality of rights, the principle of privilege, or inequality, consequence of divine right, continued, in practice, to prevail; so that we confess with our mouth one morality, and by tradition we follow another. Whose fault is it? That of tradition itself, no doubt; tradition, which never conceived this idea of an economic balance, of a balance in the distribution of services, capital and products, and which stubbornly refuses to conceive it.

Let us explain with an example:

For a long time the newspapers, as if they had the mission to prepare minds for the measure, announced that the government, wanting to restore confidence among stockholders and raise public credit, was prepared to guarantee railway companies, for whom the construction and operation of railways becomes more and more expensive, a minimum of gross income. According to the latest news that reached me, the matter appears to be settled as follows: the State guarantees company bond holders a minimum interest of 4 1/2 percent, after the deduction of a minimum of 70 francs per share for the Orléans company, 50 fr. for the Nord, 47 for Lyon, 38 for the Est, etc. This means that if the gross product of the railway only gives 70 francs dividend for Orléans, for example, so that there is nothing left for the interest on the bonds, the State will pay this interest. Needless to add, mass journalism greatly appreciated the measure, from which interested parties promised themselves a notable increase.

Without doubt, the government's guarantee will be valuable both to bond holders and to share holders: but, to be completely in Justice, the government should offer a similar guarantee to all industrial entrepreneurs, guarantee to all workers a minimum wage. Beyond that, there is privilege, then, inevitable consequence of privilege, lack of balance || e, and sooner or later general decline.

I would take great pains to demonstrate that this interminable crisis from which the country is suffering, and which, in the path the government persists in following, will end in the death of the country or in a catastrophe, this crisis is entirely due to a complication of similar causes. It is always the spirit of privilege, born of divine right, which governs us and which I denounce.

— Theories, exclaims the public prosecutor, not without impatience; utopias, madness, which the courts have no business dealing with. What does it matter to us, your distinction of the two moralities, your opposition of human rights to divine right, and your exegesis of the Revolution? We reject your doctrines, we not only do not know them, we do not want to know them. We would have a lot to do if we had to examine the nonsense of all those whom their evil genius leads into our hands. What is certain is that your so-called theories are a seed of hatred; it is that, even if these theories were true, you disturb the public peace by unwelcome and indiscreet revelations.

Oh! I know that the magistrate, like the theologian, is inclined to consider new theories suspect; he believes, and boasts of it, that all that is necessary, in order for him to judge things, is the light of his old jurisprudence and the primitive formulas of the code. But I also know that this immobilist method leads to the strangest aberrations: I only want as an example the conclusions of the Attorney General M. Sapey, in the trial recently decided by the Seine Court of Appeal between M. Mosnier and Bonnard.

The story is good to tell here: it touches me in more than one place.

Mosnier reproached Bonnard for having shamefully mystified him by his system of exchange; in a memoir he cited numerous facts bordering on fraud, and requested the termination of the commitment he had made with this so-called Credit Dank. The commercial court, examining the case in depth, in the light of practice and theory, according to the principles of fair trade and sound economics, found Bonnard wrong, and pronounced the termination of the contract.

M. The Imperial Prosecutor Sapey maintained, on the contrary, that the court did not have to be concerned with principles; that the *case had to be assessed outside of any economic and social theory, and solely by the notions of common right*. That is to say that M. Sapey asked that we turn a blind eye to a combination that could very well result, as the commercial court had thought, in a *muddle*, to only deal with the external form of the contract. Absolutely as if, in a lawsuit relating to the construction of a house, the owner accused the architect of ignorance or bad faith, or maintained that the matter must be assessed independently of the principles of statics and building, which are not the work of the courts. No doubt the courts, created to undermine justice, do not have to concern themselves with the theories *in themselves*; courts are not committees charged with examining the value of economic or philosophical systems, any more than industrial inventions and improvements. But it is certainly up to the courts to see what, in theories, as well as in contracts and in their execution, has been done according to justice or contrary to justice; and

if, to enlighten themselves further, they need the testimony of special men, they appoint *experts*. M. Sapey, on the contrary, maintains that courts do not need to see things, either through their own eyes, or, in the case of blindness, through the eyes of others. From there, he showed, very learnedly, that the agreement between Mosnier and Bonnard, from the point of view of the letter of the code, and leaving aside the theories, being regular, there was reason to overturn the decision of the first judges: the court shared his opinion. Perhaps the court was right; perhaps Mosnier was as questionable as Bonnard: I am quite prepared to refer this point to the judgment. But it is certain that by turning a blind eye to principles, by not paying attention to theories, the court exposed itself to judging like the famous Bridoye, sentencing the trials by the roll of the dice. Perhaps the court also wanted to give a salutary warning to the greedy simpletons, always ready to entrust their fortune to alchemists and the inventors of perpetual motions. In this case M. Sapey's conclusions would be explained by irony: only I would prefer them in the columns of the *Charivari* than in the mouth of an imperial prosecutor.

Whatever the Mosnier and Bonnard affair may be at base, it is visible to everyone that M. Sapey's judicial theory, consisting of assessing the facts referred to the courts apart from the theories that produced them, is the same as that which presided over my judgment and dictated my condemnation. — “We do not discuss your principles,” M. Berthelin kept telling me; “we do not have to assess your theories here: it is only a question of knowing whether, by denouncing the Church as teaching a wicked morality, you have not offended public and religious morality; if, by criticizing the economic conditions of society, you have not, *ipso facto*, excited citizens to hatred of each other.” — Well! How then, M. President, I replied, do you want me to justify myself, if I do not explain to you by what series of ideas I was led to accuse the Church and to criticize the social state?

I would like someone to tell me what difference there is between the inquisition condemning philosophers to the stake, because their principles and theories are contrary to the faith; and our correctional police tribunals and imperial courts condemning philosophers to prison, given that the said tribunals and courts, without being in any way concerned with the principles and theories, which the Revolution made free, only consider the current state of things, more or less well expressed by the letter of the laws, relate everything to this state of affairs, take this state of affairs as a criterion, and if it turns out that the facts or writings referred to them contradict in any way this state of affairs is enough, they have the power to declare them punishable?

The Church arguing from its possession to make it a title to immutability, this is understandable: it is a divine institution. But magistrates of the Revolution applying to a society of philosophical institution, to a revolutionary society, the maxims of conservation in use in the Church, it would be prevarication, if we were not to attribute it to an ophthalmia of the understanding.

Let us have no doubt: this makes us take the good pleasure of the men who govern and their system of favoritism as acts of regular administration; which maintains among us the distinction of classes, the privileges of birth and race, corporate ambitions, professional vanities; which makes us settle on everything with a sort of infused knowledge, that we judge and fish in troubled waters,

is this old feeling of providential and feudal inequality that we have kept deep in our hearts, that the religion of the Church maintains, and which stops the development of new institutions.

A village health officer, whom the restoration of the nobility would certainly horrify, moreover a poor wretch, refused to make his son a veterinarian. — I am a doctor, he said; if my son becomes a veterinarian, there is no reason why my grandson should not be a farrier. — The young man is now a trooper.

This is the principle of this lack of balance, of this universal falsity, which in my opinion stops our progress. It is not a class of society that I denounce for the hatred of others, it is all classes that I accuse at once; it is against these absurd calculations of vanity and habit, the backlash of which is felt in the acts of power and even in the decisions of the courts, that I am trying to raise public opinion. I maintain that the farrier, provided he knows his profession, is as good as the veterinarian, and that the veterinarian is as good as the doctor: it is strange, when I remind citizens of the principles of 89, that I am accused of inciting them against each other.

But, with the principles of 89, what becomes of the social hierarchy? What happens to the nobility? What is becoming of the Church?

Twenty-second passage; Volume I, page 444:

War, replies the Church, enters into the plan of Providence, consequently into the forecasts of the Catholic empire. The army is also a church, a terrible church, freed from all human rights and duties, whose dogma, religion, economy, government, morals, are summed up in this word, which is its reason of state, orders. The soldier knows neither family, nor friends, nor citizens, nor Justice, nor fatherland: his country is his flag; his conscience, the order of his chief; his intelligence at the end of his bayonet. This is why the Eternal is a warrior, Dominus vir bellator, as well as a God of peace, deus pacis. This is why the Church has had warlike pontiffs, Urban II, Innocent III, Gregory IX, leaders or instigators of crusades, Julius II and a host of others.

Indeed, is not war the permanent state of humanity? War against the devil, war against heresy and philosophy, war against the flesh and against the spirit; consequently, war of peoples and governments against each other, war everywhere, war always. Could Justice exist from nation to nation, from prince to prince, from state to state, when it does not exist within the nation itself from prince to subject, from government to citizen?

War is the violent expression of religious thought. The army, like the Church, is the world of privilege, favoritism, indulgence, passive obedience, contempt for life and human dignity. It is, they say, the home of heroism and devotion, it is also that of betrayal and cowardice. Read, in the memoirs and correspondence of the time, the complaints of soldiers of all ranks under the consulate and the first empire. There, there is no morality, no concern for rights and laws. — Does he fight well? asked a general, apropos of a soldier brought before a court-martial for the crime of rape. — Yes. — Be indulgent. This is the word of the Church: Does he go to mass? — Yes. — Be indulgent. The crime of the soldier, like that of the Christian, only takes on seriousness insofar as it compromises command, hierarchy, discipline. The military oath above all; but the civic oath, what does it matter?

This page is one of those that I am most grateful to have written; so my surprise was great when the investigating judge told me that I was being charged with a crime. And when I read in

the considerations of my judgment that *I point out the army, which is the homeland of honor, to public contempt, by saying that it is the home of treason and cowardice*, I admit that I don't understand any more. I'm afraid that it is the illness of people who don't understand being afraid and forming illusions; I am afraid, I said, that there is, beneath this incredible disguise of my words, something else.

If I had been guilty of an insult as absurd as the one against the French army that is attributed to me, I would lower my eyes and beg for mercy: that would be my entire response. Are not our soldiers, as well as our priests, to whom I compare them, fellow citizens, men who touch us from all sides, by blood, by education, by ideas, by labor itself, since there is not a young conscript who is not a worker? How do they want me to insult the army?

Perhaps the accusation, placing itself from the point of view of the riot, the memory still full of our last struggles, will have seen in my words, inspired, according to it, by the spirit of party, a cry of hatred against the army, which, in two deplorable circumstances, in June 1848 and December 1851, defeated the democracy.

If this was only the court's thinking, I am able to comply with the request. May the court take note of the declaration I have just made: what remains for me to say will show whether it is sincere.

When, following these words, *war enters into the plan of Providence*, I add these, *The army is also a Church*, it is obvious that I meant EVERY ARMY, and not *some particular army*, for example, the French army. The article *the* is generic here; it is not determinative. It is therefore a state of affairs, a social situation that I am describing, not a class of citizens that I am denouncing. The French army has no more to do here than the bashi-bazouks or the sepoys.

What is now this situation, designated by me in the two terms that manifest its reality, *war*, the *army*, correlatives of *Religion*, the *Church*?

A fatal situation, created by the regime of divine right, in which the relationships being inverted, force prevails over right, and Justice is done in opposition to itself.

In principle, war is a state in which all acts that Justice prohibits to man and citizen once again become the privilege of the warrior:

Right of life and death over the person of the vanquished, and consequently the right to place him in servitude: the entire practice of antiquity proves this;

Right of rape, both on men and women: the Roman general Marius, after the victory won over the Teutons, having refused to grant safety to the modesty of their women, they all cut each other's throats and massacred their children. In Algeria, when the Arabs took us prisoners, using the law of war in their own way, they raped them;

Right of devastation and arson: we know the words of Napoleon about Turenne, who was blamed before him for the fire of the Palatinate: "He had the right to act in this way, if it was part of his plan," said Napoleon;

Right of pillage: any city taken by storm is delivered as a reward to the soldier;

Right of massacre: the Convention orders all prisoners taken in Quiberon to be put to death by force of arms. They were French traitors to their country, people will say. No doubt: but in the eyes of the emigrants the Republicans were also traitors.

For centuries, the progress of morals and the sentiment of humanity have brought some restrictions to this horrible right: these restrictions are what we today call the *Right of War*.

Thus, we no longer reduce entire populations into slavery, we no longer massacre them; their nationality is taken away from them, by uniting them to the domain of the winner.

Instead of pillaging the towns, a contribution is levied, either in precious objects or in cash. Instead of mass massacres, we settle for summary justice, like that of General Radetzki, in Italy.

These modifications and softening of the law of war are carried out by means of the *orders*, a word in which the entire philosophy, the entire morality of the soldier is summed up. Please do not take my words in a bad light here: it is the glory of a nation and its armies that the orders, with regard to the restrictions placed on the law of war, are severe; but it is no less true that the order turns soldierly virtue into pure machinery, to which the conscience is as light as liberty is to the Jesuits. And it is this blind respect for discipline that makes the soldier so valuable: passive obedience being the lifeblood of the army, without which there is no salvation, no victory. What would have happened, on 13 Vendémiaire, if the soldiers of General Bonaparte had taken it into their heads to say: These men, on whom we are ordered to fire, are our fellow citizens, they are the national guards, French people, insurgents against the despotism of the Convention? What would have happened, in June 1848, in December 1851, if, instead of obeying, the army had decided to deliberate? The democratic party can regret, and I regret that it did not do so: is it up to the magistrates of the imperial government to say that by summarizing the morality of the soldier in this single word, the orders, we are slandering him?

This is why I was able to say in complete truth and without offending anyone that, *if the army is the home of heroism and dedication, it is also the home of betrayal and cowardice*: the Court was wrong to delete the first phrase and make me say simply, *the army is the home of betrayal and cowardice*.

What constitutes the heroism of the warrior, the virtue of Scipio, du Guesclin, Bayard, Latour d'Auvergne, is that they do not use the right of war for themselves, being as disinterested, as human, as chaste as they are brave. In this regard, no soldier, either in ancient times or in modern times, can compare with the French soldier.

But it is no less true that this terrible right of war, which lies at the bottom of the soldier's soul, and which the restrictions of the order very weakly cushion, maintains fatal habits in the nation, and puts liberty constantly in danger. This is why, for thirty years, opinion has spoken out more and more against the regime of standing armies; this is why England and the United States

do not suffer from an army at home, and finally why the Emperor Napoleon I held more to his glory as a legislator, a judge and a statesman, than to all his campaigns.⁹

I will summarize regarding this charge:

What excites hatred between citizens is the opposition of their interests.

Now, the opposition of interests is caused by the principle of feudalism and divine right, of which the Church is the representative and the regime of war the sanction.

To put an end to this state of affairs, we must find the balance of forces and interests; my book has no other aim; I protest against any other interpretation. Say, if you want, that you don't want this equilibrium; that you reject the Revolution, in its principles, in its consequences and in all works; put the Revolution on trial: but respect its interpreter, who can do nothing about it.

⁹ Belgium began the demolition of its fortresses: Ypres, Menin, Ath, Philippeville were demolished; we are talking about demolishing Mons and Tournay, we are asking the same thing for Namur. At the moment it is a subject of serious controversy and real anxiety for the country, whether and how Antwerp should be fortified. Many people find this gigantic enterprise more dangerous for national freedom than useful. The Belgian people, whose numerical inferiority between great powers condemns them to systematic neutrality, seem to understand at this moment that the surest way for them to enforce their neutrality, which means their independence, could well be to disarm entirely. We do not dare completely abandon ourselves to the faith of the treaties; but we have even less confidence in the virtue of the citadels: we say to ourselves that the guarantee of the four powers will, in short, always be worth more than all military defenses; we are not sure that in the presence of this guarantee of the powers, which has become an article of European public law, the fortifications of Antwerp, inspired by distrust, are not already the beginning of a violation of the treaties; we wonder what we would say to Prussia, to Austria, to France, if one of them came to say to Belgium: Your disarmed neutrality, neutrality which I promised to respect, and of which you have accepted the guarantee from me, is a condition of security for me vis-à-vis the other signatories; therefore I oppose the construction of your fortress. It is feared that through this first act of untimely militarism, Belgium will lose its prestige as a peaceful, industrious and constitutional power, and that the arming of Antwerp will be the starting point for the decadence, internal and external, of the nation. Added to all this is some presentiment that the day is approaching when, for Belgium and for Europe, the law will be decidedly beyond the reach of force. In this, I can say that the tendencies of the Belgian people are fully in agreement with those of the people of Paris, with the most advanced aspirations of the revolutionary party. If the Republic is re-established in France, it will undertake, vis-à-vis civilized Europe, only one war, which it will be able to bring to an end quickly: it will be the war of universal disarmament. These armies, of which after all we French have the right to be proud, since there were never any so beautiful or so brave, we no longer want them; we no longer want citadels, glacis, nor marches, no more Cherbourgs or Gibraltors. We have had enough of this awful profession, which has its schools, its teachers, its manuals, its legislation, its literature, its own customs: if the criminals seem ridiculous to us, the heroes and the thunderbolts of war seem to us above all to be feared. We know that there is no conquest which benefits as much as equal and free exchange; and if one day, having all returned from exile, we remember Belgium, it will not be to ask for its annexation to France, that no longer makes sense in our ideas, but to open up to its workers and to its products our doors all wide.

§ 4. — Propagation of false news.

Everyone was surprised to see article 15 of the decree of February 17, 1852, certainly issued with a view to the periodical press, applied to a large book of moral philosophy. — One of my friends, careful of my reputation as much as of the truth, was kind enough to warn me that in one place I had made an inaccurate quotation from Seneca; elsewhere I had poorly translated a passage from Cicero; that certain facts of ancient history, reported by me as accurate, left something to be desired. I thanked this friend, and took note of his remarks for a second edition: how can I be prosecuted, for these scholarly peccadilloes, as if I had spouted false news? The theory of the Court would tend to nothing less: this is why I energetically reject it. In addition, let's see this *news*:

Whereas, finally, in pages 250 and 450 of Volume I of his book, Proudhon, in bad faith, published false news; that in fact he publicizes, and this contrary to the truth, as he admitted at the audience, that, “under the inspiration of the clergy, a general purification is accomplished, alongside which the purifications of Robespierre would only be a game,” and that he drew up lists for a first batch of 40,000 individuals who would be, according to his expression, “the most unhealthy in Europe; » that finally he represents as having neglected in the Crimea the sick who did not confess, the sisters of charity,” who, in reality, were in the last war the Providence of the soldier, whatever his belief and his nationality;

Whereas, as for the application of the decree of February 17, 1859, that the terms of this decree are general, they punish any publication of any false fact, without imposing this condition that the fact be presented as current at the time of the publication; that the legislator could not have wished to distinguish between the case where the published fact has just happened and the case where a certain period of time has passed since this fact would have occurred, since in both cases the danger that the decree seeks to avert, which is the consequence of the propagation of the false news, is equal; that the legislator is concerned above all with the harmful nature of the news; that moreover, in this case, the first false fact released to publicity must have worried the public, not only for the moment, but for the future.

That Proudhon is convicted of having committed the offenses provided for and punished by article 8 of the law of May 17, 1819, 7 of the decree of August 11, 1848, 3 of the law of July 27, 1849, and 15 of the decree of February 17, 1852.

The Court affirms that I *admitted at the hearing* the falsity of news that I *published, in bad faith*, in my book. This is serious. Many people present at the hearing assured me that I had not admitted nothing at all. As it is not possible for me to contradict the court so sharply, I will limit myself to responding that if I *recognized, at the hearing, the falsity of the news*, as it is relative in the judgment, I did not recognize at least that I had PUBLISHED it, which nullifies the recital of the court. You will judge.

Concerning the numerous arrests that took place in 1851 and 1852, following the coup d'état, I wrote:

Twenty-third passage; Volume I, page 449-450:

I do not ask what use the clergy has made of its influence in our recent political commotions; I like to believe that it only fulfilled a mission of charity. The Terror seemed to have returned; a general purge, compared to which Robespierre's purges would have been only a game, was taking place. Things were pushed to the point that the Minister of the Interior, M. de Persigny, one day thought himself obliged to restrain, by an official circular, this zeal for proscription. According to *one rumor*, there would be lists all drawn up for a first batch of 40,000; what is certain at least is that the police file of a friend of mine bears the number 37,000 and so; and that a German publication has been announced in a Cologne newspaper containing a list of 6,000 elite individuals, reputed to be the most unhealthy in Europe, and over whom, at the first disturbance, the hand of the counter-revolution must be extended.

Now here is the explanation I gave to the Court:

In Chapter V, Volume I, STUDY IV with the title: *Corruption of public morality by the government of Providence*, among other immoral results that result, in my opinion, from a regime founded on divine right, having as its law the reason of State, for sanctioning the armed force, one of the most serious is *the suspension of public trust and charity*.

This is written in full, at the end of the section, of which the public prosecutor's indictment only cited half.

Now, what produces this suspension of public trust and charity?

The rage of denunciations, on the one hand; the terror they give rise to, on the other.

This rage, in 1852, went to the point that the Minister of the Interior, M. de Persigny, thought it necessary to put an end to it with a circular. I did not expect that by recalling such a fact, one honorable for the emperor's government, and by going back to the causes that motivated it, I would expose myself to committing the crime of publishing false news. This is the case for applying the two verses of the good Lafontaine to me:

Ce monseigneur du Lion-là
Fut parent de Caligula.

The fury to denounce had to be very great. indeed, so that the minister of a new power, of a power that could only be established by a battle, and which one part of the nation treated as a usurper, while the other part acclaimed him as savior; it was necessary, I said, for the fury to denounce to be very great, for the minister of such power to believe he had to repress it.

But the terror was no less: we only spoke, these are the rumors that I report, of batches of 40,000 and 100,000; it was talked about so much that the foreign press welcomed these rumors and converted them into reality. Isn't this what has been seen in all times: in 93, when Marat, half mad, asked for 100,000 heads; after 1815, when M. de Labourdonnaie was making his categories. Is it not official that in 1848, following the June days, there was a first transportation of 14,000 individuals; after the coup, a roughly equal second? And in its last session did not the Legislative Body vote for a general security law, directed exclusively, according to the report of the president, M. de Morny, against the *red party*, which is implemented every day?

Regarding ecclesiastical personnel, I took care, as always, to separate the men from the institution; I expressly declared that while tracing the cause of our political agitations and our

terrorism to the principle of divine right, I did not hold the clergy responsible: this is again written, in full, at the head of the incriminated passage, and in the lines that immediately follow.

What! I note, I describe the symptoms of a moral epidemic, particular to societies governed by divine right, subject to the reason of state, in which the principle of authority takes the place of justice and the military order takes the place of conscience; it is this respect for ancient fanaticism that I pursue and denounce: and I am made to say, despite my text, that *under the inspiration of the clergy, a general purification is being accomplished; that a list of 40,000 outlaws was drawn up*, etc.! It is no longer interpreting the thoughts of a writer; it is not even quoting him: it is distorting him.

About no. 37,000 *and such*, M. de Cordoën gave an explanation which I no longer remember, but which I accept. Does it follow that I slandered the police administration by publishing false news? I gave No. 37,000 a scope that it doesn't have: that's all. Previously in a trial that occupied public attention, M. Jules Favre having misunderstood the meaning of a police report, the facts were reestablished in their true light by the prefect, M. Piétri; there was no prosecution against the lawyer: why is the same not used against me?

Let's move on to the last false news.

Twenty-fourth passage; Volume I, page 249-250:

The clergy have their hands everywhere. They are the ones who runs hospitals, shelters, asylum rooms, ambulances, and our soldiers have not always had reason to praise them. An officer of the Crimean army complained that the so-called sisters of charity neglected the sick who did not confess. From time immemorial, the clergy has taken over the department of public charity, etc.

Whereupon the court, taking charge of the sisters' defense, protests that the fact alleged by me, on the report of an officer, is pure slander; that the sisters of charity *are the providence of the soldier, whatever their religion and nationality*.

I am afraid that the court, by wanting to do things too well, has dissatisfied the Church and the Sisters of Charity. This indifferentist philanthropy that ut attributes to them is part of a feeling higher than the Gospel: on this account, I would only have to applaud ut, noting within the Church party itself the progress of new ideas. The sisters of charity would therefore be more than just Christians, they would be citizens!

But that's not what it is about: did I publish what law calls *false news*?

The court affirms it: on this occasion, it issues, in a special consideration, a theory of how to interpret the decree of February 17, 1852.

Later I will explain about the Sisters of Charity. But I will first respond to the court that his theory is false, that it did not understand the meaning and scope of the decree, and that, in this case, the application it made of it is radically erroneous, therefore unjust.

What does the decree say?

The publication of *false news*, of *documents fabricated, falsified or falsely attributed* to third parties, will be punished by a fine of 50 francs to 1,000 francs. — If the publication or reproduction is made in bad faith, or if it is likely to disturb the public peace, the penalty will be one month to

one year of imprisonment, and a fine of 500 to 10,000 francs. The maximum penalty will be applied if the publication or reproduction is both likely to disturb public peace and in bad faith.

It is a wonderful thing to see how easily laws are botched, and with what difficulty the courts responsible for applying them manage to grasp their spirit.

It first seems obvious that this article 15 of the decree of February 17, 1852 concerns exclusively newspapers and does not apply to books. How do we expect, in fact, that a book, which requires three years of study, ten months of printing; which is bulky and expensive; which is read slowly, is aimed at special readers, who are much less interested in news and anecdotes than ideas; a book in which, following the rules of interpretation that we have laid down, the anecdote only serves as a covering for the idea, is not the essential thing; how, I say, can we suppose that such a publication could provide material for the offense of false news, published in bad faith, and with the intention of disturbing the public peace? Brevity, celerity, ease of delivery, are the necessary conditions for false news, provided for by the decree of 1852. Apart from that, it is simply stupid, and the alleged crime absurd.

The Court did not want to hear any of this. A temptation to which the contemporary judiciary willingly gives in and which posterity will reproach it with is to extend, through an arbitrary generalization, the application of the laws to cases that had not previously been planned for or even foreseen by the legislator. I cited, in the book *Of Justice*, Volume II, page 536, an example; I did not expect that I myself would soon be the victim of this deplorable drive. Well, since with current justice an accused must be ten times right, I admit for a moment that the decree of 1852 did not make any distinction between daily publications and books; that false news must be pursued wherever it appears, and that consequently the court was right to punish it in my person, if it exists in my book; in this very hypothesis, I maintain that the crime of false news with which I am accused is entirely the creation of the judge; that it is, like contempt for morality, the result of a false qualification; in short, that if, in the incriminated passage, there is an offense, this offense is not at all that of false news, and that article 15 of the decree of February 17, 1852 is in no way applicable to it.

I ask pardon for this legal discussion, which is not without interest.

The entire article and the precision of the terms that compose it imply this: for there to be an offense of publishing false news, the news, first published as true, must then be recognized as authentically false, false in its objectivity and materiality, as happens with a document *fabricated*, *falsified* or *falsely attributed* to third parties.

For all news necessarily relates to a fact and as the truth, in matters of fact, is that which exists by itself, objectively, and outside the intelligence that grasps it, in the same way false news is the announcement of a false fact, of a thing that has no objective existence, and whose reality is entirely in the imagination of the inventor. It is therefore necessary, for the judicial establishment of the crime, that the falsity of the fact be materially and extrinsically demonstrated. Otherwise, if the falsity of the news was left to the judge's discretion, it would be he who would create the truth, and as, for the creation of truth, the reason of the accused is worth as much as that of the judge, it would be the judge himself that the accused could accuse of publishing false news.

Let us clarify this with examples.

An individual announces that the Bank of London is suspending its payments. The next day, the letters from England all testify that this is not the case. The news was false; the judge is entitled to affirm this and to take action. Why? Because the falsity of the fact has been authentically recognized.

A stock speculator announces that Sevastopol is taken by the allied armies: immediately the rise is declared; the cannon are almost fired and the bells rung. It was a false report, of which Justice would have justly punished the author, if it had found him. Why? Because the magistrate would have judged the news premature, improbable, false? No. Because the dispatches from Crimea following the announcement would have demonstrated the deceitfulness of it.

One day, in a poorly written dispatch, even more poorly read, an illustrious general got it into his head that the emperor was dead: I will not say what conclusion the illustrious general was preparing to draw from this serious news. Soon the poor man was able to recover from his alarm, and how? Quite simply because the electric telegraph came to correct his first opinion. The emperor forgave the general's zeal: he could just as easily, just as justly, have dismissed him, for having given credence to news of which he had not been better assured.

In the preceding examples, the offense exists: there is false news; the proof is made demonstratively by the subsequent manifestation of the truth.

But there are circumstances where the falsity of the announced fact cannot be established, either because the fact escapes, by its nature, from any empirical investigation, or because it cannot be accepted by Justice, or even because the law prohibits the search for it. In this case, it is still possible that there is some crime in the news; but it will no longer be the crime of false news, which has become impossible, due to the impossibility of any test.

Every day, the Catholic papers are full of stories of apparitions of the Virgin, healings carried out by relics, transportations and even miraculous transformations. The *Univers religieux* of May 18 contains the story of a young girl from Sourdes, department of Hautes-Pyrénées, to whom the Virgin Mary had appeared several times, and who was seen, on March 4, by more than 5,000 people, in conversation with the Mother of God, whom she claimed to see and hear, although the 5,000 people present neither saw nor heard anything. A collection was immediately organized for the construction of a chapel at the place of the apparition; from the first day, the amount of sums paid exceeded 1,500 francs. — The same sheet, issue of June 6, in an article on the blessed Mary of Agreda, relates that this saint, who lived at the beginning of the seventeenth century and resided in Madrid, was transported, during her ecstasies, to the other side of the Atlantic, in New Mexico; that there she preached to the Indians, converted them, distributed images to them; so that, when the Franciscan fathers arrived to preach the Gospel to the Indians, they found the job done and their neophytes perfectly instructed. — But here is something even more extraordinary, told by the same newspaper, issue of June 16. A young woman, Jewish by religion, actress by profession, after leading a happy life, suffering from pulmonary phthisis, enters the Saint-Louis hospital, Sainte-Marie pavilion. Assailed by the sisters, she ended up converting, and on May 19 she received baptism. By a favor from heaven, she had a revelation of the day of her death, which

happened, as she had announced, on the last day of the octave of the Blessed Sacrament. Now here is the marvelous, marvelous like we have never experienced before.

“I was in the chapel,” recalls the narrator of the *Univers*, M. Barrier (at the moment when the sick woman, whom he had just visited, breathed her last), “and I was meditating on this divine word of Jesus Christ to the Pharisees: *The women you have lost will precede you to the kingdom of heaven*, (I did not find this passage in the place cited by M. Barrier, and I do not know if it exists in the Gospel.) But I was undoubtedly wrong (in calling the dead Jewess a *lost woman*), since the venerable Mother Saint-L... crowned with white flowers (like a virgin), and wrapped in white clothes the mortal remains of A. L. purified, regenerated by the baptismal waters; and it was this other divine word that I should have meditated on: *Her sins will be forgiven her, because she loved much.*”

Love has restored my virginity, said the amorous courtesan; here is one to whom baptism has restored her virginity. It is Mother Saint-L... who assures this, and M. Barrier makes it clear.

Do all these pretty miracles, which produce such pretty receipts, constitute the crime of *false news*? Nothing would be easier for our courts, as long as they put some good will into it, than to say it. Experimental physics declares all these facts impossible; reason disavows them; when, instead of canonized saints, like Marie d'Agreda, or Jews converted and reintegrated into their primitive innocence, like the young actress A. L., it is a question of sorcerers, telling good fortune or preserving from conscription, the ministry public does not hesitate to pursue them. Why then, here, does it not pursue? Doesn't the regeneration of the actress A. L. fall into the category of manufactured articles, of which article 15 of the decree of 1852 speaks? Let us do justice to the public prosecutor here: 'although science most absolutely denies the existence of these phenomena, Justice cannot directly note their falsity, an essential condition for there to be legally false news.

Let us apply these principles.

It displeases the government, protector of religion and the Church, that an author suggests, in a book of moral philosophy, that the sisters of charity, no less devoted to faith than to charity, sometimes use constraint to make the sick confess, and show regrettable negligence towards the recalcitrant.

So be it: there was perhaps grounds, under the law of May 17, 1819, to accuse this author of *defamation*; but of the publication of false news, I deny it, and all the more energetically because if the accused tried to justify his statement, the court, under the law of May 26, 1819, would prohibit him from providing proof. It would tell him what the honorable M. Berthelin told me: Do not insist, you would worsen your position. That is to say that in such a case it would be forbidden to verify the news.

Well, let the public prosecutor get out of this dilemma, if he can:

Either you accuse me of *defamation*, under the law of 1819: in this case, I recognize it, the proof is prohibited, and I only ask to explain my words favorably;

Or you accuse me of false news, under the law of 1852: in this case, I have the right to prove the fact, and I ask to prove it.

For neither can you, by a confusion of the two laws, prosecute me for an offense and follow the procedure indicated by another; nor is it up to you, in the case of the offense of false news, to presume the falsity of the fact, and to declare it, from your subjective, acquired knowledge. It is not your assessment that decides the truth or falsity of things; as the truth exists, independent of any human authority and any assessment or judicial declaration, similarly a lie can only result from a material observation.

Is it now enough for you to simply accuse me of defamation? In this case, here is my answer.

When I reported, without guaranteeing it, the remarks of an officer of the Crimean army, remarks that I heard repeated at the audience by one of the municipal guards who had been part of the army of Orient, I have not, believe me, attached to this subject a thousandth part of the importance that the court found in it. I only wanted to say a very simple thing, which everyone knows, of which the *Univers religieux*, which I cited earlier, reports a miraculous example, and which the entire Church holds in great honor: it is that, whatever the charity of the people dedicated by religious principle to the care of the sick, and I readily admit that this charity is great among the sisters, precisely because the devotion of these people is linked to their religion, they are trained to talk about religion to the sick, and even, on occasion, to use pious restraint towards them. This is the truth, and far from taking it as a slander, the sisters consider it a glory. Charity consumes them, and *the zeal of the Lord devours them*; healing the sick is their love, saving souls is their passion. It is probably to this double spirit of the sisters, and to the fear it inspires, that the troubles that occurred in Bahia at the beginning of last March are due, which the *Univers religieux* speaks of in its issue of May 18. The mere arrival of the Sisters of Charity in Bahia causing a riot to break out speaks loudly. As for me, I would not even reproach the sisters for their excess of zeal, if I were not convinced, in my soul and conscience, that a charity based solely on faith is subject to regrettable indiscretions and sad failures, and that if it is beautiful to serve one's brothers for the love of God, it is safer to serve them for the love of humanity.

The Revolution will not allow the institution of sisters of charity to be lost. It will reform it, beautify it, ennoble it; it will make it a sort of conscription for young girls. Such words, in my mouth, are the most beautiful praise that the good sisters have ever received, the most complete reparation for the slander that can affect them.

I have finished examining the passages noted by the public prosecutor.

I have no doubt that my book contains many others that appear to him to be as reprehensible as those that we have reviewed; but, as he chose his samples himself, it is according to the samples that he was pleased to produce that it is appropriate to judge the author and his work.

What remains now of this scaffolding of crimes by which the prosecution believed to reality reality in various ways? Arbitrary qualifications, disguises and even falsifications of texts, propositions presented in the opposite direction, objections taken for conclusions, definitions translated into insults, the constant forgetting of the rules of interpretation in matters of writings, a perpetual confusion of the sacred and the profane, by means of which one would like to use the secular axe to repress attacks made against the Church; finally, the most complete disdain for the

principles, institutions and laws that have governed, officially at least, the French nation since 1789.

Nothing, nothing, nothing, that is the trial. I can challenge the public prosecutor to provide anything positive, to extract from my book one proposition, one single word, that falls within the scope of the law, of the law, I say, brought back, like my words themselves, to its fundamental thought, interpreted by its fundamental thought, which is the Revolution.

And yet I will not succeed in convincing the public prosecutor; and I know very well that among the magistrates called to judge me, there will always remain some whom I will not convince any more than him. Something murmurs within them and growls at me; it seems to them that despite everything a book such as mine cannot be tolerated, that it is condemnable, that it must be condemned. They think, and this is what reassures their religion, that the case submitted to them is one of those difficult, ambiguous cases, which the criminal law has not clearly provided for and defined, but which the judge owes to public conscience, to his own conscience, not to leave unpunished, whatever the judgment's considerations.

Well! I want to seek out, to the depths of the souls of my judges, the hostile feeling that condemns me, to bring it to light, to force it to explain itself and to confound it.

Let us engage in a bit of history.

Just seven years ago, an extra-legal act of the executive power suddenly changed the political constitution of the country.

To justify this act, to obtain the *laissez-passer* of six million votes, it had to be presented, to some, as the supreme condition of social salvation; to others, as a return to the principles of 89 as well as to the glories of the first empire.

Now, if I point out, in passing, that the second of these points of view, intended to calm the effervescence of the multitude, has been neglected until now, especially with regard to the *principles* of 89, I will not say anything that offends the imperial government, and I will not slander anyone. We could not simultaneously pursue and achieve two opposing goals, the salvation of the retrograde fraction of the country, then the most powerful, and the development of the principles that this fraction abhorred.

Fatally engaged in resistance, the new government could not, even if it had had the will, prevent the principle that circumstances imposed on it from producing its consequences. From this results, in the government and in the country, a political, legal, moral situation, radically opposite to that which existed before the *coup d'état*. A wind of opinions that we thought dead began to blow over the nation again; old maxims became fashionable again; public thought seemed to regain its course; habits, style, everything seemed to want to reform itself after a lost type: one would have said the revivification of a corpse by the pile of Volta.

That many imbeciles believed in this simulacrum of social palingenesis, who doubts it? But here is the worst: especially since stupidity has its share, its very large share in the government of human affairs, it was enough for the peat that represents it to have taken this fantasy of exhuming the past seriously for sensible minds, who are distressed and disgusted by the spectacle they are witnessing, to reject now anything that could shake this supposed order of things and restore

society to its legitimate *status quo*. What's done is done, they say: don't touch it again. Enslaved as they are to a legality of circumstance, they lose sight of the fundamental pact, the fundamental rights, all the principles on which the system of French laws is based. For the miserable interest of a sect, of a passion, of a day, they sacrifice, without blinking, the superior interest of generations and of social development. To catch a mouse, they set fire to the building.

Thus, to return to the current trial, we believed it necessary, after the *coup d'état*, to return to the Church, to Catholicism, its secular honors. Under Louis-Philippe, public opinion would have put a brake on this fantasy of religiosity: because following December 2 public opinion remained silent, it seems to certain people that there was a novation in the pact between the Church and the State, that this novation sufficiently results from the universal silence, according to the proverb, *He who says nothing consents*, and despite the code that formally says that in matters of conventions "novation cannot be presumed." And now that the protest has risen, demanding, in the name of the principles of 89, that the Church return to the modesty of its legal existence, and that the comedy ends... This language, they cry, is intolerable; it is an outrage to religion, it is an outrage to morality... And I reply: Nothing that we claim today in favor of the Church, nothing that we claim to do for it is constitutional, is legal: far from it, all right, public and civil, in its spirit and in its letter, is contrary to it. You want to maintain the thought of the *coup d'état*, to avenge the honor of the Church, to avenge religion. I know your motives; I will not discuss them. Start, therefore, by having the competent authority declare that the Revolution is void, that its principles are pernicious and false, its morality reprobate, its rights abrogated, its justice cursed. You need no less than that to justify a conviction against my book. Because you probably think that the *great principles* on which the Imperial Constitution is based and according to which it must be interpreted, only exist as long as it pleases the judges to remember them. You do not think that this bastard legislation, conceived in bad times, made up of parts and pieces, which we call the *Laws regarding the press*, subordinates, annuls, these great principles; that in matters of jurisprudence, the particular absorbs the general, the new takes away the old, and that, through seven years of an equivocal, surreptitious reaction, the prescription is acquired against the ideas, the institutions and the conquests of two generations. And what is your Church, in the presence of the society recreated by the Revolution? What is your theology, in the face of the manifestos of 89 and 93?... Let the Court think about it: the path it would take by confirming the sentence of the first judges ends, and this is where I stop it, at the absolute, fraudulent negation of our entire legal state, a state that irrevocable destiny has made for us, which no man in the world has the power to abrogate, and outside of which there would be only decline and ignominy for the nation.

I protest against all these concerns about a so-called public order, which would be nothing other than the siege of the principles of 89 and the suspension of all the rights consecrated by the Revolution; I ask that there be no more question of religion or Church in the sanctuary of the law, and that justice, too long ignored and hindered, resumes its free course.

These considerations lead me to report on the incident that complicated the trial: I want to talk about my petition to the Senate.

IV. — PETITION TO THE SENATE.

From the outset, I told myself that the logical conclusion of my book would be, after recognizing whether public opinion was favorable, to bring about a reform of the Concordat. Then, anticipating the case where I would be prosecuted for the publication of this book, and judging that the prosecution could only take place under the law of May 17, 1819, art. 13, which concerns *defamation* of a corporation; or else under the law of March 25, 1822, art. 1, which punishes *insult to religion*; or, finally, if the public prosecutor judged it appropriate to combine the two offenses, by virtue of one or the other law, I still told myself that, in this case, I could find myself in the need to anticipate, by a request to the Senate, the protest of the opinion.

From all this resulted for me a new, extraordinary aspect of the question.

What was this book, leaving aside the positive part that serves as an exegesis of the Revolution?

A trial against the Church and Christianity.

Of what, in this work, are the Church, and consequently the Christian religion, accused?

Of teaching an erroneous morality, inferior in every way to the morality of the Revolution, which has become, since 89, the public morality of the French people and the basis of its public right. It did not seem possible to me to discover other pretexts for accusation in the work. The offenses of *contempt of public and religious morals*, of *advocating acts classified as crimes or misdemeanors*, of *attacking respect for the laws*, of *stirring up hatred*, of *publishing false news*, with which I am being charged today, when they are not based on passages taken in the wrong direction, truncated or disguised, are all — I believe I have proven it beyond the evidence — the product of what I will call religious consciousness, a consciousness of which the effect on the understanding is that any attribution made to religion of an error in morality seems to the religious soul an outrage against morality. I will not return to this phenomenon of which the first judges were so completely duped and me a victim: this is how, in all times, persecution has been unleashed against the reformers; this is what made the Roman proconsuls say that Christians were impious, scoundrels, impure and immoral beings, because they treated Venus as naughty, Bacchus as a drunkard, Mercury as a thief, Jupiter as an adulterer.

Therefore, I concluded, whatever religion my judges may be, I can, reminding them of the principle of their institution, respectfully address them with this language:

Morality, the principles of which were officially laid down by the Revolution, is one thing; Religion and the Church, tolerated, protected, for purely political reasons, by the same Revolution, are something else.

By denouncing, between the Revolution and the Church, an antagonism that we did not suspect, have I slandered the latter and outraged its religion?

This is the only thing that the public prosecutor has to examine; and, if necessary, the only trial he can make against me...

This reasoning was in no way modified by the seizure of April 28 and the summons that was subsequently given to me. While this summons, in fact, made no mention of *defamation* against the Church, nor of *contempt of Religion*, I knew that the court had the right to change the qualification of the offenses contained in the passages incriminated, and to explain consequently its judgment.

It was therefore in anticipation of this double accusation, the only rational one, the only plausible one, that my counsel and I resolved that there was reason to oppose the accusation, before pleading on the merits, with a request for suspended sentence, explained as follows:¹⁰

In PRINCIPLE, according to the laws of 1819 and 1822, religion is considered voluntarily, in France, as an auxiliary of public morality.

As a result of this principle, the Catholic, Protestant and Jewish religions, *recognized by the State*, enjoy the protection of the laws and the respect of citizens; their ministers receive salaries from the public treasury.

The Catholic Church, formerly the State Church, also enjoys special privileges, guaranteed by the *Concordat*.

In FACT, it is established that public morality and religious morality, based on different principles, follow opposite directions, to the point that religious France goes in the opposite direction to revolutionary France. Even if we contest this *fact*, it is the right of every citizen, convinced of its reality, to denounce it as being of the highest concern to the political constitution of the country, public morality and order.

Moreover, it is the Revolution that, since 1789, has officially governed public morality: all religions obey its law; it is only on this condition that they can be *recognized*.

It follows from this that Religion is, before the law that *recognizes* it, only a theory capable of being false and true, which consequently can be judged non-moral; that the Church, which formerly enveloped the nation, is now enveloped by the Revolution and has become constitutionally its subject; that finally, by virtue of the principle of equality before the law, any citizen can be allowed to reproach the Church for braking the law, the public prosecutor forced to demand against the Church, the Senate to pursue its dissolution.

The law, in France, is atheist, said a famous orator. Atheist, that is to say freed from any profession of religious faith, based on the progressive knowledge of man, no longer on the problematic knowledge of God. Developing this idea at the hearing, my defender added: "On putting on his robe, the magistrate abdicates his Christian conscience. The proof, gentlemen, that you cannot take on any religious character is that if, as magistrates, you retained something of the Catholic within you, and you had to judge a Protestant, you would have to recuse yourself; and conversely if you retained something of the Protestant in you and you had to judge a Catholic, you would again have to recuse yourself. You are only men here, magistrates of the Revolution"

¹⁰ See, at the end of the memoir, the letter that M. Gustave Chaudey wrote to me on this occasion, and in which is summarized in a few pages my whole system of defense.

These consequences, for the Church, are terrible: they result from the about-face made by the public, official conscience of the French people since 1789.

In this situation, what will result from the trial?

The conflict between the Revolution and the Church being initiated by the trial for defamation and contempt of religion brought against the author of the book *Of Justice*, the latter, after having pointed out to the court that it was not a question of imputations of *facts*, but of imputations of *doctrines*, that is to say of things that fall within the circle of free discussion, will be obliged, if the public prosecutor, assimilating the doctrines to the facts, maintains his indictment, to also maintain his statement, and under the terms of art. 25 of the law of May 26, 1819, to provoke the intervention of the public prosecutor in ecclesiastical teaching and its prosecution against the Church.

This is in fact the formal text of the law:

Art. 25. When the imputed facts are punishable according to the law, or when proceedings have been initiated at the request of the public ministry, or when the author of the imputation has denounced these *facts*, he will, during the investigation, be REPRIEVED of the charge and judgment of the offense of defamation.¹¹

If the imputation of a doctrine is assimilated to the imputation of a fact, it must be admitted that the rules of procedure will be the same for both cases: here is the criminal police court transformed into a court of history and philosophy. Do we want to go that far? The example, which I am far from approving, was recently given in the trial between the heirs of Prince Eugène Beauharnais and the publisher Perrotin, regarding the publication of the *Memoirs* of the Duke of Ragusa. Well, so be it: the court will summon the Bibliothèque des Pères before its bar.

Here then is the Church pleading for its doctrinal honorability, against the philosophy which denounced it, in the tribunal of the Revolution.

What will be the outcome of the debate?

I only see three possible solutions:

¹¹ A judgment of the Court of Cassation, June 1, 1855, criminal chamber, decided that art. 25 of the law of May 26, 1819 was still in force, notwithstanding art. 28 of the decree of February 17, 1852, which says that under no circumstances will evidence by witnesses be admitted to establish the truth of defamatory facts.

Here is the text of this judgment:

“Whereas the decree of February 17, 1852 does not contain any provision derogating from that of art. 25 of the law of May 26, 1819; — that art. 28 of the same decree only absolutely prohibits proof by witnesses of insulting or defamatory facts; — that if art. 27, by reestablishing the rules of the Code of Criminal Procedure for the prosecution of offenses committed through the press or any other mode of publication, necessarily repealed what the laws of 1819 had contrary to this code, as to the forms and the delays of the prosecution, it does not follow that it has repealed art. 25 of the law of May 26, 1819; — whereas, in fact, the provisions of this article do not only determine a simple form of procedure, but that they provide a means of defense, basically, for the accused of defamation; — consequently, that in the state of the facts the contested judgment, in ordering the requested suspension, made a sound application of the aforementioned law, etc....”

(Confirming the judgments of the Courts of Orléans and Bordeaux, which ruled to the same effect.)

1. Either the author accused of defamation against the Church will be absolved, by the very reasons that he developed in his book and that he will have reproduced in his defense, namely, that there is contradiction, incompatibility, antagonism, between the morality of the Church and the morality of the Revolution; that what we call religious morality is not morality, etc. — In this case the Church is morally fallen; its Concordat is virtually annulled; from this simple decision of the correctional police arises, in the sphere of ideas, a revolution;

2. Or the Court, giving in to the reactionary tendencies of the time, refusing any examination of doctrines, rejecting the distinction between the divine order and the human order, between religion and morality, between the Church and society, admitting the Revolution only as a historical accident, mixed with goods and evils, but without philosophical value, without regenerative scope, will declare the accused guilty. — In this case the Revolution is legally denied; its principle of legitimacy is destroyed; everything that it has created is declared void or accepted as the benefit of inventory; the government is a usurper, the prince a tyrant, the law impious. France is delivered to the Jesuits, the counter-revolution affirmed by the authority of justice, and we return to the old regime;

3. Or, finally, the court, frightened by the gravity and the dangers of a similar debate, placed in the necessity, either to strike the Church, whose existence is guaranteed by a Concordat, or to disavow the Revolution, in the name of which Justice is administered; the court, I say, will declare that it does not consider itself, for the moment, in a position to rule, and that before doing so, it is appropriate to wait, with the decision of the Senate, that of the judicial authority on the facts, that is to say on the doctrines denounced. In short, the Court will grant the requested stay.

This was the conclusion to which I attempted, with the approval of my council, to bring the trial, by asking the Senate, by petition, for the reform of the relations between Church and State. The more untenable the accusation, in the terms in which it was made, was, the more there was reason to expect that the public prosecutor, through a spontaneous rectification, would change its nature: the reference to the Senate therefore became good procedure, as well as good justice.

This thought, all moderation on my part, was not understood by anyone: not by the Senate, whose first movement was to send the petition back to the Minister of Justice; nor by the imperial prosecutor, who discovered in the petition what he had not seen in the book, an offense of contempt for Religion; nor by the court, to whom the idea of a reprieve provides the opportunity for a mediocre joke. “What would we think,” said M. Berthelin, “of a thief who asked that his judgment be withheld until the law governing property was reformed?” As if, in the current trial, the real thief was not the Church. And what would M. Berthelin have replied if I had gone so far as to claim that the laws of 1819 and 1822, concerning the protection to be granted to the Church because of its moral usefulness, are virtually repealed by art. 56 of the Imperial Constitution, as being essentially contrary to the *great principles* of 89, the sole basis of French public right? No doubt he would have said that it is impossible; that this would make the Imperial Constitution, so religious (art. 26), a trap for Religion. Well, M. President, the laws of 1819 and 1822, as you intend to apply them to a controversial book, are a trap for the Revolution: which of the two, the Revolution or the Church, do you think must now succumb?

Here is the text of this petition. After the explanations that we have just read, it cannot offer anything disturbing.

FIRST PETITION.

Paris, May 11, 1858,

GENTLEMEN SENATORS,

The undersigned, Pierre-Joseph Proudhon, author of a recent publication entitled *Of Justice in the Revolution and in the Church*, has the honor to present to you the following:

The undersigned, struck by the disagreement that exists, in doctrine and in fact, between the *Principles of 89*, invoked at the head of the current Constitution of France, as the basis of French public right, and the official recognition of a Church of which all the principles and all moral directions have the result of undermining and shaking this basis of our public right, has directed all the forces of his mind towards the search for means of remedying this disagreement, which is a permanent cause of disturbance for consciences and instability for the social order.

He came to recognize that the true constitution of society has as its foundation JUSTICE, considered both as a power of the soul and a notion of the understanding; that this principle, of the soul and intelligible, is *immanent* in human nature, and does not require the assistance of any external influence, of whatever order, to act; that the family and the city are its natural organs; that in it are summarized, as in their center, all the ideas of 89, all the declarations and constitutions that followed; but that such a principle is absolutely incompatible with the continuation of the official existence of the Church, at least as the Concordat of 1802 established it.

The practical consequence to be drawn from this, by confining ourselves to the most strictly constitutional means of reform, is that there is reason to completely rework the current legislation, in every part that has as its object the regulation of the relations of the Church with the State.

Such a reorganization, gentlemen Senators, is nothing new or exorbitant. The example has been given by all the governments that have presided over the destiny of the country since 1789; it has become a tradition of our public Right; it follows very constitutionally from the high prerogative of the Senate, and very constitutionally again it is up to the citizens to provoke the intervention of this high prerogative, by the exercise of the right of petition.

“The Senate,” says the Constitution of 1852, “is the guardian of the fundamental pact and of public liberties;

“It regulates everything that has not been provided for by the Constitution, and which is necessary for its operation;

“It maintains or annuls all acts referred to it as unconstitutional by the Government, or denounced, for the same cause, by the petitions of citizens.

“It can also propose amendments to the Constitution.”

The undersigned took seriously these guarantees offered by the Constitution to the initiative of the citizens; and it was with his eye fixed on this text of the fundamental law, and with the intention of availing himself of the means of legal reform that it assured him, that he wrote his book *Of Justice in the Revolution and in the Church*.

He wanted this book to serve as an explanatory statement for the request he intended to make to the Senate for a revision of the legislation relating to the Church; and as it was not possible to separate such an appeal to the Senate from an appeal to public opinion, he had to combine the various parts of his work, write it up and publish it, so as to strongly capture this sovereign opinion, and to prepare for its contribution in the deliberations of the Political Body specially responsible for translating it into legislative developments.

Consequently, the undersigned, attaching his book as an annex to this petition, and without prejudice to new productions, supporting documents and documents of any nature that he subsequently deems appropriate to forward;

Whereas, as he believes he has established through a long controversy, that human society possesses in itself, due to our nature, all the principles, all the notions, all the energy necessary for its progress; — that, far from conscience demanding the support of a higher sanction, the depravity of the ancient society came precisely from this so-called sanction, and that this is still today the cause of the weakening of public and domestic morals;

Whereas the purpose of the Revolution was to remedy the insufficiency of the moral teaching given by the Church; thereby, to raise the dignity of man, to ensure the balance of social forces, to establish the liberty and happiness of the citizen;

Whereas the Church does not, in fact, possess any moral doctrine; whereas by the nature of its dogma and by the spirit of its discipline it is impossible for it to produce one; whereas it is totally devoid of legal ideas, both with regard to *persons* and with regard to the *social economy*, the *political order*, *education*, *labor*, the *direction of the mind*; that it knows and supports neither *liberty*, nor *equality*, nor *progress*, nor *certainty*; that she knows nothing about *marriage* and the *family*;

Whereas, if since 89 the Revolution, by radically separating itself by its principle from a Church established for eighteen centuries, has nevertheless believed it necessary to use forbearance and tolerance towards it; if it provided for the existence of the clergy; if it surrounded the ancient cult with protection and respect; if it refrained from any official controversy with it; if it went so far as to retain for the Church, despite its unfortunate antecedents, a share of influence in the education of youth and the direction of public morals, it would be a sovereign error to attribute this deference of the Revolution to a retrograde thought, as if the Revolution distrusted liberty and Justice; that we must see here only the prudence of the legislator, obliged to treat new generations according to the degree of their aptitude, and to go step by step;

Whereas the Church, formerly the equal power of the State, is now, in revolutionized France, only an establishment of an inferior order, extra-constitutional (*ex-lex*), whose precarious existence does not have reason only in the munificence of the sovereign, especially since the Revolution has in itself its spiritual constitution and does not need any theological hypothesis to formulate it;

Whereas this same Church, condemned by its dogma to a fatal immobility, increasingly ignores the system of rights that the Revolution tends to develop; that through it the Revolution continues to be slandered, the principle of the legitimacy of the revolutionary government denied; that, not content with forming a state within a state, it aspires to make each state only a particular Church within the great Church of which Rome is the capital, the Jesuits its guard, and the Pope the autocrat; that this antagonism, revealed every day by the courts, between the Church and the Revolution, results, for citizens, in a state of continual agitation, a prelude to a civil and social war; for the succession of families, deprived of their property, an instant threat; for the State, an ever-present danger of revolt;

Whereas the prolongation of this state of affairs worries the friends of the Revolution and would compromise in the eyes of the nation the government which tolerates it;

For these reasons, and given the progress of the ecclesiastical counter-revolution,

The undersigned asks that the Senate please examine whether it is not necessary, to ensure the free exercise of the rights created by the Revolution and to restore the Constitution in the unity of its principle, to modify the position made to the Church by the Concordat of 1802 and the subsequent constitutions, in the sense of the articles proposed on pages 606 and 607, volume III, of the attached book;

Otherwise, and failure by the clergy to adhere to this reform, declare the Church forfeited of all the rights and benefits it derives from the Revolution, the budget for worship abolished, etc., etc., etc.

The undersigned has the honor, etc.

If my information is correct, what determined the seizing of this petition is the public character that I wanted to give it by increasing the circulation to 1,000 copies, while the number of senators is only 170. We are here today, because when we have to speak to those in power about something that concerns the universality of citizens, we must, to please those in power, prevent it from coming to the attention of citizens.

A few observations on this subject will not be out of place here. We have already begun to proceed with my written defense as we did with my petition: the law is the same for both; It is appropriate that I recall its principles.

I will therefore ask the public prosecutor, this public minister whose institution is completely revolutionary, how he conceives of legislative authority? How does he conceive of judicial authority? How does he conceive of public action, that is to say of his own attributions?

In France, since 1789, legislative authority no longer comes under divine right; it is not established, by mystical institution, above and outside the nation; it does not reside in a dynasty, in a body or in a caste: to put it better, there is no longer any authority. The law is nothing other than the expression of conscience and public reason, manifested by the universal discussion of citizens, and formulated by the official representatives of the nation, prince, senators, deputies, whoever it may be, in the presence of the nation and under its decisive influence. Since the *coup d'état*, I know, there has been a tendency to rule, decree and legislate outside of the competition of opinion, outside of national consent. But these reminiscences of ancient absolutism are contrary to the spirit and letter of the Imperial Constitution itself; it is an abuse born of circumstances that everyone explains, but that do not justify it. Let those whose job it is to flatter the power in order to better exploit it and to better ruin it preach as long as they want the reestablishment of the great principle of authority; they will not make the legislative power the prerogative of a man or a Senate. The law is the expression of the general will: this is why, as the book *Of Justice in the Revolution and in the Church* was published to prepare public opinion for the reform of the Concordat, so too the petition in the Senate, by which I ask this illustrious body to examine whether there is not reason to proceed with this reform, should itself be published.

What I have just said about the legislative power, I will say again about the judicial power. In France, since 89, every citizen has the right to justice, as he has the legislative faculty: the judgments of the courts and the rulings of the courts are nothing other than the expression of social justice, formulated by special agents, as the law is itself through the assistance of the prince, the deputies and the Senate. Hence the institution of the jury, the publicity of the hearings, the newspaper reports. Hence, finally, the faculty left to any accused to publish, in his defense, *memoirs* which, by special privilege, can no longer be pursued criminally, although they can be *suppressed*, if they are defamatory, and give rise to damages. It would be strange if the public prosecutor and the courts had the pretension of limiting the distribution, ordinarily free, of these memoirs, to the number of judges called to deliberate: as if Justice emanated from them and the judgment was their work! As if the judicature could separate itself from the public conscience that serves as its control!

I insist on these considerations, in which my last hope rests.

Article 23 of the law of May 17, 1819, expressly states:

“No action for defamation or insult will be given to speeches made or writings produced before the courts: the judges attached to the case may, in ruling on the merits, pronounce the suppression of offensive or defamatory writings, and judge who will be entitled to damages.”

This is the law: it is clear, precise, and leaves no room for doubt. It literally means that if, for example, the author of the book *Of Justice* publishes for his defense a Memoir in which the passages incriminated must necessarily be reproduced, this Memoir can no longer give rise to any action, either against the author or the printer; only it may be *suppressed*, for defamatory facts, if any, and the author sentenced to *damages*.

This is the guarantee of the defense: the inviolability of the brief; and this is at the same time the guarantee of public order: the suppression of this memorial, if the Court judges that there is a legitimate reason for suppression. As for the method of distribution and the number of copies printed, the law is silent; it had nothing to say. Any judgment being rendered in the view of the country, and supposed to be the expression of its conscience, any supporting brief is therefore supposed to address the entire public, as well as the court. It is up to the litigant to see for himself to what extent he considers it necessary to appeal to public opinion in his case. It is the same with the judicial brief as with the political petition: nothing, in law, can impose a limit on its distribution, and, in the silence of the law, it belongs neither to the public prosecutor, nor to the courts, nor to the police, to prevent or restrict its publicity.

How is it that today, despite art. 23 of the law of 1819, I am obliged to come to Belgium to publish my defense, no printer in the French capital having dared, even with the signature of a lawyer, to take care of it? How could the head of the Seine public prosecutor's office, M. Chaix-d'Est-Ange, not be afraid to say to me: “You want to do like Beaumarchais. But do you know that if Beaumarchais pleaded today we would be able to stop his Memoirs?” — So the defense is less free today than it was in 1778, under the Maupeou parliament! No, M. Attorney General, I am not Beaumarchais. I do not have enough talent for that. I make right and morality; and you are counter-revolutionary.

We legislate behind closed doors, we govern behind closed doors, and we would ask for nothing better than to judge behind closed doors; soon we will be guillotined, just as we are already transporting people behind closed doors. Down with the closed hearings!...

After the treatment of the printer of my first petition, I could no longer hope for publicity for the next one, which was swallowed up in the boxes of the Senate.

SECOND PETITION.

Paris, June 1, 1858,

GENTLEMEN SENATORS,

On May 11, the undersigned, *Pierre-Joseph* PROUDHON, had the honor of sending you a petition in which he requested the revision of the legislation which since the Concordat of 1802 regulates the relations between Church and State.

A work in three volumes, entitled *Of Justice in the Revolution and in the Church*, served as an explanatory statement for this petition.

Today, and notwithstanding the agenda with which you responded to his request, the said undersigned, confirming and renewing his first petition, once again takes the liberty of drawing your attention to the facts and considerations that follow:

The undersigned, in his petition of May 11, pointed out to you *between the Church and the State, an antagonism revealed every day by the press and the courts, and from which resulted, according to him, for the citizens a state of continual agitation, a prelude to a civil and social war, and for the government an ever-present danger of revolt.*

He added that *the prolongation of this state of affairs worried the friends of the Revolution, and would compromise in the eyes of the nation the power that tolerated it.*

He was far from expecting that events would soon prove him right.

The publication of the book *Of Justice in the Revolution and in the Church*, made to support the eminently constitutional petition of May 11, has since become the subject of legal proceedings, the reasons for which seem expressly chosen to bring out this antagonism that he denounced to you between the Church and the Revolution.

There is more: the petition addressed to you, for having received the very limited publicity implied by its object and purpose, is itself seized and pursued like the work it summarizes, pursued as *an attack on the public and religious morality, and making a mockery of a religion recognized by the State.*

Thus, as a result of the antagonism that reigns in current legislation, the sole fact of investigating whether the Revolution and the Church reconcile or exclude each other; whether they are based on identical principles or on contradictory principles: then, in the case of demonstrated antagonism, the loyal search for means of remedying this antagonism, and the constitutional indication of these means to the legislator by way of petition, become reproachable acts, amenable to the correctional police.

If the Church and the Revolution contradict each other, and if, in this conflict, we take sides for the Revolution, out of fear *for the principles of 89*, that is to say, for the political and social constitution of the new France, we become reproachable with regard to the Church, by virtue of the press laws of 1819 and 1822, promulgated under the regime, surreptitiously introduced by the Restoration, of a *Religion of State.*

If, on the contrary, we take sides with the Church against the Revolution, against *the principles of 89*, against the Constitution of regenerated France, as is done every day in the books and newspapers of the clergy, it is no longer so easy to know by virtue of which laws we become culpable with regard to the Revolution.

Both the interests, the ideas and the rights of this sovereign Revolution, which made the Church what it is today, which gave it legal existence and the prebend, have been misunderstood, neglected by the powers that have succeeded one another since 89; so carefully have the prejudices of divine right, the principle of the Church, and episcopal thought been retained!...

The Church, the antagonist of the Revolution, is protected by revolutionary law more than the Revolution, more than the political and social Constitution of France; more than this PUBLIC MORALITY, born from the principles of 89, which we pretend to confuse with the *religious morality* of which it is the negation; more, finally, than right!...

There is here, gentlemen Senators, a reversal of all law and all reason, which obviously constitutes a danger of the first order for citizens and for those in power, a danger that threatens to corrupt even Justice, by making the courts, whether they like it or not, depart from their legal attributions.

It results, in fact, from this intimate contradiction between the Church and the Revolution, a contradiction demonstrated at length in theory by the petitioner, and now translated into fact by the double trial brought against him, that the judges, in whatever way they explain their sentences in the trials that

may arise from the conflict between the revolutionary current and the religious current, if they find the Church wrong, declare it, *ipso judicio*, unworthy, convicted of error in its discipline and its morality, leaving forfeited from the position given to her by the Concordat; if they prove the Revolution wrong, they destroy the public right of France, declare its government illegitimate and usurping, its morality corrupt; they ruin their own authority.

There is no middle ground: the conflict is now posed in such a way that any escape, any doctrinaire reconciliation, is impossible. Between the Church and the Revolution, the legislator must absolutely choose, on pain of abdication or betrayal.

Consequently the undersigned, supporting his first request with a new and considerable act, addresses you, gentlemen Senators, for the second time, and on the most serious question that can be submitted to you, provokes your very serious meditations.

Perhaps, by dismissing the petition of May 31 with a simple agenda, you thought that it had no other purpose than to obstruct the course of Justice, or to make a little noise around a work referred to the courts. Make no mistake, gentlemen: it is not a man and his vanity as a writer that we are talking about at this moment; it is your own prerogative, it is national justice, it is the Revolution.

I am, etc.

What now is this revision of the Concordat, on which the entire trial revolves, and which M. de Cordoën read to the court, as if it had been the greatest outrage?

Here it is as I formulated it on pages 606 and 607 of my third volume. I urge every honest man, from whatever country he may be; any Christian belonging to one of the Reformed Churches; every Gallican Catholic, who has remained faithful to the traditions of his Church, and who has not been blinded by ultramontane fever, to say how this proposed Concordat *offends morality*, how it is an insult to the clergy, how it excites contempt for the laws and hatred of citizens, how is it an attack on the family?

1. Reunion of the two powers, spiritual and temporal, in French sovereignty;
2. Teaching by the clergy, in large and small seminaries, in schools and in churches, of the principles of justice and morality, in accordance with the doctrine of the Revolution;
3. Accomplishment by ministers of religion of all matters relating to births, marriages, funerals, national anniversaries, etc. at the request of the citizens, and without the need to provide confession notes or make a profession of faith;
4. Suppression of convents of both sexes and of any religious congregation;
5. Abolition of perpetual vows in the clergy; consequently, the right for any ecclesiastic, after six years of active service from the date of his ordination, to leave the ministry at will and to marry, unless the Church prefers to abolish from now on the celibacy of priests, as the Reformation has done;
6. Restitution to the communes of all ecclesiastical properties, and absolute prohibition for any member of the clergy to accept any donation on behalf of the Church;
7. Priests are prohibited, on pain of termination of employment and fine, from engaging in any commercial, banking, industrial, publishing, subscription operations, erection of monuments, institutions, etc.;
8. Establishment of a more severe penalty for all crimes and offenses committed by ecclesiastics, particularly those involving modesty;
9. Abolition of episcopal and papal authority, ecclesiastical administration reformed on the principles of common right, and ordinary judgments falling to the Council of State and the Court of Cassation.

What! exclaim my readers here, this is what you conclude after having, according to what is said, insulted, defamed, shaken, for 1,700 pages, both the Church and Religion!...

Alas! yes: I want the priest, who until now has only been a minister of the sacraments, to become, if he must be retained, a professor of morality; I want him to get closer to the homeland, its spirit and its laws; I want him, after having renounced the family to enter the holy ministry, to be able, if the heart invites him, to abandon the holy ministry to return to the family; I especially desire that, as he is responsible for teaching and directing public morals, the sanctity of his responsibilities should not be given a right to impunity.

This is why I wrote to the Senate;

This is why ultimately I am sentenced to three years in prison.

POLITICAL CONSIDERATIONS: CONCLUSION

Any press trial, when it does not have as its object an obscene publication, a fraud or a defamation, falls into the category of political trials.

Any tribunal judging in political matters, especially when it judges without a jury and without newspaper reporting, can be considered a political tribunal; and it is not an insult to it to say that its judgement, in whole or in part, is based on political motives. M. Attorney General Chaix-d'Est-Ange, to whom I had the honor of making this observation, was kind enough to agree with me on the truth of these principles.

Now, when politics mixes with Justice, they harm each other and spoil each other: we will presently provide proof of this.

What, first of all, is political justice? Can there be political justice; and can the magistrate, responsible in society for *speaking the right*, judge politically?

Under the ancient monarchy, constituted according to the principle of divine right and the maxims of the Church, every faculty for action was given to the reason of state. It had the initiative and could act alone; politics and justice thus remained separate. A man published a book, which the royal authority considered untimely, compromising, dangerous, but not legally indictable: the book was suppressed by a simple *lettre de cachet* and, if necessary, the author was put in the Bastille. A matter of policy, of pure politics, where Justice was not tainted.

The Revolution changed this regime. No one can be distracted from his natural judges, or detained except by virtue of a judgment; no conviction can be pronounced except by virtue of laws, according to legal formalities, and for an act that the legislator has qualified as a crime or misdemeanor. To suppress a book and put an author in prison, you need a court sentence.

Thus the reason of State has given way, at least officially, to the reason of right: it is one of the most precious conquests of the Revolution.

But social transformations, even the most just, are not accomplished in a day; a nation does not change its morals, a State's regime, like a garrison regiment; and as there remained in the State many arbitrary, discretionary things, which cannot be satisfied by right, given that they fall below or outside of right, we have been led to supplement, as much as possible, by new and arbitrary qualifications, by the elasticity of definitions, by the prerogatives of the judge, by the latitude of forms, the omnipotence of the *lettres de cachet*.

In principle, and apart from cases of fraud, obscenity or defamation, which fall under common law, the case cannot be brought against a book, said the legislator of 89, because the book, the

manifestation of thought, whatever it is, is the very life of society.¹² In fact, according to imperial legislation, the prosecution of the book remains at the disposal of the government: only it must exercise this prosecution through the ministry of courts.

Thus, in a case like this, the legislator having provided, for the satisfaction of the reasons of State, certain offenses that could very well never have existed without it; the law, by its content, leaving to justice the greatest margin, first for the *observation* of the offense, then for its *qualification*, finally for its *repression*; the public prosecutor may, *ad libitum*, pursue or not pursue, observe or not observe, see or turn a blind eye; he can, according to his pleasure, qualify white or qualify red, require strong or require weak. And the court, in turn, after having received the opinion of the minister and putting into its considerations what it sees fit, always implying the real reasons, essentially political, the court has the power to pronounce for the same fact, against the same man, innocent or guilty, it does not matter, but inconvenient, a sentence which can vary from a fine of 16 francs (law of May 17, 1819, art. 19, §2) up to 10 years in prison and 12,000 francs fine (law of March 25, 1822, art. 1st, and Penal Code, art. 58).

In cases of a secret society or illicit assembly, conspiracy, riot, etc., everyone knows that the magistrates do not just decide, as is obligatory for the jury (art. 312 of the code of criminal investigation), "*according to the charges and the means of defense publicly produced*;" they also decide according to secret depositions and police notes, which no legal discussion, no legal challenge, can reach.

Add the right of pardon, the intelligent exercise of which sows denunciation among the accused, shields traitors from the vindictiveness of public opinion, and makes the prince an instrument of popularity for convictions wrested from the politics of the courts.

This is how, since 1789, the *lettre de cachet* has been gradually replaced in France: under the appearance of regular justice, absolutism has been completely reorganized; overall, the situation is worse than before, and we would have to curse the Revolution, if we were to think that it has said its last word for us.

The heart of man is so inclined to domination, and, in times of trouble, it is so easy to find pretexts for the so-called *public safety* laws, that more than one magistrate must have been delighted to thus participate in the power of the prince, and to exchange, for a few moments, his passive role of interpreter of the law for that, apparently more active, of secretary or councilor of state.

The court, I am firmly convinced, professes other sentiments. It knows that of all the attributes of the sovereign the most sublime is that of judge; it knows that the judge never

¹² It is by virtue of this principle that in Switzerland, according to the latest law, all press offenses falling under common law, there is, in fact, no legislation on the press. What! Switzerland, which did not make the Revolution, which received the Revolution from us as Belgium received it, as Piedmont has just received it, Switzerland is now ahead of us on the revolutionary path! How can this be? — *France is not ripe for free thought*, say writers committed to reasons of state. — And why is it not ripe, if not precisely because there is a REASON OF STATE, I mean a dynastic reason, an ecclesiastical reason, a capitalist reason, and a hundred others that prevent France from *ripening*? As if, in terms of liberty, maturity was not liberty itself.

commands better, is never more truly MASTER, *magistratus*, than when he speaks in the name of right; that by making himself superior to right he no longer renders judgments but services, and that any political condemnation resolves for him into a confession of indignity. The court knows that it is up to the judge, at all times, to put a brake on the recklessness of power and to call it to order: it is enough for the judge to refuse his support for the reason of State, and, receiving the citizens' complaint, he pronounces the right: *Dicat jus, et lex esto!*

I pleaded my case from the point of view of justice. My defense would be incomplete if I did not add a few words from a political point of view. I am not asking, far from me to harbor such an idea, that the court places itself in opposition to the power: on the part of the court, the slightest hostile gesture, at this moment, would bring about a revolution. But, all spirit of revolt removed, without antagonism or fear, the court can make this word heard by the public prosecutor, organ of executive power: ENOUGH... Is it not, among other things, in order to avoid conflicts between the executive power and the judicial power that this intermediary, a sort of government shield, the public prosecutor, was created?

What then are the political considerations that determined the public prosecutor to bring charges against me, and perhaps the court to impose on me three years of imprisonment, a fine of 4,000 francs, the suppression of my book, and, as a consequence of the conviction, loss of my political rights? Let us try to clarify this question further.

Considerations regarding the Church.

If the situation in 1858 was the same as in 1802, while the nation, in the vast majority, had remained Christian, the government of Napoleon III could say, like that of the First Consul: "There is a contradiction between the religious state of minds and the crushing of the Church. Without doubt, the development of the ideas of the Revolution must cover and absorb, in a given time, religious ideas. But that day has not come: freedom of conscience, written in the constitution, requires that the priesthood be, to a certain extent, uplifted, and worship restored. Let the Church therefore accept the civil constitution that has been given to it, let it submit to the established facts, and let it live."

We conceive, I say, in such circumstances, and while regretting it, such language. The concordat was, like the billion emigrants, a transaction between the old world, which we wanted to bury magnificently, and the society that replaced it. Whatever one thinks of the justice and appropriateness of this type of compensation, we cannot deny at least that it creates one more title for the new proprietor: it is the *quitus* between the dispossessed Church and the Revolution.

Today, the situation is no longer the same; the relationships have been completely reversed. The bourgeoisie and the people, in the vast majority, have arrived, as it was easy to predict, at indifference in matters of religion. Public reason, left empty, now calls for the development of other principles; the conscience of the country, detached from divine law, demands another justice. As for the Church, which no longer serves us, it is triumphant, all-powerful, insolent. The coup d'état returned the Pantheon to it; large sums are allocated to it each year, to repair and build

temples without worshipers. To the advantages that the concordat had assured it, it added that of being part of the imperial system.

The Church, said the first Constituent Assembly, *is only the servant of the people at the foot of the altars.*

Now the Church is the mistress of the people on the steps of the throne. It reigns and governs with the emperor, and walks almost his equal.

“The Senate is composed,” says the Constitution of 1859, art. 20, of:

“1° CARDINALS;

“2° MARSHALS;

“3° *Admirals*;

“4° Citizens whom the Emperor deems fit to appoint to the dignity of senator.”

So what does the Church have to desire? Far from suffering persecution and reaction, it is the Church that reacts today against the Revolution, which persecutes or causes to be persecuted philosophers, free thinkers, all who refuse to bow their heads under its leadership. It is the Church who believes itself strong enough to deny, fight and destroy one by one all the principles, all the rights, all the freedoms of 89.

The reasons that, in 1802, served as an excuse for the Concordat no longer exist: why would the imperial government continue its high favor towards the Church, and why would the courts of the empire pronounce political condemnations for it? Could it be that the aim of the empire, its reason of state, is to re-establish in France, and little by little in neighboring countries that have adopted the principles of the Revolution, the Church regime, the morality of Church, Church justice, that is to say divine right, monarchical absolutism and all the feudal privileges? Is the emperor conspiring with the priests to ruin modern liberties? The question must be asked, in its harsh frankness, not to indict the emperor any more than the magistrates, but to reveal to everyone the fatal consequences of their policy.

De Maistre, in the preliminary speech of his book *Du Pape*, repeating what he had already said in his *Considérations sur la France*, chap. x, §3, writes: “The French Revolution is unlike anything we have seen in times gone by. It is *satanic* in its essence. It will never be totally extinguished except by the opposite principle.” This contrary principle is of course that of the Church; it is the Church itself, entirely personified in the Pope. So de Maistre adds: “Without the sovereign pontiff, the entire edifice of Christianity is undermined, and no longer waits to collapse entirely, until the development of certain circumstances...”

Would the empire of Napoleon III have the secret goal, while proclaiming the principles of 89, to realize the thoughts of de Maistre, to stop the *satanic* work by giving rise to the *opposite principle*?

The current situation in the Church, its growing pretensions, its visible action on the Power and on Justice, would be such as to make us believe this.

The Church is responsible for preaching to the masses, through its 40,000 tribunes, the great principles of *authority, hierarchy, absolute power, hereditary nobility, providential inequality, servitude of reason*, and others, which the reaction of December 2 put on the agenda, but which

are the negation of the principles of 89, and principles against which the public conscience energetically protests.

The Church is the only school of morals that the nation has, and the nation no longer wants it;

The Church has the upper hand over primary education, regarding which it makes children waste two years to prepare them for their first communion, and disgusts them with the life of all study;

The Church, through its colleges, competes with the high schools, which it will eventually invade: then it will be the same for secondary education as for primary education;

The Church accumulates, monopolizes, builds, encloses itself, founds convents, raises contributions, works incessantly to reestablish, at the expense of the country, its former domains;

The Church demands the registers of the civile State; it aspires to regulate the days and hours of labor, interferes in finance and industry, subscribes to anonymous companies, of which it will end up taking over the management;

The Church, which, in 1685, had the Edict of Nantes revoked, worked to have the principle of freedom of worship abrogated and to replace it with the principle of the Religion of State; already it is trying, through small persecutions against Protestants, new *dragonades*.

The government knows all this: until now it has tolerated it, apparently imagining that, since the second empire had no other goal than to take up and continue the traditions of the first, there was nothing better for it to do, with the Church, after half a century of philosophical and social progress, than to restart, on a larger scale, the temporary work of 1802.

But the government must know it too, and better than anyone: in politics, as in literature, imitation is the absence of genius, powerlessness; in the current case it would be a stupid demotion, a contradiction of the model, a crime. What! The empire, formerly in continual war with the Holy See, despite the Concordat that united them, would today be in community of views, principles, plans, with the Holy See; the empire, which made itself proud, under Napoleon I, of pursuing and dispersing, even at home, the government of priests, would support, recreate, under Napoleon III, not only in Rome, but in France and everywhere, the government of priests! It is when England, by its bill regarding the Israelites, is on the eve of abolishing in her country even the last vestige of the state religion; when Belgium, despite the power of its subjects and the eminence of its characters, ousts the Catholic party from its administration; when Switzerland draws the consequences of its Sunderbund War; when Piedmont sells the goods of its clergy, and deserves papal excommunication; when the whole of Europe cries out against the Lutheran fanaticism of Sweden: it is at this moment that the empire would make a secret alliance with the Church, concealing and equivocating, until the time has come to strike a big blow! It is for the service of this utopia that our institutions would be cleverly distorted, war declared on books, and justice replaced in the courts by the reason of state! For this reason an interpreter of the Revolution, a theoretician of pure right, of justice without reward, of virtue for virtue's sake, would be declared guilty of contempt for public and religious morality, sentenced to three years in prison and 4,000 francs fine!...

No no; Napoleon III, could not, any more than Napoleon I, put on the mantle of Charlemagne or take the short robe of Charles X with impunity. Traditions have their religion, I know that; but they also have their law, which consists, not of starting again, but of continuing the movement. To claim, in 1858, to again make the Church what it was in the time of Saint Louis, because in 1802 the First Consul gave it bread, would be as absurd as to renew the continental blockade, or to seek the revenge of Trafalgar or Waterloo.¹³

Let the Church salute the Revolution, and I will salute the Church: that is all that the Court, judging politically, can wish from me. And let it leave to the clergy with its forty thousand chairs the task of defending its theology, its morality, its spirituality, less precious in its eyes than its temporality, against a philosopher. There is no other policy to follow: any other would ruin the Empire, by turning the Revolution against it.

Considerations of the moral order.

I think I hear one of my readers, excessively political, making religion out of politics, morality out of politics, who says to me:

“You materialize the debate, reducing it to a matter of ecclesiastical interest. The question is higher than the Church: it concerns the spiritual interests of society, its moral life, weakened by a century of agitation and doubt. What will become of this moral life if, by abandoning religious faith, we extinguish its last spark; if we do not support, at all costs, the Church, that is to say, the officially recognized religion for the majority of citizens, the old state religion? Napoleon I supported the Church because, despite the recent Revolution, the ancient faith still existed; Napoleon III supports the Church because, despite the already old Revolution, the new faith has not yet appeared. What one did out of necessity of expectation, the other did out of necessity of delay. Faced with this delay, there is danger for society, danger for the nation. The Church alone

¹³ In this regard, I cannot help but record here an observation suggested to me by the piety, too marked in my opinion, of His Majesty Napoleon III.

Whether the Emperor, a simple believer, hears mass in his chapel or in the parish is his right. Let him even go so far as to bring his chief pastor, Monseigneur Cardinal Morlot, to the Tuileries and ask him for holy anointing, if he fears that the six million votes of December 21 will have him not sacred enough; provided that the ceremony has no official character, the Emperor is perfectly the master. But the head of the French State, relating solely to the principles of 89, is unfaithful to these principles, unfaithful to his own dignity, when, in his capacity as head of state, he attends a Mass of the Holy Spirit or a *Te Deum*. To be, if not entirely legal, at least logical, it is not only in Catholic churches that the Emperor should make these solemn entrances that hold such an important place in the program of his travels; it is also in Protestant temples, in synagogues and mosques. The multiplicity of worship in the head of state would show the absurdity of it.

We have already spoken many times about the coronation of Napoleon III. In this regard, I add only one word: Napoleon I and Charles X failed the national conscience as much as the spirit of their institution, when they were publicly confirmed, one at Notre-Dame by the pope, the other at Reims by the successor of Saint Remy. A simple citizen, I would have the right to say to Napoleon III, by virtue of the Constitution that he himself had made: Your coronation is adultery, Sire; I oppose it, *veto*.

appears as a branch of salvation: the government attaches itself to it with all its strength. Who are you to contradict, to hinder this policy of salvation, yes, of the salvation of souls, as well as of properties?

I bow before a reason of state so concerned with spiritual interests. Far from contradicting it, it edifies me; I find there consoling proof that public conscience is not dead in France, that it is agitated in its depths, and that the imperial government has heard its murmurs.

Ah! Politician, who believe yourself to be clever, small-time Machiavelli, you are forced to recognize that your trickery, your corruption, your bayonets, all this is nothing but impotence; that in vain you would have discovered the secret of satisfying all greed, of satisfying all pride, that if you do not at the same time satisfy consciences, the country will rise *en masse* against you! So after having spent so much capital on your establishment, having used so much power, you must appeal to probity, devotion, moderation of desires, modesty in public life, frugality and modesty in private life! In order for you to be able to govern the world, it is necessary for the world to begin to believe in justice again and practice virtue; In other words, the world must know how to govern itself, and not need you! God will be grateful to you for these good feelings, I hope; he will reward such a laudable thought. To all repentance, mercy!

But, if this is the policy that we propose to follow, why, from now on, are we not setting an example? What works of virtue have we produced? What fruits of remorse can we cite?... Let our statesmen be reassured: it is not *petty morality* that I want them to maintain, the precepts would be too painful for them; it is *high morality*. Why, I say, are the moral powers of the country suspended, liberty suspended, reason suspended, Justice suspended, all the rights of man and of the citizen suspended?

It was feared that the *coup de main* of December 2 would be carried out, like that of Brumaire 18, in hatred of the *lawyers*. The word has been said: fortunately it was only a reminiscence. The jurists had a large part in the government of December 2: M. Troplong, president of the Senate, was a lawyer; M. Baroche, President of the Council of State, lawyer; MM. Magne, Rouher, Royer, Rouland, Delangle, ministers of His Majesty, lawyers. The *lawyer* element dominates in the empire: this is undoubtedly not so that Justice remains under siege there. How then does the reason of state still hold such a large place in the courts, and even in the Court of Cassation? Is it only in order to better bend the law that so many men of law were brought into the government in order to show once again the truth of this observation, already very old, that there are no greater experts in the law than jurists, when they are in the service of force? Why, under a regime that depends exclusively on the Revolution, am I not judged according to the principles and conscience of the Revolution, according to the formalities it has prescribed, under the protection of the guarantees it grants? Why, commentator on the Revolution, am I sacrificed by the justice of the Empire to the discipline of the Church, to dogmatic divine right?

We do not know, you say, the thought of the Revolution. — Say rather that you do not recognize it, that you deny it: because you know perfectly well the thought that is contrary to it, and that you have made it your own, as the honorable first president, successor of M. Delangle, M. DEVIENNE said recently, in veiled terms:

“The public prosecutors organize and direct public action, shed light on the debates at the hearing through their studies, and give justice, through the elevation of their word, the only adornment that is permitted to it, *And when agitation takes hold of minds*, it is still up to them to *struggle against the sophists of disorder*, and to defend the *principles that bring life* to the nations.”

And further down:

“Is there a nobler cause? Its success is now assured among us. The grand jury of December 10 rendered a supreme decision against which nothing will prevail. The undisciplined pride of a few minds will not destroy the work of the good sense of all.”

Things are understood half-heartedly in the official world. When M. Devienne speaks of the *sophists of disorder* and *proud minds*, we know very well that he does not mean the publicists of the Church and the theorists of absolute power. Likewise, when he recalls the *vital principles* of nations, and the *good sense of the jury* that decided on December 10, we are sure that it is a question of something other than the principles and good sense of 1789. If there could be any doubt in this regard, M. Devienne's last sentence would dispel it:

Happy are the magistrates whose voice is called to support this movement of minds, and to support the PRINCIPLE OF AUTHORITY on which all the forces of the homeland and civilization rely!

The *principle of authority* is the coefficient that gives meaning to M. Devienne's words.

So be it! I want sophism to be repressed, whatever interest it covers; false doctrines, as well as bad morals, to be combatted, whatever their source. But, with all due respect to the judiciary and as my position as an accused commands me, I will point out to the very excellent M. Devienne, who wants the magistrates of the prosecution to refute the theories, while M. Sapey does not want them to concern themselves with it, that it is not up to magistrates of the public prosecutor's office, nor of the tribunals, nor of the courts, to treat anyone as a *sophist of disorder* and of a *proud mind*: the magistrates have not the character for this. It is not up to them to establish themselves as judges of theories and principles, except to rule, where appropriate, on what, in the application of these principles and theories, or in their exposition, is according to right or is not according to right. Criticism of theories in themselves and their refutation is not the responsibility of Justice; free thought recognizes no control other than that of free thought; and the mercurials of M. Devienne, when it were possible to ignore the aim, I dare say a bad aim, that he proposes, and to consider his words only for what they are worth, would be the subversion of right and of philosophy. *A fortiori* is it not up to magistrates, creatures of the Revolution, to protest, in the name of the definitively abrogated principles of the Church, against the officially recognized principles of the Revolution, and to stone their mother.

You want to resurrect moral life, to give spiritual direction to souls, and rule to consciences; to carry out this resurrection, to determine the rule, you start with the most scandalous arbitrariness: a magistrate, you go beyond the magistrate's attributions; as interpreter of the law, you cross its limits; priest of Justice, you offer your incense to the reason of state. Your words, your actions, are purely political, which means illegal, non-moral. Do you understand at this time that you can only affect the Revolution by attacking Justice; that the Revolution and Justice are united in spite of

you, that they are one, given that the Revolution is nothing other than the subordination of both the reason of the Church and of the reason of State to the reason of right, and that it defines itself, right, all right, nothing but right?

That if you cannot achieve the Revolution, which you persecute, without passing over the body of Justice for which you display respect, recognize with good grace that your politics and your spirituality are on the wrong track; tell yourself that religion, which is mystery, must come after Justice, which is certainty, and resign yourself, wise magistrate, never to use for the cause of order, temporal and spiritual, weapons other than those entrusted to you, which are exclusively the weapons of right. There is a contradiction in wanting to save morality through immorality. If Satan were to plead against the Lord, you should listen to his speech; now, by the very fact that you would have given Satan the floor, you would have made Justice a principle superior to the Eternal. So renounce these so-called political judgments, which contain only hypocrisy or cowardly complacency; even if you let the theories most painful to your piety pass, even if it costs you the loss of your faith, be the first to demand these forms and these guarantees with which the prudence of the legislators, in agreement with the conscience of the people, had surrounded your sentences and which an insolent reason of state has suppressed. Above all, refrain from these unconstitutional demonstrations, where the judge's toga serves as an acolyte to the priest's chasuble. Remember that the public conscience, in France, has been above religion since 1789, and that if the faith of the private man is free, the magistrate has no other religion than Justice.

What! When for a century the effort of general reason has been to separate these two things, faith and law, more and more, we could not get magistrates to agree to no longer mix and confuse them!

Voltaire, our master, in the Notice which precedes his Remarks on the Thoughts of Pascal, said:

“Every time that morality is dependent on a religious system, and priests are its interpreters and judges, it necessarily becomes exaggerated and lax, false and corrupt.”

I would perhaps have the right to add to these words of Voltaire: Whenever a court, judging in matters of morality, is preoccupied with religious ideas, borrows its definitions and axioms from theology, it loses the notion of right; its judiciary is depraved; its decisions are acts of authority, the only rule of which is expressed in this verse: *Hoc volo, sic jubeo, sit pro ratione voluntas*. But let us allow the courts to apply Voltaire's remarks to themselves.

M. Guizot, the great moralist of the conservative and religious party, writes for his part:

“For those who have made somewhat extensive philosophical studies, it is, I believe, obvious today that morality exists independently of religious ideas; that the distinction between moral good and evil, the obligation to flee evil, to do good, are laws that man recognizes in his own nature, as well as the laws of logic, and which have in him their principle, as in his current life their application.” (*History of civilization in Europe*, 5th lesson.)

And what conclusion does M. Guizot draw from this *obvious* truth? Listen to him: it is nothing less than the elimination of the principle invoked by M. Devienne, of the principle of Authority, in all the faculties of the human soul, collective and individual:

“It is today a vulgar remark that as civilization and reason make progress, this class of social facts that are foreign to all external necessity, to the action of all public power, becomes day by day broader and richer. Ungoverned society, society that subsists through the free development of human intelligence and will, will always expand as man improves. It is increasingly becoming the basis of the social state.” (*History of civilization in France*, 11th lesson.)

M. Guizot is a serious writer, who knows the significance of his words. I do not believe that he would disavow me, if I observe that in the two passages that I have just cited, he outbids Voltaire's thoughts. Voltaire poses the principle of the independence of morality and its inevitable corruption by the priesthood; M. Guizot, a philosophical historian, after having recognized and affirmed the principle, notes that this is indeed how things happen in history; that the more reason and civilization advance, the more society frees itself, in its interior life, from all religious and governmental direction. This emancipation is the principle and the pledge of our *perfection*; it is the *basis of the social state*.

It is therefore against the improvement of humanity, according to M. Guizot, that the restorers of extinct cults work. It is against the social state itself that the supporters of the principle of authority conspire, those who prevent *ungoverned society* from expanding, and who, through the persecution of free thought, strive to restrict *the class of social facts that escape the action of the public power*. These people are the enemies of civilization, according to Voltaire and M. Guizot, the enemies of Justice.

But here is a testimony that, in the minds of some people, will weigh more in itself than the entire eighteenth and nineteenth centuries. Napoleon I, in the *Memorial of Saint Helena*, expresses on several occasions the idea that a new public morality emerged from the Revolution, that morality was transformed and regenerated by the Revolution, that the effect of this regeneration will be felt more and more, etc. It is on this principle that he said, in a conversation with O'Meara, dated November 2, 1816:

“I have made everything independent of religion. The courts were, as well as the administration and the government. You could get married without priests; the cemeteries themselves were not at their disposal, because they could not refuse to bury anyone, whatever their religion... I wanted to strip the priests of all influence, as well as of all power in civil affairs, and force them to limit themselves to their spiritual matters, without getting involved in anything else... My system was to have no dominant religion, but to grant a perfect liberty of conscience and thought, to make all men equal, whether they were Catholics, Protestants, Mohammedans, deists, etc.”

I know well that to these disdainful words we can oppose others in which the same character shows himself to be as religious, as Christian, as he had previously insisted on being skeptical. What do these variations, perhaps more apparent than real, matter? That the ex-potentate, weakened by the troubles of prison, felt awaken in him, towards the end of his career, his Italian religion; that the head of the dynasty wanted to provide the heirs of his name with the support of

the Catholic clergy, for eventualities that are easy to foresee: how could these miserable considerations invalidate the judgment of the head of state? One thing remains certain: in the eyes of the Emperor, revolutionary faith came before religious faith; it is that he regarded morality as having been *regenerated* by the Revolution, Justice as superior to any kind of cult, to such an extent that the magistrate who, in mounting his tribunal, would not in his conscience have acted free from all divine and ecclesiastical authority, would have been, in the eyes of the Emperor, unfaithful to his mandate and perjured in his oath.

Oh! Do not fear that I will demand from you, President of authority, a public, solemn profession of irreligion: you do not have *immanent* Justice; it would be compromising the interests of your litigants to ask you for these actions. But how much more you would have been in the majesty of your functions, M. Devienne, if, with regard to this Church and this Revolution whose contrary aspirations divide us, you would have been able to make your audience hear words like these:

“When I pronounce the name of God, and think of the immortality of my soul, a feeling of I know not what reverence for myself takes possession of my heart; I believe I feel my being idealized, my dignity rising to infinity. This is why I respect religious thought, even though I do not share it; and why every impious proposition, every brutal negation, every sacrilege, hurts me deep within, like a violation of my person,

“But as soon as I want to realize, through reason alone, this ineffable feeling, as soon as someone claims to demonstrate to me, by arguments, the super-sensible reality of these unfathomable essences, God, the soul, the dialectic causes pity; common sense, raised within me, protests. And if we go so far as to maintain, with theology, that these marvelous hypotheses are essential to the observation of Justice, I immediately feel myself becoming suspicious, and these same ideas of God and of the immortal soul, which just now seemed so beautiful, so noble to me, now only appear to me as an attack on my conscience.

“This is what forever separates our rational morality from our religious morality; this is why the Revolution was made.

“I therefore conclude to exclude from the motives of my practical reason the considerations of transcendence, although they are not without charm; I agree to see in these intimate suggestions a testimony to the elevation of my nature and the holiness to which I must aim; I honor him who prays, and I will protect him, if necessary, in his worship: but I will at the same time blame the mystic whose zeal aspires to convert incomprehensible conceptions into positive truths, whose intolerance would proscribe a virtue stripped of all religion, because all mysticism is illusory, all zeal suspect, all intolerance worthy of blame.

“Justice subsists by itself, free and without other hope. This legal atheism, which has raised so many anathemas, is the sublime of virtue.”

Let us summarize this chapter:

Is it for real that we are talking about resuscitating the cult of moral sentiments in the country? I am not fighting the urgency, certainly; I would even dare to say that skepticism, in

matters of morals, seems to me to have spread to the judicature. Pushed by the reason of the Church, pushed by the reason of State, through so many changes of scene, the magistrate, troubled in his conscience, ends up losing little by little the true notion of right: it is by the justice-bringing world that reform must begin.

Let the French judiciary therefore know: to bring the people back to virtue, there is today only one way, but this way I declare it unavoidable, it is to speak to the people about virtue, no longer like Fénelon or Bossuet, catechism in hand, in the name of Our Lord Jesus Christ, but like Robespierre, in the name of the Revolution.

The Revolution is the sanctifying grace of the people.

And it is by revolutionary virtue that the magistrate, freed from political servitudes, will govern both the people and the power, without worrying any more about the *sophists* than the statesmen, convinced moreover that the greatest harm he could do to the State would be to allow the belief in the people, by the arbitrariness of its judgments, that the State is secretly and systematically hostile to the Justice of the Revolution, hostile to morality.

Considerations of dynastic interest.

It is not without some embarrassment that I approach this line of ideas. One wonders how a preacher of *anarchy* can invoke dynastic interest for his justification, in a press trial, which means in a trial of principles; if such an argument, coming from such a suspect mouth, can be fair, if it is moral?

To this specious question, I answer that it is not me who created the current legality; that if it provides weapons against me, I must also be permitted to seek weapons there to defend myself; and thus the same things that one would not tolerate from the party man, my position as accused allows me to say. Furthermore, I hope to raise the question high enough, even with regard to dynasties, that any kind of scruple or false delicacy disappears; then, the truth is sovereign. So let people read me, even with the greatest prejudice: I have the confidence that, once read, everyone will be of my opinion.

The most serious reproach that a government, a dynasty, a prince can incur is that of *illegitimacy*. On this point, all opinions are unanimous. Applied to the power, the qualification of *illegitimate* includes all those that most forcefully express the idea of public disapproval: this is usurpation, tyranny, felony, assassination, regicide. No leniency on the part of the prince, no heroism, no service, could redeem this original vice. Such a prince is the living violation of right; he only supports himself by force. And the day when force, neutralized by the public conscience that he is incapable of constraining, fails him, the day when the bayonets allow themselves to be seized by reason and right, he is lost.

What then constitutes the legitimacy of a government, and consequently that of the prince and the dynasty?

To this question, I answer without hesitation: it is social communion.

By this I mean that the prince and his government must be in perfect communion of feelings and tendencies with the nation, faithfully expressing its conscience, ideas and laws.

So that, if in a nation relations multiply and extend; if, by a necessary consequence, the laws are modified; if the institutions are transformed, the government will have to change in turn; — what did I say? — it will be up to the prince himself to take the initiative of the movement, with the risk of soon becoming, and notwithstanding the seniority of his possession, illegitimate.

The annals of humankind are full of stories of dynasties that, having failed to observe this law of social improvement and political mutations, were suddenly dispossessed and replaced by others whose novelty thus provided legitimacy.

In 1789, the movement of social consciousness was so profound, and at the same time the habits of the old regime were so tenacious, that the greatest minds of the time considered it an immense advantage to marry together the reigning dynasty and the revolution. Hence, in the first place, the efforts, so little known, of Mirabeau and later of Barnave; hence, in 1814, the joy that greeted the Bourbons, to whom it was given for the second time to reconcile tradition and the Revolution. At this moment, the legitimacy of the elder branch of Bourbon seemed doubled: this is what earned its supporters the name, par excellence, of *legitimists*.

For seventy years, with the revolutionary idea gradually taking over, the condition of legitimacy for the prince has been variable, as a result of frequent changes of dynasties. Louis XVI, Napoleon, the Restoration, the July Monarchy, were all, in turn, legitimate and illegitimate. I am not talking about the two attempts at a republic: the republic is a problem for the future whose solution still lies in other ideas. Is the current empire established under conditions of legitimacy? I would be careful, in the presence of an imperial court, to delve into such a scabrous question; I prefer, leaving aside the accomplished facts, and even considering them to be duly established, to substitute for the question of establishment the much less risky question of exploitation: Under what conditions will the current empire stand in legitimacy?

Which amounts to saying: Under what conditions can the dynasty of Napoleon III hope to remain on the throne?

I won't give the answer: from my mouth it would be suspect. I borrow it from the will of a prince who, like another Marcellus, gave great hopes to his party and left deep regrets, from the will of the Duke of Orléans.

In April 1840, following the long agitation which, after overthrowing the Molé ministry, replaced it with the Thiers ministry, after ten years of the equivocal reign of his father, the Duke of Orléans, leaving for Algeria, as if he had had the feeling of his imminent death, of the misfortunes of his family, and the events that would shake Europe, wrote:

“It is a great and difficult task to prepare the Count of Paris for the destiny that awaits him; because no one can know from now on what this child will be, *when it comes to rebuilding on new bases a society that today only rests on the mutilated and poorly matched debris of its previous organizations*. But let the Count of Paris be one of these instruments broken before they were used, or let him become one of the workers of this *social regeneration* that we still only glimpse through great obstacles, and perhaps floods of blood; whether he is a king or whether he remains an unknown and obscure defender of a CAUSE *to which we all belong*, he must be, above all, a *man of his time and his nation*; let him be Catholic, but a *passionate, exclusive servant* of France and the REVOLUTION...”

The word *Catholic* is introduced there for Princess H  l  ne, whose Protestantism overshadowed Queen Marie-Am  lie and the entire French Catholic party. But what emerges forcefully in the words of the unfortunate Duke of Orl  ans is the subordination in which he places the Church in the face of the Revolution. It looks like a reminiscence of Napoleon I:

“What I especially recommend to my dear H  l  ne is the moral guidance to give to my son; these are the impressions he will find neither in his books nor in the lessons of his masters. H  l  ne knows that my POLITICAL FAITH *is even dearer to me than my religious flag*: my convictions being, after my affections, my dearest possessions in the world, I want to bequeath them, not through the stupid pride of believing myself infallible, but through a deep and reasoned feeling of fidelity. Moreover, it is the only inheritance that I can leave to my son, having to pass on to him neither a fortune, nor a name that I have made, nor a sword that I have used. But I will bequeath to him better than that, that which must most tempt an elevated soul, great duties to fulfill and immense obstacles to overcome in order to accomplish them.

“By bequeathing to him the defense of a country and a PRINCIPLE under threat, I must bequeath to him at the same time faith in their good right and in their final triumph. May these thoughts and this devotion, dead in me without having been applied, germinate in the heart of my son; let him, in his affection for France, always know how to be *her accomplice, and never her guardian*; let him think of his ancestors only to feel how much the greatness of the race adds to the scope of duties; let him learn that he is of the first family in the world only to be proud and worthy of one day holding in his hands the destiny of *the most beautiful CAUSE which, since Christianity, has been pleaded before the human race*; may he be the APOSTLE of *this cause*, and if necessary its MARTYR.”¹⁴

Such words, so lofty in their modesty, so profound in their simplicity, need no comment; they are themselves the most eloquent commentary on this fundamental truth, the first article of the dynastic catechism: That the principle of legitimacy, for a dynasty, is neither in divine right, nor even in popular election; it is in what I called social communion.

The Count of Paris, said the Duke of Orl  ans his father, must be above all, a *passionate, exclusive servant of the Revolution*; the *accomplice of France and never its guardian*; the *apostle* and, if necessary, the *martyr*, of this POLITICAL FAITH that dominates even religion, and which is resolved in these two words, JUSTICE, MORALITY.

How this contrasts with the speech of M. de Persigny, speaking in the name of the imperial dynasty, before the general council of the Loire! — “*France*,” said the orator of Bonapartism, the companion, the friend of Napoleon III, “*is above all monarchical*... Let France therefore, for whom monarchy is the first need, give the occupying dynasty time to strengthen itself on the throne, let France rally around it; then *the Revolution will be over, and Liberty, no longer being a danger for ANYONE, will become a benefit for all*.” (*Moniteur universel*, August 29.)

The Bonapartist, emerging from the glebe, immediately affirmed the monarchy. — The Duke of Orl  ans, of royal race, heir presumptive to the crown, does not dare to make such an assertion.

¹⁴ Extract from the Will of the Duke of Orl  ans, found in the original at the Tuileries, after the sack of the castle, February 24, 1848. This will is dated Toulon, April 9, 1840, two years before the death of the prince, Publication was made by the newspapers at the time: no doubt was raised about its authenticity, which has also been confirmed by the will of the princess herself.

He knows that the monarchy is dead along with divine right; he only assumes that, by reason of the transition, the princes, remaining without right with regard to the people, may nevertheless have to fulfill great *duties*. It is from this idea that he begins in recommending to the Count of Paris to be a *passionate, exclusive servant* of the Revolution.

The imperial dynasty consolidated, the Revolution is made, says the quasi-official mediator of the Bonapartes: as if the Revolution had only them as its object! This comes back to the proverb: When the king has drunk, France is drunk. — For the Duke of Orléans, on the contrary: The Revolution has only just begun; society must be *rebuilt on new foundations*; its *regeneration* is still only glimpsed through *great obstacles*, and *perhaps floods of blood*; in this vast labor, the role of the Count of Paris must be that of a worker, not a beneficiary.

Liberty, adds M. de Persigny, would now be a danger for the dynasty of Napoleon III; therefore it is impossible. — Not that, replies the Duke of Orléans: a liberty granted would be a servitude. Liberty first, dynasty later, if it is not itself an obstacle to liberty. Let us be the *apostles*, if necessary the *martyrs* of liberty; God forbid that we should ever be its *guardians*!

Thus, according to the renewed Bonapartist theory of divine right, national right would derive from the dynastic principle; this is why, as long as the dynasty does not feel solid, the liberty of the nation is postponed. According to the Orleanist theory, on the contrary, the dynasty takes its source in the very liberty of the country; it is based on this liberty, it is incarnated in it, it becomes one with it; it becomes illegitimate the day when liberty and itself appear incompatible.

Oh! Certainly, we can say that on April 9, 1840, the man in whom the national consciousness was reflected with the purest brilliance, the one who translated with the most frankness the spirit of the Revolution, was not Prince Louis Napoleon; it was the Duke of Orléans. The affairs of the Orleanist party do not concern me; I have deserved too much of all these dynasties for me to take the slightest part in their competitions. But let the Count of Paris adopt his father's will as his manifesto; let him add a declaration of twenty lines, containing, with the statement of the principles for which France has fought since 1789, with the motto, *Liberty, Equality, Fraternity*, erased by December 2, the promise of a Constitution representative and parliamentary, according to the liberal tradition of 1791, 1793, 1795, 1814 itself, 1830 and 1848, and in opposition to the absolutist tradition of 1799 and 1804: — either I am grossly deceived, I know nothing about conscience country, I have glimpsed nothing, during seven years of attentive observation, of the movement of opinion among the bourgeois, the peasant, the worker; or else, to this cry of Justice uttered by a young man of royal race, a universal, irresistible driving force, bayonets at the head would soon show, in spite of the suffrages and the oaths, and unless the emperor hastened to lay down his *Additional Act*, on which side would be the legitimate dynasty, on which side the illegitimate....

The destiny of princes is to always be poorly informed and poorly served, in exile as on the throne. There is no one who says these things to the Count of Paris; neither is there anyone who says such things to the emperor. Since 1848, the Orleanist party has shunned the Revolution; they would like to change the prince, but without modifying the system. For its part, the empire seems to have taken the Church as its fortress and the Jesuits as its artillerymen. It is said that during the

discussion of the law of general security, the emperor, having read the report of M. de Morny, president of the Legislative Body, could not help but say: We see very clearly from this report that there are legitimists in France; we see that there are Orleanists; we even see that there are republicans: we don't see that there is a single Bonapartist!... Well! No, Sire, there are no Bonapartists, or to put it better, there are no more, and your Majesty alone is surprised. You have entered into the communion of the Church; the good Lord is with you, *Dominus tecum*: and the people have no other religion than the Revolution, *Credo in Revolutionem*.

I have finished.

History, Morality, Right, Politics, everything comes together to overturn the judgment of the first instance.

Historically, the French Revolution was a necessary event, brought about by the natural development of civilization, by the progress of public reason and the immobility of the religious idea. As it was not me who made this Revolution; as I am no more the hero than the inventor, as I did not imagine its principles, as I did not write these principles at the head of each of our constitutions, and as my entire role, in this matter, is reduced to a pure exegesis, I cannot be held responsible for the contradiction that exists between the principles of the Revolution, which all our governments pretend to claim, and the principles of the Church, which they prefer to follow. This contradiction, between official practice and theory, is not my work; I'm not even the first to reveal it. From this first point of view, I am not guilty.

In *Morality*: I know how little it is up to me to speak to the people of right and duty; I know that if my merits were to be judged by my maxims, I would only have to bow my head and ask for mercy for my insufficiency, *Video meliora proboque, deteriora sequor*... But the time of the saints has passed; all fallible by nature, but all justice-bringers by our conscience, we still have, by virtue of the Revolution, the right and the duty to be, towards each other, all sermonizers. If then, using the prerogative vested in me by the Revolution, I show that its morality is different from that of the Church; if I prove that of these two moralities, the first is superior to the other; if I draw this conclusion that between two moralities of unequal value, it is absolutely necessary to follow the more perfect one, and to demand from the Church, which is still tolerated, a more explicit submission to the Revolution: in what way will I have violated morality? In what way have I outraged religion, harmed the family, trampled the law, disturbed the public peace, defended crime? How can I be slanderous and sacrilegious, for having described, according to the truth and according to my right, an illicit influence? From this point of view again, I am not guilty.

In *Right*, that is to say, from the point of view of the written constitutions, the question seems more difficult. The Concordat gave the Church a position; the law of 1819 and the Constitution of 1852 protect religion and guarantee respect for it. Now, it is positive that if the morality of the Church is declared inferior to that of the Revolution, in other words, if religion is considered an antithesis of morality, the Church becomes *ipso facto*, unworthy; its teaching is virtually a crime. The Concordat of 1802, the law of 1819, the Constitution of 1852, remain convicted of error; there is conflict between the principles of 89, on which all legislation is based, and the legislative

provisions that concern worship and the Church, and which, like any law, must be observed, until they have been regularly repealed by the competent authority. How to resolve this conflict?

To this I respond, in principle, that I cannot be guilty for having highlighted the conflict inevitably implied in their terms, on the one hand by the principles of 89, on the other hand by the laws of 1802, 1819 and 1852; in fact, that I have not attacked the privileges that the Church derives from the Revolution, that I am asking for their reform; judicially, finally, that I myself indicated the solution to the difficulty, by referring, by way of petition, the question to the Senate.

In *Politics*, I only say one word. In a few years public thought will have assimilated what truth my book can contain; it will have rejected the rest: of my three volumes, only an entry in the bookstore catalog will remain. This is how the policing of books is exercised: persecution alone makes them, as well as their authors, formidable.

Let the court, disregarding everything corporate and individual in the trial, consider only the general reason, overturn the sentence of the criminal police court: by this simple decision, the legal state of France, fallen into ambiguity by the mixture of religious traditions with the principles of modern philosophy, is definitively constituted; the public conscience recognizes itself; the government enters, without any shock, into a new era, the era of true legitimacy; the Revolution, established in minds, continues its peaceful course, and Europe follows us. The French judiciary will have deserved well from the country and the human race.

Let the court, on the contrary, yielding to disastrous prejudices, uphold the judgment of first instance; I say it with pain, but I owe this warning to my fellow citizens as well as to my judges, the war waged on books, on the thinking Revolution by a power resulting from the Revolution, becomes a provocation to social war.

Brussels, August 15, 1858.

P. J. Proudhon.

Postscript. — Me Gustave CHAUDEY should, as a lawyer, have signed my Memoir. As I am unable to communicate my proofs to him and obtain his signature, I believe I would please my readers and my judges by publishing here the remarkable letter that he wrote to me on May 8, a few days after the seizure of my work.

CONSULTATION

Paris, May 8, 1858.

My dear Friend,

I have finished your book *Of Justice* and I am able to answer you. You asked me for my opinion:

- 1) On the legal application of your distinction between public morality and religious morality;
- 2) On the legal value of a request for a stay motivated by your petition to the Senate.

Here, after an attentive reading of your book and your draft petition, is what I have to say to you:

On the first point, I do not hesitate to declare to you, philosophically speaking firstly, that the necessity of a distinction between public morality and religious morality seems to me to be clearly established by your book.

The Church and the Revolution, distinct by their starting points, distinct by all their doctrines on society and on man, necessarily become distinct by their morality, This is certain, with all the certainty of logic.

No dispute is now possible on this. The Church is the first to claim this profound distinction. There is certainly not a priest who, by preaching religious morality, intends to preach revolutionary morality. Whoever was accused of this confusion would raise loud cries.

What is also certain is that by revolutionary morality, we must understand the morality that is deduced from the principles of 89, civil morality, secular morality, the only one that can be called *public* morality in opposition to *religious* morality,

Now, if the two moralities differ profoundly, if they contradict each other, if they are incompatible, it is absolutely necessary that one manages to dominate, to subordinate the other; which amounts to saying that if the Church and the Revolution cannot agree, cannot coexist in the same society, it will be necessary for the Revolution to submit the Church, or vice versa. This is the major conclusion of your book. You cannot be more guilty of having seen and said that than an astronomer can be guilty for announcing a comet after having calculated it, at least as long as there is not in our codes an article establishing and repressing the offense of logic, as there was once the crime of exact observation and rigorous calculation repressed in the person of Galileo.

Legally, here is where this can lead, as you have very well anticipated:

We have entered into the principles of 89 by the current Constitution which, in its first article, *recognizes, confirms and guarantees them as the basis of our public right.*

Since there is a distinction to be made between the Revolution and the Church, between revolutionary or public morality and religious morality, the effect of this constitutional consecration of the principles of 89 must obviously be to subordinate the Church to the Revolution, religious morality to public morality.

You cannot be accused of having, by precisely distinguishing public morality from religious morality, and by taking the *public* side against the *religious*, outraged both one and the other. You cannot be held responsible for the fact that there is such a contradiction between the two morals that one cannot be supported without the other being attacked; and if, in the necessity of deciding between the two, you have given high priority to public morality, in this, far from having committed an offense, you have only strictly complied with the fundamental article of the Constitution. I would go so far as to maintain that, in the face of our public right thus reconstituted, the law must only recognize and protect *public morality.*

No one can claim to understand the principles of 89 better than the constituents of 89, and I remind you that these great legislators considered the subordination of the Church to the Revolution so clearly an obligatory consequence of their principles, that they imposed on the ministers of all religions the oath to their Constitution. It is the same deduction, to say in passing, as that which you arrive at by the draft Concordat proposed at the end of your third volume.

It results from all those which, if there were in our laws, during the promulgation of the current Constitution, provisions that, in negation of the Revolution and the principles of 89, would have reestablished the confusion of public morality and religious morality, as in the time when the State only recognized religious morality, there would be reason to conclude that these provisions have been virtually repealed by the current Constitution.

Now, this is the case with several provisions of the laws of the Restoration: on the press, obviously made in a spirit of reaction against the Revolution, and in particular article 8 of the law of May 17, 1819, which represses *outrage against public and religious morality*, by confusing the two moralities into one; and as this offense provided for by the law of 1819 forms precisely one of the charges under which the seizure of your book was carried out, I think that, legally, you have in article 1 of the Constitution a peremptory means of pushing back this indictment.

All this will no doubt seem like very audacious, reckless logic, and I do not answer that it will have a very good effect on the audience. The people are too unaccustomed to discussion on this matter for us to count on an immediate influence from the most solid argumentation. It is at most that we will not find that all these beautiful reasonings are outside the case. However, I cannot accept that the Constitution of 1859 was only promulgated on the condition that it could not be used, and that an accused could not seek means of defense there. You return straight to the point, with the principles of 89, on the ground of Voltaire and Mirabeau. This should give you confidence. Be assured that with these allies we are sure one day or another to be right.

On the second point, I will explain myself just as frankly; but the question is not as clear,

If, among the offenses that will be noted in your summons, there is found the offense of defamation against certain members of the clergy, it would not be doubtful that, by denouncing the facts forming the subject of defamation, you would be authorized to request a reprieve, if these facts were punishable according to the law.

This formally follows from article 25 of the law of May 26, 1819, which was not repealed by the organic law on the press of 1859, that thus several judgments have decided, and in particular a judgment of the Court of Cassation.

But the question would be to know whether, in the case of defamation against the Church as a body, the denunciation of the doctrines and unconstitutional acts of the Church, made to the Senate, by way of petition, under the terms of the Constitution, to provoke a change in the legislation relating to the Church, should place you in the benefit of article 95 cited above, as well as a denunciation made to the prosecution against certain members of the clergy, to provoke criminal repression.

Looking only at the bottom of things, it is certain that there is a very strong reason for analogy to place it for the benefit of the aforementioned article 25 the petitioner who provokes a legislative repression against a corporation on the part of the Senate, with as much if not more favor than the denouncer who provokes a judicial repression against an individual on the part of the public prosecutor's office.

It is certainly repugnant that someone who imputes a punishable act to an individual and who pursues the redress of an individual offense through legal means is better treated by the law than someone who, imputing unconstitutional doctrines and acts to an entire corporation, pursues its recovery through legislation and thus becomes the defender of the principles of the Constitution. Note also that the legislative route is the only one open to denouncing the doctrines or reproachable acts of a corporation like the Church, which by its very generality escapes any criminal repression. The detention of the entire Church by the prosecution is inconceivable. It is therefore necessary, in the absence of the prosecution, to resort to the Senate.

From a procedural point of view, it will be sufficient if, to base your request for a stay of execution, you have to invoke an analogy instead of a formal text, for you to have to expect regarding this astonishments and major disputes, not to mention that very probably the offense of defamation will not be raised against you, precisely to avoid any direct collision between you and the clergy. But the question nevertheless seems important enough to me, independent of the other considerations that may motivate your petition, for you to consider reserving the means of including it in the general plan of your verbal or written defense.

Sincerely yours,

G. CHAUDEY.