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THE LITERARY MAJORATS

EXAMINATION OF A BILL

AIMING TO CREATE,
FOR THE BENEFIT OF ACTORS,
INVENTORS AND ARTISTS,
A PERPETUAL MONOPOLY.

P.-J. PROUDHON

“If the right of authors is not a property, let us purge the language of an inexact word, and rid jurisprudence of a false idea.”

(E. Laboulaye, *Étude sur la Propriété littéraire.*)

1863

Working translation by Shawn P. Wilbur.
(Last modified June 10, 2024)

[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. — Shawn P. Wilbur, translator]

NOTICE.

This short work was to appear in Paris six weeks ago.

A bookseller took charge of the edition, a printer had agreed to lend his presses; the composition was finished, the proof signed; many amendments had been, at the bookseller's request, made by the author to the original text; we were going to go to press, when suddenly the printer, with the approval of the publisher, declares that he will refuse his ministry, if the author does not resign himself to the pure and simple suppression of a certain number of passages that have indicated to him.

It seems that in the absence of official censorship there has been organized in Paris, among printers and booksellers, an unofficial censorship, which slashes writings at random, often without the slightest intelligence of the text, sometimes even in interests entirely other than those of order. So that the production of ideas, in this so-called progressive France, is placed under the blows of four scourges: 1. the laws of repression concerning periodical and non-periodical writings; 2. the privileges of the bookstore, the printing press and the newspaper; 3. unofficial censorship; 4. the veto of the cliques and interests. Of these four scourges the least to fear is still that of the law, but how can we resist the coalition of the other three?

I refused to subscribe to the demands of my censors. On the one hand, whatever my good will, I could not tolerate the excessive ineptitude of certain critiques, which recalled the story of the cobbler and the painter: *Ne sutor ultrà crepidam*. Then, they pretended to forbid me from certain questions that the aim of my work is precisely to pose, if not yet to resolve. Can you conceive, among entrepreneurs of publicity, such ostracism? To exclude the idea from suspicion of the writer, or the writer from suspicion of the idea: this is what the French bookseller has come to!... One last reason for my refusal is that I suspect the honorable industrialists who were responsible for publishing my work of not having adhered to the discreet consultation of their lawyers, and of having gone higher or lower to seek their inspirations.

Perhaps, and I like to believe it for the honor of the Parisian printers, I might have found, by searching carefully, auxiliaries more reasonable or less frightened. I thought that the thing was not worth it, and since it is the second time that such an adventure has happened to me, I preferred, by publishing at Brussels, to denounce the fact to public opinion and appeal to the imperial government itself. A government can believe itself obliged to be severe; but it will never allow public stupidity to increase its severity; it knows that the action of police must always remain below, never go beyond the rigorous laws, *odiosa restringenda*, and it will let escape no opportunity to bring excessive minds back to the legal measure.

The passages incriminated by my unofficial censors are at number fifteen; they will be found on pages 7, 34, 56, 58, 61, 63, 71, 90, 96, 98, 102, 110, 117, 137, 138, 162, 163, with notes.

Ten copies of this work will be sent by post, to the persons named below: MM. TROPLONG, pre- resident of the Senate; de MORNAY, president of the Legislative Body; BAROCHE, president of the Council of State; PERSIGNY, interior minister; DUPIN, Attorney General at the Court of Cassation; H.H.H. Prince NAPOLÉON; PIETRI, senator; DARIMON, deputy; G. CHAUDEY, lawyer at

the Imperial Court of Paris; the director of the *Moniteur*. I hope that in none of these cases the copies will be retained. A bundle of 50 others copies will be sent, by way of the the Ministry of Interior, to my correspondent in Paris: depending on the reception of this bundle, I will be able, to a certain point, to conjecture about the intentions of the government.

Certainly, I expect neither great honor nor great profit from this pamphlet, written solely for the honor of the principles and to set my conscience at ease. Much less still I hoped to pull back the imperial government from a project to which it seems to cling all the more as it is requested by the mass of men of letters, the coterie of economists and the coalition of journalists, and as it imagines itself doing the work of democracy But I had to neglect nothing that could serve the manifestation of the truth and the prevention of a fatal error. Let the imperial government refuse entry into France to my brochures, if it wants; but let it push far from itself the bill that is proposed to it, and I am the man to congratulate it, I proclaim it, for this single act, more intelligent with the principles of 89, more liberal, more friendly to progress than three quarters and a half of these people who never stop shouting: *Revolution! Revolution!* and who, especially for ten years, have been demolishing the Revolution and liberty.

THE
LITERARY MAJORATS

REVIEW OF A BILL
INTENDING TO CREATE, FOR THE PROFIT OF AUTHORS, INVENTORS AND ARTISTS,
A PERPETUAL MONOPOLY

On September 27, 1858, a congress composed of men of letters, scientists, artistes, economists, and jurisconsults of all the nations, gathered in Brussels, in order to clear up the questions of authors' rights, what one calls today *intellectual* or *literary property*.

On August 5, M. de Lamartine had written the following letter to the president of the congress:

"Paris, August 15, 1858.

"M. President, some sensitive (*sic*) and pressing circumstances make it impossible for me to attend the congress to which you wish to invite me. I regret it so much more keenly, as the position of *rapporteur* for the law on literary property in France (in 1841) drew from me some serious works on that question: you will find them in *Le Moniteur*.

"It up to for Belgium, intellectual land par excellence, to take the initiative in this progress to accomplish more in the constitution of true properties. A sophist has said: *Property is theft*. You will respond to him by instituting the holiest of properties, that of the intelligence: God has done so, and man must recognize it.

"Please accept, M. President, the assurance of my high consideration.

"LAMARTINE."

I cite this letter from *l'Indépendance belge* of August 18, 1858.

In August 15, 1858, I had just withdrawn to Belgium, following a condemnation to three years of imprisonment for my book *Justice in the Revolution and in the Church*. I was then reported to the Belgians, by M. de Lamartine, in a not very benevolent manner, and the congress was put on guard against my *sophisms*. M. de Lamartine put himself to useless trouble. I had not been invited to the congress, at which I did not appear. The only part that I took in that solemnity consisted of an article published in a small weekly journal then unknown, an article which, consequently, was only read by a very few people in the world. Nobody repeated my arguments in the debates, and my name was not spoken. The perpetuity of literary privilege was nonetheless rejected by the congress, which was otherwise unanimous in the defense of property.

Dismissed in its demand to the congress of Brussels, literary property did not consider itself beaten; it resolved to take its revenge. With this aim, there have appeared several publications, among which I distinguish: 1. *Études sur la propriété littéraire*, by MM. LABOULAYE, father and son, 1858; 2. *De la propriété intellectuelle*, by MM. Frédéric PASSY, Victor MODESTE, P. PAILLOTTET, with Preface by M. Jules SIMON, 1859. — M. de Lamartine believed he needed to protect the congress of Brussels against my sophisms, one has seen with what success. MM. Frédéric Passy, Victor Modeste et P. Paillottet, not daring to attack the honorable members of

Congress, have fallen in their turn on the unhappy *sophist*, treated by them as a brazen plagiarist and flogged like a serf. When I have time to laugh, I will give the public the *Propriété intellectuelle démontrée par la métaphysique* of M. Frédéric PASSY, followed by the *Jurisprudence absolue* of M. Victor MODESTE and the *Voyage à l'île de Robinson* of M. PAILLOTTET, a comedy in three acts, in prose, with prologue by M. Jules Simon. Let it suffice, for the time being, to say that the rantings MM. Laboulaye father and son, Frédéric Passy, Victor Modeste and P. Paillottet, that last counter-signed Jules Simon, had no more success at the congress of Antwerp, held in 1861, and at which I was not present, than the authority of M. de Lamartine had obtained for it in 1858, at the congress of Brussels.

Presently, literary property has lodged an appeal before the imperial authority. The journals had first talked of a third congress, which should be held at the Palace of Industry. That would have been logical. The question of literary property is essentially cosmopolitan, no solution being able to receive serious execution except insofar as it will be accepted by all the governments. One should oppose congress to congress and appeal from the provincial synods of Brussels and Antwerp to the ecumenical council of Paris. Doubtless, the first two assemblies, influenced by the Belgian atmosphere, had erred; the third, debating on a free terrain, sheltered from all prejudice, would have put things right again. It would have been worthy of France, once constitutional, representative and parliamentary, to have debated solemnly, in every language, and over the course of thirty sessions if necessary, that which had been sliced through, at Brussels and Antwerp, in three.

The brief forms of the imperial regime have been preferred as offering more guaranties. A commission was instituted a year ago by the minister of State, M. Walewski. That commission, deliberating behind closed doors, has written and revised a report on the basis of which the State counsel will be called to prepare a bill, on which the legislative Corps and the Senate will then vote. [1] I had initially hoped that after a year of reflection, the commission and minister would abandon this project: nothing of the sort happened. For the partisans of literary monopoly, the strongest considerations that one opposes to them are just further grounds for perseverance. The lettered caste, the would-be successors of Voltaire and Rousseau, of d'Alembert and Diderot, today declares war against the very spirit of the Revolution. Apparently it is hoped that once France has spoken, the other nations will fall in line. Are we not the true interpreters of liberty, equality, and property, advancing, drums beating, under the flag of the Revolution? That done, we would have *emancipated human intelligence*, as M. de Lamartine said in 1841.

As for the democracy, represented by the press, it has nodded in agreement. If some reservations have been expressed, it is in a manner so discreet, on so few and such feeble considerations, that one could say that there has been no opposition. The day has been carried by the decisive, triumphant apophthegm of M. Alphonse Karr: *Literary property is a property*. What one will pardon me for recalling, as a personal fact, is that such a devotion to literary property would have its principle, if we are to believe its partisans, in a deep respect, an intelligence superior to property, and a holy horror of the attacks of which it has been the object. It is at such point that the property in land, which has been stipulated as the property *par excellence*, would no

longer be anything but a property of the second order, declared even, by the champions of the new property, defective, without foundation, without legitimacy, i.e., theft, unless it is given, as its complement, sanction and buttress, intellectual property, the *truest*, the most *holy* of properties. Even when I have not been directly named by the theoreticians of monopoly, these allusions have been quite transparent: this is how I have found myself personally engaged in the debate. If sometimes my polemic takes the style of a reprisal, the reader will know the reason why.

Until now, the perpetuity of privilege with regard to books, objects of art, machines, etc., has been rejected by the universality of traditions and the unanimity of peoples.

"This cause," declares M. Victor Modeste, a partisan of literary property, "has against it the vote of all our legislatures and the positive law of the two worlds. It counts among its adversaries the majority of the great minds, the majority of our masters."

Let us add that it is in formal contradiction with our public right and with the principles of the Revolution.

We are going to change all of that. Tradition and universal agreement do not have common sense; our legislatures, from 1780 until 1851, were mistaken; the positive right of the two worlds is in error. The Revolution has gone off course; besides, that Revolution belongs to another century: we have had enough of it. The Revolution is an expired patent for us; we swear by progress. The revision of the acts of congress of Bruxelles and Anvers will prove it. The appellants are numerous, powerful and active: they also have their authorities. There would be great misfortune if literary property, fighting on a terrain chosen by it, having before it only some *sophists*, sustained by a minister of the State and believing itself certain of the protection of the Emperor, does not finish by winning the victory. Those who have judged at Brussels were old counterfeiters; at Paris, there were only some economists and jurists.

Thus it is not with the hope of success that I battle at the moment. France, in its revolutionary back-and-forth, seems to have to go back to the limit of the regime abolished in 1789. One would have believed us on the road to apostasy, if one did not know that history has its returns, its *ricorsi*, as Vico said, and that a regression is often only the precursory sign of a new progress. A strange phenomenon, that the moralist is tempted to blame on the failure of the nations, and in which a more in-depth observation discovers a sort of law!... Now, as to the era that civilization has reached, nothing of that which is done in one State becomes definitive if it does not receive the approbation of the others; as it is not in the power of France to proscribe the Revolution that it has started, while that Revolution has taken all of Europe for parade ground, I have not hesitated to throw myself into the arena and to publish this work, hoping that it would have for effect at least to stop at the frontier what it no longer knows how to suppress within.

Two things put me completely at ease: one is that *property*, for which are armed in 1862, as in 1848, so many defenders, not only is not interested in the creation of a perpetual monopoly, as the partisans of literary property do their best to believe; quite the contrary, it has the greatest interest in seeing that that monopoly does not exist; the other, that I do not have for an adversary the government, which imagines that it does a work of justice, conservation and progress by proposing

to the consideration of the great powers of the State a question which, eight years ago, would have raised a unanimous disapproval.

"It is also in order to stimulate labor and encourage merit by the legitimate perspective of fortune," said the *Exposé de la situation de l'Empire* recently presented to the Chambers, page 57, "that the Emperor has deigned to appoint a commission to examine in its principle and in its application the question of literary and artistic property. Inspired by a noble benevolence, the solution seemed assured in advance; but serious interests being in play, it has not required less than a year in order that the commission had been able to elaborate the bill which, in the first day of the session, will be presented for the consideration of the great body of the State."

Very good! Let the Emperor propose to the deliberations of the great body of the State the same laws to which, in another political system, he should refuse his sanction: it must be so, since he alone, according to the constitution of 1882, has the initiative of the laws. But let the great body of the State, let the members of the counsel of State, of the legislative Corps and of the Senate know it: by voting for the law that was proposed to them, they would have destroyed in its principle, in its idea and in its law the REVOLUTION, struck a decisive blow against property and substituted to the principle of the sovereignty of the people, by virtue of which Napoleon III reigns, the feudal principle of dynastic legitimacy and the hierarchy of castes; they would have changed from top to bottom the political and civil rights of the French people.

Let the proprietors, on their side, to whom one still comes today to speak of *partageux* and of the red specter, reassure themselves: they will not encounter in this writing the slightest improper proposition. Their interests are perfectly sheltered. Their property, to them, has nothing in common with that would-be intellectual property that they are called to recognize; they will not be expropriated for having rejected the consecration of the most immoral of privileges. Far from that, it will be easy for them to judge, if they will only take the trouble, that the most disinterested voice, the one most sure of itself, which was never raised in favor of their prerogative, is the same that scandalized them, twenty-two years ago, by an analysis that is however nothing other than the point of departure of the thesis that I uphold today, and which they will regard as their safeguard, the day when it will be given to them to understand it.

As for the estimable orators and publicists who, at the congress of Brussels and since, have defended the doctrine that I uphold in my turn, and among which I will name MM. Villemain, Wolowski, Villiaumé, Calmels, Victor Foucher, Cantù, de Lavergne, Paul Coq, Gustave Chaudey, — I speak only of the living, — let them permit me to join my injuriously compromised voice to their more authorized votes. All has not yet been written on that complex question of the rights of the writer and artist; so many clouds piled up in recent times by the would-be jurisconsults, economists and philosophers have not been dispelled. I had believed that one would be grateful to have me show by a detailed study into what pothole the Nation and the government are led.

The question of the remuneration of authors touches on several orders of ideas. I will examine it from the triple point of view of Political Economy, Aesthetics and Public Right.

[1] The commission named by the minister was composed of the following names:

President: MM. Walewski, minister of State;

Vice-presidents: Persigny, minister of the interior;
Rouland, minister of public instruction.

Members:

Marthe, senator, first president of the Court of Auditors;
Dupin, senator, procurer general to the Court of Cassation;
Le Brun, senator, member of the Institute;
Mérimée, senator, member of the Institute;
La Guéronnière, senator;
Schneider, vice-president of the legislative Corps;
Nogent Saint-Laurens, deputy to the legislative Corps;
Vernier, deputy;
Vuillefroid, president of section to the Counsel of State;
Suin, counselor of State;
Duvergier, counselor of State;
Herbet, counselor of State, director of foreign affairs;
Flourens, member of the Institute, perpetual secretary of the Academy of Sciences;
Nisard, member of the Institute;
Sylvestre de Sacy, member of the Institute;
E. Augier, member of the Institute;
Auber, member of the Institute, director of the Conservatory of Music and of déclamation;
Alfred Maury, member of the Institute;
Baron Taylor, member of the Institute, president of several artistic societies;
President of the commission of authors and dramatic composers;
President of the commission of the men of letters;
Imhaus, director of the press and of the library to the minister of the interior;
G. Doucet, division chief to the minister of State;
Éd. Thierry, administrator general of the *Comédie-Française*;
Théophile Gautier, man of letters;
Firmin Didot, library printer.

I give this list as it has been communicated to me. According to the journals of the last year, the commission, in session with twenty-two members, has pronounced in favor of the perpetuity of the monopoly by a majority of eighteen to four. The four opponents, to the best of my knowledge, are MM. Flourens, Nisard, Dupin and Didot. It is a singular thing that the men who are alleged to represent liberal opinion, MM. de Lamartine, V. Hugo, J. Simon, F. Passy, L. Viardot, Alph. Karr, Alloury, Ulbach, Pelletan, G. Hecquet, Dolfus, etc., and the journals *les Débats*, *le Siècle*, *la Presse*, *le Temps*, and *l'Opinion Nationale* are in favor of this ultra-feudal creation, among the adversaries of which one encounters some declared friends of the Empire, such as MM. Dupin, Flourens, Nisard, and Sainte-Beuve. It is the world turned upside-down.

FIRST PART
ECONOMIC DEMONSTRATION

§ 1. — Position of the question.

In 1844, the prince Louis-Napoleon, presently His Majesty Napoleon III, responding to M. Jobard, author of the *Monautopole*, allowed to fall from his pen the following words, of which the partisans of literary property boast today.

"The intellectual work is a property like a piece of land or a house; it must enjoy the same rights and can only be alienated in the cause of public utility."

In times past, the word of the master was considered in the School an unanswerable argument. The master had spoken, *Magister dixit*, and all was said. French logic, essentially authoritarian and unitary, is still this way. The king has spoken; the emperor has spoken! One does not appeal that judgment. One has thought in Paris: it is enough for the eighty-nine departments.

Well! The Emperor is mistaken. The intellectual work is not a property like a piece of land or a house, and it does not give rise to similar rights. As I am not one of those that one believes on speaking, I ask to make the proof.

Certainly, I would not make a crime of that which Napoleon III, in 1844, assailed already by the makers of utopias and the inventors off panaceas, allowed himself to be surprised by that joker Jobard, whom I have known well, and who believes in intellectual property as in spiritualism, which is to say in true Norman, without believing in it too much. I would only take the liberty to remind His Imperial Majesty, by making an allusion to a word of Louis XII, that the Emperor of the French cannot respond to the *lapsus calami* of the prince Louis; and, that said, I would willingly praise the august personage for having, in the phrase that I have just cited, placed his finger on the difficulty on the first try.

The question, in fact, is to know, not if the man of letters, the inventor or artist, has a right to a remuneration for his work: after all, who thinks to refuse a morsel of bread to the poet, any more than to the sharecropper? We must, once and for all, banish from the debate that odious question, which forms the matter for the most ridiculous declamations. What we have to determine is the nature of the right of the author; in what manner to make remuneration for his labor; if and how that work could give rise to a property analogous to property in land, as the petitioners for monopoly claimed and as prince Louis-Napoleon believed in 1844; or if the creation of an intellectual property after the model of property in land does not rest on a false assimilation, on a false analogy.

Reasoning at first glance and according to a badly made generalization, the partisans of monopoly say yes. I declare, following an attentive study of their argumentation, and on the faith of an analysis of which the reader will be the judge, no.

§ 2. — DEFINITION: From the economic point of view, the writer is a *producer*, and his work is a product. — What do we mean by that word, to *produce*? The character of human production.

All the writers in favor of literary property are in agreement, in order to establish their thesis, in assimilating literary and artistic production to agricultural and industrial production. It is the point of departure for all their reasoning: it will also be mine. It is well understood that that assimilation does not prejudice the dignity that properly belongs to letters, to the sciences and to the arts.

Yes, whatever fundamental difference may exist between the orders of the *beautiful*, the *just*, the *holy*, the *true*, and that of the USEFUL, however solid the demarcation that may separate them in every other respect, in so far as the man of letters, of science, or of art produces his works only by the sweat of his brow, since to that end, he spends effort, time, money, and subsistence, from the inferior point of view of political economy, in a word, he is what the science of wealth calls a *producer*; his work is a *product*, which product, introduced into circulation, establishes credit for a compensation, remuneration, wage or payment, I will not argue at this moment about the term.

But first, what is meant in political economy by that word, *producer*?

The masters of the science all teach us, and the partisans of literary property are the first to say it, that man has not the power to create an atom of matter; that his action consists of taking hold of the energies of nature, directing them, modifying their effects, composing and decomposing bodies, changing their forms, and, by that direction of natural forces, by that transformation of bodies, by that separation of elements, of making the creation more useful, more fertile, more beneficial, more brilliant and more profitable. So that human production consists entirely, 1. in an expression of ideas; 2. in a displacement of matter.

Thus the most humble artisan is only a producer of movements and forms: he draws the first from his vital force by the play of his muscles and nerves; the second come from the excitation of his brain. The only difference that there will be between him and the writer is that the artisan, acting directly on matter, gives it impetus, inscribes there, and so to speak incorporates his idea there, while the philosopher, orator, the poet, do not produce, if I dare to say so, outside of their own being, since their production, spoken or written, is confined to language. For my part, I made that observation long ago, and MM. Frédéric Passy and Victor Modeste, who profess the same manner of seeing, could have cited me, if I was a writer that one cites, had there not been more profit in treating me as a *sophist*. But do they know where this assimilation, generally accepted, it appears, among contemporary economists, is leading us? They do not even suspect it.

Here, then, is what is meant: The writer, the man of genius, is a producer, no more and no less than his grocer and his baker; his work is a product, a portion of wealth. Formerly, the economists distinguished between material production and immaterial production, as Descartes distinguished between matter and spirit. That distinction becomes superfluous: first of all, because there is no production of matter, and, as we have said, everything happens through ideas and movements; in the second place, because we no more produce our ideas, in the rigor of the term, than we produce bodies. Man does not create his ideas, he receives them; he does not make truth, but discovers it;

he does not invent beauty or justice, they are revealed to his soul, like the conceptions of metaphysics, spontaneously, in the perception of phenomena, in the relations of things. The intellectual bases of nature, just like its sensible bases, are outside of our domain: neither the reason nor the substance of things come from us; the very ideal that we dream, that pursues us and makes us commit so many follies, a mirage of our understanding and our heart, we are not the creators of it, we are only the viewers. To see, through contemplation; to discover through seeking; to mix matter and modify it according to what we have seen and discovered: that is what political economy calls producing. And the deeper we go into the thing, the more we convince ourselves that the similarity between literary production and industrial production is exact.

We have reasoned from the quality of the product: let us speak of the quantity. What could be the extent of our productive power, the measure of our production?

To that question one can respond, in a general manner, that our production is proportional to our forces, to our organization, to the education which we have received, to the milieu in which we live. But that proportionality, which must express a considerable quantity, if one considers it in the collective man, only expresses a very feeble one in the individual. In the collective human and in the social wealth, the individual and his work are indefinitely small. And that infinitesimality of the individual product is as true of philosophical and literary production as of industrial production, as we will see.

Just as the rustic laborer turns on average only a very small surface of soil, cultivates only a corner of earth, produces, in short, only his daily bread: so the laborer in pure thought seizes the truth only slowly, through a thousand errors; and that truth, to the extent that he can boast of having been the first to discover it and mark it with his seal, is only a twinkle that shines for an instant, and tomorrow will be blotted out by the always growing sun of general reason. All individualism disappears rapidly in the region of science and art, so that the production that it seems to us must be most sheltered from the abuses of the time, that of ideas, does not have, subjectively speaking, more guarantees than the other. The work of man, whatever it is, is like him, limited, imperfect, ephemeral, and serves only for a time. The idea, in passing through the brain in which it is individualized, ages like the speech that expresses it; the ideal destroys itself as quickly as the image that represents it; and that creation of genius, as we have always called it with emphasis, that we declare sublime, is in reality small, defective, perishable, constantly in need of renewal, like the bread that nourishes us, like the clothing that covers our nudity. These masterpieces that have come down to us from extinct nations and that we believe immortal, what are they? Relics, mummies.

Thus, from all points of view, industrial production and literary production appear to us identical. Carried into political economy, the distinction between matter and mind is only proper to maintain proud pretensions, to establish categories of conditions to which political economy is as contrary as nature. This does not mean, however, that those who specialized in the mind were not more *intellectual* or spiritualized than the men of the flesh whose profession placed them in constant contact with matter; this merely proves that artistic and literary production is but a specialization within industry. I will confine myself to establishing, in the end, the reverse. I say

that at base, in that which concerns wealth, there is no qualitative difference between the various categories of production, and the partisans of literary property speak as I do. And frankly, once again from the economic point of view, is the distance between the two as great as we seem to believe? A contemplative person has conceived an idea; a practical person grasps it and realizes it with his hands. To whom should we award the palm? Do we believe that it is enough to have read the rules of stone cutting in a treatise on geometry in order for the stones to be cut? It is still necessary to maneuver the hammer and the chisel; and it is not a small affair, after the idea has been conceived by the mind, to make it pass to the fingertips, from which it seems to escape in order to attach itself to the matter. The one who has his idea in the hollow of his hand is often a man of more intelligence, in any case a more comprehensive intelligence, than the one who carries it in his head, incapable of expressing it other than by a formula.

§ 3. —Right of the producer to the product. —That the idea of production does not imply that of property.

The thing, or rather the form, is produced: to whom does it belong? To the producer, who does with it as he likes, and would have exclusive enjoyment of it. Again, a principle that I am ready to endorse wholeheartedly. No need for a demonstration of that, Messieurs Passy and Lamartine. I have never said that labor was theft; on the contrary... — Thus, they conclude, the product is the property of the producer. You recognize this, you have taken this for one of your aphorisms, convinced by your own words.

Gently, if you please: I believe that it is you, Messieurs, who mystify yourselves with your false metaphysics and your grandiloquence. Allow me first a small observation; you will see afterward on which side the sophistry lies.

A man has written a book: this book belongs to him, as there is no need to declare, as the game belongs to the hunter who killed it. He can do with his manuscript what he likes: burn it, frame it, make a gift of it to his neighbor; he is free. I would even say, with the abbé Pluquet, that the book belongs to the author, the author has the property of the book — but let us not equivocate. There is property and there is propriety. This word is subject to very different meanings, and it would be to argue in a buffoonish manner to pass, with no other transition, from one sense to another, as if it were always the same thing. What would you say to a physicist who, having written a treatise on light, and thus being the owner of this treatise, claimed to have acquired all the properties of light, arguing that his opaque body has become luminous, radiant, and transparent, that he travels seventy thousand miles per second and thus enjoys a kind of ubiquity? You would say that this a great shame, that this man is clever, but unfortunately he has gone mad. This is nearly what has happened to you, and we can apply to you what the governor of Judea said of St. Paul, *multo te litteræ perdidit*, when you conclude from the right of property in the product to a new species of property in land. In spring, the poor peasant women go to the woods to harvest the strawberries that they bring to the city. These strawberries are their product, therefore, to speak as does Father Pluquet, their property. Does this prove that these women are to be called proprietors? If you said

so, everyone would think they own the wood from which the strawberries come. Alas! Just the opposite is true. If these marketers of strawberries were their owners, they would not go to the woods to seek what belongs to the owners, they would eat them themselves.

Let us not pass so quickly from the idea of production to that of property, as Chapellier did in 1791 when he introduced this confusion into the law. The synonymy that he seeks to establish here has so little justification that common practice has decided against it. It is generally accepted, both in the vulgar language and in science, that if a man can accumulate in his person the qualities of both producer and proprietor, these two titles are different from and frequently the opposite of one another. Certainly the product is the *asset* of the producer, as the bookkeepers say, but this *asset* is still not CAPITAL, much less PROPERTY. Before we arrive at that point, there remains some distance to be travelled; now, it is this path that it is a matter, not of stepping over, as was done with the big words that seem to be M. de Lamartine's hobby-horses, but carefully illuminating and marking.

In short, and to return to our comparison, the writer's work, like the farmers' harvest, is a product. Returning to the principles of this production, we arrive at two terms, the combination of which result in the product: on the one hand, the labor, on the other hand, a substance, which for the farmer is the physical world, the earth, and for the man of letters, the intellectual world, that of the mind. The earthly world having been divided up, each of the portions of it on which farmers raise their crops is called *property in land* or simply property, something very different from the product, since it preexists it. I do not have to seek here the reasons for that institution of property in land, which my adversaries do not attack, and of which they limit themselves to demanding a counterfeit. These reasons, of a very lofty order, have nothing in common with our current researches. I take hold only of the distinction so clearly established between agricultural product and property in land, and I say: I see well, in that which concerns the writer, the product, but where is the property? Where can it be? On what basis will we establish it? Will we divide the world of the mind after the fashion of the terrestrial world? I do not oppose it if it can be done, if there are sufficient reasons to do it; if, by itself, a similar appropriation raises no revulsion, contains no contradiction; if, in this connection, the opposition between the physical world, which is susceptible to division and which must be divided, and the intellectual world, incompatible with the idea of property, is not one of the organic laws of the humanitarian constitution. Now, have these questions been answered? Have they even been asked?... Will it be by chance the very product of the writer, would it be the book, conquest of genius, which, detached from the common intellectual funds, will become in its turn a substance for exploitation, a property? How, by what social relations, by what fiction of the law, by virtue of what reasons will this metamorphosis be accomplished? That is what you have to explain, what I will seek soon, but which you never have explained, when you pass without transition from the idea of production to that of property. The man of letters is a producer; his product belongs to him: we agree with you. But, one more time, what does that prove? That one has not the right to ask for more from him? So be it. And after?...

But a new question appears suddenly, which demands to be treated as well.

§ 4. — Of the exchange of products. — That property does not result from commutative relations.

Since, in order to establish literary property, one must begin by demonstrating the reality of literary production, and because, although the first does not result from the second, it is necessary to suppose that that property, if it must be formed, will be the effect of relations that emerge as a result. Let us return then to the question at the point where we left it, and follow the literary product in its economic evolution.

All wealth obtained by labor is at once a production of force and a manifestation of an idea. Coming from the hands of the producer, it is not yet property; it is simply product, utility, object of enjoyment or consumption. Now, the condition of humanity would be very unfortunate if each producer was limited to the enjoyment of his specific product. The enjoyment must be generalized, and, after having been special producer, man becomes universal possessor and consumer. The operation by which the consumption of products is generalized for each producer is *exchange*. It is thus by exchange that each product or service receives its *value*; it is by exchange that arises for all the categories of production the idea of remuneration, payment, wage, pledge, indemnity, etc.

Can property, — I always mean by this word that property in land, domain, of which the division of the earth has given us so clear an idea, and to which it is a question of creating an analogy in the intellectual order, — can property, I say, which we have seen cannot come from production, arise from exchange? That is what we have to examine now.

The laws of exchange are: that products exchange for one another; that their evaluation or compensation takes place in a free debate and negotiation, designated by the words *supply* and *demand*; that, the exchange accomplished, each trader becomes master of that which he has acquired, as if it had been his own product, so that, the delivery made and the exchange consummated, the parties owe nothing to one another.

These laws are universal; they apply to all sorts of products and services, and allow no exception. The products of pure intelligence exchange with those of industry in the same manner as those exchange among themselves: in both cases, the rights and obligations which rise from the exchange are similar. And why is that? Because, as we have observed earlier, in §2, the products of human activity are all, at base, of the same nature and of equal quality, consisting of an exertion of force and the manifestation of an idea; and that all, from the idea expressed by speech to the transformation or displacement imposed on the materials, are limited, ephemeral and imperfect creations, the substance of which is external to man, and of which the proportional mean hardly varies. That is why the products of man can be exchanged, serve mutually as measures of one another, in short pay for each other.

Now, in all that commutation, I see nothing appear that could make of the thing exchanged a substance productive of rent or interest, like the earth, nothing, in a word, that is a property.

We can divide an exchange into a series of moments distinct from one another, which all have their importance and give rise sometimes in commerce to grave difficulties. there is the proposition or offer, which sometimes precedes and sometimes follows the demand; estimation or haggling, the

agreement, the transport, the delivery, the inspection of the merchandise, the reception, the payment. Between these various moments, which bring about incidents of all sorts, on each of which volumes have been written, impossible to place or to conceive of a fact that modifies the first idea, nothing which alters the title of possessor, producer or purchaser of the things, and converts him, from simple trader that he is, into what we mean by proprietor.

We will come below to the question of savings and of capital, and we will ask ourselves, as we did here, if the notions of savings or capital can lead us to that of property. For the moment, we are only at exchange.

Thus I say that, just as the idea of literary production is not enough to justify the creation of a literary property, any more than that of agricultural or industrial production would have been enough to legitimate the creation of a property in land, so the notion of exchange is not any more sufficient, and for two equally peremptory reasons: the first is that the work exchanged is always only a product, a fungible, consumable thing, the opposite of what we call, by a generally admitted usage, property, that is funds; the second, that after exchange, the object no longer belongs to the one who created it, but rather to the one who has acquired it: which leaves things *in statu quo*, and overturns from top to bottom the hypothesis of a property to the advantage of the producer.

Thus the analogies so often invoked, and now met everywhere, of literary production and industrial production, far from leading to any idea of property, lead us away. It is this that should be understood better than by anyone by M. Frédéric Paesy and M. Victor Modeste, who both sustain, with all the energy of which they are capable, that property is not a consequence of the productive action, and that those are adversaries of property, who, like M. Thiers, give it for principle the labor of the proprietor. It is clear, and I am of that opinion, that property in land has another origin; that it is superior, if not prior to labor, and that it is to tangle oneself up and and compromise everything to insist, as the perpetuists do, on the quality of producer in the man of letters, in order to deduce that of the proprietor.

We are among producers of various specialities; these producers make exchange of their products, but there is nothing in that exchange that would suggest the idea and and give rise to a right of property in land or domain. Possession, — that is the proper term, when one speaks of the right of the producer and trader on the product, — begins for each with the product, nothing more, nothing less, and finishes with the exchange. *Do ut des*, I give you, so that you will give me; give me a lesson in writing, in arithmetic or music, and I will give you some eggs from my chickens, a pint of my wine, some fruit that I have gathered, some butter or cheese from my herd, at your choice. Recite to me your poem, tell me your story; teach me your processes, your industry, your secrets, and I will lodge you, feed you, bear your costs for a week, a month, a year, while all the time you will be my tutor. Products and services exchanged, what is happening? Each of the traders makes his personal profit from what he has received, assimilates it, distributes it to his children, to his friends, without the seller having a right to protest against that communication. Has anyone ever heard that young people of both sexes, who, from France, Switzerland or Belgium, go to Russia as educators, stipulate for themselves and their heirs, in addition to their salaries and bonuses, that the students should not in turn become tutors to their compatriots, given

that the preceptorship is the property of the tutor? That would be to give and to take back, which is the destruction of the principle of exchange. In that case, the Russian lords who bring over these young people could also demand of them that after having ended the education enterprise and received the wages agreed upon, they must consume their emoluments on the lands of said lord, and not transport the Russian gold to foreign countries, which would be of all the ideas the most ridiculous and certainly the least acceptable. It is, though, something similar of which the partisans of literary property dream: we will soon see on what pretext.

In summary, all that which, product of pure thought or of industry, enters into commerce, is reputed, not as fund or property, but as a fungible thing, fully consumable by usage, and recognized to have no other master than the one who has produced it or paid for it with an equivalent. It is otherwise with property. The the land itself is not the product of man; it is not consumable; and the property in it can be attributed to others than the one who fashioned it. Nothing is more clear than this distinction: the reasoning of the monopoleurs supposes it, even though it is inept to express it; and all their talent consists in blurring the ideas, in confusing the notions, to give rise to equivocations, and to draw conclusions without relation to the premises.

§ 5. — Particular difficulties with the exchange of intellectual products.

What has puzzled minds is, from one side, the apparent heterogeneity that exists among the various categories of production; from the other, the imperfection of the processes of exchange and as a result of the commutative right.

Between the shepherd who produces butter, mutton and wool, and the manufacturer who makes cloth, hats and shoes, the exchange seems as simple as it is natural. The labor of each is here incorporated in a material, palpable, weighty object, which one can taste, measure, feel, and the consumption of which is necessarily limited to the person of the buyer and his family. Valuation, transfer and compensation give no trouble. So the legislation in that matter is ancient and precise.

But between these products and the work of genius that is an idea, an idea the consumption of which seems, at first sight, to always leave it whole, and of which the communication, made first to one alone, can spread to infinity without the intervention of the producer, the exchange no longer appears such a certain practice; the legislator hesitates, and more than once the interested have protested, this one of abuse and that one of ingratitude. Commerce has always been full of iniquity: has the Jew, who for three thousand years has given himself up to traffic, learned to distinguish exchange from agiotage, or credit from usury? The laborers of the pure idea complain of having been badly served; and the serfs of the glebe, have they been treated with rose water?... Let us examine things then with calm; and, because corrupt practices abound, let us not abjure common sense.

I begin with the simplest case; I will then come to the more difficult ones.

A physician is called to visit the sick: he recognizes the nature of the illness, prescribes a medication, indicates a regime of treatment. For that office, the custom is to settle the fees of the

doctor at so much per visit, payable after the convalescence; in England, he receives the price of his visits as he makes them. What has the physician provided? A counsel, a prescription in four lines, an immaterial, impalpable thing, without relation to the price paid. Such a prescription, given appropriately, saves the life of a man and would not be overpaid with a thousand francs; any other is not worth the drop of ink that was used to write it. Each understands however that the physician was disturbed, that he has used his time, that he had to make the journey on foot, by carriage or on horseback; that before being a doctor and having a clientèle he gave himself up to long studies, etc. All of that demands an indemnity, but what will it be? No account could establish it with exactitude. We only know that it is determined according to the combination of costs incurred by the doctor for his education and his marketing, of the number of the sick, of the competition that his colleagues give him, and of the average consumption or well-being of the families that live in the locality. In sum, and although there has not been an exchange of materials, there is an exchange of values: that is why the cares of the physician who saves the life of his patient, like the one who have the misfortune to lose it, is paid in cash and at the same rate.

The professor, who courts, as one says, the cachet, is remunerated in the same manner and according to the same considerations as the physician.

Now, let us remark that, the lesson given, the consultation written, the person who has it receives in fact what they want. If it please the student to transmit to another what he has learned, the patient to point out to another sick person the remedy that has cured them, nothing forbids it: neither the professor nor the physician would make a case for that. If the exercise of medicine is prohibited to individuals not provided with a diploma, it is because of the police and in the interest of public hygiene, not because of privilege. Everyone can follow the course of the Faculty and arrive at the doctorate. In a word, the principle inherent in exchange, namely that the object delivered becomes the property of the one who receives it, that principle receives here, as elsewhere, its full and complete execution.

With regard to the university professor, the process is somewhat different: the State assigns him an annual salary, which amounts to absolutely the same thing. There is, you will say, a law that forbids anyone to reproduce his lessons. I admit this precaution of the law, which does not want the thought of Professor mutilated, forged or disguised, by unintelligent or malevolent auditors. The teacher is responsible for his teaching: it is for him, consequently, to preside over the printing. Beyond that, the benefit derived by the teacher from his public lectures, in addition to his salary, should be considered, in principle, as duplication or surplus. It is an indulgence that can be motivated by the scarcity of treatment, by the desire to excite the zeal of the professor, etc. I do not question these motives: I say that this profit from publication constitutes for the professor a duplication of fees, otherwise it should be seen as a violation of the rule of trade, which does not allow the same merchandise be paid for twice. What induction comes from that for the creation of a perpetual literary rent?

The magistrate, the clergyman, the civil servant, are treated on the same footing. They also are intellectual producers; and it is in order to lift up the character of their functions, which we are loathe to confuse with the servile labors of industry, that we have invented the terms of salaries,

fees, benefits, etc., which all, neither more nor less than the more humble one of wages, indicate one single and same thing, the price of the service or product.

Often the State accords to its ancient servitors a retirement pension. That pension, essentially a life annuity, must still be regarded as an integral part of the remuneration, consequently it returns to the rule. Into all this, I admit, abuse slips easily, but the abuse does not nullify the principle; it proves it. At base, it is still the legislation of exchange that governs us, and what does that legislation say to us? Supply and demand, free debate, synallagmatic convention, the basis of which is product for product, service for service, value for value; then, the transfer carried out, the recognition achieved, the acceptance made, there is *quittance*. Note that word: exchange consummated, the parties are quits towards each other; each takes away his thing, disposes of it in the most absolute manner, without charge, and in all sovereignty.

Let us pass to the writer. From what has just been said, it is clear that if the writer was a public servant, his salary would not offer the slightest difficulty. He would be treated like the university professor, the magistrate, the administrator, or the priest, who, like him, all make works of genius; who, often without writing anything, dispense more eloquence, knowledge, philosophy, and heroism, than he who puts his dreams in verses, written dissertations, pamphlets or novels. In this regard, any distinction between these various services or products would be impertinent, insulting. However, heredity has been abolished in the magistrature and the clergy, just as in industry: no more *mâtrises* or *jurandes*; the salaries are annual, complemented, where appropriate, by a pension, and the jobs are put up for competition, just as industry is given to competition. As an employee of the State, the man of letters would lose then, *ipso facto*, by his employee status, by virtue of the employment contract for work which linked him to the State, property in his works, exchanged by him for a fixed salary, which embracing the entire life would exclude the supplement of pension. — In France the clergy, employed by the State, but poorly paid, also receives a *casuel*, and he complains about it; teachers receive compensation for exams, academics have attendance fees. It would be good to do away with all these *bonuses*, the remains of our old customs, when economic notions were not very accurate, when the judge received *spices* and the clergy enjoyed *benefits*; where the noble combined with the privilege of arms that of the property, while the farmer remained forever subject to *mortmain* and *corvée*; where the prince's civil list merged with the public treasury; where production, finally, was servitude, and exchange mutual swindling.

§ 6. — Liquidation of author's rights.

There remains then the independent writer, the one who is neither professor, nor functionary, nor priest; who casts his ideas to the winds, sur des feuilles de papier où elle a été couchée par un imprimeur en caractères moulés. How will his remuneration be regulated?

The kings of France, who were the first to grant printing privileges, told us, and we have only had to follow the path they opened.. The author is a trader; is this not true? With whom does he exchange? It is not, *in particular*, with you, or with me, or with anyone; it is, IN GENERAL, with

the public. Since the State, an organ of the public, does not grant the writer any salary — and I hasten to say that I do not claim any for him — it is clear that the writer must be considered as an entrepreneur of advertising, at its own risk; that his publications are, from a commercial point of view, an uncertain thing; that consequently a tacit contract is formed between him and society, by virtue of which the author will be remunerated, at a fixed rate, by a temporary privilege of sale. If the work is in high demand, the author will earn well; if he is rejected, he will collect nothing. He is given thirty, forty, sixty years to cover his expenses. I say that this contract is perfectly regular and equitable; that it meets all requirements, that it respects all rights, respects all principles, satisfies all objections. The author, in a word, is treated like everyone else, like the best: on what basis would he claim to be classified separately and obtain, in addition to what commercial right, commutative justice, economic reason grant him, a perpetual rent?

This deduction is clear, and I defy you to show the shadow of a sophism in it. Let us reproduce it once again, summarizing it:

One solicits the government to constitute in favor of writers a new property, a property *sui generis*, analogous to property in land.

I say nothing against property in land, established on other considerations, and which is not put in question here by anyone. I ask only on what one bases that analogy?

On this, the partisans of perpetual remuneration begin an economico-juridical dissertation the point of departure of which is that the writer is a producer; and that, as such, he has a right to the exclusive enjoyment of his product. — I allow the assimilation, but I remark that the idea of production and the right that results from it do not lead in their consequences to the constitution of a property, in the sense that common usage gives to that word, and which is also the one that one intends to apply to the people of letters. Let the author have the sole right to enjoy his manuscript, if it pleases him, without sharing it: once more, what does that prove?

One says to me that every product or service merits recompense, which means that if the author presents his work for consumption, he has a right to draw from it, as trader, an equivalent. I grand once again the condition; but I observer to my antagonists that the idea of exchange does not, any more than that of production, imply that of property; and, following always the chain of analogies, I demonstrate, by the rules of commerce, by the principles of commutative justice, that the writer to whom one accords a temporary privilege for the sale of his works is paid. One desires that this temporary privilege become perpetual. If is absolutely as if the peasant woman of whom I have spoken, to whom one offers 50 centimes for her basket of strawberries, responded: No, you will pay me every year, in perpetuity, to me and my heirs, 10 centimes; — as if the producer of wheat, of meat, of wine, etc., declining the payment for his merchandise, wanted to replace the price of it by a perpetual rent. It would be, like Jacob, to demand a birthright in exchange for a plate of lentils. On this account, there would soon be no more trade, each family having to produce everything for itself, on pain of soon seeing themselves crushed, by the fact of their exchanges, under an infinity of royalties. The absurdity springs to the eyes.

Is there at least a plausible pretext for demanding in favor or literary and artistic producers, and by exception to all the other categories, that perpetuity of tribute? No: we are not alleging

anything. What the perpetuators demand is a purely gratuitous gift, which is not based on any consideration drawn either from the dignity of the authors or artists, or from the excellence of their products, and which, consequently, falls entirely outside the rule. Why this species of eternal pension to the producers whose works, expressions of individuality and of the moment as all the sorts of products, are narrow by nature, imperfect, fragile, precarious, ephemeral? Don't we know that the products of pure thought, like those of industry, wear out quickly, erased by the incessant movement of the general thought, absorbed and transformed by other works? The average life of a book is not thirty years: outside of that term it no longer responds to the state of minds. It is overwhelmed, it has had its day and one no longer reads it. Some, the imperceptible minority, survive to cross generations, but as monuments of languages, testimonies of history, objects of archeology and curiosity. Who reads Homer and Virgil? It is all a study to understand it and to sense the beauties of it. We have attempted to perform the plays of Aeschylus and Sophocles: it does not succeed. The Bible, in passing from the Israelites to the Christians, has been, so to speak, travestied. Very recently we saw Béranger finished; in a few years we will not speak of Lamartine, nor of Victor Hugo. They will remain, like thousands of others, in the memory of curious scholars: that will be their immortality.

If such is, one says to me, the duration of the works of the mind, what inconvenience do you find in according to writers a perpetual privilege?

The disadvantages that I find with this concession are serious and of several kinds. First, perpetuity is just; it violates the law of exchange which requires, as much as possible, that each product be paid for by an equivalent. To go beyond this is to sanction parasitism, inequity. Then, this perpetuity would be an abandonment of the public domain, which, instead of benefiting from the intellectual work of individuals, would be positively diminished. Finally, something that the perpetuists do not see, if the privilege of sale were granted to authors in perpetuity, it would result that the duration of literary works, instead of following its normal course, would be artificially and indefinitely prolonged by the very fact of privilege, that it would consequently become an obstacle to the production of new works, and this to the great detriment of progress. I have nothing more to say about the first of these propositions, namely the violation of the principles of exchange: I will return to the other two in the third part of this labor.

§7 — Response to some difficulties.

Allow me, before going any further, to dispel some doubts originating from the false terminology employed as much by the partisans of literary property as by those who combat it. The details, I know, are tedious: they have been rendered necessary.

The two principal points to note here are: 1) that between the author and the public there is an *exchange*; 2) that, by the fact of that exchange, the public has seized the work and become, save for payment, its proprietor. From that all is clarified; the clouds amassed by discussion evaporate.

In order to establish his idea of intellectual property, the Abbe Pluquet compares the work to a plot of LAND cleared by the author, and the *communication* of which he then makes to the public is the CROP. — One sees what absence of logic, and even of grammar, reigns with that writer. The

work of genius is not a plot of land, but a product, which is completely different. The communication is not a crop, it is the very fact of the exchange, what the juriconsults call *transfer*, the men of commerce *delivery*, exactly the act by which the author releases his work: it is absurd to give to that price the name of crop, at least to say that price of a sack of wheat is the harvest given by the wheat, which would be to confuse notions and things. The land, worked and sown, has given for crop the wheat; and the wheat, carried to the market and sold, has received its price: there are the facts. Just so a man who explores the fields of thought draws from it a product that is his book; and that book, published by means of the press and sold, procures for the author his remuneration.

Others, taking up Pluquet's gibberish and persisting in looking at the literary work as a field, call the *fruits* of this field the copies or exemplars made of it by the printer. Now, they say, every landowner *makes the fruits his own*; therefore, etc...: which is to reproduce Pluquet's absurdity in another form. The author's work is a thought, more or less enveloped, and it exists in him independently of printing, of writing, I would almost say of the word itself. The speech, in which this idea is formulated; the paper, the characters by means of which this discourse, first thought, then spoken, is fixed and made visible to the eyes, are not the offspring of the idea, the fruits that emerge from it, but the *means of manifestation* that it uses. It is a foreign product that here comes to the aid of the author, almost as the midwife comes to the aid of the woman giving birth. This is so true that the printer's product, the auxiliary, not responsible product, is paid for by the author or his publisher prior to the work of the author himself.

M. Victor Modeste, continuing this false analogy of the literary product with a FUND, protests against the expression *salary*, which some opponents of perpetuity had inappropriately used to define copyright. He says that the author is not in anyone's employ; that there is no hiring of work here; that he does not create to order; that, consequently, the expression salary is inaccurate and gives a false idea of the thing. So be it: let us reject the word salary, which could only be used in the case where the writer is declared a public official, and let us simply say that the author is a producer; that consequently, he is entitled to receive, for the communication of his work, remuneration. What will M. Victor Modeste gain from this? Product for product, service for service, idea for idea, value for value: we always remain within commutative law, outside the sphere of property.

Against the perpetuity of copyright, some have argued for the *public utility*. An unfortunate argument: if the perpetuity of the writer's rights could result from his status as producer, as the supporters of literary property have tried to maintain, there would be no public utility that would hold, the property would have to be recognized beforehand, then the author compensated for an equivalent amount. Public utility has nothing to do here, but rather public right. The literary work, through publication, has entered the domain of publicity, that is to say that it is now part of the collective assets, save for liquidation, by the principles of exchange, of the rights of the writer.

The rapporteur of the law of 1791, Chapelier, fell into a similar error, when he said that, "*The privilege of sale once expired, public property began.*" This still misunderstands the nature of the contract of sale and exchange, and in particular that which is supposed to be formed between the

author and the public. In any sale or exchange, the ownership of the purchaser begins upon delivery or receipt of the goods, even though payment should not take place until a long time later; However, in the case of books, delivery takes place at the moment of publication, consequently public ownership begins with it. Let us not confuse, as Chapelier did, these two things, the ownership of the literary work and the right to distribute copies of it. The first concerns the content of the book; it ends for the author and begins for the public when it goes on sale. As for the privilege, which is nothing other than a guarantee of remuneration given to the author and which only interests those who trade in books, it also ends for the author and begins for all booksellers at the expiration of the time limit set by law.

This taking of possession by the public of a work for which it pays seems, to the defenders of literary property, a usurpation. After having said that the communication of the manuscript is the harvest of the author, Abbé Pluquet claims that this communication, the exclusive property of the author, cannot be made without his permission by the people who received it from him at other people. Such a communication, adds M. Laboulaye senior, would be theft; it would be harvesting in someone else's field... They will never come back. Let us not confuse confidence with communication here. As long as the work is unpublished, those to whom the author entrusts its secret could not, without failing in honesty and justice, divulge it. But if the communication has been paid for, if only one copy has been sold, there is publication. The price paid implies for the purchaser the right to use, enjoy, share, quote, read. Will you forbid the enthusiast who has just paid for a book, to gather a dozen friends at his home, read, lend and circulate his volume? We would have to go that far, if we followed the reasoning of these relentless proprietors to the end. In Paris, it is not uncommon for workers to come together to jointly purchase a piece of work that their means do not allow them to purchase individually. Will these written communication societies be prosecuted for infringing on the property of the authors?

Here, the adversaries of literary property fall into another excess. It has been said that the counterfeiter, by reprinting a book, is only using his thing. In principle, this is true. Everyone has the right to communicate, lend, copy the book they have purchased, and distribute copies. In practice, one must wait until the author's privilege expires, because to do otherwise would deprive the author of his or her legitimate remuneration.

On this account, it will be said again, if the ownership of a writing passes from the author to the public on the day of publication, the author can no longer do with his work what he wants; he no longer has the right to correct it, modify it, extend it, reduce it, since this would be an attack on public affairs. This objection, very ticklish for the self-esteem of the authors, is not more difficult to resolve than the others: it is not even, to tell the truth, an objection. We can admit that, throughout the duration of his privilege, it will be optional for the author, in subsequent editions, to rectify himself, to amend, even to retract, to perfect and to enrich his work. But he is no longer in control of suppressing it; because, I repeat, on the one hand, from the commercial point of view, the public is seized; on the other, with regard to the sincerity of the work, the good faith of communications, literary probity, the author can only do what he has said once he has not said it; when what the public has read has not been read; that the readers have not taken note of it, have

not appropriated it and thus retain the right to represent it if necessary to the author, despite his concealments and retractions.¹

If the writer, whose work has received the beginnings of publicity, no longer has, in principle, the right to withdraw it, all the more reason why such a right cannot belong to his heirs. In this regard, the argument of the defenders of the public domain requires a new adjustment. One of the reasons, according to them, that must lead to the rejection of the principle of literary property, is that families, through considerations or interests foreign to the author, could destroy or delete these works. This reasoning, like that based on public interest, is flawed; because if ownership is legal, if it is transferable, nothing can limit it, neither in the person of the author, nor in his family. But it is clear that the legal experts I am talking about have seen the thing backwards from what it is; it is not because the family could abuse the property and destroy the work of criticism, that this property must be rejected. On the contrary, it is because the public is seized and made irrevocably possessor, by virtue of the publication, it is because there has been an exchange, that the author and his family lose the ability to sovereignly dispose of the book, in compensation for which a temporary sales privilege is also allocated.

¹ Here, I can cite an Imperial Court ruling which is personal to me. In 1830, anonymously, I published a pamphlet on general grammar following Bergier's *Primitive Elements*. The work remained almost entirely unsold. Later, after further studies, judging my first attempt to be defective, I resolved to make the sacrifice, and I sold to the grocer what remained of the edition. A bookseller bought these copies and, in 1852, put them on sale with my name. It was my work, certainly. I did not deny it. But I had not signed this work at first, because I was not sure of it, because I was only publishing it subject to subsequent revision and amendment, and I had every reason to congratulate myself on this discretion. Why then was someone selling, under my name and without my consent, a work that I had redone, that I reserved to republish myself, and from which I expected compensation for the loss that my first attempt had caused me? Certainly, I could say I was wronged, both as an author and as a publisher. The commercial tribunal of Besançon ruled in my favor; but the Court, considering things from another point of view, and assessing the facts with complete sovereignty, judged otherwise. It allowed itself to be told that the lawsuit had been brought by me with bad intentions; that it was not the love of truth, but the desire to eliminate pages compromising my self-esteem, that guided me; that we should not believe that a writer could thus lie to the public, etc. To which I replied that the bookseller only had to wait for my new publication; that he would then have every opportunity to compare the two works, to highlight the accusatory passages, and to reproach me publicly, if necessary, for my bad faith. These observations were considered specious, and the *sophist* was tossed out. The Court, I repeat, was right on one point; it is that the thought of the writer, published by him, has become public property. But they did not come to apply this principle against me, since I myself had to make a new edition, my privilege as publisher was guaranteed by law, and by authorizing a publication that I disavowed, real harm was caused to me.

§ 8. — Credit and capital. — That the notions of savings, capital, service or sponsorship cannot lead to that of a literary property analogous to land ownership, and give rise to a perpetual rent.

But, someone will tell me, your theory is flawed at the base; it is based on an inaccurate assimilation. What happens between the writer and the audience is not an exchange, as you say; it's more of a loan. Indeed, the literary product is not one that is consumed through use, like most industrial products; it is a product that cannot be consumed. The communication of this product therefore constitutes not a sale or an exchange, but a service. However, unless we claim that the loan must be free, which is not the existing practice, recognized as legitimate among all peoples, we must admit that the publication of a work of literature, science or art, just like the provision of capital, the rental of a house, a ship or a machine, can give rise to perpetual income. Without doubt, the writer is the master of delivering the fruit of his labor for nothing; liberality and sacrifice have never been condemned. Without doubt, he has the right to make the product of his vigils an object of exchange, and, after having received his copyright for twenty or thirty years, to renounce the usufruct and launch his book into the public domain. But it will be a gracious act on his part, a true donation, in the absence of which common sense and all analogies say that the rent, interest or annuity, must be paid, in perpetuity, to the writer.

I do not want to discuss here the question of interest-bearing loans and free credit: that would raise a new scandal and make sophistry cry louder than ever. I once said it to Bastiat: I don't want anything for nothing; I recognize that if my neighbor does me a service, by lending me either grain or a tool, he has the right to demand compensation. I only ask not to be forced to pay interest when I can do better; I have the right to do without the sponsorship of others, if I can address my distress by other means; in any case, I intend to pay only what is fair. This is my profession of faith on the loan at interest. So, let the state's rentiers, the shareholders of large companies, the capitalists of the *Crédit Foncier* and the *Crédit, Mobilier* the house builders, etc., not be alarmed: I will not touch their rights any more than that of the proprietors. What I maintain is that the communication made by the author to the public is not a credit transaction; it is, I say, neither loan, neither rental, nor service, nor sponsorship; it is, as I explained, purely and simply an act of commerce, an exchange.

Everything is false, illusory, contrary to the principles of economic science and business practice in the argument of my adversaries. This is what the reader will have no difficulty in convincing himself of, as long as he follows the line of my reasoning.

And first of all, we start from a false hypothesis when we say that the intellectual product, not being consumed through use, cannot give rise to an exchange. This supposes in the first place that exchange exclusively embraces in its specialty things that are consumed through use, and loan those that are not consumed. Now, one is not more true than the other: a provision of food, for example, can very well give rise to interest; just as a provision of capital, land and houses, can be converted into an exchange. Wheat, wine, everything that is consumed can be the material for a loan, *commodum*; conversely, land and buildings, everything that is not consumed, can be the

subject of a sale, *venditio*. All legislatures recognize this. The consumability or fungibility of the product therefore has nothing to do with our question: it is not in itself a sign that the contract concluded between the producer and the consumer or user is a rental or loan contract, or a exchange contract. Other clues, another diagnosis are needed.

And then, is it true to say that the intellectual product is by its nature not consumable, eternal? I have already had the opportunity, § 2, to note that this is not the case: I can only reproduce, in other words, my observation. What man produces of his own, in the order of philosophy and art as in that of industry, is neither matter, nor ideas, nor laws. Matter is given by nature in bodies, both organized and unorganized; man cannot create or destroy an atom. Ideas and laws are given to man in the contemplation of things; he cannot suppress or invent a single one. The truth does not depend on him; all he can is to discover it step by step, laboriously; to formulate it as best as possible, through speech, writing, the works of his art and his industry. He is also free, at his own risk, to ignore it, to turn a blind eye to it, to proscribe it: lies and sophistry are his; he will soon know what they are worth. As for beauty and justice, they are as independent of our reason and our will as truth and ideas: in this respect we always have only the choice to approach them through incessant study and absolute dedication, or to deny them by abandoning all dignity and all ideals. We will then know what comes from cultivating iniquity and ugliness, two things which have sin as their common denominator.

What is it then once more that the man produces, if he does not create matter and life, if he does not have his own ideas, if he cannot attribute to himself even the revelation of the beautiful and the just; if his greatest glory, in all that concerns the work of pure thought, is to render the truth exactly, without error, fraud or alteration?

Man produces, to the extent of his limited being, movements and formulas, the first having the aim of giving, in a particular way, greater utility to bodies; the second serving as an approximation of the truth and the ideal glimpsed. All this is essentially personal, circumstantial, therefore transitory, subject to perpetual revision and of short duration. This is what the destiny of the works of intelligence makes perceptible.

Which writings seem most sheltered from variations in opinion and progress? Those that deal with the exact sciences, geometry, arithmetic, algebra, mechanics. Well, treatises are constantly renewed; there are almost as many as teachers, and it is always the oldest that are least used. What does this incessant renewal mean? That truth and certainty vary? Not at all: but the fact is that, for the same idea, for the same truth, for the same law, each generation needs, — what am I saying? — each category of students needs a special formula; which means, in other words, that after ten, fifteen or twenty years, the writer's work is perfectly consumed. The form is worn out: the work has fulfilled its purpose; it has done its service, and it is finished.

It is therefore not correct to say that the writer's product is not consumable, that it is eternal, that consequently it binds the entire series of generations to the author. What is eternal, I repeat, is matter, it is ideas. Now, these things are not ours. For ideas to become properties, for them to give rise to majorats, to an aristocracy of thought, it would be necessary, as I said above, for the intellectual world to be, like the terrestrial world, divided; this sharing would have to be possible,

moreover justified by considerations that no jurisprudence could discover, and we are only dealing with industrial and mercantile practice, with purely economic notions, of *production, exchange, price, salary, circulation, consumption, loan, credit, interest.*

Having made these observations, both on the consumability of intellectual products and on the quality of things that can be lent, let us enter into the theory of capital and credit, and apply it to literary production.

In the first place, can the product of the man of letters, at the moment it enters into publicity, be considered *capital*?

Everyone knows what is meant by this word: it is a mass of products accumulated through savings and intended for reproduction. Capital by itself does not exist: it is not a new thing; it is a particular aspect of the product, considered in the use for which it is intended. Thus, we call the capital or livestock of the farmer, the agricultural instruments, the livestock, the fodder, seeds, provisions, the household effects, clothes, linen, everything that is used for labor and the maintenance of the family, while awaiting the harvest. The craftsman's capital consists of the tools and raw materials with which he comes. Houses, machines, work carried out on the ground, are capital. Man himself, as he is considered as an agent or engine of production, is deemed capital. An able-bodied 25-year-old male subject who has learned a trade is valued at an average of 25,000 francs.

From this it is not difficult to say what the writer's capital consists of. This capital consists of his studies, his notes, the work he has begun, the materials he has collected, his library, his portfolio, his correspondence, his observations, his skill acquired through work, the means of existence that he has secured while waiting for the income that his writings should provide him. This is the capital of the writer. But that is not what he puts into circulation; this is not what he offers to the public, who would have no use for it. The writer's capital, like all invested capital, is something almost unsaleable, incommunicable, which is only of value to the person who puts it to use, and which, when put up for auction, often does not bring in ten percent of what it cost. From the perspective of the writer, the published book is therefore not capital; it is really a product.

Let us turn to the side of the public. Will the author's product, entering into general consumption, be considered capital? I want it: but on whose behalf? From the author or the audience? We have just seen what capital consists of, for each category of producers: it is an ASSEMBLY, acquired through commerce or exchange, of instruments, tools, raw materials, subsistence, by means of which the producer accomplishes his work of reproduction. In a word, it is the reproductive fund. The word capital or fund here implies composition, accumulation, assembly. Depending on the professions and industries, this assembly includes a greater or lesser number of articles. As long as these miscellaneous articles are in the possession of their respective sellers, they are not capital; they become so after the consumer's acquisition.

But then it is not for the benefit of the person who produced and sold the commodity that the product thus capitalized bears interest; it is for the benefit of the purchaser, who bears this interest in his reproduction costs. Thus, for the writer to count in the price he must obtain from his works the interest on the money he spends on his library, on his investigative trips, on the collaborations

from which he profits, he has to the right: it is the interest of one's own capital. But for him to demand a perpetual royalty from the public for the deliveries he made to them, under the pretext that his works have entered into the public capital, into the public domain, that would be derisory. Yes, the work of the writer has entered the public capital; the individual product of the individual is part of the collective *assets*; but it is precisely for this reason that the said individual has nothing to claim, except the price of his product, the remuneration for his labor. It is not for him that collective assets will produce interest; if there is interest produced, it will be for the public.

Our entire argument therefore remains: the conclusions to which we arrived through the notions of product and exchange are found identically the same in the analysis of capital.

Someone insists: Why should the theory of prestation not be applicable to the works of intelligence, as well as the alternative? Why should the writer's remuneration, instead of being expressed by a price once paid, not take the form of interest? You admit the principle of interest; you acknowledge that it is applicable to objects of consumption, *mutuum*, as well as to things that are not consumed and to buildings, *commodum*. Why, once again, not prefer this last mode of repayment, which would satisfy self-esteem, to the other, which seems less equitable and makes people cry out?

Let us agree: If it is only a question of replacing a sale and purchase transaction with a credit transaction, I am not opposed to it. What is credit? A long-term exchange, which implies for the lender, seller or trader an indemnity called interest, but which also supposes for the borrower the ability to repay, which excludes the perpetuity of the liability and consequently that of the interest.

Thus the merchant who discounts his commercial paper pays interest to the Bank. Nothing could be more fair, since he receives a service; since while waiting for payment for his goods he needs to return to his capital, and this capital is advanced to him. But it is understood that interest is only due by him until the day on which the Bank itself is reimbursed, the day fixed on the bill of exchange presented for discount.

Thus, the consumer who buys on credit pays interest to the seller: this is still fair, since interest is compensation for the delay in payment. Once payment is made, interest ceases. In this case, as in the previous one, interest is not sought for its own sake; it is only required as remuneration for a service, the price of a momentary credit. The proof is that no banker would agree to eternally renew the obligations of his clients, and that they would give up business, or go bankrupt sooner or later, if they only subsisted on this *circulation*.

Thus again the borrower on a mortgage pays interest, but always with the hope and ability to free himself as soon as possible.

Thus, finally, the creditor of the State, like the railway shareholder, receives an interest: but the State retains the right to free itself; but the Companies are only formed for ninety-nine years, and we regard it as a misfortune, as a sign of impoverishment and decadence, when the State, instead of amortizing its debts, increases them; when a Company, instead of recovering its capital profitably within the prescribed time, can only withdraw half of it.

Everywhere you find that credit is only a form of exchange: if this is what is asked for intellectual production, I have nothing to say; you just have to stay in the *status quo*. But who does

not see that the authors are talking about something completely different here? It is a perpetual rent that they are requesting, which goes as much outside the notion of credit as that of production and exchange.

All the pretexts therefore escape and refute themselves. The claim to property is based only on juggling. From the moment that the work of genius is legally and scientifically classified as a *product*, it is only entitled to a defined remuneration, which can be done in two ways, either by life payments, or by a privilege of sale to term. Demanding more would no longer be credit or exchange, it would not be fair trade: it would be worse than usury, because usury has its end like interest; it would be to create a domain from the understanding, and to make the public, the State, society, serfs of writing, which would be for them a hundred times worse than being serfs of the glebe.

§ 9. — Domain and personality. — Appropriation of the intellectual world.

Let us, however, admit, for a moment, the assumption of intellectual property. It is a question of passing to the application; and I ask where, with what, could this property be created?

It would not be established on the product of the writer: we have proven to our satisfaction that the idea of production in no way implies that of property; that then the product, subject to the laws of exchange, supply and demand, transfer, payment, quittance, cannot become a fund on which a perpetual royalty would be constituted.

Nor would this property be established on the capital of the author: this capital, precious for the writer, but useless to the public, who only asks for the product, is a non-value unsuitable for the object that the new proprietors are proposing. As for the ideas of *credit* and *interest*, in which we would seek a favorable analogy to the idea of a perpetual royalty, they are radically exclusive of this perpetuity.

So what remains to be done? It is to appropriate the intellectual domain, the world of ideas, as we divided and appropriated the soil, the world of matter. M. de Lamartine tends towards nothing less than this:

“A man spends his strength fertilizing a field or creating a lucrative industry. You assure him possession of it forever, and, after him, those whom blood designates or whom the will writes. Another man spends his entire life, forgetting himself and his family, to enrich humanity after him with a masterpiece, or with one of those ideas that transform the world... His masterpiece is born, his idea is hatched; the intellectual world takes hold of it; industry and commerce exploit it; it becomes wealth that makes millions in work and in circulation; this is exported as a natural product of the soil. And everyone would be entitled to it, except the one who created it, and the widow and children of this man, who would beg in indigence, alongside the public wealth and private fortunes created by the thankless work of their father !...”

Mr. de Lamartine takes the fanfares of his eloquence for reasoning. For him, hyperbole, antithesis, exclamation and declamation take the place of logic. We ask him for a definition, he draws up a table; a proof, he attests the gods, he swears on his soul, he evokes specters, he cries.

M. de Lamartine is one of the contemporary writers who have made the most money from their writing; he has been remunerated, in money and fame, well beyond his merits, and he complains of poverty, Whose fault is it? Is society ungrateful because he does not know how to behave better than to reflect?

I couldn't ask for anything better than to fulfill M. de Lamartine's wishes, but we still need to know exactly what he is asking for. Let us try to clarify the thoughts of this great assembler of rhymes.

A literary property is desired that is something other than the simple possession of the intellectual product, or the price of this product; a property that is to the intellectual and moral world what property in land is to the industrial and agricultural world. It is therefore the idea itself, that is to say a corner of the intellectual and moral world, and not simply the formula or expression given to this idea, that must be appropriated. The comparison between the man who clears a field and who becomes, with the permission of society, owner of this field, and the writer who conceived, incubated, hatched, developed an idea, makes this clear.

But first of all, here is M. Frédéric Passy, one of the most frantic champions of literary property, as much an enemy of the sophists as M. de Lamartine, who maintains, — and M. Victor Modeste is of this opinion, and I side with the opinion of these gentlemen, — that this way of legitimizing the dismemberment of the common domain and its appropriation through work is supremely unfair; that it tends to do nothing less than condemn landed property, and that those who defend such an opinion, whether they know it or not, are the greatest adversaries of property. I am ready to sign this observation with both hands; and, on this first consideration, I conclude that M. de Lamartine is declared ill-founded in his request.

By virtue of what principle will literary property be granted, if the quality of producer, worker, elaborator, birther of the idea — it is M. Frédéric Passy who says and demonstrates it — cannot be considered a sufficient title? Will it be at the pleasure of the legislator? Bossuet and Montesquieu, observes M. Victor Modeste, had already claimed that land ownership had no other foundation than the law, the authority of the legislator. But we abandoned this system, tainted with partiality, arbitrariness, which leaves this formidable question unanswered: Why did the legislator, in dividing the land and granting ownership, not make equal shares and take measures so that, in the future, whatever the movement of populations, they remain equal? Certainly the legislator, in establishing property, had his reasons; he obeyed considerations of public order; However, these are the considerations that we do not understand, in the face of inequality of fortune. The principle of sovereignty, the legislative and legal power, insufficient to legitimize property in land, at least according to modern critics, would not be sufficient to legitimize intellectual property. And then, when it is true that property has legislative authority as its foundation, who tells us, once again, that the legislator should consider himself bound by this first constitution, and give it a counterpart by creating literary property? Who tells us that land ownership, the sharing of the land surface, does not have as a condition, corollary and antithesis, the indivision of the intellectual world?

As for the right of the first occupation or of conquest, by which we have also tried to explain the formation of property, we should not ask whether our economists and jurisconsults subscribe to it: they reject it with indignation. The idea of such a right was worthy of the barbarism of feudal times; Nowadays, it would find no one who supported it.

What basis are we then going to give to land ownership, the presumed type of literary property, if this basis is neither in the law, nor in labor, nor in conquest or the right of first occupant? We need to know this; because, such as will have been found the principle of landed property, such will be, according to my opponents, the pretext and the type of literary property.

M. Frédéric Passy, who sensed very well the danger, for land ownership, of the legislative or governmental theory, and of the utilitarian theory and the theory of conquest; who, on all these points, found himself in agreement with the *sophist*, has therefore looked elsewhere. He delved into the depths of psychology. What did he find at the bottom of this well? The truth? Alas! The goddess with eternal nudity is not made for the old men of Malthus' synagogue. M. Frédéric Passy discovered, through his analysis, that man is an active, intelligent, voluntary, free, responsible being, in a word a personal being; that because of this activity, this intelligence, this will, this freedom, this responsibility, this personality, he inevitably tends towards appropriation, to pose as sovereign of everything that surrounds him, and that such is the origin of property... — Poor man who, by dint of warming up his brain by digging his psychological hole, did not realize that he was only repeating in other words what had itself just been refuted among the theorists of appropriation by labor, by government or by conquest.

Certainly man is an active, intelligent, voluntary, responsible subject, judging himself the master, and, notwithstanding this pride, worthy of consideration and respect. His person, as long as he does not indulge in any aggression towards his fellow men, is inviolable; his product sacred. But what can you conclude from all this? This only, that man needs, in order to deploy his being and manifest his personality, material on which he acts, instruments, education, credit, exchange and initiative. Now, this is what *possession* fully satisfies, as defined and interpreted by jurisprudence, as enshrined in the Civil Code, as understood by all peoples from the beginning, and as the mass of Slavs still practice it today. This possession, which saves man from communism, can satisfy political economy. I have shown that the theories of reproduction, of labor, of exchange, of price, of value, of wages, of savings, of credit, of interest, do not ask, do not suppose, do not imply anything more. City and family relations, inheritance itself, require no more. Without doubt, political economy does not reject property. God forbid I should say it! But it does not conclude there, it could do without it; it did not make it, but found it; it accepted it, not called; so that things would happen absolutely in the same way in the economic order if property did not exist, and that it is the greatest question of our century to know on what basis property rests, for what purpose it was established, and what is its function in the humanitarian system.

Why then, once more, this investiture, or this usurpation, or this creation of our spontaneity, as you wish? For it is obvious that, whether we relate property to the law, whether we let it derive from work or conquest, or finally whether we are content to see in it an effect of individualism, of the tendencies of liberty and ambition, none of these interpretations justifies, none historically and

economically legitimizes property. Property exists; it asserts itself. It will remain, I hope, forever invincible: but it is no less true that we do not know it; that for us, like the federation to which it is attached, it is still only a fact of empiricism; that the most certain thing we know about it at the time I write is, as I demonstrated more than twenty-two years ago, that the depth of its institution until now escapes us, that philosophy has not made it, and that our lucubrations, instead of clarifying it, dishonor it. To which I add, regarding the artistic and literary property to which inept lawyers assimilate it, that far from requiring, as a buttress, the creation of intellectual property, it has precisely for antithetical condition and guarantee the indivision of the world of the mind.

Here, my adversaries, jurists, economists, artists and men of letters, convicted of ignorance as well as greed, will not fail to cry out in unison that *I am attacking property*. We attack property, according to these gentlemen, when we prove that on the sole basis of their production they do not have the right to it, and that the extension that they claim to give to it would be the condemnation of it. It is a way to interest in their cause the landowners, always in alarm, who have no greater enemies than these pitiful counterfeiterers.

I know of no greater shame for an era than this horror of free examination, which betrays much less respect for institutions than the hypocrisy of consciences. What! I attack property, the rights of the proprietors, because I argue against the economists, who are content to accept it as an article of faith, that it constitutes the greatest problem of social science, a problem all the more difficult as it seems to rest solely on a principle condemned by the Gospel, egoism! It is therefore attacking the Divinity to say that the demonstration of the existence of God, proposed by Clarke, does not demonstrate this existence, to which the mystics themselves agree; its it being Pyrrhonian, nihilistic, to maintain that any pure reasoning by which one would try to prove the reality of matter and movement implies question-begging and contradiction; it is blaspheming against all morality and all justice to point out that until now they have had religion and faith as their sole support, and that they have not found their rational bases! But then all science becomes impossible, all philosophy impossible, all honest politics impossible.

Pascal, in his *Pensées*, begins by lowering man, whom he intends to exalt and glorify later. Do we say that Pascal, developing the theory of original sin, is an enemy of God and of humankind? This is more or less how we must deal with property: forced to reject it, if we only consider the principle and the reasons as they are given in school; but attributing to it a superior reason and defending it by virtue of this reason that will be revealed to us sooner or later. And what better can we do for it, while waiting to contemplate it in its essence and in its end, than to rescue it from the banalities that compromise it? [1]

May the reader forgive me for my vehemence, and let him tell me, with his hand on his conscience, if, far from feeling any concern about property, he does not feel rather enlightened, reassured by my argument. Certainly, I will say again to M. Frédéric Passy that man, by virtue of his personality, tends towards appropriation, towards domain; but that it is only a tendency, and it is a question of knowing, first of all, whether this tendency derives from a principle of justice, as social justice requires, or from a principle that is vicious in itself, as it has been claimed since

Minos, Lycurgus, Pythagoras and Plato, all the communists; secondly, what will be the conditions, limits, rule and end of this evolution; if it is at use and usufruct that it must stop, or at possession, at long term lease, or finally at property? Because whoever says property, says sovereignty. Is this sovereignty of the individual, in the face of collective being, based on right, is it social? Not everyone can be proprietors at the same time: who will be the chosen ones? What compensation, what guarantee will be given to the others?... Note that considerations drawn from political economy are of no use here: we cannot invoke the interest of production, nor that of agriculture, since in all countries agricultural production is most often done by farmers, sharecroppers, not by proprietors. Finally, for what purpose, for what superior reason, which until now has remained obscure, has this haughty thought been suggested to our race? The excess of property has ruined Italy, say the writers of Roman decadence, *Latifundia perdidere Italiam*; and we are assured that property is the very right to abuse. How to make all these things agree? Can property be limited and remain property? What will its measure be? What will its law be?... This is what M. Frédéric Passy had to tell us, and to which he responded with the *flattest* of all sophisms, — it is an epithet that I refer to him,— the one who consists of answering the question with the question.

So these people who apply for the creation of literary property, like property in land; who write sumptuously, at the head of their brochures made in four: *We are economists*, we are jurisconsults, we are philosophers, implying by this that their adversaries are only sophists; these schoolmasters, whose worthlessness shames their audience, do not even know what this property in land is, of which they are today proposing to create a counterfeit; they do not know its social function; they are incapable of deducing its motives and causes. There are as many opinions among them as there are heads: their illogic exceeds their arrogance; and if any critic takes it into his head to show the nothingness of their doctrines, their entire response consists of crying blasphemy. A detestable coterie, as impure as it is absurd, which posterity will blame for the contemporary waste and cretinization of France.

I repeat, this is not the place to seek by what considerations of a civil, political or economic order civilization was led to this proud institution of property, which no philosophy has yet been able to explain, and which nothing can destroy. This investigation is useless to the question that concerns us. I affirm, by virtue of the axiom *pro nihilo nihil*, that property was not established for nothing, and that it has its reasons for existing in society and in history. That the partisans of literary property, furious at not having been able to demonstrate the legitimacy of the monopoly they are seeking, are now attacking property in land; let them attack it, if they dare: perhaps I will take it upon myself to defend it, and I will show once more to rhetoricians what a *sophist* is. For the moment, it is enough for me to take note of the existence of the property; to declare that I do not want to harm it in any way, that I intend, on the contrary, in this discussion, to take advantage of it, contenting myself with maintaining that the existence of land ownership cannot in any way legitimize the creation of intellectual property; that neither the public domain, nor the liberty of the individual, nor the care for public prosperity, nor the rights of producers, require a similar guarantee; that on the contrary all liberty, all property and all rights will be in danger the day when, by decree of the prince, the appropriation of the mind is made.

The right of the cultivator to the fruits obtained by his labor is one thing, there is no danger in repeating, and another thing is the ownership of the soil, which society has been able to grant him in addition. Possession of the product is by right, property in the fund is a free gift. I do not blame society for having used this munificence. It is my opinion that it was directed by predictions whose loftiness escapes us, and that if property has remained imperfect, if the iniquity with which we have soiled it since Roman times, for a moment wiped away by revolutionary right, seems to threaten it again; if this glorification of the man and the citizen has lost its influence and its prestige, the fault could well be in our own cowardice and our ignorance. I therefore accept, with all hope, and as a foundation for the future, the institution of property, reserving for myself the investigation of the reasons for it another time. Does it follow that from now on we must request from the public power, which is still so little enlightened, a constitution that would remake the intellectual and moral domain in the image of domain in land? No, a thousand times no: the temperaments are not the same, the law which governs the mind is not that which governs matter. You might as well put the birds of paradise on the diet of hyenas and jackals.

Moreover, the supporters of literary property themselves do not understand it that way. After having exhausted all the arguments in favor of their thesis, by one of those contradictions that are familiar to them, they reject the only condition thanks to which their chimera could become a reality.

Let us remember that it is a question here, not only of ensuring to the man of letters the fair remuneration of his product, but of creating in his favor, with regard to this product, a property analogous to that granted to the colonist, in supererogation of his harvest. It is therefore the common productive fund itself that must be appropriated. Let us take an example.

Here is Virgil, who, in a poem to which he devoted eleven years of work, sang of the origins and antiquities of the Roman people. His *Aeneid* is one of its kind, and despite its imperfections, a masterpiece like no other in the history of the human race. Certainly, the work of the great poet is equal to that of the settler, to whom the sovereign graciously donates the land he has cleared. Virgil plowed the field of Latin traditions; he gave birth to flowers and fruits on this ground where previously there were only brambles and nettles. Augustus rewarded him for his trouble by showering him with his generosity. But in this Augustus only paid the worker for his product: it remains to create property. So, Virgil dead, the *Aeneid* saved from the flames, his heirs or successors have the right to exclusively exploit this traditional domain, to sing Evander, Turnus, Lavinia, to celebrate the heroes and glories of Rome. It is forbidden for any counterfeiter and plagiarist to recount the loves of Dido, to put into Latin verse the Platonic doctrine, the religion of Numa, to reproduce the same fictions. Lucan will not publish the *Pharsalia*: it would be an encroachment on the Virgilian domain, all the more reprehensible since Lucan, enemy of the emperor, speaks of Pompey, of Cato, of Caesar, as it does not befit a good subject of talk about. Dante himself will have to abstain: let him put Christian theology into song and damn his enemies to all the devils, we allow him. But his descent into hell, even in the company of Virgil, is a theft.

This is how intellectual property could be constituted, based on analogies drawn from land ownership and the trends of the feudal system. Under feudalism, everything was constituted and

tended to constitute itself as a privilege: the Church alone had the right to define what was of faith and to teach religion: the University alone could profess theology, philosophy, right, medicine: it had the privilege of the four faculties, and it still has it. The profession of arms was reserved for the nobility; the magistracy had gradually become hereditary; trade guilds were forbidden from encroaching on each other and breaking the law of specialty. When Louis XIV made Racine and Boileau his historiographers, perhaps he did not think of reserving for them and their heirs the privilege of recounting his great deeds; but he could have done it according to the principles of the time, which are those of M. de Lamartine. Is it not true that if a young poet were pleased to publish a volume of verses under the title of *Poetic Meditations*, M. de Lamartine would regard him, in his heart of hearts, as a thief of signs, worse than this, as a vile counterfeiter? MM. Frédéric Passy, Victor Modeste, P. Paillottet, write these significant words in their preface: *We are economists*. Is it not as if they were shouting to the public: Be careful, those who attack literary property are incompetent; they are not economists, patented by the Academy, published by Guillaumin; they do not have the right to speak?

Well, these famous economists recoil from the consequences of their principle, so much so that we no longer know it; that they themselves do not know what they want.

“Ideas,” says M. Laboulaye senior, “are those common things that are as impossible to appropriate as the water of the ocean or the air of the sky. I use the ideas that are in circulation, but I do not make them my property. The man who draws salt from the sea, the one who uses the air to turn his mill, they have been able to create a particular wealth: does this prevent anyone from using these inexhaustible reservoirs, and because the air belongs to everyone, does everyone have the right to seize my mill?”

This last sentence is a leap of faith. The mill is real estate, following the appropriation of the land on which it is established; without this it would be purely and simply a tool, a portion of capital. The example cited by the lawyer-economist M. Laboulaye therefore does not prove anything in favor of intellectual property; it provides proof against it. The same writer adds:

“It is the same for a book, with the difference that the literary work does not impoverish the common fund, but enriches it. Bossuet writes a *Universal History*; Montesquieu publishes the *Spirit of the Laws*; does this prevent someone from making another universal History, from imagining a new Spirit of the Laws? What is there less in the circulation of ideas?... Racine published *Phèdre*: that did not prevent Pradon from treating the same subject, and no one called it counterfeiting. Write a history of Napoleon, and benefit from M. Thiers’ research; but do not reprint the text of his book, for that would be a material crime as visible as the theft of the fruit that grows in my field.”

When quoting an economist, it would be necessary to annotate all the sentences, as there is so much confusion and equivocation there. The *book* cannot be compared to the *mill*, because the first is a product, capable at most, after having been transported from the bookseller’s shop to the scholar’s library, of being considered as a portion of capital; while the mill, established on the ground, is part of an appropriated fund, in a word, a property. — The literary work enriches the common domain, that is true; but it is not *unlike* other products, it is like all other products. — He who steals an author’s text is guilty, without a doubt; but it is not the same offense as the one who

steals the fruits which have grown in an owner's field: given that the text of the author is the product of his work, while the fruits that grow spontaneously in a field are a benefit acquired by accession to the owner. I neglect these miseries, to stop only at the main idea.

Thus, according to M. Lahoulaye, the intellectual domain, unlike the earthly domain, is not appropriable. Whether a man turns a mill by air, water or steam, his mill will be his; as for the very idea of applying to a pair of millstones, in place of the arms of man, air, water or steam, as a driving force, this idea in itself cannot be converted into property. It is true that in this case there could be grounds for a patent of invention: but then we would fall back into the general condition of the intellectual producer, who is remunerated for his work, for his discovery, by a privilege of publication or temporary exploitation. Subject to this reservation, M. Laboulaye's reasoning remains unassailable: the recognized invention can give rise to a right of *priority*; it cannot be used to motivate a constitution of PROPERTY.

Would these gentlemen, economists, jurisconsults and philosophers, then want to tell us what is the object of their claim and what they are complaining about? Because we really don't understand them, and their request has yet to be formulated. To hear them say, there are no more energetic adversaries of monopoly: so let them remain faithful to their maxims, and let them stop disturbing the world with their society declamations.

Certainly the land was divided and appropriated; and although the theory of property remains to be developed, although the problem is still to be resolved, land ownership is no less an immense fact, which has taken its place in the politics of nations and in the relations of individuals, a fact that reason is well-founded to see as established in loftier views and for a grandiose end, while that view and that end still escape us.

Is it necessary at this time, when we only begin to establish the science of social organization, to hold a timorous hand on that organism of which the secret is unknown to us, to blur all the notions, mix the heavens and the earth, and, for the satisfaction of some pedants, turn the world upside down? Of what do the literary people complain? Is their condition more unfortunate than that of other producers? Property in land makes them jealous: let them accuse the nature of things, which alone is responsible here and which it would be appropriate to understand before condemning it. Or rather let them enjoy, with everyone, and while awaiting greater clarity, the progress achieved. Since the feudal regime has been repealed among us, the earth, although it cannot actually be the property of everyone, is accessible to each. The domestic, the worker, the sharecropper, the greengrocer, who goes by mountains and valleys to pick dandelions and lamb's lettuce, can, by economizing on their meager wages, form a savings, a capital, to convert their money into beautiful and good immovables, and to say in their turn: I am also a proprietor! Who stops the man of letters from doing so much? Mutation is incessant in property. But let one no longer speak to us of transforming the remuneration due to the writer into a perpetual usury. That would be the confusion of all principles and the subversion of the social order.

(1) The question of property, perhaps the greatest of the nineteenth century, given that it also concerns right, politics, political economy, morality and even aesthetics, has been for twenty-five

years for the public and for the mass of writers a real stumbling block: I would add that I myself have not been more fortunate than anyone else, if at least I had not had over the others the advantage of clearly seeing the difficulty and sensing the solution. We imagined that simple common sense was enough to resolve a problem that embraces the entire society, which for four thousand years has resisted the analysis of philosophers, and of which the greatest among the wise have themselves formally condemned the principle. We threw ourselves blindly into this arena, each claiming the honor of justifying the institution under attack, and of deserving the honors and rewards that people, disturbed in their beliefs, never fail to award to their saviors. In the academy, in the tribune, in the school and in the press, everywhere they boasted of having refuted the *sophist*; and what was the result of all these beautiful refutations? That the truth has fled; that doubt has spread more distressingly than ever, and that property has entered a path of transformation that raises serious fears regarding its duration. It is not the fault of the Power: it has multiplied the repression, the safeguards, asserting at the same time its high domain, without thinking that property must subsist by itself, on pain of becoming a simple privilege and perishing, and that if it is not sovereign, it is nothing. This is how, believing we were repressing the danger, we made it more imminent. This is how truth and right, as soon as they rely on bayonets, vanish.

As it is of the utmost importance, for the very re-establishment of right and truth, that opinion be enlightened and fixed on the state of the question, I ask permission to summarize here, in a few lines, the rest of my studies, both on land ownership and literary property.

The old legists bluntly said that property had its principle in the right of first occupant, and rejected any other hypothesis. The corollary of the right of the first occupant is conquest, by which a new occupant replaces the original occupier, defeated in struggle or incapable of defending himself, and thus inherits his right. At a time when the right to force was not contested, at least in its normal application, when conquest, therefore the conclusion of any regular war, was considered just, this origin of property satisfied people's minds; it was sacred. Others came later, such as Montesquieu and Bossuet, who held that property derived its existence from law, and consequently rejected the old theory. In our day, the opinion of Bossuet and Montesquieu appears insufficient in its turn, and two doctrines were formed, one that relates the right of property to labor, this is the doctrine supported by M. Thiers in his book on *Property*; the other that, going back further, even judging M. Thiers' idea compromising, imagines itself having grasped the true reason for property in the human personality, and regards it as a manifestation of the self, an extension of liberty. This is the opinion adopted by MM. Cousin and F. Passy. I do not need to add that this opinion appeared, either to the supporters of Bossuet and Montesquieu, or to those of M. Thiers, as vain as it was pretentious. We ask, in fact, how, if it is the will, the liberty, the personality, the self that create property, is not everyone a proprietor?...

The question was at this point when I addressed it in my turn. Analyzing and breaking down all these theories, I demonstrated that they were all equally false; that they refuted each other in turn by the same arguments, and that moreover each implied contradiction. I have shown that the fact of occupation, for example, is not a principle, a reason, and does not in itself create a right; — that if the right of property does not result from this first fact, the subsequent fact of the conquest

or dispossession of the weaker by the stronger adds nothing to it; — that the authority of the legislator is certainly a very respectable thing, and that there could be no question of disobeying the law, but that it is a question here of justifying the law itself and of giving its reasons; — that labor is a sacred thing, but that the right to which it gives rise does not go beyond simple remuneration, according to the economic formula, service for service, product for product, value for value, and that it has no capacity to confer on the cultivator the title of proprietor; that if it were otherwise it would be necessary to declare all farmers proprietors, and consider those who receive income from land that they do not cultivate as parasites; — that the human self in turn is indeed, like the earth, the stuff of which property is made, which obviously presupposes two terms, an appropriate thing and a subject who appropriates it; but it always remains to give the justifying reasons and the conditions of the appropriation, since without this any non-possessing individual could intervene, and, by virtue of the sovereignty of his self, say to others: And I, too, I am proprietor.

The opinion of MM. Cousin and F. Passy, who attribute to the self the faculty of creating property, even has an unfavorable prejudice against it. In the eyes of every moralist, the self is odious; the Gospel condemns its growth, under the name of concupiscence, and regards it as the principle of sin. Everyone knows that the institution of property was rejected in the early Church; that later, morals having relaxed, it was felt necessary to make this concession to the century, but that the pure doctrine was maintained in the cloisters; finally, that with the fall of the Roman Empire in the West, property was dragged into the debacle, and that in its place and on its ruins, under the double influence of the Church and Germanic customs, was introduced the Feudal regime, definitively abolished in 1789.

Now we have to conclude. The Revolution put an end to the feudal regime and reestablished, except for a slight modification, the ancient Roman property. But if it reestablished it, it did not give its philosophy; we have the provisions of the law, we do not know the reasons. Now, as in the period into which the Revolution brought us, institutions subsisted only through their rationality, we already see property, unexplained, trembling on its foundations as in the time of Christ and the emperors. Is it threatened with a new catastrophe, and are we going to speak out, with the primitive and communist Church, against property? This is the question asked today by all those who, having understood the criticism of the institution, observe the progress of things, and already grasp all the symptoms of a retrogression. So the negation of property is supported today by a crowd of people who are careful not to say it, and some of whom do not suspect it. I will only cite the blind supporters of centralization, the bankocracy, the *agiotouse* Saint-Simonism, enemy of the family and liberty; the Church, which works ardently to re-establish its convents and reconquer its lands; the absolutist and autocratic democracy, idolizing unity, and enraged only by the shadow of federalism.

For me, my ideas are entirely different. A man of liberty and individuality above all, it is not enough for me to have observed, with a vehemence that did not deserve so much reproach, the egoistic principle of property for me to abandon its institution; I am simply saying that there is room for new research. I believe that property, until now little or not understood, is still to be

organized, and that civilization has not reached its height. It is therefore with full reflection, if not yet with perfect knowledge of the facts, that instead of concluding, as the Church has done in its moral theology, as all the teachers of religious orders and all communist sects, to the suppression of property, I protested, from the publication of my first Memoir against all communism and all feudalism; that I have forcefully maintained, in my successive publications, the principles of industrial liberty, family, heredity, federation, and that I repeat at this moment, with increased energy, with the same voice and the same pen, that I fight all kinds of privilege and monopoly, that property, antinomic in essence, is a problem that it is up to the Revolution to resolve, an institution that antiquity has only half understood, and whose greatness is mysteriously revealed to us in its very abuse, *jus utendi et abutendi*. The criticism of the day, with its usual impertinence, did not fail to address this reserve of contradiction and inconsistency; it accused the cowardice of my conclusions, after having condemned the effrontery of my premises: what has not been written about this, about my love of noise and paradox? The correspondence sent from Paris abroad is still full of them... Fortunately, the documents from the trial are there, and every day the revelations of experience confirm the correctness of my deductions. As property weakens under the attacks of industrial feudalism and the absolutism of power, society feels itself dissolved; at the same time it does not know what to do to maintain and consolidate property. It would even seem, seeing the relentlessness of the expropriations, the fever of capitalization, the insolence of urban areas, the worsening of charges and mortgages, that we hate property and that we have too much of it!...

In the midst of this controversy suddenly arises the hypothesis of literary property, that is to say of a division of the intellectual world corresponding to the division which has been made of the earth. Whereupon I say, continuing my previous criticism, 1. that the example of landed property cannot be invoked by way of analogy or precedent, given that its institution is based on considerations of a high order, still little known, but which everything tells us are inapplicable to things of the mind; 2. that, whatever the hyper-economic reasons that determined the institution of land ownership and which constantly bring it back, these reasons could not serve to motivate the creation of intellectual property, whereas as much as the inert and passive earth seems to offer itself to human domination, the world of the mind is as reluctant to appropriation, which I will show in the second part of this writing; 3. that this opposition between the physical world and the intellectual and moral world is such, from the point of view of property, that it would be enough to decree intellectual property, as is demanded today, to at the same time decree the forfeiture of land ownership; which will be established in a third part.

This is, on all this matter, the basis of my thought, an eminently conservative thought and a thought designed to attract a lot of sympathies for me, if justice were of our times, if it were not a bias to attribute to me the scandal that ignorant declaimers have made my criticism and my formulas. But there are people, they are in the red party as in the white party, they are in bohemia as in the Church, for whom any discussion is sacrilegious. Property, among others, is one of those fetishes, placed beyond the reach of free examination, and to which it is not permitted to apply the methodical doubt of Descartes. Rather perish than learn, that is the motto of these tartuffes. What cries would they not raise if I announced to them that, after having discussed property for twenty-

five years, I believe I have finally found the theory, and that I hope to publish it shortly!... To speak of property and of its origins, for these people, it is walking with a torch in your hand in a powder magazine; what did I say? it is to distract the public from their charlatanesque *tirades*, and to warn them to keep their hands in their pockets. How many scoundrels, enriched by agiotage, by blackmail, by bribes, by advertising, imagine seeing the police commissioner arriving when they hear property discussed! I have yet to meet an honest man who had these terrors. But let these crooked zealots rest assured: my criticisms are not denunciations. Their right to them comes under the penal code, not the discussions of science. It is possible that they will have to explain themselves one day to the correctional police; certainly, they have nothing to do with the right of property.

§ 10. — Summary of the discussion: That the government has neither the right nor the power to create a literary property.

Among those who have made a weak opposition to the projected law, some, led by that false analogy to property in land, have agreed that the government has the power to create a literary property, as it has created property in minerals and other sorts of property. It is an ill-considered concession, which testifies to the chaos that troubles men's minds.

Certainly, the government can do what it wants, if one means by "can do" the faculty to act regardless, setting aside the laws of nature and of society. When it pleases a government to say: *I want*, who will stop it, especially if opinion supports it?

It is another thing if one means that the government can do what it wants, but within the limit of natural and economic laws and the rules of right.

Thus the government cannot make that which is simply a *product*, by nature and purpose, be considered as a capital or property.

It cannot make a contract of exchange a lease at perpetual rent, although the service or merchandise exchanged could be remunerated, paid for, either by an annual pledge or by a series of annuities.

It can only make the *price* of a product be absorbed in a land-rent.

It cannot, without violating the law of human relations and without confusing all notions, make it so that a writer who puts his thoughts in circulation should be considered, no longer as a simple producer-trader, but as an irreimbursable sponsor, to whom, for this reason, a hereditary royalty would be due until the end of the centuries. The government has no more power to do any of these things, than it could divide the atmosphere, build on the ocean, produce without labor, and give rents to everyone. If it tried it, it would be to its detriment; ridicule and ruin would soon bring it back to the truth.

Society has been able, by some considerations that science has still not sufficiently clarified, but which are not contradicted, to divide the soil and institute a property in land; it has been able to do it, I say, even thought that appropriation, by the admission of all legal experts, is an addition to the right of the cultivator; even though the production and the exchange of riches do not

rigorously require a similar concession; even though property does not exist among numerous nations, where it is replaced by a simple right of possession. But in order that there would be an intellectual property, it would be necessary that the government could concede to the writer, as a domain, the privilege of general ideas and of the subjects of studies that are the common funds of intelligence. Now, it is exactly this that is impossible, which common sense rejects, and which, moreover, no one claims. How then, obliged to renounce the analogy, would they decorate with the name of property a simple privilege of reproduction and of sale, and that with the single aim to create a sinecure for their heirs?

Boileau has said in his letter on the nobility:

But the posterity of Alfane and of Bayard,
When it is but a nag, is sold at hazard.

Can the government make the children of men of genius be geniuses like their fathers? No. Let it then leave the posterity of genius to itself: the fathers have been paid, and there is nothing due to the heirs.

PART TWO
MORAL AND AESTHETIC CONSIDERATIONS

§ 1. — On the distinction between venal and non-venal things.

If our modern jurists and economists have lost even the critical sense, which their studies require above all and which distinguished their predecessors to such a high degree, it is much worse for people of letters, who no longer understand what makes the excellence of their profession and their own dignity. I will surprise more than one by demonstrating just now this astonishing proposition that, among the things which enter into the commerce of humanity, which are the object of our incessant activity and to which we attribute a value, there are some which, by nature and destination, are venal; others which, by nature and purpose also are not, and that among the latter we must count our most precious productions, those of art and literature.

This is another *sophism* of mine. M. de Lamartine, — who seems to only value things, divine and human, to the extent that they can be converted into money; who, for this purpose, organizes subscription after subscription to his verse and prose; who adds to subscriptions the supplement of a monster lottery; who, for greater security, asks that the temporary monopoly of authors be converted into a perpetual income, — will be careful not to agree with my opinion. As for the economist-jurisconsults, whom we saw previously, while demanding the institution of literary property, nevertheless recognize, through the voice of M. Laboulaye, that the intellectual domain is not appropriate, I suppose that they will not be angry to know more or less why.

Until now, we have only considered the writer as a producer of *utility*: as such, we have concluded that remuneration is legitimate for him. But there is something else in the writer other than a producer of utility. The goal he pursues is not simply a utilitarian goal; it is above all a goal of ideal moral education. The ideal, both in the sphere of consciousness and in that of life, is what constitutes the dominant feature of the literary producer, unlike the industrialist, whose dominant feature is utility. From this point of view, I say that the work of literature and art ceases to be remunerative, that it loses its character of venality, and that this is the main cause that prohibits any appropriation in the intellectual domain. I therefore maintain that the creation of artistic and literary property, were it possible, would be the corruption of all art and all literature; that a literature animated by such a spirit would be in contradiction with itself, against progress, in opposition to social destiny, in short a literature of immorality.

Is this understood? Is the paradox striking enough?... Poor revolutionary abortions that we are! Not eighty years ago, all this would have seemed like pure common sense, a banality. Today we need a proper demonstration.

§ 2. — Of Religion.

The things which, by their excellence, fall outside the utilitarian circle are of several categories: religion, justice, science, philosophy, arts and letters, government. Just one word from each.

Does there exist a book that has sold a greater number of copies than the Gospel, and whose author has remained poorer than Jesus Christ? This is indeed the height of genius and virtue, joined to the height of intelligence. Well, I ask the crudest of mortals: could the Gospel be an article of commerce?

Yet, he who proclaims the Gospel must live. First of all the question presented itself to the apostles: *Master, what shall we eat?* they said to the reformer of Nazareth. According to the theory of M. de Lamartine, M. Laboulaye, J. Simon, F. Passy, *et tutti quanti*, the Gospel being the property of Jesus Christ, the Church its heir, the apostles and their successors would have had the privilege, in perpetuity, of the sale of the sermons on the mount, the parables, in a word, of all the sayings and works of Christ, and every Christian, in order to read the New Testament, would have had, until the end of the centuries, to pay a premium.

Jesus does not see it that way. He knows, and in this he is a deeper economist than the disciples of Malthus, that money and religion are immeasurable values, and he responds to his disciples: *You will eat what you find*. What you have received in grace, give freely: *Gratum accepistis, gratis date*. More positive, even more proud, and already less confident in the hospitality of the neophytes, Paul takes an energetic step: giving his *Epistles* and his preaching for nothing, he earns his bread by making tents. It is the most beautiful trait of his life.

This is how the problem of remuneration of authors was resolved in the first century of our era. My Gospel is not a venal thing: this is the response of Jesus Christ. And whoever has religious feeling, apart from all dogma and all revelation, understands it as he did. Selling the Gospel, as the idea came to an economist of the time, Simon Magus, would be a crime against God, the lowest of indignities. It is precisely the crime that the Church slanders with the name of the one who first affirmed spiritual property, *simony*. Later, it is true, the Church fell into laxity. For centuries, the bishops were landed lords, the abbots had serfs, the priesthood lived on profits, the convents were overflowing with extorted donations. But the principle remained: if the Church does not want its ministers to beg, it does not hate simoniacs any less.

And all the founders and reformers of religions, Buddha, Confucius, Socrates, did as Jesus Christ did, preaching the kingdom of God from the rooftops, giving their thoughts *gratis*, eating what they found, and sealing, on occasion, their doctrine with their blood. Mohammed was accused of deceit; he was not insensitive to the glory of a writer. It has never been said that he made a pittance from the sale of the Alcoran.

§ 3. — Of justice.

Just as religion gave birth to a body of ministers, which is the priesthood, justice in turn produced a specialty of civil servants, which is the magistracy. Both live on salaries, or better said, on the compensation offered to them: it would really not be accurate to say that they are paid. Payment would be synonymous with prevarication. The litigant who, after winning his case, addresses even a word of thanks to his judge, would insult him: in such a matter, any gift, offered or received, any solicitation, is an offense. If Judge Goetzmann was guilty, Beaumarchais was no less guilty. And yet, what work is done by the magistrate worthy of the name to unravel the lie, to put aside the chicanery! What knowledge, what patience, what good will he needs! The literati make fun of the judicial style: any judgment, well reasoned, briefly delivered, is a masterpiece, not only of reason, but of diction. Did it ever occur to anyone to put court judgments up for sale for the benefit of those who wrote them? Dalloz's collection produces profits for the collector, but nothing for the magistrates who provided the material. No service is harsher: much more than the plowman in the fields, the judge, when he succeeds in overcoming sleep, sweats blood and water on his court. Talk to him about profits; try to tell him, as I don't know what *Mixed Commission* formed in Paris for literary property does, that he only owes the litigants his word, but that the reproduction of his sentences, so laboriously motivated, so strong of logic, precision, legal science, so remarkable in style, belongs to him alone: you will see how your proposal will be received. Under the old monarchy, no better way of giving the judiciary a livelihood was found than to allocate *spices* to him: this insulting law of retribution was abolished in 89, to universal applause, as making justice a venal thing. Practicing justice is a painful thing, which is rewarded among children, to whom we award prizes for good conduct, but which it is unworthy to remunerate among men. Distributing justice, says the right, is something even more difficult, and, for this very reason, all the more exclusive of the idea of sale.

§ 4. — Of philosophy and science.

From the things of religion and morality, which hold such a large place in the intellectual consumption of peoples, let us move on to others.

The French law on patents of invention expressly declared that philosophical or scientific principles, that is to say the knowledge of the laws of nature and society, are not susceptible to appropriation. The sale of the truth, like that of justice, is a repugnant thing, says the legislator. Can we imagine the Romans who, during the time of the republic, sent a deputation to Athens to copy the laws, paying the Athenians a tribute for this importation? Sieyès, who sold his constitution to Bonaparte, after starting out in glory ended in contempt. It is with the philosopher as with the legislator, as with the magistrate, as with the priest: his true reward is in the truth that he announces.

The unknown speculator who invented the so-called *Arabic* numerals; Viette, who created algebra; Descartes, who applied algebra to geometry; Leibnitz, author of the differential calculus;

Napier, who discovered logarithms; Papin, who recognized the elastic power of steam and the possibility of using it as mechanical force; Volta, who built the famous pile; Arago, who, in electromagnetism, pointed out electric telegraphy fifteen or twenty years before it existed: none of these men whose discoveries dominate science and industry could have been patented. For these first-rate intelligences, the most absolute disinterestedness is in command. Could the law, which has made this strange distribution between the scientist, inventor of the principle, to whom it grants nothing, and the industrialist, applicator of the principle, whom it favors, be unjust by any chance? No. It is our consciousness that is weak; it is our dialectic that is misguided.

Without doubt, the scholar, the philosopher, as well as the magistrate and the priest, must live: they are forbidden to speculate. — What! you say, they will be disinherited, condemned to indigence, because their lot was to discover the IDEA, which the first comer will only need to make the application with the aid of a partnership in order to enrich themselves! Does each of them not have the right to say: My figures, my algebra, my analysis, my logarithms, my pile, as well as Watt or someone else could say my machine?

No, responds the law. The truth in itself is not an object of commerce; it cannot be the subject of appropriation. Let us look for a way to make the thinker live honorably, but by freeing his existence from any idea of traffic: I will allow it, and I desire it. As for the one who makes the application, his job is different; it is a random thing, where the very rare excess of profits is only compensation for risks. Let us regularize the profits, reduce the risks, equalize the chances and, if possible, the conditions; it will be a good economy, and I am not opposed to it. But to take the truth to the trade fair is immoral and contradictory. Just as justice, religion, truth, if sold, would, by the very fact of the sale, be degraded, its dishonor would kill it.

Thus nothing that is of the order of science or of the order of conscience can fall into venality. The idea of profit is antipathetic to them: they are loath to see things of this nature become a matter of appropriation. The philosopher, magistrate of truth, is in the same condition as the judge. By the fact alone that he professes to teach the truth, or what he considers to be truth, and to correct the prejudices of his fellows, the truth obliges him; he owes it to men: if he sells it, he violates it. A man of extraordinary genius saw himself, in our century, trading in the *absolute*. Brought before the correctional police for this fact, he remained, for his contemporaries and for posterity, tarnished with the name of the *charlatan*. Fallen during his life and after his death, Hoéné Wronski counts neither in philosophy nor in science.

The *anti-venal* character of the idea extending to the function, it follows that the ministry of the priest, the judge, the philosopher, the scholar, is essentially free: I mean by this that they do not make a profession and merchandise of the word of which they are the heralds, and that the remuneration allocated to them, however they collect it, cannot, in good economy, be considered as wages. It is a respectful subsidy, an indemnity calculated not on the value of the service rendered or the communication made, a service and communication whose effect is inappreciable, above all mercenary nature, but on the physical needs of humanity. Everywhere and at all times people have wanted to save the honorability of the priesthood, the judiciary and the professorial profession, by elevating their personnel above the temptations of avarice and the anxieties of the indigent.

Universal reason has felt that such functions cannot be paid for, cannot be measured according to the unit of value used in commerce, gold, silver, the bushel of wheat, head of cattle or day of work. Here the utilitarian rule is abandoned: while the industrialist takes into the price of his product, with his production costs, the rarity of the object and the intensity of the need that others have for it, and thus works for lucre, those whom we previously called intellectual producers only count their labor and their time; they are content with their daily bread, with the bare minimum portion; they are men of sacrifice, to whom agiotage is unknown.

This is why I reject, as an offense to the platform both sacred and profane and a blasphemy against science, the words of the *Joint Commission* of which I spoke earlier: "Professors, preachers owe the public only their *words*; they alone have the right to reproduce them (for profit) through printing." A sad sophism, which could only occur in an era of venality and decadence. The professor, the orator, who sells his speeches after having delivered them for compensation, is doing something unworthy and positively unjust. *You cannot draw two grinds from one bag*: I would happily say of this man that he is more than simoniac; he is an extortionist. I understand certain tolerances; I can turn a blind eye to certain abuses: my conscience revolts as soon as we pretend to establish them as principles.

§ 5. — The Arts and Letters.

Alongside the *holy*, the *just* and the *true*, we now have to consider the *beautiful*. Are we justified, from an economic point of view, in uniting this new term to the same category as the previous ones, and consequently saying that poetry, literature and the arts repulse venality? This is what I am going to try, not precisely to demonstrate, since what is of taste, like what is of conscience, relates to an acuity other than intelligence, but to make it clear through some general considerations.

Let us first note that between the things of religion, justice and science, and those of poetry, eloquence and the arts, there exists an intimate connection, which subjects the latter, at least in large part, to the law of the others. What FORM is to substance in metaphysics, letters and the arts are originally to justice, religion and morality. Later the separation will be made; in the meantime, their destiny is united.

Thus religious and moral sentiments are translated by poetry, songs, temples, statues, paintings, sculptures, legends, myths, etc., all creations of art and a little of industry, but which it cannot enter into anyone's mind to make an object of commerce. Can we imagine King David levying tribute on the *Psalms*? The architect Hiram collecting a toll at the entrance to the temple? Bossuet drawing a *casuel* from his Funeral Orations, and our priests, on Corpus Christi, imposing a tax on the faithful to see the procession pass?

The same goes for artistic creations of the civil order. The first laws were written in verse that children learned by heart, as Cicero relates of the law of the Twelve Tables: it never entered anyone's mind to consecrate ownership of it to the profile of the legislator or to make it a perquisite for the praetor. To the bard who had sung in battle a prize was offered; his verse was not given a

price. Tyrtaeus asking the Lacedaemonians for payment for his songs would lose his prestige; Rouget de l'Isle, claiming after the battle of Jemmapes, under the principle of expropriation for reasons of public utility, compensation for his *Marseillaise*, could not be imagined any further. I am going to say something cruel: Rouget de l'Isle died forgotten, in a state bordering on poverty. The hostility of governments and the length of reactions were partly the cause: I would be angry, I admit, for the honor of principle and for the glory of the Revolution, if the Republic had granted him a pension. I would have voted for a bust of Rouget de l'Isle; I would have refused him any subsidy. One night the genius of the Revolution visited him and dictated to him, words and music, the *Marseillaise*. Since that day, Rouget de l'Isle wanted to continue his career as a cantor, and did not do much good. Proof that the idea of which he had been the organ was more collective than personal, that it was among the things not payable. Rouget de l'Isle lived poor: this was an insult to circumstances, which we must be careful not to blame on men. In 95 we were not, thank God, speculating on the sale of an ode or a poetic meditation. This trade was left to the designers of pont-neufs. For this sublime vigil, which made Rouget de l'Isle immortal, the Republic literally owed nothing... but a crown. Despite the contrary prejudice, I will always say that dedication to the homeland and the monuments that reflect it are beyond traffic; that this is all that distinguishes the writer and the artist from the industrialist, as it distinguishes the citizen soldier from the mercenary.

It remains to consider free, unofficial art and literature, I mean works independent of the Church and the State, without religious, political or educational mission. For this very considerable branch of literature and art, will we follow the strict rule?

Let us first talk about the true writer, the frank artist, by which I mean the one for whom the beauty that he strives to reproduce in his works comes before considerations of profession and utility. I say that this man, in the very fullness of his independence, cannot deny his sacred character, so to speak. He is always the prophet of divine things, a public teacher, who takes, if you like, his mandate from his genius, but who nonetheless works, in his own way, at the education, let's say better, at the exaltation of humanity. We are thus brought back to our starting point, which is the distinction between venal and non-venal things, the first forming the category of the useful, the others embracing everything that is of conscience, of the ideal and of liberty.

Let the gentlemen artists and men of letters once deign, for their own honor, to understand it: poetry, eloquence, painting, statuary, music, are by nature like justice, religion and truth, like beauty, priceless. Everything serves them, everything becomes their instrument or material; no limits, no types are imposed on their creations: they themselves only serve truth and justice, which they could not offend against without being corrupted. Now, if literature and art are only servants of justice and truth, how could they be paid in anything else? It is through reason, right and art united that man frees himself: how would this emancipation take place if the artist, if the writer were at the mercy of the tyranny of the senses, if he made himself the courtier of vice, if, to this end, he put a price on himself and worked, like the merchant and the usurer, only with a view to fortune? Art that becomes venal, like the woman who traffics in her charms, will soon deteriorate. It has been claimed that art was independent of morality: the comparison I have just

made shows to what extent and in what sense. There are creatures as vicious as they are beautiful; others, mistreated by nature, but with a spotless soul. But while vice continually deteriorates the former, truth illuminates and seems to beautify the latter; so that beauty and virtue, ugliness and vice, are fundamentally identical and synonymous. No, it is not true that art, the religion of the ideal, can be sustained in the practice of immorality. On this slope, there is no talent that resists, no genius that prospers. Insensibly the artist falls into triviality, from triviality into impotence; he is lost.

Let us conclude on this point as on the previous ones: the forms with which the writer and the artist embellish religious, moral or philosophical thought are sacred like religion, morality and truth themselves. Just as justice obliges the judge and truth the philosopher, beauty obliges the poet, the orator, the artist. They owe it to us, this beauty, since their goal, in manifesting it, is to make us more beautiful and better; since their work is a criticism of our figure and of our whole person, just as philosophy is a criticism of our reason and jurisprudence a criticism of our conscience.

An Arab proverb says: "We gather thistles for the donkey; we don't catch midges for the nightingale." This seems unfair; it is just. Any author who, being able to live on his assets, made a penny from his writings, is, in principle, guilty of indignity. Indemnified by birth and fortune, he owes it to himself to reject, on the basis of the title of his works, any additional income, if he were not stopped by the fear of humiliating his less fortunate colleagues. It is the humiliation of the poor writer, in fact, to feel obliged, to fulfill his mission, to demand an emolument. The ideal of the artist's life is to spread beauty for the sole joy of embellishing the world: beauty cannot be placed on mortgage. The great orator, thrilling his audience, strives to elevate them beyond the sphere of lower interests: make him a mercenary, you cut off his wings and take away his power. This is precisely how we have come to enjoy fine speeches in France; we have become impenetrable to eloquence, as we are inaccessible to virtue. Ah! Monsieur de Lamartine, who is so afraid that people will take your verses and your prose.

What a man you could have become, if you had known how to be poor as you knew how to be magnificent! But it was reserved for you to show, by your example, that the grandeur of feelings does not always coexist with the luxury of sentences, and that all these magnificences of speech most often only serve to conceal the weakness of character and the pettiness of the idea.

A venal poetry, a venal eloquence, a venal literature, a venal art: doesn't that say everything, and why do I need to insist more? If we no longer believe in anything today, it is because we are all for sale, *urbem venalem*, and we trade our soul, our mind, our liberty, our person, like products of our fields and our factories. Antiquity has preserved the trait of this citizen who, in pressing need, borrowed from the corpse of his father. How many of us would think of withdrawing such a pledge? We would join there our children and our wives.

§ 6. — Why certain products and services do not sell. — Causes of literary mercenarism.

I have shown, by the simple opposition of ideas, that the laws that govern the useful are inapplicable to the world of conscience, philosophy and the ideal. These are two incompatible orders, which cannot mix without destroying each other. Labor, paid for with a thank you or a *bravo*, would be a servitude to which derision would be added. Conversely, religion, practiced for profit, becomes hypocrisy and simony; justice, prevarication; philosophy, sophistry; the truth, a lie; eloquence, charlatanism; art, a means of debauchery; love, a lust. It is not me who says this: universal sentiment proclaims it, and all legislators until now have ruled accordingly.

The distinction between venal and non-venal things is fundamental in political economy as well as in aesthetics and morality; and if my opponents, who make their reputation as economists sound so loud, and who interfered in resolving the question of copyright *ex professo*, had had a real understanding of science, its principles, its limits and of its divisions, here is the march they would have followed:

After recalling that political economy is the science of the production and distribution of wealth, of all kinds of wealth, material and immaterial, temporal and spiritual, they would have defined production, and shown that it absolutely does not differ in any way in the artisan and the man of letters, since it is always a question of a personal form to be given to impersonal ideas, and of a movement of matter, that is to say of a production by force.

That said, they would have noticed that, among the products of human activity, there are some that naturally must be paid for, and others which cannot be; some for which venality is right, and others for which venality is repugnant. They would have shown that this distinction is necessary, and that the security of transactions, the liberty of persons, human dignity and the entire social order depend on the observation of these two contrary laws, venality and non-venality. Indeed, they would have said, it is not enough to have produced, the products must be consumed, they must be assimilated, some by the minds, others by the bodies. To this end, it is essential that products intended for physical consumption, and which more especially form the category of the useful, be *exchanged*, that is to say paid for, value for value; that the others, which belong to the categories of the beautiful, the justice and the truth, be distributed *gratis*, without which the distribution of labor and the distribution of objects of non-free consumption would soon be tainted with servitude and fraud. The man who believes in nothing, who respects nothing, quickly becomes a dishonest man and a thief. Now, let us put our hands on our conscience, and we will find that in the final analysis we only have faith in what is given to us *gratis*, that we only respect what cannot be paid for. And it is respect for things not payable that alone has the virtue of making us punctually pay for those that must be paid.

In other words, it is not enough to have demonstrated the laws of political economy, which are objectively those of the *yours* and the *mine*, for society to live and develop; these laws must be observed religiously and by all: which can only be done through a wide, continuous and free dissemination of the ideas of beauty, justice and truth. This is how in the social economy egoism is reconciled with the public good. The individual has his rights; society has its own. How do the

ideas of beauty, justice and truth act on souls and incline them to observe the laws of utility? Precisely because they are like gifts from God, placed outside of traffic, and because they flow from above to humanity like a blessing.

But, the economists would have been careful to add, given that the magistrate, the scholar, the artist, by producing non-commercial things, are obliged to consume commercial utilities in order to survive, and that many among them are without wealth, it is just that the community pays for them and provides for their needs. However, their remuneration will take on a different character: it will not be deemed the price or salary of the service, but a subsidy. The beautiful, the just and the true do not enter into comparison with the useful; it is here no longer the product that is sold, bought; it is the man who is rescued, compensated... To this end, the law grants to each author a temporary privilege, leaving him to judge his own need and the necessity he may find to resort to commerce.

This is how the demonstration should have been conducted, the crux of the question being, as I said, the non-venality of the things of literature and art, as opposed to those of industry. — Alternatively, and in the event that the distinction between commercial and non-commercial things is rejected as excessive and paradoxical, the economists, taking refuge in the rules of utility, would have proven, as I did in the first part of this writing, that the artistic and literary work being a *product*, and this product entering into consumption through exchange, there can be no place, in any case, for a constitution of property.

These principles are those of eternal justice; they mark the precise point where political economy touches morality and becomes one with it; they have never been lacking in any society, in any era. Those who dared to deny them would resemble those patricians of ancient Rome, who refused marriage and religion to the plebs, judging them unworthy of these high communications; or even to those slave owners who do not consider that a Negro is worth baptizing.

Don't we ourselves have our own politicians who protest against the education given to the masses? Don't we have our newspaper monopoly, a monopoly concerning which we have been constantly criticizing the government for forty years, but with which the monopolistic critics are so comfortable?...² Certainly, it is easy to see that if for thirty years, since the question of literary property was brought to our assemblies, the principles that I defend had been proclaimed by science, if the public had been strongly affected by them, thought in France would never have been enslaved; the influence of cliques and sects would not have tried to distort opinion and corrupt it.

How then did the idea of literary property take hold of people's minds, to the point that we will see it erected shortly in state law in the most civilized nation in Europe? There is a phenomenon here to study, which shows an equal reduction of the aesthetic sense and the moral sense, and which it is impossible to pass over in silence.

² The proposal to combat socialism by abolishing schools was produced under the republic, and, if I am not mistaken, by M. Thiers. As for journalism, I showed, in another publication (*The Federative Principle*, 3rd part, chap. 1), who are the real authors of the venality and servitude of the press.

The currently widespread opinion of intellectual property has several causes. For the economists, it comes above all from their training to prove that writers and artists, whom the vulgar are inclined to regard as parasites, are real producers, and that as such they deserve remuneration or compensation, if not salary; This unfortunate opinion still stems from the inconsiderate zeal which since 1848 has seized people for the defense of property. This is an exaggeration of the controversy, nothing more. But on the public side, the error is much more profound. It has its source in the general demoralization caused by the commotion of 89 and 93, a demoralization that has only worsened and spread for seventy years, through a series of catastrophes.

The Revolution undertaken by the French nation, it must be recognized, embracing society in all its layers and in its entire system, was beyond our reach. *It was*, said the exiled Barrère, *stronger than us*. Our fathers behaved at the beginning with bravery; then they weakened, and we only went backwards. I don't know if others would have been more valiant or happier; the fact remains that we succumbed to the task. Now, if a revolution brought to fruition is a regeneration, a failed revolution is a cause of moral collapse and decadence. Rejected, discouraged, we have fallen from all the height of our principles. After having lost faith in ourselves, we have lost it in our ideas and in our institutions; we have become skeptical of even those things that essentially exclude all skepticism, the good, the beautiful and the honest; and what distinguishes us at this time in the eyes of the world is an inconsistency of reason, a weakness of character and a despairing cowardice of conscience. Man is condemned to combat and to victory: when energy falls, ideas soon collapse; honor and dignity in turn deteriorate, and all that remains is putrefaction.

§ 7. — Political failure: primary cause of literary mercenarism.

A truth is only definitively established when the contrary error is explained. Now, as this is about us, our past, our future; as the proposed law is linked, by its idea and its consequences, to the evolution of the last eighty years, I believed that it would not be useless to bring the branch back to the tree and to observe it from closer to the vegetation. I will abridge, as much as it is up to me, these considerations. Besides, I am not forcing the reader to read everything; I only believe that it is my duty not to omit anything.

I therefore said that we were powerless or unhappy in our reform enterprise; that demoralization had come as a result; and that this national failure had its expression, among other things, in literary venality and in the project of converting the products of genius into property.

In support of these propositions I ask to cite some facts.

Thus, we tried to take hold of the monarchy and shape it to the new role assigned to it by liberty. This was one of the conditions of the revolutionary problem: we did not succeed. The Englishman had opened the way for us and set an example. He said to himself: "I am a monarchist, and I want to preserve at home the principle and the institution of royalty. But this royalty will be as I want it, not as it would like to be; the king will reign, will represent, will

appoint ministers, will exercise his share of influence, will serve as a link and rallying point between the government and the national will, expressed by the majority. But he will not govern, will not administer: it is I who will govern and administer myself. The prince will have no other thought than my thoughts, and his friends must be my friends..."

The Englishman, holding on to this language, was careful not to add, like the Spaniard, *Y sino no*, which would have implied that he left the option to the prince and put the market in his hands. The Englishman is less superb and much stronger than the Spaniard. He wanted a king, but as he pleased, and he got it. The English people have enough bad sides for us to give them the justice they deserve: I look at the discipline of royalty as the most remarkable fact in English history. It cost centuries of struggle: a king, one of the most honest, perished on the scaffold; another, the most obstinate among them all, was expelled with his race; English *loyalism* wept. But royalty was tamed, softened; today it lives in the best understanding with the country.

France is also monarchical: I don't know why the *Indépendance belge*, a newspaper as un-republican as possible, reproached me for having said so. France is monarchical to the marrow of its bones, down to the last atom of its democracy. In vain, for thirty years, the unfolding of facts, the reason of the interests, the parliamentary dialectic, have carried it elsewhere; instinct wins. In one form or another, dictatorial, imperial, presidential, legitimist, Orleanist, France is monarchical; the French democracy, through its unitary policy, loudly confesses this, and those who do not admit it still think so.

Absolute monarchy having become impossible, France therefore undertook, like England, to convert its old despotism. It brought its royalty from Versailles to Paris, it brought it back from Varennes, it made it swear to a constitution, it put a red cap on its head, then it guillotined it. Later, it abandoned Napoleon, chased out Charles, having conquered, tamed, shaped the monarchical principle, from which we do not know how to separate ourselves. Do we have, in terms of government, the one that our fathers, in 1789, consulted with their monarchical genius and their liberal aspirations, chose, rightly or wrongly, as the most propitious, and which most of us still demand, I mean a political system such as Montesquieu had foreseen, as Turgot conceived it, as the Constituent Assembly wanted, as the Charter of 1814 and that of 1830 tried to achieve it, and as the government of Napoleon III promises to give it to us one day, if we are wise?

No, the monarchy has not been frankly constitutional in our country; our inability to reprimand it, or to do without it, was such that, without wanting to hear any more about the republic, we ended up giving our fiery steed the reins. This state of affairs is only transitory, you will say. Undoubtedly, everything is transitory in this life. The need for freedom becoming more intense every day, public and private affairs more and more united, we are led to suppose, and the advances made over the last two years by the imperial government support this hypothesis, that the French nation will return, if not to the fullness of its autocracy, at least to a greater part of its government. But apart from the fact that this is only an induction, in which the known character of the country requires little confidence, who does not see that this happy progress, the crowning achievement of the building, would then result from the force of things, — what am I saying? — from the prudence of the government itself, not from the will of the nation? It would be as it was

in 1848, when everyone found themselves Republican out of necessity, without anyone being able to boast of having defeated the monarchy.

I insist on this fact, which our historiographers explain in a convenient way, by saying that the fault was with the princes, who all failed to keep their promises and forced the country to reject them. As if it were not of the essence of the Power to constantly encroach! However great a woman's wrongs may be, divorce always leaves doubt about the husband's capacity: what should we think when we see the same man divorce one after the other up to four times? All our struggles have been domestic quarrels, following which the monarchy, eliminated for a moment, has always returned triumphant, while the country, the male element, has constantly lacked strength and decision. We did not strongly want the constitution of 91, discredited before having been put into force, and we slipped into the republic of 93, which we did not want at all. When, after 18 Brumaire, Sieyès attempted for the second time to introduce us to the constitutional system, we applauded Bonaparte's words, saying that he did not want to be *a fattening pig*; so little did our levity understand what the new monarchy should be. We talked during the Restoration, but without taking the Charter seriously, defeating the king every day, and then boasting of having played a comedy. The old Bourbons were not difficult to curb, however, and Charles X was no James II. After 1830, when M. Thiers, in a moment of verve, uttered his famous adage, *The king reigns and does not govern*, we could only see in it the sarcasm of a rebellious subject: it was one more argument for the Republican party. The government of the citizen king was carried away as that of the knight king had been, but what a great advance! It is a question of harnessing the lion, not of killing it. I would not like to discourage the friends of liberty; but they must say it to themselves: until ideas on the nature and conditions of government have been reformed, and the general condition of European society is changed, the Power in France will remain master; it will always return to its type, which is Clovis, Charlemagne, Louis XIV, and Napoleon. Never, in the face of Authority, will the people wear breeches.

Recently, in connection with January 21, certain newspapers felt it necessary to defend the Convention and maintain the good judgment of the condemnation of Louis XVI. The moment, it must be admitted, was singularly chosen for such a manifestation!... This regicide (which would have its value), which history would perhaps recognize if, like that of Charles I, it had resulted in founding, in a lasting manner, if not the republic, at least the constitutional monarchy. This execution of the *tyrant Capet* rises against us. It was an act, not of energy and high justice, but of anger and fear. We saw this when those who had voted for the death of the king, Sieyès, Cambacérès, Fouché, Thibaudeau, became courtiers of the Emperor; when in 1815 Benjamin Constant, the so-called tribune, took charge of drafting for the returnee from the island of Elba the *Additional Act*, in which the fundamental principle of the constitutional, representative and parliamentary monarchy, laid down by the Charter of 1814, is so subtly evaded.

The consequence of all this is that since 99 we have entered into a crisis. The Revolution is not over, as the consuls said in 1799; nor is it repressed, as the emigrants boasted after 1814: it is only blocked. The religion of royalty has weakened; but the principle, but the practice have remained intact; and as the Republic, after two unfortunate experiments, is not yet defined, as its

tendencies are contrary to what we love and seek in monarchy, it follows that we have neither monarchical faith nor republican conviction. We follow a routine. Well, in fact, we have no political principles, as we are equally incapable, at the time of writing, of living with or without a master. All our energy is theater energy. Instead of self-government, the reality of which in England is hidden under the insignia of the monarchy, we have civil service, made popular by the *eligibility of all citizens for employment*; instead of a federal republic or a monarchy surrounded by republican institutions, we have *democratism*, which is nothing other than a variety of despotism; in the final analysis, a government which, wherever it comes and whatever name it bears, a simple agent, is forced, on pain of perishing, to act as a sovereign; and a so-called sovereign nation, which, greedy for subsidies and places, taking the State for a cash cow, and deeming itself free enough provided that it suckles, makes itself the servant of its elected official and imagines itself exploiting his government.

Conclusion: a nation fallen into political indifference is in the worst conditions for having political literature; and it is inevitable that writers who, in newspapers or in books, deal with political, economic and social matters, gradually become like those honest employees who serve their country under all governments.

§ 8. — Mercantile anarchy: second cause of literary mercenarism.

The same demoralization which, in politics, has produced such sad fruits among us, has caused no less devastation in the sphere of interests and in that of ideas.

Before 1789, the Third Estate had been repressed, the common people despised. The world of utilitarian production, which formed ninety hundredths of the nation, and which had every right to be counted for something, only occupied third place. This subordination was an irreparable misfortune for us. The Revolution having broken out, the popular and bourgeois masses burst into the arena, drove out the clergy, nobility, royalty, and, in one fell swoop, found themselves owners of the land and mistresses of power. It would have been magnificent if the power of rebuilding had been equal to that of demolition. After twenty-five years of war, the overflowing torrent returns to its bed: then it is a question of organizing the industrial regime, called since 1789 to succeed the feudal regime. We had moved in one leap from the system of corporations and authorities to that of free competition: an economic constitution had to be created on these ruins.

But here again the task is too heavy: the nation does not know how to calculate its effort, arrange its means, move towards the goal with intelligence and firmness. The arbitrariness that was left to power, for lack of knowing how to contain it, was wanted, from another point of view, for anyone dealing with commerce and industry. Mercantile anarchy, denounced from its birth by Sismondi, appeared to be the last word of science and revolution. So what happens?

One of the miseries of our revolution is that since 1789 we have had nothing consistent, nothing traditional. This is noticeable in the succession of these short-term governments, which have no connection with each other, and whose sterile learning we pay for in turn. However, what is true of the power is even more true of the bourgeoisie. From 92, it underwent a metamorphosis:

everything about it changed in style and appearance. A generation freshly emerged from under the clod, as foreign to the bourgeois mind as to noble customs, whose title is in the acquisition of the national goods and the abolition of the old cadres, takes the place, the habit, the name of the old bourgeoisie. It is this class that now forms opinion and leads the movement. After the priesthood, fierce at the memory of the old regime, it does not realize that it is remaking, in another form, the abolished system. The feudalism of capital lays its foundations. The other feudalism had as its basis, its reason and its sanction, religious faith, a whole order of ultra-mundane relations. Now we have returned to primitive materialism, a crude and unveiled worship of interests.

Here, however, as before, we believed we were following the example of England. But the situation was not the same. England, while giving rise to industry, the prerogative of the bourgeois class, had preserved its landed aristocracy and its clergy; it had a social system, a national religion, a practical philosophy, which guaranteed it against the aberrations of politics and the excesses of speculation. Finally, it had the whole world as its clientele and the Ocean as its empire.

The result of this influence was an economic subversion as humiliating to our self-esteem as it was fatal to our fortune. The wealth of France, its strength, is in a system of small properties, small industries, balanced among themselves and served by a few large farms, just the opposite of what exists in England, and what we have ridiculously striven to import for half a century. We don't understand it: it is one of our faults to disdain our advantages and to get angry about limiting others. For several years, *prosperity has been increasing*: what is it today? Pauperism besieges all classes of the nation. Economic anarchy acting in turn on morals, souls, disconcerted by political failure, have become darkened. Under Louis-Philippe, while the government favored the development of primary education, bourgeois intelligence, infected by utilitarianism, declined visibly. The bourgeoisie renounces these good studies which, in previous centuries, had made them famous, preferring a purely mathematical and industrial education. What good are the Greeks and Latins? What good are philosophy and the high sciences, and languages, and right, and antiquity? Make us engineers, foremen, clerks!... The discoveries of modern industry have completely blinded this shopkeeper caste: what was supposed to raise minds was only one more victory for obscurantism. From this moment, the science of wealth, the agreement of interests, only appear through their anti-aesthetic side. *Political economy*, said M. Thiers, *is boring literature*; it fell out of demand. Intellectual property, venal literature, is one of its inspirations.

A fact that shows how the new bourgeoisie understands the commerce of ideas and the practice of the liberal arts is the way in which it exploits journalism. You criticize this newspaper director for his complacency towards power, his reluctance, his cowardice. He answers you, in the most serious way: But, if I do what you say, I will receive a warning. Get yourself warned. — I will be suspended. — Get yourself suspended. — I will be suppressed. — Get suppressed. — And my capital, must I therefore lose it? — Lose your capital, but do not compromise with your conscience. At this, the honorable publicist, scandalized, turns his back on you, Obviously this man, whom the vulgar accuses of having sold himself to the Power, is free from any commitment to the Power. What is the point of buying him? He would have been possessed by his capital, and this possession is the strongest of chains, and for the Power a surer guarantee than all betrayals.

Thus we have failed in our attempt at economic revolution: from this double failure we are left, with a profound feeling of helplessness, and a no less profound alteration of our moral sense. We are neither tamers of kings nor true entrepreneurs, and we have lost, along with the intelligence of our humanitarian function, even the instinct of our nativeness. Our deranged souls, no longer receiving inspiration from the soil, have ceased to be Gallic, and we are not even of our own country. There are among us constitutionalists, republicans, Catholics and Voltairians, conservatives and radicals; this is all for the brand. There really is no political and social thought, and our nationality, all official, stifled by foreign influx and artificial mores, has become a myth. What part do we play in the European concert? It is impossible to say. So the world goes without us, only on guard against our five hundred thousand bayonets. Seventy-four years ago the third estate, which modestly asked, through the mouth of Sieyès, to become something, became everything: and since it has been everything, it does not know what it wants, and it seems to have given its resignation...

Shall I talk about philosophy? A simple reconciliation is enough.

In the sixteenth century, Germany said to itself: "The prostitute spoken of in the Apocalypse is the Papacy; Rome, the new Babylon, unfaithful to Christ, destroyed the reign of Christ. But I am a Christian, and I will save religion..." And Germany, separating itself from the Church, carried out the Reformation. Piety flourishes again on the earth; Protestant influence extended to the very base of the Church, forced, by condemning *heresy*, to obey the movement. From this Reformation, inconsistent but generous, emerged, three hundred years later, through the work of free thought, a splendid philosophy, Germanic philosophy, which today supports, nourishes, elevates all souls in Germany; which, by freeing them from dogma, subjects them to the legal conditions of liberty. I admit that Luther's work was less difficult than that of Mirabeau. But at last Luther was heard by his nation, he was followed; the Germanic race, like the Anglo-Saxon race, did what it wanted and how it wanted; while we have neglected and reviled Mirabeau, and we are still wondering what the sublime tribune wanted and what our fathers wanted. As I write, Germany is working on its federal and republican constitution, and is continuing, through its own channels, the suspended work of 1789. Thus the German people walk, with a slow but assured step. Their thought, often cloudy, is the salt of the earth; and as long as people philosophize between the Rhine and the Vistula, the counter-revolution will not prevail.

We too in the sixteenth century were visited by the Reformation; and we proscribed it twice, first under the name of Calvin, then under that of Jansenius. In the eighteenth century, it is true, we tried to take our revenge, by calling upon philosophy. French philosophy, Hegel said, was the older sister of German philosophy. One laid down the principles, the other the corollaries. Inaugurated by a powerful elite, composed of Fréret, Montesquieu, Voltaire, Condillac, Diderot, d'Alembert, Buffon, Condorcet, Volney, it could also be called philosophy of nature and philosophy of right, with common sense as interpreter. From there came the lightning of 89. But philosophy remains individual with us; the mass does not assimilate it. We have produced, of all kinds, geniuses equal to the greatest: let us be less proud of that, as we have treated them like hermits. If we visit them sometimes, it is from pure curiosity. Their thought is like the seed of the Gospel, on

which the birds of the earth feed, but which we leave to dry on the rocks. The conclusions of science do not benefit us in any way. We had believed too much when we began to think; we had had too much faith, and not enough virtue. At the first light, we were knocked down like Saint Paul on the road to Damascus, and we did not get up. From our thinkers, we have only retained gaiety and blasphemy. After the orgies of 93 and the Directory, the multitude returned to the old altar; Bonaparte reopened the churches, and everything was said. The boldest confined themselves, some to mysticism, some to libertinism; the rest sank into indifference. From this indifference was born eclecticism, metaphysical mixed vegetables, philosophy of bric-a-brac. Do you want spiritualism, materialism, deism, Scottishism, Kantianism, Platonism, Spinosism? Do you want to reconcile your religion with your reason? Speak; there is something for all tastes and in all doses; there is something for all budgets. We resemble the companions of Odysseus who were changed into swine by a fairy, and who had preserved just enough of their human nature to ridicule everything that is human. Our conscience is like this meadow mushroom which, dried up in autumn, spreads foul dust, and which rustic irony calls by a name that honesty forbids me to say.³ Everything we once respected is sullied by us; we trade in law and duty, in liberty and order, in truth and fantasy, as we do in loan securities and railway shares. Neither human morality, nor the true value of things, nor the certainty of ideas and fidelity to principles concern us; we speculate on fluctuations. Everything is an opportunity and a matter for gambling; we even count on the possibility of bankruptcy, and in this property for which we affect so much zeal, we only seek the net product.

§ 9. — Decline of literature under the influence of mercenarism. Transformation anticipated.

“Literature is the expression of society:” this phrase, cited so often, is receiving sinister confirmation at this moment. What can literature be in the political, economic and philosophical conditions that I have just described? What can literary conscience and the dignity of art be!

After the fall of the Directory, French literature, an expression of the seventeenth and eighteenth centuries, suddenly ceased to be in touch with the situation of minds. Could France in 1804 understand Bossuet, Voltaire or Mirabeau? The fall was sudden, immense. The king of beautiful minds was Fontanes: who has read Fontanes? Napoleon delighted in Ossian: who reads Ossian? What happened to the imperial literature?

Under the Restoration, which, by recalling the past, revived the bourgeois spirit, there were two currents: one of positive literature, remarkable especially for historical works; the other of retrospective literature, romanticism. The first, estimable, but skeptical and cold, did not reach the sublime; the second was the song of the eunuch. The serious works of our century will still last, thanks to the materials they contain: romanticism is over. Chateaubriand has passed: who would have believed, in 1814, that such a great man would pass? And many others will pass who are only supported by the power of the cliques and the virtue of advertising.

³ Probably the common stinkhorn, *Phallus impudicus* (shameless phallus.) — TRANSLATOR.

From 1830, industrialized France definitively broke with its literary tradition; then also the general decadence becomes more rapid. French literature, ignoring its own genius, caring little about remaining itself, is infatuated with the foreigner of whom it makes pastiches, loses the feeling for language, which it tortures and corrupts. The idea lacking, we throw ourselves into the false and the outré; we make literary veneer; we stretch on brutalities, on turpitudes, the forms created by the masters; we create style with style, as we do at the college of Latin verse with the *Gradus ad Parnassum*, like those Italians who, no longer producing original works, provide, according to the masters, statues, bas-reliefs, columns and even temples for export. That is called writing. To give ourselves an appearance of originality and depth, we remake the rules, we denigrate the classics, which we just don't understand; we fill in impossible rhyming bits; we return to the language of the troubadours; we rehabilitate, in the name of nature, the ugly; we cultivate vice and crime; we overflow with descriptions, with declamations, with torrential conversations; then the bookstore bulletin records the success. That is called literature.

Is it true, yes or no, that for the majority of scholars, literature is a profession, a means of making a fortune, not to say a livelihood? Now, there is no distinction to be made here: as soon as the writer enters the path of mercantilism, he will follow it entirely. He will say to himself that to serve the truth for its own sake and to publish it anyway is to make everyone hostile; that his interest requires him to attach himself to one or other of the powers of the day, coterie, party, government; that above all it is important to respect prejudices, interests, self-esteem. He will follow the comings and goings of opinion, the variations of fashion; he will sacrifice to the taste of

the moment, will highly praise the respected idols, demanding his salary from all usurpations, from all shames.⁴

It is thus that our literature has engaged in endless degradation, Because it has ignored the first law of the man of letters, which is sacrifice, and because it pursues profit, it has become, in less than half a century, first a literature of scandal, finally a literature of servility. How many there are who believe that letters, of whatever kind, have the main mission of defending right, mores, liberty; that genius itself only exists on the condition of defending them? Have poetry and prose, perfectly crafted, in the presence of events so full of lessons, ever seemed empty? When literature should rise, follow the upward march of things, it plummets. Kneeling before the golden calf, the man of letters has only one concern, and that is to promote his literary capital to the best of his interests, by dealing with the powers on whom he believes he depends, and by voluntarily mutilating or twisting himself. He forgets that such concessions distort conscience, kill genius, and that the man of letters is thus reduced to the condition of a mercenary, no matter to whom he has sold his conscience, if he has given himself up to a trafficker of scandal, or if he made a pact with the devil.

But, they say, it is precisely in order to enhance the character of the man of letters, to ensure his honorability and independence, that we demand the institution of literary property... Lie! It is proven that the creation of such a property, contrary to the principles of social economy, contrary to civil and political right, implies in its terms the confusion of things that are venal by nature with those which are not, and consequently the corruption of literature. And then, is it for the authors themselves that we are asking for this property, or for the heirs? When the writer reveals

⁴ The art of selling a manuscript, of exploiting a reputation, moreover overrated, of squeezing the curiosity and enthusiasm of the public, literary agiotage, to name it by its name, has been pushed today to an unheard of degree. First, there is no longer any criticism: people of letters form a caste; everyone who writes in newspapers and magazines becomes complicit in speculation. The self-respecting man, wanting neither to contribute to advertising nor to denounce mediocrity, takes the side of silence. There is room for charlatanism. But the great means of success is the high price at which the authors sell themselves. It is announced that such a work, impatiently awaited, announced with mystery, will finally appear: the author has dealt with such and such a bookstore for the price of 30,000, 100,000, 250,000 or 500,000 francs. There are, it seems, examples of such markets. Most often, something we are careful not to inform the public about, these fabulous prizes are paid by a sponsorship in which the author takes the largest part, so that, once the liquidation is done, he receives a tenth of the sum announced. A large figure, even a purely nominal one, is what most flatters the vanity of writers. Someone will prefer for his publisher a charlatan who promises him 100,000 crowns and goes bankrupt, to a serious bookseller, who would have paid, money on the table, 50,000 francs. Sometimes as well, a novice bookseller, dazzled by a great name, presents himself, runs the crazy auction, and finds ruin where he had hoped for fortune. This is called, in bookstores, *drinking broth*. What glory, for a writer, such success! Then comes speculation about the format. The first in literature is always expensive: we start by attacking the big grants, after which we address the small ones. So a change in format, characters, paper, layout. Such a work sold for 15 francs, in two volumes, at its beginnings, was released six months later, in a single volume, for 3 francs. Difference, 80 percent. — 80 percent! That's about as much as there is, in general, to pull down of reputations and books.

himself, he has nothing; it is up to him to build his nest, without subsidy or encouragement. Often, it is against the thinking of his contemporaries that he must direct the efforts of his genius, even if it means finding his reward only in the tomb. It is therefore the heirs of the authors that we have in mind. These are majorats of a new species, an aristocracy of intelligence that we want to establish, a whole system of corruption and servitude organized under the name of property!

It is said that the consul Mummius, at the sack of Corinth, said to the contractor responsible for transporting the statues: *If you break them, you will replace them!* In 145 BC, the Romans were not yet able to distinguish the fine arts from the crafts: we, on the contrary, have returned to confusing them. Isn't that what we are doing, in truth, when we create masteries in arts and letters, no longer in the sense that artists give to the word *master*, but in the meaning given to it by ancient feudalism? And how many people, even among the literati, flatter themselves *in petto*, that genius would not be lacking if it were handsomely paid, and that a masterpiece can be made to order like a house or a carriage! It is the consolation of mediocrity to think that the arts are declining, because there is no encouragement for artists.

It is said that Lord Palmerston, hearing himself reproached that his government did nothing for artists, exclaimed: *Are we no longer English?* He meant that these kinds of things concern the public, not the government. Our dilettantism is there: it is neither English nor French, and no longer knows anything about letters and the arts. We believe that a nation produces masterpieces when it is rich enough to pay for them, that Paris rebuilt at a cost of twelve billion will be the miracle of architecture, and that literature will be prosperous when scholars have income.

Moreover, there could be in this obstinate assimilation of the creations of the ideal with those of the useful, an idea of which the partisans of the new property do not suspect. Civilization has entered an eclipse. Perhaps it is in the general destiny that this momentary degradation of the humanitarian light happens. If art is lowered to the level of industry, does it not mean that industry itself becomes art? Look at the exhibitions: according to critics, the works of art are more and more deplorable; on the other hand, those of industry appear more and more brilliant. Are not the products of the Sèvres factory, that of Gobëlins, works of art? Is there not an infinite art in all these machines, in these precision instruments, in these luxury fabrics, in this crystal factory, in this bookstore so richly illustrated? Do not these entirely utilitarian inventions, the electric telegraph, photography, electroplating, the steam engine, spinning, weaving, sewing, printing, paper-making, etc., surpass as design, do they not equal in execution, the most renowned works of our painters, our statuaries and our poets? Doesn't the ideal shine through in the products of our industries in Paris and Lyon, as in the works of our novelists and playwrights? Isn't the art of speech, finally, brought to an eminent degree among our lawyers, our professors, our journalists, among a crowd of people who make no profession of literature or eloquence? Well! Would to God that the art of thinking was so vulgar! We seek the ideal, speaking well and writing well, signs of lucid intelligence and a healthy conscience; and we are, without realizing it, completely ideal. We speak like Pindar and Phoebus: thanks to this enormous consumption of novels, reports, daily, weekly, monthly publications, within the reach of all intelligences and all budgets, the elegance of French discourse, the literary substance of Antiquity and the Modern Age, have become the

heritage of all classes and today distinguish no one. After that, how is it surprising that literature and art are assimilated to industry, when every industrialist can call himself an artist, when workers have their poetry and business people have their own eloquence?

So be it then: we are in the midst of a transformation. For a time, for a long time perhaps, we will have neither true litterateurs, nor true art, any more than in an era of constitution and rationalism we can have true royalty and true priesthood, any more than under a democracy of *unity, nationality, strong government* and *natural frontiers*, there is a republic. There will be civil servants of the temporal and spiritual, very honorable indeed, from 1,200 to 100,000 francs salary; scribes with fixed salaries or wages by pieces, having learned to write French correctly and to transfer the style of the originals to all kinds of subjects; colorist designers, practitioners of marble and granite, skilled in seizing the ideas of the masters and producing masterpieces. It will be very sad, very monotonous, very boring; sometimes very infamous. Let us console ourselves, however: little by little the public will learn to appreciate at its true value this literature of counterfeiters, this art of buccaneers; falsification will be defeated, exterminated, and, after one or two centuries of decrepitude, we will have a renaissance.

So be it, I want it, I applaud it. I too, have had enough of the speaking, the writing, the pianism and the illumination. But then, let us follow the law of industry as the Revolution made it. Guarantees of remuneration for authors, inventors, perfecters, as long as they wish; but no privilege, no control, no perpetuity, Everywhere, always, free competition.

PART THREE

SOCIAL CONSEQUENCES

§1. — How revolutions begin, and how they miscarry.

If the project of law for literary property is adopted, I dare say that virtually nothing will remain of the institutions and ideas of 89. The spirit of France will have made a complete conversion: in order to erase almost the last vestige of the Revolution, it will suffice to allow the new law to produce its consequences, and to record them as things go along in the Bulletin of the laws.

A people preserves its institutions and its laws only insofar as they respond to the ideal form in its mind: as soon as that idea is shaken, the society is transformed. Thus the Revolution of 1789 was the abjuration of the religious, political and social ideal consecrated by the literature of the seventeenth century. Just so, the reaction begun under the Consulate, of which the Republic of 1848 has provoked the recrudescence, is, save for modifications demanded by the times, a return to that ancient ideal.

Under the pens of the Rossuets, the Fonelons, the Fleurys, the Arnaulds, the Pascals, the Hourdaloues, and Dom Calmets, Christianity acquired a rationality and splendor that it had never had, even in the times of Saint Augustine and Saint Paul. Philosophy, exact and natural sciences, poetry and oratory, served that Christian transformation. Thus there was pride and joy to profess the Gospel; the believer could claim that it had for him divine reason and human reason. Christianity was more than a faith: it was the system of the world, man and God.

The monarchy shared that glory with religion. Prose-writers and poets gathered in a common adoration of royalty, to which the theory of the sovereignty of the people, recently introduced by the protestants, could only give the double prestige of tradition and logic. In the seventeenth century, they had not come to think of the government of societies as depending on right and science; they started off unanimously from the principle of authority, incarnated according to some in the prince, according to others in the people, in all cases enlightened by the Church and sanctioned by the order of God. Now, as soon as one invokes authority and divine order, it is absurd to place sovereignty in the mass, to make the subject king, to call governor precisely that which must be governed.

The social hierarchy, in turn, despite its very obvious miseries, received the same consecration. If Molière, Boileau, La Bruyère, made fun of the little marquises, they nonetheless showed a deep respect for the principle of nobility, in which they found one of the conditions of society and a manifestation of individual dignity. Since it was granted, what is still granted today, that equality of goods and conditions is a chimera, the institution of nobility was given, and Fénelon in his *Telemachus*, Saint-Simon in his *Memoirs*, were right to maintain the distinction of castes and to claim more power and influence for the nobility. Richelieu's crime, in the eyes of these great publicists, was to have diminished this nobility; and one of the most important reforms expected at the death of Louis XIV, as had been expected during his minority, was a restoration of feudal

power. As for the bourgeoisie, organized by corporations and masters, it was, with the parliaments, the firmest support of the system.

After having been shaped on society as on its prototype, literature had therefore served to preserve this same society, by idealizing it. This idealism covered terrible abuses, monstrous vices, but the impression was no less profound; it is by this that France was supported until 1789. Eclipsed during the twelve years of revolutionary agitation, the glory of the great century once again took hold of us, and the reign of Louis XIV was even more admired by our era than it had been by contemporaries.

How did France break away from this ideal? In other words, how did the Republic become possible?

We know it: the seventeenth century, conservative and believing, had been less of a reasoner than an artist. It had used reason to affirm, to embellish the *status quo*; its dominant feature, sustained by thirty years of success, was the poetry of art. The eighteenth century brought an opposite faculty into play: solicited by science and unease, it compared reality with the ideal, reflected more than it admired. Analysis was its muse; it led it to negation. It is because in fact the reality, in the Church, in the power, the nobility and the common people, was hideous, and because those least prejudiced against the established order had to believe in the impossibility of a cure, consequently to treat the ideal as a lie.

In short, the Revolution was a protest of positive reason against the suggestions of imagination and faith, and everything that has happened since has been the consequence of it. The monarchical, feudal and theological ideal was false, by which I mean that the reality on which it was based was irrational, immoral, and that sooner or later, faced with the revelations of criticism, its prestige had to disappear. The analysis of the eighteenth century was irreproachable; the Revolution was its legitimate fruit.

Now this Revolution itself is outrageously denied and endangered: it is no more difficult to explain this fact than the other.

Need I remind my readers that in all this I intend to accuse the power neither directly nor indirectly, that I am not making political satire, but rather social psychology? It is not a conspiracy that I denounce; it is a current of opinions that I am pointing out, a chain of ideas and facts of which I show the series and from which I will later deduce the final consequences: all things apart from government action, which do not fall under anyone's responsibility.

I said above, Part II, §§ 6, 7, 8, that the decadence of which we are witnesses had its cause, not in the principles of the Revolution, which are justice and science; not in the conclusions that we tried to deduce from it, since these conclusions are summed up in a development of right liberty; — but in the inadequacy of the generation, which was not up to the challenge. We have been weighed in the balance, and, like King Balthasar, we have been found weak, *minus habentes*. We have not resolved any of the great problems posed by 89, and we are succumbing to fatigue and demoralization. Having failed to idealize, neither through our institutions: through our arts, nor through our actions, the Revolution that we had undertaken; far from it, this Revolution having left us only memories of horror, we could not fail to fall back under the ideal of the seventeenth

century, thanks to this splendid literature, for a moment invalidated by philosophy. From the time of the Terror, France stretched out its arms to its God and its king:⁵ Napoleon returned both, gave it conquests, nobility, decorations. From this point of view we can say that Napoleon was a restorative genius, a faithful organ of the sentiments of his era.

But the restoration energetically begun by the first consul, weakly supported by the Bourbons and by Louis-Philippe, was only begun; and we are a logical people, a people who like to exhaust their givens and follow a trail as far as it can lead. Now, what does common sense say here? That the spirit of critique is always unchained, and it is a matter of mastering it.

No matter how much we repress, intimidate, warn, crack down: the press legislation is little, the censorship nothing; the action of the courts only serves to fuel the fire. On the other hand, it is obvious that, with the best will in the world and despite all the exhumations, we cannot go back two centuries and remake society as it was under Louis XIV. Two things are necessary here: first, to substitute for the ideas of 1789, to the serious beliefs of the seventeenth century and the spirit of research of the eighteenth, fanciful mores which, flattering pride and pleasure, dispense with all philosophy, spread doubt about institutions and make people pity the principles; second, to operate, if I dare say so, on the nation's faculty of reasoning, to bind its brain, in a word to exterminate critique, by placing ideas under the control of the State.

The first part of this program is almost complete: all you have to do is let it happen. The spirit of analysis, which distinguished eighteenth-century France, gave way to the cult of pure art, art without conditions, without support, conceived as a fantastic creation, freed from any social realization. We are no longer the pioneers of the idea; we are the knights of the *ideal*. Right and morals, the laws of history and politics only have value, in our judgment, as long as they serve as a theme for this *ideal*, which has become our unique faith and our unique love. The *ideal* is the religion of our writers, whatever specialty they cultivate, critics, historians, philologists, as well as novelists and poets. The Revolution itself has become a fantasy. French society, like all societies that become corrupt, no longer believing in anything, and believing in itself less than in everything else, has become purely and simply *dilettante*: the most prosaic of people believe themselves to be artists par excellence; neither principles nor justice fascinate them any longer. The time for ideas has passed; and the writer who discusses, demonstrates, concludes, before a French audience, is today no longer of his era. Already even this industrial growth of which we

⁵ Robespierre, who reestablished the *Supreme Being*, maintained a correspondence with Louis XVIII. This correspondence, which Courtois, author of a report on the events of Thermidor, had appropriated, was given by him, after the Restoration, to M. Decaze, who had traveled to Brussels for the express purpose of dealing with the former regicide: that, at least, is what I was told in Belgium. From what transpired from this correspondence, it does not appear that Robespierre gave any hope to the pretender: but is it not an accusatory fact that the policy of the triumvir could have been considered by Louis XVIII and by the powers as a return to the old order of things; was it not the beginning of treason, this *aside* between the chief of the Mountain and the brother of the man whose death he had voted for? As for Courtois, he received the salary of all deceivers: he had been promised his removal from the list of proscribed people; once the royal correspondence was re-established, no one took any further notice of him.

were so proud is slowing down: we admit, what our fathers would not have granted, that the German and the English surpass us in the production of all the objects of everyday and cheap consumption; but no one, we add, equals us in *articles of taste!*... Also, while the English, whose trade barely equaled ours in 1788, do eight billion worth of business with the outside world, we reach barely half; soon, as long as we follow our idealist specialty, with the help of free trade, we will see our own market taken away!... Who should we accuse of this aberration of minds? Everyone and no one. It is a fact of decadence and social wandering, like the sensibility of 93, the theophilanthropy of 98, the devotion of 1825, the romanticism of 1832, etc. We can mark its origin and development in history; we cannot ignore its spontaneity.

It remains to execute the second part of the program, the rout of intelligence, so well prepared by this softening dilettantism. It is obvious that, once critical sense is obliterated in the nation, the Revolution is definitively defeated; France, the so-called artist, which imagines itself dominating the world with its *ideal*, is fallen; Paris, which was proclaimed the brain of the globe, is now nothing more than the capital of lorettes and fashion merchants. However, this is precisely the effect that would be obtained by the creation of intellectual property. And admire how well the enterprise comes along! The opportunity is favorable, opinion has long been disposed, and the nation is ripe for this decisive revolution. No one, with the exception of a few rebellious minds, protests: the economists affirm, the jurisconsults approve, the literati applaud *en masse*. The Council of State is seized, the Legislative Body and the Senate called to deliberate; the press, in the majority, gave its assent. However, we would be mistaken if we concluded from this whole that there was any initiative whatsoever, and we can admire here once again this logic of events that popular religion has named Providence, and which means that each manifestation of history, whether good or bad, occurs at its own time.

§ 2. — Spirit of the law on literary property.

In ancient Egypt, the priesthood combined, with the privilege of sacred things, that of science, literature and the arts. One of the effects of this privilege has remained visible to posterity, in the uniformity of Egyptian architecture and statuary. Fifteen or twenty centuries apart, the types did not change. The same character of immobility is reproduced in the monuments of Persia and Abyssinia, an unequivocal sign of the subservience of industry and the arts. We can understand that with such mores these old societies lived, so to speak, outside of time. A century was like a day for them: what glory! Those who admire the long duration of these first monarchies should at least tell their readers under what conditions it was obtained. To a lethargy of forty centuries, many would prefer the freedoms of nomadic life: famine, barbarism, perpetual war would seem less desolate.

The partisans of intellectual property deny that it should result in neutralizing invention and stopping progress by subjugating ideas and destroying competition. This denial can be cited as a presumption of their innocence; it does not do justice to their insight.

a) I believe I have demonstrated that things that relate to science and right are by nature non-commercial; that the work of artists and people of letters contributes to this character of non-venality, and that independent of considerations of political economy, which only allow them to be awarded a simple fee, the dignity of their profession is a reason that forbids them from demanding more.

Now, either the new law would have no meaning, or it would imply that the professions called *liberal* are, from all points of view, only a variety of *servile* industry; that in fact these professions have as their goal, like the others, wealth above all, hence the fortune of the producers; that thus the said producers have the right to derive the greatest possible profit from their works, by placing such conditions on the communication of these works as they please; that the first of these conditions may be the privilege, in perpetuity, of selling copies; that to support the gratuity of the works of the mind, like that of the acts of the conscience, would be to attribute to writers and artists a character that does not belong to them, to make them the ministers of beauty, good and truth, while that they are only their often unconscious peddlers, in any case irresponsible and not guarantors; that it is no longer permissible to say, as in the past, that the poet is the priest and interpreter of the gods, while he is only a merchant of canticles and amulets; that this metaphorical language no longer suits our time and cannot be taken literally, and that unless the legislator is able to create in the domain of the mind a property analogous to land ownership, it will only be justice if he grants to the writer, by way of inheritance, a monopoly of unlimited duration.

It is therefore a declaration of the venality of works of philosophy, science, literature and art, both in substance and in form, that the law will contain. This first step taken, let's see what happens next.

b) In order to satisfy the greed of the man of letters and confer on him the monopoly he demands, the State, we have said, arbitrarily, against all the rules of law and all the principles of economics, will change a contract of sale into a perpetual contract of annuity. However, by signing such an act, the legislator will have done worse than paying the author an exorbitant price, he will have abandoned the *res publica*, the intellectual domain, and this in a pure loss, with great damage to the community.

We know the character of human production, as much in matters of philosophy, literature and art as in matters of industry and utility. This production does not consist of a creation, in the metaphysical sense of the word, either of ideas or of bodies, but in a shaping given to matter and ideas, in an essentially individual and fleeting manner. For this shaping, and for the priority of perception that sometimes accompanies it, you deliver to the writer a right that embraces the idea in itself, that is to say what is impersonal, immovable, common to all men. But this idea, perceived, expressed for the first time, I want to believe, of which you so generously make a property, it would have been produced tomorrow by another, perhaps worse, perhaps better; it would have been produced, ten years later, simultaneously by several. It is a fact that when the time for an idea has come it blooms everywhere at the same time, like a seed, so that the merit of the discovery, compared to the immensity of humanitarian evolution, is reduced to almost nothing.

This is how differential calculus was discovered almost at the same time by Leibnitz, Newton and Fermat, then, on some indications from the first, guessed by Bernouilli. Here is a field of wheat: can you tell me the ear that came out of the ground first, and do you claim that the others that came afterward owe their birth only to its initiative? This is more or less the role of these creators, as we call them, to whom we would like to make the human race a debtor. They saw, expressed what was in the general thought; they formulated a law of nature, which sooner or later could not fail to be formulated, since the phenomenon was known; they gave a more or less beautiful figure to a subject that the popular imagination, long before them, had idealized. In matters of literature and art, we can say that the effort of genius is to render the ideal conceived by the masses. Producing, even in this restricted sense, is certainly a meritorious thing, and when production is successful, it is worthy of recognition. But let us not for this reason disinherit humanity from its domain: this would make science, literature and art an trap for reason and liberty.

c) Intellectual property does more than infringe on the public domain; it defrauds the public of its due share in the production of every idea and every form.

Society is a group; it exists with a double and real existence, both as a collective unity, and as a plurality of individuals. Its action is both composite and individual; its thinking is also collective and individualized. Everything that happens within society derives from this dual origin. No doubt the fact of collectivity is not a sufficient reason for us to adopt communism; but, reciprocally, the fact of individuality is no reason to disregard general rights and interests. It is in the distribution and balance of collective and individual forces that the science of government, politics and justice consists.

Now, I clearly see here the guarantee given to the individual; but what part have we done for society? Let society give the author compensation for his trouble, for his initiative, if you like; nothing is better. But society has entered into production; it must participate in the harvest. This share to which it is entitled, it obtains through the exchange contract, under which compensation is made for the service rendered by means of an equivalent value. Intellectual property, on the contrary, gives everything to the author, leaves nothing to the community: the transaction is leonine.

Such is therefore the spirit of the proposed law: 1. declaration of venality with regard to things which by nature are not commercial; 2. abandonment of the public domain; 3. violation of the law of community. Let's move on to the application.

§ 3. — Appropriation of the intellectual domain.

The invincible, fatal consequence of these premises, despite all the reservations that the legislator would make, despite the protests of the applicants for literary monopoly themselves, is that, by the perpetual concession of this monopoly, is not only the disguise of a product as property that one has carried out, it is the idea itself, the universal, impersonal, non-transferable, inalienable idea, which finds itself appropriated. Here, in fact, the content is inseparable from the form, and

one always leads to the other. Hence the consequence that outside of the monopolized book we will be able to neither read nor write; outside the thought of the writer-owner, we will no longer think.

Let us take for example the *Traité d'Arithmétique* of Bezout. I suppose, for the convenience of reasoning, that Bezout is the inventor of the system of written numbering, of the four rules, of proportions, of logarithms, in a word of everything found in his volume.

Bezout publishes his *Arithmétique*, for which the law guarantees a privilege of sale in perpetuity. Anyone will therefore be prohibited from publishing another arithmetic: because it is obvious that here the substance prevails the form; that the editorial differences are nothing; that there are no two ways of operating; that the tables of logarithms are identically the same; the signs, the language, the definitions, also the same. Therefore, there will be, for all of France, for all of Europe, only one treatise on arithmetic, the treatise of Bezout, and all those who want to learn to calculate will go through Bezout.

Let us say the same about treatises on geometry, algebra, mechanics, physics, etc. For this innumerable class of publications, the merit of which is entirely in the idea, the competition will be destroyed: here I mean by competition the faculty of reproducing in other terms the idea of the inventor. In two words, where substance prevails over form, there will be only one book: *Una idea, unus auctor, unus liber*.

Let us change the example: we have just seen how, in a creation of intelligence, the substance carries away the form; we will see how the form prevails over the substance.

By virtue of some law of 1794, confirmed in recent years by a decision of the Imperial Court, the liturgical books became episcopal property. In such a diocese they are sold for the benefit of the archbishopric; in any case, no one has the right to sell them without the permission of the prelate. A consequence of this appropriation is that the prayer books all look the same; so that the faithful can only pray to God according to the prescribed form and in the terms indicated by the ecclesiastical superior. There is the *Breviary*, the *Parish Hours*, the *Conducting Angels*, *Think About It* and other works of common devotion, all of which can only be used if they are approved by the Monsignor. Here, I say that it is the form that prevails over the substance: in fact, what is the substance of these books? An elevation of the soul towards God, whom it considers as father, creator, redeemer, justifier, judge, and in the end rewarder and avenger. On this given so vague, so general, so mysterious, it is clear that the expression varies infinitely, and that we can make books as different from each other as *Batrachomyomachie* differs from the *Iliad*. Now, the Church has taken the lead; it wrote prayer formulas, composed the morning and evening Offices, with the reservation of giving translation or interpretation. It is therefore really the form which here takes

precedence over the substance: with the help of the law, no one has the right to teach children to pray to God differently, nor to spread unapproved formulas of worship among the faithful.⁶

I now say that nothing would be easier than to include, either in one or the other of these two categories, namely the books of science, whose substance takes precedence over the form, and the books of faith, of which the form prevails over the substance, all the productions of literature and art; to appropriate, in a word, sometimes the form by virtue of the idea, sometimes the idea by virtue of the form.

A work of philosophy, political economy, jurisprudence, which would be recognized as classic, and whose ideas would be original, would give exclusion to all writings of the same genre, which, varying their wording, would retain the same substance. Everyone knows that plagiarism does not consist only in the theft of sentences, in the usurpation of the name or authorship; it also consists, and this way of stealing the property of others is the most cowardly of all, in the appropriation of a doctrine, of a reasoning, of a method, of an idea. There is a *Philosophy* of Descartes, Malebranche, Spinoza, Kant, etc.; a *Demonstration of the Existence of God* by Clarke, another by Fénelon; a *Morality* of Zeno, another of Epicurus, etc. What a raid among booksellers, in libraries, if, by virtue of literary property rights, all counterfeiters, imitators, copyists, quoters and commentators were to be ousted, and the privilege of publication and modification reserved for so-called original authors!

Note that this would be logical, useful even from a certain point of view, and moral. We would put an end to the invasion of mediocrities, the scourge of public reason; we would chase away these jays adorned with the feathers of the eagle and the peacock, and we would impose a barrier to chatter. Certainly, I prefer, although slow and often distorted, the justice of opinion to this policy; but ultimately such demands on the part of the owners would be perfectly justified, and sooner or later the authorities, finding what they wanted, would comply with them.

As for works of imagination, the idea of which is not precisely in the choice of the subject, which is little, but in the expression given to an ideal, there would also be grounds for broad prohibitions. A dramatic artist, for example, is said to have created a role; the true artist only recognizes himself by this easily visible creation. Why then would a rival artist, skilled at aping, but incapable of inventing, seize the creation of a comrade, and play the same characters, not according to his own evasions, but according to the meditations of others? This player of roles created by another is not a true actor; he is a *stand-in*, whom we support as long as he presents himself in good faith, but whom we would have to chase away if he stood out from the original. Now, see the consequence from here: to ensure the rights of the dramatic artist, as sacred as those of the

⁶ There would be only one case where the right to produce, publish and sell prayers could be recognized to a writer concurrently with the Church, and that would be that of a new religion. But for this to happen two things would be necessary, one that the principle of liberty of religion be admitted, the other that it be well established that the new religion is not a counterfeit. Now, I do not hesitate to say it, this last condition is impossible to fulfill, as follows from the example of all the sects that have emerged from Christianity. From which we see that literary property leads directly to the system of the inquisition.

author, it would be necessary to guarantee to the former a royalty on those who borrow his facial expressions, an impracticable thing, or to prohibit the representation, which becomes absurd.

Same observation for painting, statuary, poetry, novels. We steal a political idea just as we steal an algebra formula or an industrial invention; In the world of arts there are just as many people making a living from this piracy as in the world of manufacturers. If the law of artistic and literary property is applied seriously, it will have to provide for all these cases of plunder; there will be juries of experts to know about it, and, the form always prevailing over the substance, we will come, one thing leading to another, to appropriate even the subjects of composition, as the Egyptians did, whose priests alone had the right to execute, according to the agreed types, wall paintings, bas-reliefs, sphinxes, obelisks, temples and pyramids. Stupid logic, and nothing is ruthless like logic.

§ 4. — Continuation of the same subject: Subjugation, monopolization, favoritism.

We have just seen how, from the legal conversion of the literary product into rent-producing property, we arrive at the appropriation of the ideas themselves. What I have said so far is only theory: I am going to show, from the point of view of practice, that nothing would be easier to achieve than this appropriation. On several points it already exists.

The works that fell into the public domain prior to the promulgation of the law would, you think, continue to be part of this domain: these at least would be a barrier against the extension and abuse of new properties. This is not the case: the ancient authors will themselves be appropriated, and here is how.

A professor, an inspector of studies, adds to a Greek or Latin author an introduction, notes, a biography, a glossary. Its edition is declared the best by the University Council and the only authorized one. However, these additions are a work of genius, therefore property of the publisher. Everyone is allowed to reprint the ancient text and accompany it with such gloss as they please; but it is forbidden to appropriate the work of the commentator in credit. What is happening? The competition stopping, the accessory wins the principal, and the *Georgics*, the *Metamorphoses*, the *Letters* of Cicero become a source of income, in perpetuity, for the annotator who can say: My Virgil, my Ovid, my Cicero. This is how, or very nearly so, the trade in classic books is carried out in France.

Abbot Lhomond, who devoted himself to the education of young people and who died poor, gave away his *Elements* of French grammar for 50 centimes. The grammar of MM. Christmas and Chapsal, more extensive, cost three times as much. We can estimate the excess publication costs of this grammar over that of Lhomond at 40 centimes. Despite the enormous difference in price, the grammar of MM. Noël and Chapsal replaced all the others; it became a considerable item of commerce, with naturally no shortage of counterfeiting. I don't know if it was replaced in turn: I'm talking about thirty years ago. It was like a farm for these gentlemen. Can we not say, however, that exercising higher functions in the University, for which they received honest emoluments, they owed in return all their work to the State, especially since they naturally used

their position to get their grammar accepted? But no: they accumulated, the State tolerated. Now, a perpetual privilege will be added to the lifetime remuneration. So, goodbye to grammatical studies, literary criticism, lexicography, humanities. Everything comes to a standstill in appropriation. Do you now understand how writings that by themselves would not last ten years will impose themselves for centuries?... From time to time, a minister, judging that a particular edition has aged, will transfer the privilege of sale to one of his creatures, as one transfers a management to a new entrepreneur. What will we have to say? On the one hand, the State will only use its right by declaring that one work seems better than another; on the other, it will respect competition and property!...

This system of subjugation can be applied in a thousand ways. Once the perpetuity of exploitation for the benefit of the authors has been established, it is likely that the most important and most popular works will never enter the public domain: the heirs of the authors or their beneficiaries will prefer to use their privilege. But a mediocre writer, well-established, has written a book that sells poorly; the government declares it to be in the public interest and expropriates the book for compensation. This is favoritism transported into the domain of free thought, of free art. What did I say? This is true merit cut at its roots, neutralized by unfair competition, created if necessary by the government. Or it is an exceptional work, which it would be dangerous to proscribe, but which offends the secret thinking and politics of power: public utility is declared, and the work, redacted, transformed, or even deleted, disappears through expropriation.

Naturally there are in the works of Voltaire, Diderot, Rousseau, Volney, a host of beautiful things, moral, true, useful things, which we would not have the courage to lose. However hostile the government may be to philosophy, it will be careful not to commit such vandalism. On the other hand, we cannot hide the fact that there are in these same writers a number of outdated pages, marred by inaccuracies and errors, licentious and bad passages. And then, how many scholarships are there that can afford the seventy volumes of Voltaire, the thirty of Rousseau, the twenty-five of Volney, etc.? We satisfy all the requirements, we eliminate the disadvantages, by means of *selected works* accompanied by analyses, summaries, critical notes, general appreciations. These works, chosen, encouraged, rewarded by the government, are delivered for consumption at low prices: who will take it into their head to reprint the complete works? We can thus, with this legal, rational, even moral system, create a Christian Voltaire, a conservative

Rousseau, a royalist Diderot, etc. Charge M. de Lamartine with publishing Rabelais or Lafontaine: you will see what he will do with it.⁷

Thus the power would become master of the life and death of writings; it could at will perpetuate or shorten their existence; it would make and break reputations: all thought, all talent, all genius, would be subordinated to its system. No opposition would seriously stand before it. Property and expropriation, competition and criticism would be infallible means for it to stop any thought that is not its own, any manifestation contrary to its idea. Life would disappear from nature, from philosophy and from art; and we would become like ancient Egypt, a people of mummies, hieroglyphs and sphinxes.⁸

§ 5. — Periodical publications.

The first to have the idea of creating a newspaper in France was a man named RENAUDOT, a doctor, founder of the *Gazette de France*, which, begun in 1634 under the ministry of Richelieu and continued by the sons of Renaudot, has been preserved to this day.

The idea of the newspaper, both from a literary point of view and from an industrial point of view, was an eminently patentable, appropriable idea. Here is a man who is both scholar, writer, printer and bookseller, who imagines giving the public every morning, in one sheet, the summary of political, military, administrative, judicial, academic, scientific, artistic, ecclesiastical and literary facts; the report of the Stock Exchange and the theaters; the mercurial; accidents and disasters; news from abroad; review articles, announcements, etc. Is this not a wonderful, fruitful idea, capable of giving the happiest results, not only financial, but intellectual and moral?

⁷ With literary property, literary criticism becomes impossible, condemned as it is itself to privilege and prostitution. True literary masterpieces are exceedingly rare; and nothing is easier than to bring together, in a very small space, all that is best in a writer. Forty or fifty songs, at most, are all Béranger; the rest, that is to say three or four hundred, is only good for scholarship. Will it be permissible for a critic, giving a literature course, to collect these forty or fifty small pieces, which, with the reviews, notices, etc., will not form, in the course, a quarter of a volume? This would have serious disadvantages for property. Because it could happen that we prefer the exception, with criticism, to the collection as a whole: from then on no more royalties, no more ownership. The best novels can be treated in the same way: fifty pages of *Notre-Dame de Paris*, cited in a literature course, with an analytical report, would exempt you from reading the work of Victor Hugo. All literature tends to be condensed into an anthology, all philosophy to be summarized in a few aphorisms, all history to be reduced to a reasoned chronicle. On the other hand, the literary work being a commercial product, we do not know to what extent it would be permissible to demonetize an author, affected not only in his self-esteem, but in his interests. What are we to do ?

⁸ The founding of an *Crédit intellectuel* is announced, as a counterpart to the *Crédit foncier*, the *Crédit mobilier*, the *Crédit agricole*, and all the types of *Crédits* that have proliferated in France for ten years. It is M. Enfantin who, it is said, gave the plan for this new *Crédit*. I have not yet read the statutes: but I affirm it in advance, the *Crédit intellectuel* complementing intellectual property, will be the *coup de grace* of intelligence.

In creating the newspaper, the author therefore did a work of genius; he did more, he created a whole new genre of literature. If there is a work which falls within the conditions of property, it is certainly this one.

That is not all; to achieve his goal and give his enterprise all the perfection of which it is capable, this same man formed a partnership; he gathered considerable capital; he acquired immense equipment. Its editors, chosen from among the most skillful scholars, are paid very dearly; he maintains attentive correspondents in all the provincial capitals and in the capitals of Europe; in short, nothing has been spared by him that can give his paper universality and interest. He has already taken steps to create branches in the provinces, by establishing small newspapers, real satellites of the great Parisian planet. To satisfy all requirements, to all budgets, it will have a weekly summary and a monthly one, giving the substance of the daily newspaper, what we call today a *revue*.

By virtue of the principle of priority of invention and literary appropriation, the king grants the privilege in perpetuity and for the entire extent of his States. Everyone is prohibited from establishing newspapers or periodical publications, which, obviously, could only be counterfeits of the *Gazette*. What could be fairer? The prince would obviously only be consecrating the work of genius in this; he could not allow corsairs, taught by example, encouraged by success, to come and throw themselves into the crossing and plot for the ruin of the inventor. The excuse given by counterfeiting, that it does not report the events in the same terms, nor consider them in the same way, that it even contains many things omitted by the first occupant, that it even often attacks it, this excuse, I say, would not be admissible, since it would consist of making the right of opinion, information or rectification, granted to all with regard to the journalist, a right of usurpation of his industry, of his idea.

So, here is the French nation entirely subservient to the *Gazette*, thinking only through the writing desk of M. Renaudot, who himself takes the slogan of His Majesty!... The partisans of literary property will say that I exaggerate the consequences of their principle, to give myself the easy pleasure of overturning it. But let them deign to consider what is happening today.

As a result of the conditions imposed on the press, the newspapers have become offices of the most dangerous kind, not only for the authorities, who know how to defend themselves, but for the country, to which they only provide half information, for the parties and the opinions they purport to represent. And yet property is not declared, competition exists: in a sense, there is no privilege.

The authorization to publish, granted by the minister, can be equivalent to a gift of 100,000 francs. It is like a dock or railway concession. A newspaper is a patent of existence given by the power to an opinion, to a party, just as the suppression of this newspaper is its death.

Monopolized journalism holds in its hand politics, business, the stock market, literature and art, science, the Church, the State. So many sources of profit. An insertion is worth money, an advertisement is worth money; a report, favorable or unfavorable, — there is always a party who pays, — money; an advertisement, a lot of money. There, truth, justice, common sense have ceased to be free: they are, like lies, partiality, sophism, exhaustion, services that are not given for nothing. Society, in the absence of a free and sovereign opinion, resting on intrigue and agiotage:

such is the paradise of venal journalism, cultivating at once political servility, bankocratic speculation, the industrial and literary demands, rationalist intrigue, the philanthropic *puff* and all the varieties of charlatanism. At this moment, and thanks to existing legislation, we are only in purgatory: decree literary property, and we enter eternal damnation.

§ 6. — A tax on literary property.

The idea of property calls for that of taxation. If literary authorship is assimilated to land ownership, this authorship, producing rents, is liable to contribution. To be fair, this contribution must exist in two forms: one direct and fixed, proportional to the extent or surface area of the property; the other indirect and variable, proportional to the importance of the exploitation. If a work did not return enough to pay even its direct contribution, abandonment would necessarily be made by the author, as with barren land: we would thus note the natural death of writings. The State, having become, through the desertion of the owner, heir to the work, would do with it what it pleased: it would send it to the pestle or the granary, or deliver it to an arranger, who would extract the best from the materials.

The idea of a tax on the products of intelligence contains nothing to scare supporters of literary property.

“Why,” asks M. Hetzel, “should it not have its charges, like all other properties? Is it not better to have an tax-paying property, even subject to servitudes, than a temporary property, and therefore denied in principle?”

It's as if we were saying: Isn't it better to have a nice increase of 50,000 francs annuity, even if it means paying 3,000 francs to the taxman and to make 15,000 francs costs of representation, than to live on half pay?

M. Hetzel, who believes he has solved the problem of literary property, because in his capacity as a bookseller-publisher he has indicated a more or less convenient way of establishing and collecting copyright, proves here in the most naive way what I told him himself, that, no more than M. Alphonse Karr, Alloury, Pelletan, Ulbach, etc., does he know the first word of the question. He starts from M. Karr's famous principle: *Literary property is a property*, and this calembredaine expressed as an aphorism, he shows how it would not be difficult to assure authors, in perpetuity, a certain percent on sales. But it is precisely a question of knowing *if literary property is a property*, as M. Alphonse Karr says, that is to say, let's speak French in French, if literary production can give rise to a property analogous to property in land. However, it is precisely the opposite that we have demonstrated, first through political economy, then through aesthetics, and this is what the hypothesis of a contribution to the works of the mind will allow us to make one feel once again the high impropriety.

Let us recall one last time what we have explained at great length, that the products of literature and art belong to the category of non-commercial things, things that are corrupted by traffic and are invincibly resistant to any interested end. I will not return to what I said on this subject: these are truths that are not demonstrated directly by syllogism or by *a plus b*, but which

are deduced from social necessity, and which are felt, for as little moral sense as one may have, as certainly as we feel indignation, repentance or love. Now, a tax on science, poetry, the fine arts, would be the counterpart of a tax on piety, on justice and morality, it would be the consecration of simony, judicial venality and charlatanism.

I willingly believe that we are not, deep down, worse than our ancestors; but I cannot refuse the evidence either, and not recognize that there is currently a deep disturbance in souls. We have lost that delicacy of feeling, that susceptibility of honor which, at other times, distinguished our nation. Religious and political indifference, the relaxation of private morality, above all the invasion of utilitarianism under a veneer of the ideal, have depraved, obliterated in us an entire order of faculties. The idea of gratuitous virtue is above our intelligence as well as our temperament; with this idea went dignity, liberty, joy and love. We understand perfectly well that we cannot give our labor for nothing; but that contrary to this law of economic reciprocity, we owe each other respect, truth, charity, good example, and this without hope of salary, *nihil in de sperantes*; that probity in business has as its foundation a completely disinterested justice, and that such is the law of the human community, this is what no longer enters into our understanding. We bring everything back to what is useful; we want to be paid for everything. I knew a newspaper that practiced probity, truthfulness and impartiality for six months, in order to then sell its silence and its advertisements more dearly. This maxim that *we only respect what we do not pay for* has become a paradox for our practical reason. This is why, by positing the principle of the non-venality of the products of our aesthetic faculty, as well as those of our juridical faculty, and by deducing from this principle the immorality of intellectual property and of a tax on artistic and literary commerce, I can in the last analysis only appeal to the inner sense of my readers, telling them frankly that, in the event that their soul had ceased to vibrate to this call of the beautiful, the just, the holy and the true, I would be for them without any means of conviction. My reasonings would be in the air; I would have wasted my time and my words.

I therefore repeat that what would be true for the Christian regarding a tax on the mass and the sacraments, namely, that such a tax would be impious and odious, would be true to the same extent, if not perhaps to the same degree, of a tax on education, on school books, following the diffusion of science, philosophy, literature and the arts. It is from this side that the stamp duties on newspapers, the security imposed on them, the university remunerations, are reproachable. It is possible that the tax on books will not initially stop their circulation: over time the moral effect will be terrible. By deciding, through the double fact of appropriation and taxation, that all things which, until now, had seemed sacrosanct to nations, inviolable to the taxman, foreign to trafficking, will be in the future reputed to be things of simple utility, therefore salable, taxable, appropriable, you will have with the stroke of a pen produced in the moral order the most terrible revolution. Before the taxman, impassive like ancient destiny, superior to reason, to conscience, to the ideal, everything will be materialized, fatalized and swallowed up. There will no longer be anything that can be called beautiful, generous, sublime and sacred, everything will be weighed in the mercantile scales, valued at the price of money, estimated according to enjoyment. Poetry and eloquence, as well as morality, cultivated with a view to gain, will only be valuable for gain;

unpaid probity will be deemed to be duped probity. And as the Civil Code, the Penal Code, the Decalogue and the Gospel, by prescribing to man what he must do and not do; have not assigned any remuneration to their observances, and as everyone is far from admitting, with Bentham and the utilitarian school, that justice is always profitable, misdemeanor and crime will become simple acts of contraband. Probity will only be a way of understanding business: what a simplification! The Jew removes his foreskin, as a sign of freedom from the flesh and a renunciation of impurity; we, to whom Christ recommended circumcision of the heart, we will cut off dignity, virtue, and this strengthening ideal that they reveal. We will realize the irony of Horace, making philosophy a pen for swine, and, all glorious in our turpitude, we will fall in ecstasy before this progress!

I doubt that these reflections will be understood by my opponents. Not that I suspect their morality: God forbid that their conscience should have fallen as low as their judgment! What I accuse in them is the abuse of phrasing that has made them lose the acuity and rectitude of reason. Literature, in the intellectual environment where they live, is nothing other than an article of Parisian clothing, art a trade in trinkets. Intoxicated with their own faculties, they take the failures of their reason for discoveries. Anyone who tries to open their eyes to them is called by them a *sophist*, and the more they ramble, the more they pose as inspired. Don't you hear them every day protesting against the burdens, servitudes and obstacles of the press? Take care! It is not for truth and right that they fight, but is for their industry. This great zeal that they show for the free press does not prevent them from asking for perpetual royalties in favor of the writing industry, except for taxes to be levied by the State. They would blush at their contradiction if they could see it; fortunately, and this is what gives them their innocence, they are blind.⁹

⁹ I have only spoken, in this paragraph, of the tax on literary property from the point of view of its influence on ideas and mores. There would also be something to say about the influence of this tax on bookselling, whose freedom is not already very great, and which would be even less.

Naturally, the tax would be collected from the debtors, who would cover it with the public. Adding to the amount of the author's tax, payable in advance, at the rate of 8 to 10 percent of the full price, we would arrive, for the printing of a volume at 3 francs, printed in a thousand copies, at an average of 300 francs, tax and royalty, in addition to printing costs, to be provided by the bookseller before any receipt of funds. If a publisher published or reprinted ten similar volumes in one year, that would be an outlay of 3,000 francs with which he would have burdened his business; what would it be if they were editions of 5,000 to 10,000; of volumes at 6 francs of works in several volumes and more numerous reprints? It is no longer per thousand, it is per hundreds of thousand francs, not including printing costs, that advances from publishers would be counted. How many houses are able to support such loads? Suppose that, for greater guarantee, the government imposes a bond on booksellers: there you have, through tax, bond and patent, the trade in books has almost become prohibited

§ 7. — Constitution of industrial property on the model of literary property: reestablishment of masterships and corporations.

The creation of literary property analogous to landed property has the forced consequence of the restitution of industrial privileges, which implies, in a very short period of time, the reestablishment of the entire feudal system.

It is clear that the form given to thought by the writer has nothing more personal and more sacred to me than the formula of the scholar or the invention of the industrious person, and that, if a perpetual royalty can be granted to the first, it cannot be refused to the other two. All the reservations expressed in this regard by literary property lawyers, which this conclusion throttles, are pure verbiage. Moreover, this is what Prince Louis-Napoleon meant when he wrote to Jobard, preaching for the perpetuity of patents for inventions, the words that we have quoted:

“The intellectual work is property like land, like a house; it must enjoy the same rights, and can only be alienated for reasons of public utility.”

There is not a profession that is not today flanked or besieged by several patented inventions. These patents, transformed according to Jobard's wishes into properties, would constitute so many operating privileges, real masteries, with this difference that in the past the mastery was a royal fiefdom, while today it would have its origins in a so-called property.

In the first place, it cannot be denied that, with the perpetuity of the privilege, competition receives a mortal blow. What supports industrial and commercial liberty is that patents expire, and after a few years fall into the public domain. Unpatented industrialists, producers and manufacturers, reduced to common processes, make the greatest efforts to support each other until the privilege expires, an expiration which is for them deliverance. Sometimes they become inventors in their turn; often also a patented invention remains powerless, either because its products do not respond to demand, or because the application is premature, poorly calculated, made under unfavorable conditions. In any case, the temporary patent of invention and competition, acting on each other like two cylinders rotating in opposite directions, maintain labor and generate progress. There are many unfortunate inventors, I confess; there are some unworthily stripped; too often a useful invention is sterilized; other times it enriches miserable speculators, after having ruined the inventor. All this is a matter of reforms to be introduced both in patent legislation and in the general economy and in mores. What is important is to give equal satisfaction to freedom and genius, and to ensure that, through their support, individual initiative, the cheapness of products, public prosperity, are surrounded by the strongest guarantees.

But, faced with a perpetuity of patent that would have the inevitable result of sacrificing one of the two economic forces to the other, liberty to genius or genius to liberty, discouraged competition would soon stop, and, having given too much to invention, we would fall into immobility. “No,” cries Jobard; against inventions patented in perpetuity, you will have competition from new inventions in perpetuity. — This answer, which at first glance seems to satisfy theory, falls short of practice.

Triptolemus invents the plow; this is the *araire*, still in use in some countries. The *araire* is an instrument that consists of: 1. a pointed ploughshare, fitted like a hook at the end of a pole, and intended to lift the earth horizontally, in layers; 2. two ears pushing the raised earth to the right and left, without turning it over. For this tool, Triptoleme obtained a patent of invention, with manufacturing and sales privileges. Later, the imperfection of the *araire* was recognized. A plowman adds, in front of the share, a coulter, intended to cut the earth vertically; he widens the ploughshare on one side, removes one of the two ears, adjusts and contours the other in such a way that the strip of earth, cut vertically by the coulter and horizontally by the share, is overturned on its axis by the ear and turned upside down. A third installs the instrument on two wheels, and adds some improvement in detail. Each of these inventors is patented in turn, like the first, with manufacturing privilege or right to a perpetual royalty, regarding which I point out three things:

First, from the point of view of the agricultural art, considered in itself, these successive inventions do not really compete with each other: they complement each other, support each other; so that, if the improved *charrue* of Mathieu de Dombasle far outweighs the *araire* of Triptolemus and competes with it fiercely, in the eyes of the public, obliged to pay the royalty to both, things happen as if there were only one and the same invention, one and the same privilege.

The consequence will be that the inventors who contributed in turn to the construction of the plow, instead of each exploiting their idea separately, will join together for the manufacture of *charrues* and *araires*, will form a plow-making company in collective name and partnership, for the supply of agricultural implements to all countries where plowing is practiced. Or else they will cede, for money, the manufacturing rights, for specific districts, to companies of entrepreneurs. Here are the masters duly constituted, a whole corporation created, the corporation of plowwrights manufacturers of *charrues* and *araires*. Now comes the steam plow, which will be well received: it will be one more participant, it is true, but also additional profits for the company.

Final result of the simple and perfected plow in the system of perpetual patents: small farmers, who will not be able to lift a plow, maintain a team and pay royalties, forced to plow with a spade, will be ruined by competition from large farmers, producing cheaper, thanks to the extent of their operations, and easily covering their costs. The question of progress is thus transformed into a question of capital; on the one hand, the agricultural art wins, on the other the fortune of the common people is compromised. We started from equality, and now industrial property endangers land ownership; work is impossible for the poor, small-scale farming makes people abandon the land: so much so that in the final analysis, where there were a hundred small owners, there is only one landed lord, a peer of France decorated with all orders.

Here we encounter, with the most overwhelming evidence, what we said in the first part of this writing: that in the social economy, material production and immaterial production are subject to inverse conditions; that, by primordial considerations, the depth of which our philosophy has not yet reached, the first has as its buttress the sharing and appropriation of the earth's lands, while the second is established on the indivision and inalienability of the intellectual and moral domain; finally that this relationship of opposition is such that, on the one hand, with the community of land or land feudalism, liberty of thought and industry soon disappears, while, on

the other, with the artistic and literary appropriation, land ownership and industrial liberty would in turn disappear and no less quickly. As much, in short, as the community of the soil would be fatal to freedom of work and independence of the mind, on the other hand, the appropriation of the intellectual domain would be fatal to property in land. Oh! Gentlemen, economists and jurisconsults, who speak with authority as if you were the pontiffs of reason, you still have a long way to go before arriving even at the propylaea of science. Learn your language first; retake even grammar, redo your logic, start your law again and do a new internship. Do not neglect history, nor metaphysics, nor aesthetics; do not even disdain theology, nor bookkeeping. You will then be able to approach political economy and ask yourself this question, which you will not solve the first time: *What is property?*

Such disastrous consequences could only arise from an essentially false principle: this is why, without inquiring further into the constitutive reasons for property in land, I deny intellectual property with all the energy of my conviction. The araire of Triptolemus was an improvement worthy, if you like, of immortality, but it certainly did not deserve a perpetuity of privilege.

The fundamental idea of the charrue is even simpler than that of the araire: it consists of opening the earth, or better said of *scratching* it deeply, this is the true meaning of the word *arare*, by means of a barter and proceeding by traction, instead of using a point and proceeding by impulse, as the pig does with his snout or the gardener with his spade. Are you going to patent such an idea? Declare, if you dare, that it is forbidden, unless you are paid a fee, to scratch and dig the earth by pulling a pick or hook, because that would be an infringement!... But, the first idea given, and it is as old as the world, the rest follows. The series of improvements or inventions takes place like reasoning: will you therefore also prevent the individual from reasoning? So if it is right to encourage and reward intelligence in the individual, it is absurd to prohibit it in the masses, and this is what we do in perpetuity. It is not, once again, the individual who invents and creates: it is human industry, whose principles and entire theory are impersonal, anonymous, which unfolds.

Another example; it will be the last.

Gutenberg receives a patent for his invention of movable type; Fust and Schæffer are in turn granted patents for the font of the characters. Naturally these inventors need one another; they associate. Privilege is granted to them, in perpetuity, to print books, to manufacture type and presses, as well as to transfer to others, in return for reimbursement and for specific localities, the right to print, to found, to make the trade in printed books and printing instruments. Later, the slugs were replaced by the roller; we say; we replace the wooden press with the Stanhope and the Colombian; finally, we build the mechanical press. All these inventions will come to group themselves around the primitive invention, and once again we have corporation and mastery, the corporation of typographers, with its masters, companions and apprentices. Sennefelder arrives: will lithography compete with typography? No: printers in moveable type or their beneficiaries deal with the printer in stone, and the former privileged ones are entitled: *Printers and lithographers*, at the choice of the publisher.

One of the subjects of complaint of the friends of liberty is the privilege maintained since 1789 for bookselling and typography. But what we have not seen is that this privilege can become an excellent means of policing. Suppose intellectual property were in force, governments would have almost nothing to do in this regard. In a system of industrial feudalism, the master printers would be noble; they would be part of the aristocracy; as much and more than the king they would be interested in the preservation of order. It would be enough to let the privileges, the privileges of authors and the privileges of printers, operate, and the policing of the press would be done by the masters and owners a hundred times better than by censorship.

The newspapers have spoken, in recent times, of a petition: typographic workers, asking for the re-establishment of the corporations, and of another petition from the masters, demanding the censorship. The reason alleged by the first was competition from women who, employed in the work of composition, lower the wages of men; the reason for others is the risk of conviction. We are on the slope: establish literary property, and in the opinion of everyone, government, scholars, masters and workers, we are back to the feudal regime!...

Here again I will repeat the observation made above on the occasion of the plow: a false principle leads to disastrous consequences. Why this perpetuity of monopoly for Gutenberg and his associates? Wasn't the fundamental idea of printing, namely the mobilization of characters, bound to result sooner or later from the art of printing on solid plates, an art known well before Gutenberg and which constitutes Chinese typography? Was this mobilization of type not given, on the contrary, in their very solidity? Isn't it one of the most familiar processes of the human mind to constantly take the other side or the reverse of things, to reverse ideas, to turn routine upside down, to contradict tradition, as Copernicus did when he changed Ptolemy's hypothesis, as the logician does, who proceeds in turn by induction or by deduction, by thesis or antithesis? As for the successive improvements, they are the development of the mother idea, a series as inevitably given in this idea as the idea was itself given in its opposite.

What I say about the printing press and the plowman must be said about every profession, every industry and every art. Each forms a series of operations that meshes with another; so that, if we were to apply the principle of appropriation to all cases that required it, the mass of populations would find themselves dependent on a few hundred entrepreneurs and patented masters, forming the aristocracy of production, credit and exchange. It would be as if we had established a prescription against intelligence for the benefit of the monopoly.

Thus the principle of intellectual property concludes straight, through the servitude of the mind, either to the reconstitution of fiefdoms or to the communism of the land, declared everywhere the property of the State, in short to the restoration of the regime of divine or feudal right. There is not an industry, not a profession that, freed for centuries, cannot be monopolized by means of a few patents of invention or improvement; which does not prevent supporters of intellectual property from being supporters of free competition and supporters of free trade at the same time. What am I saying? Here are some who, at the time that they demand literary property,

demand that the privilege of industrial property be abolished by the abolition of patents of invention.¹⁰ Grant these contradictions if you can.

§ 8. — Influence of the literary monopoly on public happiness.

I believe I have sufficiently explained, for any man whose thought is not imprisoned in the circle of material interests, how the creation of an artistic and literary property is the negation of the superior ideas that constitute the dignity of the man, freeing him from the servitudes of the flesh and the household. I now want to show how this same property would set the seal on demoralization, by aggravating pauperism.

In the past — I am old enough to have witnessed it — before mercantilism and its usurious processes had invaded everything, the relations of services and interests between the various classes of society had a very different character. The way of selling, delivering, processing was incomparably gentler. Everyone did their best: the tradesman, the craftsman, the day laborer and the servant, no one spared their effort. The balance always tipped towards the side of the one who

¹⁰ Conclusion of the report of the Commission on the London Exhibition. — Thus, 1. Organization of the bankocracy and development of stock market mores by the establishment of so-called *Compagnies de Crédit foncier, mobilier, agricole*, etc., and the multiplication of limited companies; — 2. Concentration of transport services in railway companies; — 3. Ruin of national industry through *free trade*; — 4. All-out war on small industry and small commerce through large factories and vast bazaars; — 5. Institution of artistic and literary property and foundation of a *Crédit intellectuel*, for the definitive enslavement of the human spirit and the cretinization of the masses; — 6. At the same time, declaration of the inferiority of industry and subordination of the working classes, irrevocably subjugated by the suppression of patents of invention and the creation of large monopolies; — 7. Restoration of the feudal system, through the agglomeration of inheritances, the recomposition of fiefs and the abolition of the *alleu*: as a result, return to the Middle Ages, to the caste system, to theocratic oppression and to praetorian autocracy, condemnation of all the principles, all the ideas, all the rights and all the guarantees of the Revolution: such is the plan that has given itself the mission of executing so-called saviors, to the constantly repeated cries of: *Down with the socialists! Down with the partageux! Down with the bandits!*... And we are not at the end. Nationality will pass in its turn: because this vain and turbulent race, incapable of governing itself and holding up the flag of liberty, must finally be restrained. It is already no longer, since 1830, the French spirit that governs France: it is the feudal memories evoked by this execrable romanticism that we have just seen complete its work by the demand for literary property: it is the materialist, utilitarian and exploitative genius of Albion, renewed by Bentham, Malthus and Law, and covered with theological and philanthropic trappings by the sequel of Saint-Simon and the coterie of Say; it is the Jewish Mammon, god of usury and agiotage, whose priesthoods dominate everywhere today, in politics and in business; these are all the accursed influences coming from abroad, which we take for revelations of humanitarian wisdom, and of which we bear the ignominy. The French race now only seems fit for the drill. But this very honor is taken away: it is the English, the Hollands: the Germans, the Swiss, the Jews who sponsor the soldiers, and, sooner or later, the money being refused, we will learn, through the saddest experience, that *victories and conquests* are vanity and nothing but vanity. 1814 and 1815 only brought us invasion; foreign influence, more powerful every day, will make you enjoy an even greater glory, denationalization.

pays; we didn't concern ourselves five minutes or a centiliter; we easily earned our salary, and our daily wage, and our commission. The bosses, in their turn, the entrepreneurs and the masters were the same with their workers, clerks and servants: there were, in addition to the salary paid, gratuities, tips and pins, the use of which was preserved, but becoming an integral part of the price and obligatory. The wholesale and retail merchant made good weight and measure, adding to the dozen, the hundred, the thousand. Hence the 13/12 and even the 14/12 of booksellers: but be careful, this is no longer generosity, it is due.

The effect of these mores, generally observed, was a positive increase in public wealth. It was as if each producer of utility, from the servant and the laborer to the large industrialist, had donated to the masses, in addition to what he was required to deliver, a bonus of one-half, one, two percent of his product per day, the annuitant an equivalent part of his daily income. And notice this: this generosity towards our neighbor was accompanied by a great spirit of economy. We allowed ourselves few luxuries, more miserly for ourselves, so as not to be mean to others. This was one of the causes of cheapness and well-being; it was also one of the sources of morality. We worked, we saved more; we devoured and plundered less. As a result, we found ourselves more valiant and better, which means happier. Greed aside, neither insolence nor baseness; no grabbing among the little ones, no plundering among the big ones; little flow in society; the forecasts of the entrepreneur, of the father of the family, were correct. Munificence towards others had its article in the smallest budget. We were not deceived in our spending: because, after having calculated on the agreed price and quantity, we were sure that the imperceptible deficit that accompanies all production, acquisition, transport, consumption, and which by repeating itself becomes a burden, was covered by the insignificant discount that was not spoken about at the time.

All this has changed, to the great detriment of the country and each individual, as it is easy to see. The new spirit of commerce, where everything is calculated by francs, centimes and fractions of centimes; where the great maxim is that *time is money*, and that every minute has its price; this spirit of petty trafficking and harsh agiotage has changed the conditions of well-being and also morality. We have become misers, consequently robbers. To each his own, we say; and we interpret this axiom of eternal justice by a measurement of desperate accuracy. Nothing less, as honesty demands, but nothing more than what has been agreed, expressed by the figures, and which is strictly due. Naturally this ideal precision, impossible to achieve, turns out to be to the detriment of the one who pays. The servant finds that he always does too much, and that the master is left behind; he gets up and goes to bed at his own time, reserves one day of going out per fortnight, demands gifts, collects in the household everything that the master is supposed to neglect, obtains discounts from suppliers, finally enriches himself with a casting which he himself caused and which he is far from compensating with his services. The worker and the clerk count the moments; they will not enter the workshop before the bell rings; they will not give another minute to the work; and as the boss deducts a quarter of a day from the one who is late, the worker in turn refuses the slightest extra penalty, demands that he be paid everything, minutes and seconds. The fashioning suffers from this ill will; the work is neglected, poorly done. We cheat, with security of conscience, on quality, and we thus become emboldened to cheat on quantity;

waste and poor workmanship are thrown from one to the other; everyone, stingy with their service, uses wrong weights, wrong measurements, deceives about title and quality. He who has received a counterfeit coin shall not nail it to his counter; he will include it in his payments. The man employed upfront, that is to say by the day or by the week, fills his hours poorly. The pieceworker, in order to make more, neglects the execution; it is, as the people say, a *massacre*. All this embezzlement results in a general deficit that is initially unnoticed, but which ultimately translates into high prices and impoverishment. It is as if each of the individuals who contribute to production and exchange, man or woman in service, city and country worker, clerk, employee, public official, rentier, etc., took away from the mass the equivalent of a quarter of an hour, more or less, of work per day. Increase the price of this quarter of an hour to 10 centimes, and to 25 million for France the number of individuals carrying out daily production or exchange: you will have, at the end of the year, a sum of 912,000,500 francs, to write off profit and loss. This cause of deficit alone would be enough to explain the state of embarrassment of the nation. Now add that what we refuse to labor and the loyalty of transactions, we transfer to luxury. The spirit of thrift and frugality declines in the same proportion as labor and good faith; we become miserly, precisely because we devour more; so that in the final analysis, while we pursue enjoyment, we rub shoulders with immorality and misery.

One of the missions of literature and art was certainly to maintain and develop old mores. The principle exists in people's minds: all that was needed was to cultivate, weed and make this precious germ bloom. Here the writer and the artist spoke with authority. Their works being recognized as non-commercial by nature and only giving right to compensation for time, they were qualified to preach modesty and disinterestedness. Giving the example of sacrifice themselves, they were the apostles of public beneficence and the ministers of wealth. It is the opposite system that they will serve, when the principle of property which destroys everything that is generous and honorable in transactions, has been consecrated by law. Has not the class of artists and people of letters already made themselves the representatives of vain poverty, by taking the significant name of *Bohemia*?

Infatuated with their own talent, calculating their remuneration according to the exaggerated opinion they have of their works, people of letters and artists only dream of sudden fortunes and lordly income. The public entering into these views, instead of literature and art we have only an industry applied to the service of luxury, an agent of general corruption.

The journalist is paid by the line, the translator by the sheet; depending on the fashion, the serial produces for the signatory from 20 to 500 francs. One of my friends once criticized Nodier for the long adverbs that pepper his diffuse and loose prose; he replied that a word of eight syllables made one line, and that one line was worth one franc.

Booksellers have found the secret of whitening the pages,¹¹ widening the lines, enlarging the characters, multiplying the sheets and volumes at will. A book is no longer paid for according to the fees it should reasonably cost and the fair remuneration to be paid to the writer; it is evaluated

¹¹ It is not always by speculation: they often do it, alas! to escape the stamp. Witness this publication.

according to the size, surface area and weight. Respecting the thoughts of the writer and no less concerned about the purse of subscribers, the publisher of the *History of the Consulate and the Empire* preferred to give large volumes of 600 and even 900 pages for 2 francs, rather than miss the breadth and truth of the story. The speculator who publishes *Les Misérables* in ten volumes charges 60 francs for what would largely take four volumes and should only cost 12 francs. From this simple comparison we can guess which side is literary work, which side is agiotage.

We complain that literate youth are blocking careers, that manual work is being deserted, that there is a danger for order and mores. The Greeks and Latins have been accused of this danger: absurdity. The *gnawing worm* is neither in Virgil, nor in Cicero, nor in Demosthenes: it is in this literary industrialism on which we are preparing to put the seal by the constitution of a perpetual monopoly. While serious works are neglected, industrial literature overflows, the world is filled with abandoned talents, with a brush skill, if I dare say so, extraordinary. Little is written from inspiration; the author in whom thought is born original, and in its birth takes on an expression made for him alone, has become a phoenix. On the other hand, we know admirably how to extract nothings from the purple of the masters and models. Everything has become venal, because everything has been done by industry and trade. We are no longer even bohemian, we are in prostitution; and I don't know if these poor dancers, whom theater directors pay two francs per evening, or even don't pay at all, given that they are content for their entire salary with the opportunity offered to them to exhibit their charms, are not more honorable than the starving peat of our people of letters. At least, if these unfortunate women sell their bodies, they do not traffic in their art. They can say, in a sense, like Lucretius: *Corpus tantum violatum, animus insons*.

§ 9. — General summary: Again property.

I have gone on too long: however, I am far from having said everything:

I would have liked to show, with further developments, how, under the action of intellectual property, commerce and industry return to the regime of the corporations, masters and jurands; how property in land is in turn drawn into the same movement, and, even as the Revolution did, becoming a fief again, would return to a civilized, less social form. Already, if my information is not mistaken, there would exist in a certain world a project of conversion of land ownership and organization of large agricultural companies, intended to replace both small cultivation and small property, as we replaced the freight forwarders and valets by railway companies. The feudal idea is not dead in France; it persists among certain so-called democrats, much more than among the readers of the *Gazette* and the associates of Saint Vincent de Paul.

I would also have to show how, with France entering this retrograde path, while the other States follow the opposite course, antipathy cannot fail to become increasing between peoples, incompatible morals and hostile interests; how a war of principles would result from new institutions, a war in which France and the coalition would have changed roles, the first defending feudal right, the second liberal and revolutionary right. It is clear that if intellectual property, that is to say the perpetual monopoly on the products of literature and art and the inventions of

industry, is established in France, the reciprocity treaties are annulled, and that foreign work, freed from all privileges, enjoying our own discoveries without paying royalties, would be placed in better conditions than ours. For a war not to emerge from this situation, it would therefore be necessary either for the foreigner to agree to return to the feudal system of which it is in the process of ridding itself, or for France to abolish its own law and return to the unison of liberty.

I abbreviate these considerations, and I summarize:

a) There is not, there cannot be, literary property analogous to property in land. Such a property is contrary to all the principles of political economy; it is given neither by the notion of *product*, nor by those of *exchange*, *credit*, *capital* or *interest*, and cannot result from their application. The writer's service, considered from an economic and utilitarian point of view, is resolved into a contract, expressed or tacit, of exchange of service or product, which exchange implies that the work of genius, remunerated by a privilege of sale temporary, becomes public property from the day of publication.

b) Relative to the intellectual domain, on which only a new species of property could be constituted, free of charge of course, this domain is essentially, by nature and purpose, not appropriable, placed outside the sphere of egoism and venality. Just as religion and justice, science, poetry and art are corrupted by entering into traffic and submitting to the law of interests. To put it better, their distribution and remuneration follow a law contrary to that which governs the distribution and remuneration of industry.

c) As for the political and economic order, the consequences of such an appropriation would be incalculable. They would result in nothing less than restoring a system that had fallen under the curse of the people, and which would be a hundred times worse today than in the past, since instead of the religious faith that served as its basis, it would be supported by materialism and universal venality. And now, bourgeois and proprietors, to whom the monopoly cries, like the famous Puss in Boots from Perrault's tales to the peasants: "If you reject Intellectual property, if you do not say that *literary property is property*, your landed property is itself without foundation; the *partageux* will come, and you will all be expropriated;" — race of tremblers and fools, listen to this:

Some twenty-three years ago, I made of property what in philosophy is called a *critique*. I believe I made it accurate and fair, and I supported it even because of the anger it aroused. I may have been wrong: modesty befits a man so violently contradicted. Even in this case, would I be so guilty? This critique, which I can call my own as much as the critique of an idea can belong to a philosopher; in which I gloried, because I saw in it the starting point of a social science, the prelude to the reconciliation of classes and the guarantee of a more perfect order, I was careful to present it only as a critique, refraining from concluding in dispossession, fighting communism, at the risk of being accused of inconsistency, hypocrisy and cowardice, and limiting myself to maintaining that our practical philosophy was born yesterday; that if we have abjured divine right and its feudal institutions, we have not therefore established the government of liberty; that our economic right is even less advanced than our political right; that reason and the end of property, for example, escape us; that all we know for certain about the things of social economy and

government is that they appear to us as *antinomies*; that after having demolished the old society, it remains for us to create, from top to bottom, the new one; that our most respectable institutions, works of ancient faith, passed through the sieve of modern reason, seem the invention of an evil genius: that this is due, not to a thoughtful system of spoliation and lies, but to our own mental and revolutionary state, prelude to a new right and a new philosophy, in which the past and the future must be reconciled, and which must put the seal on our happiness and our glory.

This is what I said, bourgeois, believing I was saying the right thing, convinced that I was exercising a right and fulfilling a duty, and more surprised than anyone at the propositions to which the analysis led me. If I am wrong, if you remain as certain as you seemed, fifteen years ago, to be convinced of it, excuse me in the name of philosophical tolerance and the freedom of opinions written into our laws. Have you not just convinced yourself, in the course of this discussion on copyright, that it is not free research that is to be feared, but pedantic ignorance; that those who persist against my criticism, posing as champions and avengers of property, know less themselves than I knew in 1840, since they only reproduce arguments twenty times refuted, without suspecting that these arguments are what compromises the property the most?

Now another idea pursues me, an idea that you can put, like the previous one, down to hallucination, but of which you will at least not misunderstand the conservative intention. Property, under the weight of a public and mortgage debt of twenty billion, of a budget of two billion, of increasing centralization, of a law of expropriation for reasons of public utility to which no one can fix the limits; in the presence of legislation which, by consecrating the perpetuity of the literary monopoly, would establish the principle of a feudal restoration; property, defended by inept lawyers who seem paid to betray it; assailed by agiotage, exposed to all the rashness, to all the deceitfulness of empiricism; property, I said, despite the energetic protection of the power, seems to me more under attack than in 1848. — *Pourquoi des propriétaires à Paris?* You read this title of a pamphlet published a few years ago, when we were cracking down on good-faith critics, who philosophically seek the secret of destiny. It was the trial balloon of a sect which, through blackmail and swindling, led our blind nation to the industrial caliphate. The time will come, it is not far off, when you will hear people say: *Why proprietors in Paris?* Then, as in 1848, distraught property will seek new saviors; and will you tell me where it will find them, if those who pursue it are precisely the same ones who once saved it?... I imagine that then also the moment will have come for this critical socialism, — that is how we must name it, — of which you have been so afraid, to draw up its conclusions and, after having resolved the formidable problem, to take charge of the defense of property. And rest assured: defended, saved by socialist criticism, property will, this time, be well saved; it will be firmly established, unshakeable forever. It won't cost your cashbox a penny, nor us, the cursed ones, the smallest withdrawal.

Critique requires neither privilege nor endowment for the ideas which it breaks down before pouring them out into the world. It goes straight on its path, confident in logic, without ever retreating or denying itself. It is not jealous, does not seek its own glory or its own interest: but it knows how to put everything in its place and give back to everyone what belongs to them. This is why it supports the division of the earth, at the same time as it refuses the *property of intelligence*.

END.