

On Freedom of the Press

**Proceedings of the Sixth Rhine
Province Assembly**

**Debates on Freedom of the Press
and Publication of the Proceedings
of the Assembly of the Estates**

Written: May 1842

First Published: May, 1842, in the [Rheinische Zeitung](#)

Translated: from the German

Transcription/Markup: Zodiac, Brian Basgen and Sally Ryan

Online Version: Marx/Engels Internet Archive (marxists.org) 1996, 2000

Contents:

May 5: [\[Prussian Censorship\]](#)

May 8: [\[Opponents of a Free Press\]](#)

May 10: [\[On the Assembly of the Estates\]](#)

May 12: [\[As a privilege of particular individuals or a privilege of the human mind?\]](#)

May 15: [\[Censorship\]](#)

May 19: [\[Freedom in General\]](#)

General Introduction

Post-Napoleonic Germany had been promised a constitutionally-established string of provincial parliaments.

In 1823, [Prussia](#) formed eight such parliaments (Assemblies of the estates). They embraced the heads of princely families, representatives of the knightly estate, i.e., the nobility, of towns and rural communities. The election system based on the principle of landownership provided for a majority of the nobility in the assemblies. The competency of the assemblies was restricted to questions of local economy and administration. They also had the right to express their desires on government bills submitted for discussion. They were largely powerless ("advisory") however, could only summoned by the Prussian government, and then they were held in secret. Furthermore, a two-thirds majority was required to pass resolutions. Since the knightly (aristocratic) estate held 278 of the 584 parliamentary votes (the towns estate had 182 and the rural estate 124), nothing could be done against its wishes.

In the 17 years of Frederick William III's rule, parliaments met five times. In 1841, Frederick William IV came to power and decreed parliaments would meet every two years and the secrecy surrounding them would be lifted. And so the first parliament under his reign (and Sixth since the Assemblies were created) was held in Düsseldorf between May 23 and July 25 1841.

That same year, a Königsberg doctor named Johann Jacoby issued the pamphlet "Four Questions Answered by an East Prussian," calling for the constitution promised after Napoleon's final defeat in 1815. For this, Jacoby was charged with treason. Among other things it opened a debate on censorship.

In March 1842, in the official government paper *Preussische Allgemeine Staats-Zeitung* (*Prussian General State Gazette*) ran a series of articles supporting censorship "in order to enlighten the public concerning the true intentions of the Government."

The Sixth Rhine Province Assembly held debates, dealt with by Marx which took place during the discussion on publication of the proceedings of the assemblies (this right had been granted by the Royal edict of April 30, 1841) and in connection with petitions of a number of towns on freedom of the press.

Citations in the text are given according to the *Sitzungs-Provinzial-Landtags des sechsten Rheinischen Provinzial-Landtags*, Koblenz, 1841.

Publishing Notes: Marx devoted three articles to the debates of the Sixth [Rhine Province](#) Assembly, only two of which, the first and the third, were published. In the first series of articles Marx proceeded with his criticism of the Prussian censorship which he had begun in his as yet unpublished article [Comments on the Latest Prussian Censorship Instruction](#). The second series of articles, devoted to the conflict between the Prussian Government and the Catholic Church, was banned by the censors. The manuscript of this article has not survived, but the general outline of it is given by Marx in his letter to Ruge of July 9, 1842. The third series of articles is devoted to the [debates of the Rhine Province Assembly on the law on wood thefts](#).

These articles constitute Marx's first contribution to the *Rheinische Zeitung für Politik, Handel und Gewerbe*. Marx began his work as a contributor and in October 1842 became one of the editors of the newspaper. By its content and approach to vital political problems, the article helped the newspaper, founded by the oppositional Rhenish bourgeoisie as a liberal organ, to begin a transition to the revolutionary-democratic positions.

The appearance of Marx's article in the press raised a favourable response in progressive circles. Georg Jung, manager of the *Rheinische Zeitung*, wrote to Marx: "Your articles on freedom of the press are extremely good.... Meyen wrote that the *Rheinische Zeitung* had eclipsed the *Deutsche Jahrbücher* ... that in Berlin everybody was overjoyed with it" (MEGA, Abt. 1, Ed. 1, Hb. 2, S. 275). In his comments on the article published in the *Rheinische Zeitung* Arnold Ruge wrote: "Nothing more profound and more substantial has been said or could have been said on freedom of the press and in defence of it" (*Deutsche Jahrbücher*, 1842, S. 535-36).

In the early 1850s Marx included this article in his collected works then being prepared for publication by Hermann Becker. However only the beginning of the article was included in the first issue. The major part of the text which had been published in the *Rheinische Zeitung* No. 139 was left unprinted. The end of the article was intended for the following issue, which was never published.

A copy of the *Rheinische Zeitung* which Marx sent from London to Becker in Cologne in February 1851 with the author's notes on the text of articles (mostly in the form of abbreviations) intended for the edition Becker was preparing has recently been found in the archives of Cologne University library. This copy of the newspaper proves that Marx thought of publishing--partly in an abridged form-- many of his articles written for the *Rheinische Zeitung*. However, his plan was not realised. Marginal notes show that the articles "Communal Reform and the *Kölnische Zeitung*" and "A Correspondent of the *Kölnische Zeitung* vs, the *Rheinische Zeitung*" belong to Marx. These articles have never been published in any collection of Marx's works.

In English an excerpt from the *Proceedings* was published in *Karl Marx, Early Texts*, Oxford, 1971, pp. 35-36.

This online publication: Chapter titles have been introduced in brackets.

[Marx/Engels Internet Archive](#)

Encyclopedia of Marxism

Glossary of Periodicals

Rh

Rheinische Zeitung
für Politik, Handel und Gewerbe

The Rheinische Zeitung was founded on January 1 1842. It was, generally, a pro-democracy [reformist](#) publication of the Rhine's oppositional bourgeoisie to Prussian absolutism. Karl Marx wrote his first news article for it in May 5 1842. By October 1842, he was named editor.

On November 16 1842, enroute to England, Engels paid a visit to the Rheinische Zeitung offices — where he first met the new editor. Engels' time in England would result in a series of articles for the RZ — and those would, in turn, lead to his famous book, [The Condition of the Working Class in England](#).

Under Marx's editorship, the paper promoted increasingly radical/revolutionary-democratic ideas — which would result in Marx being forced to resign (March 17, 1843), and the paper's complete suppression two weeks following (March 31, 1843).

In 1851, Marx (then living in London) planned to publish an abridged collection of his Rheinische Zeitung articles through [Hermann Becker](#) (living in Cologne) — with notes, etc. Marx, however, did not have the time to complete this project. These notes were found over a century later in the Cologne University library. Progress Publishers has since released them in the Collected Works.

See: Articles by Karl Marx and Fredrick Engels in the [Rheinische Zeitung](#)

[Index of the Letter R](#)

[Glossary of Periodicals](#) | [Encyclopedia of Marxism](#)

Karl Marx

On Freedom of the Press

[Prussian Censorship]

Rheinische Zeitung
No. 125, Supplement
May 5 1842

The very first article by Marx in this newspaper was about the freedom of the press debates in the Rhineland province of Prussia. It appeared in issue No. 125, on May 5, 1842 — Marx's 24th birthday.

All these articles were signed: "By a Rhinelander." They received a very positive response in the progressive German community. Manager of the *Rheinische Zeitung* told Marx: "Your articles on freedom of the press are extremely good.... Meyen wrote that the *Rheinische Zeitung* had eclipsed the *Deutsche Jahrbucher*... that everyone in Berlin was overjoyed by it." The *Deutsche Jahrbucher* itself wrote of them: "Nothing more profound and more substantial has been said or could have been said on freedom of the press and in defence of it."

To the amazement of all writing and reading Germany the *Preussische Staats-Zeitung* one fine Berlin spring morning published its *self-confession*. [\[A\]](#) Of course, it chose an elegant, diplomatic, not exactly amusing, form for its confession. It gave itself the appearance of wanting to hold up the mirror for its sisters to recognise themselves; it spoke mysteriously only about other [Prussian](#) newspapers, while it was really speaking about the Prussian newspaper par *excellence*, itself.

This fact allows of many different explanations. *Caesar* spoke about himself in the third person. Why should the *Preussische Staats-Zeitung*, in speaking about third persons, not mean itself? Children, when speaking about themselves, are in the habit of saying not "I", but "George", etc. Why should not the *Preussische Staats-Zeitung* be allowed to use for its "I" the *Vossische*, [\[B\]](#) *Spencersche*, [\[C\]](#) or some other saint's name?

The new censorship instruction had appeared. Our newspapers believed they had to adopt the outward appearance and conventional forms of freedom. The *Preussische Staats-Zeitung*, too, was compelled to awake and have some kind of liberal — or at least independent — ideas.

The first essential condition for freedom, however, is self-knowledge, and self-knowledge is an impossibility without self-confession.

Hence one should firmly keep in mind that the *Preussische Staats-Zeitung* has written *self-confessions*; one should never forget that we see here the first awakening to self-consciousness of a semi-official press-child, and then all riddles will be solved. One will be convinced that the *Preussische Staats-Zeitung* "utters with composure many a great word", and will only remain undecided whether one should admire more the composure of its greatness or the greatness of its composure.

Hardly had the censorship instruction appeared, hardly had the *Staats-Zeitung* recovered from this blow, before it came out with the question: "What use has the greater freedom from censorship been to you

Prussian newspapers?"

Obviously, what it means to say by this is: What use have the many years of strict observance of the censorship been to me? What have I become, in spite of the most scrupulous and thoroughgoing supervision and tutelage? And what should now become of me? I have not learnt to walk and a sensation-loving public is expecting *entretchats* from one who has a dislocated hip-joint. So will it be for you, too, my sisters! Let us confess our weaknesses to the Prussian people, but let us be diplomatic in our confession. We shall not tell them outright that we are uninteresting for their newspapers.

We shall tell them that if the Prussian newspapers are uninteresting for the Prussian people, the Prussian state is uninteresting for the newspapers.

The bold question of the *Staats-Zeitung* and the still bolder answer are mere preludes to its awakening, dream-like allusions in the text to the role that it will perform. It is awakening to consciousness, it is speaking its mind. Listen to Epimenides!

It is well known that the first theoretical activity of the mind limit still wavers between sensuous perception and thinking is *counting*. Counting is the first free theoretical mental act of *the child*. *Let us count*, the *Preussische Staats-Zeitung* calls to its sisters. *Statistics* is the premier political science! I know a man's head when I know how many hairs grow on it.

Do as you would be done by. And how could one better us and especially me, the *Preussische Staats-Zeitung*, than statistically! Statistics will not merely prove that I appear as often as any French or English newspaper, but also that I am less read than any newspaper in the civilised world. Discount the officials who half-heartedly have to be interested in me, subtract the public places which must have a semi-official organ, and who reads me, I ask, who? Calculate what I cost; calculate the income I receive, and you will admit that it is not a profitable business to utter great words with composure. See how cogent statistics are, how counting makes more far-reaching mental operations superfluous! Therefore count! Numerical tables instruct the public without exciting their emotions.

And the *Staats-Zeitung* with the importance it attaches to statistics not only puts itself on a par with the Chinese and with the universal statistician Pythagoras! [\[D\]](#) It shows that it has been influenced by the great natural philosopher of recent times, [\[E\]](#) who wanted to represent the differences between animals, etc., by a series of numbers.

Thus the *Preussische Staats-Zeitung* is not without modern philosophical foundations, in spite of its apparent positivism. [\[F\]](#)

The *Staats-Zeitung* is many-sided. It does not stop at number, temporal magnitude. It carries the recognition of the quantitative principle further and proclaims the justification of spatial magnitude. Space is the first thing whose magnitude impresses the *child*. It is the first magnitude which the child encounters in the world. Hence the child holds a big man to be a great man, and in the same childish way the *Staats-Zeitung* informs us that thick books are incomparably better than thin ones, and much more so than single leaflets or newspapers, which produce only one printed sheet daily.

You Germans can only express yourselves at great length! Write really voluminous books on the organisation of the state, books of solid learning, which no one reads except the Herr Author and the Herr Reviewer, but bear in mind that your newspapers are not books. Think how many printed sheets go to make a solid work of three volumes! Therefore do not seek the spirit of our day or time in newspapers,

which offer you statistical tables, but seek it in books, whose size guarantees their solidity.

Bear in mind, you good children, that it is a matter here of "learned" things. Study in the school of thick books and you will quickly get to love us newspapers on account of our flimsy format, our gentlemanly lightness, which is truly refreshing after the thick books.

Of course! Of course! Our time has no longer that real taste for size that we admire in the Middle Ages. Look at our paltry little pietistic tracts, look at our philosophical systems in small octavo, and then cast your eyes on the twenty gigantic folios of Duns Scotus. You do not need to read the books; their exciting aspect suffices to touch your heart and strike your senses, something like a Gothic cathedral. These primitive gigantic works materially affect the mind; it feels oppressed under their mass, and the feeling of oppression is the beginning of awe. You do not master the books, they master you. You are an unimportant appendage to them, and in the same way, in the view of the *Preussische Staats-Zeitung*, the people should be an unimportant appendage of their political literature.

Thus the *Staats-Zeitung*, although its language is quite modern, is not without historical foundations belonging to the sterling period of the Middle Ages.

If, however, the theoretical thinking of the *child* is quantitative, its judgment, like its practical thought, is primarily practical and sensuous. The sensuous quality of the child is the first link that connects it with the world. The practical organs of *senses*, primarily the nose and mouth, are the first organs by means of which it *judges* the world. Hence the childish *Preussische Staats-Zeitung* judges the value of newspapers, and therefore its own value, by means of its *nose*. If a Greek thinker [\[G\]](#) held that dry souls were the best, [\[H\]](#) the *Staats-Zeitung* holds that "pleasant-smelling" newspapers are "*good*" newspapers. It cannot praise too highly the "*literary fragrance*" of the Augsburg *Allgemeine* and the journal *des Débats*. Rare, praiseworthy naivety! Great Pompey, greatest of all!

After allowing us, therefore, a deep insight into the state of its soul by means of a number of separate praiseworthy utterances, *the Staats-Zeitung* sums up its view of the state in a profound reflection, the crux of which is the great discovery:

"that in Prussia the state administration and the whole organisation of the state are remote from the political spirit, and therefore cannot be of political interest either to the people or to the newspapers".

In the *opinion* of the *Preussische Staats-Zeitung*, therefore, in Prussia the state administration has no political spirit, or the political spirit has no state administration. How crude of the *Staats-Zeitung* to assert what the bitterest opponent could not express more brutally, namely, that the real life of the state is without any political spirit, and that the political spirit does not live in the real state!

But we ought not to forget the *childish-sensuous* standpoint of the *Preussische Staats-Zeitung*. It tells us that in regard to railways one should think only of rails and ways, in regard to trade contracts only of sugar and coffee, and in regard to leather factories only of leather. The child, of course, does not go beyond *sensuous perception*, it sees a thing only in isolation, and the invisible nerve threads which link the particular with the universal, which in the state as everywhere make the material parts into soul-possessing members of the spiritual whole, are for the child non-existent.

The child believes that the sun revolves around the earth; that the universal revolves around the particular. Hence the child does not believe in the spirit, but it believes in *spectres*.

Thus the *Preussische Staats-Zeitung* regards the political spirit as a French spectre; and it thinks it exorcises the spectre if it throws leather, sugar, bayonets and numbers at it.

However, our reader will interrupt us, we wanted to discuss the "Rhine Province Assembly proceedings" and instead we are being presented with the "innocent angel", that senile child of the press, the *Preussische Staats-Zeitung*, and a repetition of the old-time lullabies with which it again and again tries to lull itself and its sisters into wholesome hibernation.

But does not Schiller say:

"But what the sage's reason fails to see
A childish nature grasps in all simplicity." [1]

The *Preussische Staats-Zeitung* "in all simplicity" has reminded us that we in Prussia, no less than in England, have *assemblies of the estates*, whose proceedings the daily press would indeed be *allowed* to discuss, if it *could*; for the *Staats-Zeitung* in its great, classical self-consciousness takes the view that what the Prussian newspapers lack is not permission but ability. We concede it the latter as its special privilege, while at the same time, without further explanation of its ability, we take the liberty of actually implementing the idea it had in all simplicity.

The publication of the Assembly proceedings will only become a reality when they are treated as "*public facts*", i.e., as subject-matter for the press. The last *Rhine* Province Assembly is the one with which we are most immediately concerned.

We begin with its "*Debates on Freedom of the Press*" and must remark as a preliminary that, while we sometimes give our own positive view of this question as a participant, in later articles we shall follow and present the course of the proceedings more as a historical spectator.

The nature of the proceedings themselves determines this difference in the method of presentation. For in all the other debates we find that the various opinions of the Assembly representatives are on about the same level. In the question of the press, on the other hand, the opponents of a free press have a considerable advantage. Apart from the catchwords and commonplaces which fill the air, we find among these opponents of press freedom a *pathological emotion*, a passionate partisanship, which gives them a real, not an imaginary, attitude to the press, whereas the defenders of the press in this Assembly have on the whole no real relation to what they are defending. They have never come to know freedom of the press as a vital need. For them it is a matter of the head, in which the heart plays no part. For them it is an "exotic" plant, to which they are attached by mere "sentiment". Hence it happens that all too general, vague arguments are put forward to counter the especially "weighty" grounds of the opponents, and the most narrow-minded idea is held to be important as long as it is not demolished.

Goethe once said that the painter succeeds only with a type of feminine beauty which he has loved in at least one living being. [2] Freedom of the press, too, has its beauty — if not exactly a feminine one — which one must have loved to be able to defend it. If I truly love something, I feel that its existence is essential, that it is something which I need, without which my nature can have no full, satisfied, complete existence. The above-mentioned defenders of freedom of the press seem to enjoy a complete existence even in the absence of any freedom of the press.

Footnotes

[A] The reference is to the article "Die inlandische Presse u. die inlandische Statistik", published in the *Allgemeine Preussische Staats-Zeitung* No. 86, March 26, 1842. Marx cited mainly from this article, and also from two other articles, "Die Wirkung der Zensur-Verfügung vom 24. Dezember 1841" and "Die Besprechung inlandischer Angelegenheiten," published in the same newspaper in Nos. 75 and 78, March 16 and 19, 1842, respectively

[B] *Vossische Zeitung*--the name given after its owner to the daily *Königlich privilegirte Berlinsche Zeitung von Staats- und gelehrten Sachen*.

[C] *Spenerche Zeitung*--the name given after its publisher to the *Berlinische Nachrichten von Staats- und gelehrten Sachen* which was a semi-official government organ at the beginning of the 1840s.

[D] Marx ironically compares Prussian officialdom's enthusiasm for statistics with the ancient philosophical systems which assigned a special importance to signs and numbers. He hints in particular at the ancient Chinese "I Ching" writings, of which Confucius was considered in the nineteenth century to be one of the first commentators. According to the philosophical conception laid down in them, ku signs, which were formed from various combinations of three continuous or broken lines, symbolised things and natural phenomena.

When calling Pythagoras the "universal statistician" Marx had in mind the ancient Greek philosophers' conceptions of number as the essence of all things.

[E] Lorenz Oken

[F] The reference is to positive philosophy.

[G] Heraclitus

[H] By this Marx meant Heraclitus' maxim: The dry soul is the wisest and the best.

[I] F. Schiller, *Die Worte des Glaubens*

[J] J. Goethe, *Verschiedenes über Kunst*. Kapitel 2.

Table of Contents: [On Freedom of the Press](#)

Karl Marx

On Freedom of the Press

[Opponents of a Free Press]

The *liberal opposition* shows us the level of a political assembly, just as the opposition in general shows the level of development that a society has reached. A time in which it is philosophical audacity to doubt the existence of ghosts, in which it is regarded as a paradox to oppose witch trials, is the time in which ghosts and witch trials are *legitimate*. A country which, like ancient Athens, regards lickspittles, parasites and flatterers as exceptions to the good sense of the people, as *fools among the people*, is a country of independence and self-reliance. But a people which, like all peoples of the good old times, claims the right to think and utter the truth only for *court-jesters*, can only be a people without independence or personality. An assembly of the estates in which the opposition assures us that freedom of the will is inherent in human nature, is at least not an assembly in which freedom of the will prevails. The exception proves the rule. The liberal opposition shows us what the liberal position has become, to what extent freedom is embodied in man.

Therefore, if we have remarked that the defenders of freedom of the press in the Assembly of the Estates are by no means equal to their task, this applies still more to the Provincial Assembly as a whole.

Nevertheless, we begin our account of the Assembly proceedings at this point, not merely out of a special interest in freedom of the press, but equally out of a general interest in the Assembly. For we find the *specific estate* spirit nowhere more clearly, decisively and fully expressed than in the debates on the press. This holds good especially of the *opposition to freedom of the press*, just as in general it is in opposition to a *general* freedom that the spirit of a definite sphere in society, the individual interest of a particular estate and its natural one-sidedness of character are expressed most bluntly and recklessly and, as it were, show their teeth.

The debates provide us with a polemic of the princely social estate against freedom of the press, a polemic of the knightly estate, and a polemic of the urban estate, so that it is not the individual, but the *social estate* that conducts the polemic. What mirror, therefore, could reflect the inner nature of the Assembly better than the debates on the press?

We begin with the *opponents of a free press*, and, as is only fair, with a speaker from the *princely estate*.

We shall not deal with the content of the first part of his speech, to the effect "that freedom of the press and censorship are both evils, etc.", for this theme is more thoroughly expounded by another speaker. But we must not pass over his *characteristic method of argument*.

"Censorship," he said, "is a lesser evil than excesses on the part of the press." "This conviction has gradually so taken root in our Germany" (the question is: which part of Germany that is) "that the Federation too, issued *laws* on the subject, which Prussia joined in approving and observing." [\[A\]](#)

The Assembly discusses liberation of the press from its bonds. These bonds themselves, proclaims the speaker, the fetters with which the press is shackled, prove that it is not destined for free activity. Its fettered existence testifies against its essential nature. The laws against freedom of the press are a

refutation of freedom of the press.

This is a *diplomatic* argument against all reform, one which most decisively expresses the *classical theory* of a certain party. [B] Every restriction of freedom is a factual, irrefutable proof that at one time those who held power were convinced that freedom must be restricted, and this conviction then serves as a guiding principle for later views.

People were once ordered to believe that the earth did not go round the sun. Was Galileo refuted by this?

Similarly, in our Germany legal sanction was given to the conviction of the empire, which the individual princes shared, that serfdom was a quality inherent in certain human beings, that truth could be made most evident by surgical operation, we mean torture, and that the flames of hell could already be demonstrated to heretics by means of flames on earth.

Was not legal serfdom a factual proof against the rationalist fantasy that the human body was no object for handling and possession? Did not the primitive method of torture refute the false theory that truth could not be extracted by opening veins, that stretching limbs on the rack did not break down the victim's silence, that convulsions were not confessions?

Thus, in the speaker's opinion, the fact of censorship refutes freedom of the press, a statement which has its factual correctness, being a truth of such a factual character that its magnitude can be measured topographically, since beyond certain frontier barriers it ceases to be factual and true.

"Neither in speech nor in writing," we are further instructed, "neither in our Rhine Province nor in Germany as a whole, are any shackles to be seen on our true and nobler spiritual development."

The noble lustre of truth in our press is supposed to be a gift of the censorship.

We shall first of all turn the speaker's previous argument against himself; instead of a rational proof we shall give him an ordinance. In the recent Prussian censorship instruction it is officially made known that the press has hitherto been subjected to excessive restrictions, that it has still to achieve true national content. The speaker can see that convictions in our Germany are liable to change.

But what an illogical paradox to regard the censorship as a basis for improving our press!

The greatest orator of the French revolution, whose *voix toujours tonnante* [C] still echoes in our day; the lion whose roar one must have heard oneself in order to join with the people in calling out to him: "Well roared, lion!" [D] — Mirabeau — developed his talent in prison. Are prisons on that account schools of eloquence?

If, despite all spiritual toll systems, the German spirit has become capable of large-scale enterprise, it is a truly princely prejudice to think that it is the customs barriers and cordons that have made it so. The spiritual development of Germany has gone forward not *owing to*, but in *spite of*, the censorship. If the press under the censorship becomes stunted and wretched, this is put forward as an argument against a free press although it only testifies against an unfree press. If the press, in spite of censorship, retains its characteristic essence, this is put forward in support of censorship although it only testifies in favour of the spirit and not the fetters.

By the way, "*true and nobler development*" is another question.

In the period of strict observance of censorship from 1819 to 1830 (later, in a large part of Germany although not in "our Germany", the censorship itself came under censorship owing to the circumstances of the time and the unusual convictions which had been formed) our literature experienced its "*Abendblatt period*", which can be called "true and noble and spiritual and rich in development" with as much right as the editor of the *Abendzeitung*, named "Winkler", had in humorously adopting the pseudonym "*Bright*", although we cannot even credit him with the brightness of a bog at midnight. This "*backwoodsman*", [E] with the trade name "Bright" is the prototype of the literature of the time, and that Lenten period will convince posterity that if few saints could endure forty days without food, the whole of Germany, which was not even saint-like, managed to live over twenty years without producing or consuming spiritual nourishment. The press had become vile, and one could only hesitate to say whether the lack of understanding exceeded the lack of character, and whether the absence of form exceeded the absence of content, or the reverse. For Germany, criticism would reach its zenith if it could prove that that period never existed. The sole literary field in which at that time the pulse of a living spirit could still be felt, the *philosophical* field, ceased to speak German, for German had ceased to be the language of thought. The spirit spoke in incomprehensible mysterious words because comprehensible words were no longer allowed to be comprehended.

As far then as the example of *Rhenish literature* is concerned — and, of course, this example rather closely concerns the Rhine Province Assembly — one could wander through all five administrative districts with Diogenes' lantern and nowhere would one meet "this man". We do not regard this as a defect of the Rhine Province, but rather as a proof of its practical and political good sense. The Rhine Province can produce a "*free press*", but for an "*unfree*" one it lacks adroitness and illusions.

The literary period that has just ended, which we could call the "literary period of strict censorship", is therefore clear historical proof that the censorship has undoubtedly influenced the development of the German spirit in a disastrous, irresponsible way, and that therefore it is by no means destined, as the speaker imagined, to be *magister bonarum artium*. [E] Or should one understand by a "nobler and true press" one which bears its chains with decency?

If the speaker "took the liberty" of recalling "a well-known saying about the little finger and the whole hand", we take the liberty in return of asking whether it does not most befit the dignity of a government to give the spirit of the people not merely one whole hand but both hands whole?

As we have seen, our speaker disposes of the relation between censorship and spiritual development in a carelessly aristocratic, diplomatically sober way. He represents the negative aspect of his social estate still more resolutely in his attack on the historical *shaping of freedom of the Press*.

As regards freedom of the press among other nations, he says:

"*England* cannot serve as a measuring-rod, because, it is claimed, centuries ago conditions were *historically* created there which could not be brought about in any other country by the application of theories, but which had their justification in *England's specific conditions*."

"In *Holland*, freedom of the press was unable to save the country from an oppressive national debt and to a very large extent it helped to bring about a revolution which resulted in the loss of half the country."

We shall pass over France, to come back to it later.

"Finally, should it not be possible to find in *Switzerland* an Eldorado blessed by freedom of the press?"

Does one not think with disgust of the savage party quarrels carried on in the newspapers there, in which the parties, with a correct sense of their small degree of human dignity, are named after *parts of an animal's body*, being divided into *horn-men* and *claw-men*, and have made themselves despised by all their neighbours on account of their boorish, abusive speeches!"

The *English* press, he says, is not an argument in favour of freedom of the press in general, *because* of its *historical foundations*. The press in England has merit *only* because it developed historically, not as a press in general, for then, he alleges, it would have had to develop without historical foundations. History therefore has the merit here, and not the press. As if the press, too, were not part of history, as if the English press under Henry VIII, the Catholic Mary, Elizabeth and James did not have to wage a hard and often savage struggle in order to win for the English nation its historical foundations!

And would it not, on the contrary, testify in favour of freedom of the press if the English press, having the greatest freedom from restraint, did not destructively affect the historical foundations? However, the speaker is not consistent.

The English press is no proof *in favour* of the press in general, *because* it is English. The Dutch press testifies *against* the press in general, *although* it is only Dutch. In the one case all the merits of the press are ascribed to the historical foundations, in the other case all the defects of the historical foundations are ascribed to the press. In the one case the press is not supposed to have had its share also in historical progress, in the other case history is not supposed to have had its share also in the defects of the press. just as the press in England is bound up with the latter's history and specific conditions, so also in Holland and Switzerland.

Is the press supposed to reflect, abolish or develop the historical foundations? The speaker makes each into a matter of reproach for the press.

He blames the *Dutch* press, *because of* its historical development. It ought to have *prevented* the course of *history*, it ought to have saved Holland from an *oppressive national debt!* What an unhistorical demand! The Dutch press could not prevent the period of Louis XIV; the Dutch press could not prevent the English navy under Cromwell from rising to the first place in Europe; it could not cast a spell on the ocean which would have saved Holland from the painful role of being the arena of the warring continental powers; it was as little able as all the censors in Germany put together to annul Napoleon's despotic decrees.

But has a *free* press ever increased national debts? When, under the regency of the Duke of Orleans, the whole of France plunged into Law's financial lunacies, who opposed this fantastic storm and stress period of money speculations except for a few satirists, who of course received not banknotes but notes sending them to the Bastille.

The demand that the press should be the saviour from the *national debt*, which can be extended to say that it should also pay the debts of individuals, reminds one of that writer who always grumbled at the doctor because, although the latter cured his bodily ailments, he did not at the same time correct the misprints in his writings. Freedom of the press is as little able to promise to make a human being or a nation perfect as the physician. It is itself no perfection. [\[G\]](#) What a trivial way of behaving it is to abuse what is good for being some specific good and not all good at once, for being *this* particular good and *not some other*. Of course, if freedom of the press were all in all it would make all other functions of a nation, and the nation itself, superfluous.

The speaker blames the Dutch press for the *Belgian revolution*.

No one with any historical education will deny that the separation of Belgium from Holland was an incomparably greater *historical event* than their union. [H]

The press in Holland is said to have brought about the Belgian revolution. Which press? The progressive or the reactionary? It is a question which we can also raise in France; if the speaker blames the clerical Belgian press, which at the same time was democratic, he should also blame the clerical press in France, which at the same time was absolutist. Both helped to overthrow their governments. In France it was not freedom of the press but censorship that made for revolution.

But leaving this out of account, the Belgian revolution *appeared* at first as a spiritual revolution, as a revolution of the press. The assertion that the press caused the Belgian revolution has no sense beyond that. But is that a matter for blame? Must the revolution at once assume a *material form*? Strike instead of speaking? The government can materialise a spiritual revolution; a material revolution must first spiritualise the government.

The Belgian revolution is a product of the Belgian spirit. So the press, too, the freest manifestation of the spirit in our day, has its share in the Belgian revolution. The Belgian press would not have been the Belgian press if it had stood aloof from the revolution, but equally the Belgian revolution would not have been Belgian if it had not been at the same time a revolution of the press. The Revolution of a people is *total*; that is, each sphere carries it out in its own way; why not also the press as the press?

In blaming the Belgian press, therefore, the speaker is *blaming Belgium*, not the press. It is here that we find the starting point of his historical view of freedom of the press. The popular character of the free press — and it is well known that even the artist does not paint great historical pictures with water-colours — the historical individuality of the free press, which makes it the specific expression of its specific popular spirit, are repugnant to the speaker from the princely estate. He demands instead that the press of the various nations should always be a press holding his views, a press of *haute volée* [I] and should revolve around certain individuals instead of around the spiritual heavenly bodies, the nations. This demand stands out undisguised in his verdict on the *Swiss press*.

We permit ourselves a preliminary question. Why did the speaker not recall that the Swiss press through Albrecht von Haller opposed the Voltairean enlightenment? Why does he not bear in mind that even if Switzerland is not exactly an Eldorado, nevertheless it has produced the prophet of the future princely Eldorado, once again a certain Herr von Haller, who in his *Restauration der Staatswissenschaften* laid the foundation for the "nobler and true" press, for the *Berliner politisches Wochenblatt*? By their fruits ye shall know them. And what other country in the world could oppose to Switzerland a fruit of this luscious legitimacy?

The speaker finds fault with the *Swiss press* for adopting the "animal party names" of "horn-men and claw-men", in short because it speaks in the *Swiss language* and to *Swiss people*, who live in a certain patriarchal harmony with oxen and cows. *The press of this country is the press of precisely this country*. There is nothing more to be said about it. At the same time, however, a free press transcends the limitations of a country's particularism, as once again the Swiss press proves.

As regards *animal party names* in particular, let us remark that religion itself reveres the animal as a symbol of the spiritual. Our speaker, of course, will condemn the *Indian* press, which has revered with

religious fervour Sabala the cow and Hanuman the monkey. He will reproach the Indian press for the Indian religion, just as he does the Swiss press for the Swiss character. But there is a press which he will hardly want to subject to censorship; we refer to the *holy press*, the *Bible*. Does this not divide all mankind into the two great parties of *sheep* and *goats*? Does not God Himself describe his attitude to the houses of Judah and Israel in the following terms: I shall be to the house of Judah as a moth and to the house of Israel as a *maggot*. [J] Or, what is more familiar to us laymen, is there not a *princely literature* which turns all anthropology into zoology? We mean the literature of *heraldry*. That contains things still more curious than horn-men and claw-men.

What, therefore, was the accusation the speaker levelled against freedom of the press? *That the defects of a nation are at the same time the defects of its press*, that the press is the ruthless language and manifest image of the historical spirit of the people. Did he prove that the *spirit of the German people* is an exception to this great natural privilege? He showed that every nation expresses its spirit through its press. Ought not the philosophically educated spirit of the Germans to be entitled to what, according to the speaker's own assertion, is to be found among the animal-fettered Swiss?

Finally, does the speaker think that the *national* defects of a free press are not just as much *national defects of the censors*? Are the censors excluded from the historical whole? Are they unaffected by the spirit of a time? Unfortunately, it may be so, but what man of sound mind would not rather pardon sins of the nation and the time in the press than sins against the nation and the time in the censorship?

We remarked in the introduction that the various speakers voice the polemic of their *particular estate* against freedom of the press. The speaker from the princely estate put forward in the first place *diplomatic* grounds. He proved that freedom of the press was wrong on the basis of the *princely convictions* clearly enough expressed in the censorship laws. He considered that the nobler and true development of the German spirit has been *created* by the restrictions from above. Finally, he waged a polemic *against the peoples* and with noble dread repudiated freedom of the press as the tactless, indiscreet speech of the people addressed to itself.

Rheinische Zeitung
No. 128, Supplement
May 8 1842

Chapter 3: [\[On the Assembly of the Estates\]](#)

Footnotes

[A] The reference is to the Provisional Federal Act on the Press for the German states adopted on September 20, 1819.

[B] The reference is to the *historical school of law*--a trend in history and jurisprudence which originated in Germany at the end of the eighteenth century. Its representatives (Gustav Hugo and Friedrich Carl von Savigny) tried to justify the privileges enjoyed by the nobility and the existence of feudal institutions by

eternal historical traditions. An assessment of this school is given by Marx in the article "The Philosophical Manifesto of the Historical School of Law".

[C] Ever thundering voice.

[D] W. Shakespeare, *A Midsummer Night's Dream*, Act V, Scene 1.

[E] In German "Krähwinker", a pun on the man's name.

[F] Teacher of the fine arts.

[G] According to the errata to the *Rheinische Zeitung* No 130, may 10, 1842, this should read: "It is itself perfection."

[H] By the decision of the Vienna Congress of 1815, Belgium and Holland were incorporated in the single kingdom of the Netherlands, Belgium being actually subordinated to Holland. Belgium became an independent constitutional monarchy after the bourgeois revolution of 1830.

[I] High society.

[J] Hosea 5:12, paraphrased.

Table of Contents: [On Freedom of the Press](#)

Karl Marx

On Freedom of the Press

[On the Assembly of the Estates]

The speaker from the knightly estate, to whom we now come, wages his polemic not against the peoples, but against persons. He questions *human freedom* in *freedom of the press*, and law in the *law of the press*. Before dealing with the actual question of freedom of the press, he takes up the question of *unabridged and daily publication of the Assembly debates*. We shall follow him step by step.

"The first of the proposals for *publication of our proceedings* suffices." "Let it be in the *hands of the Provincial Assembly* to make a *wise use* of the permission granted."

That is precisely the *punctum quaestionis*. [\[A\]](#) The province believes that the Provincial Assembly will be under its control only when the publication of the debates is no longer left to the arbitrary decision of the Assembly in its wisdom, but has become a legal necessity. We should have to call the new concession a new step backwards if it had to be interpreted in such a way that publication depends on an arbitrary decision by the Assembly of the Estates.

Privileges of the estates are in no way rights of the province. On the contrary, the rights of the province cease when they become privileges of the estates. Thus the estates of the Middle Ages appropriated for themselves all the country's constitutional rights and turned them into privileges against the country.

The citizen does not want to have anything to do with right as a privilege. Can he regard it as a right if new privileged persons are added to the old ones?

In this way, the rights of the Provincial Assembly are no longer *rights of the province*, but *rights against the province*, and the Assembly itself would be the *greatest wrong against the province* but with the mystical significance of being supposed to embody its greatest right.

How greatly the *speaker from the knightly estate* is imbued with this medieval conception of the Assembly, how unreservedly he upholds the privilege of the estate against the rights of the province, will be seen from the continuation of his speech.

"The extension of this permission" (for publication of the debates) "could only result from *inner conviction*, but not from *external influences*."

A surprising turn of phrase! The influence of the province on its Assembly is characterised as something *external* to which the conviction of the Assembly of the Estates is contrasted as a *delicate inner feeling* whose highly sensitive nature calls out to the province: *Noli me tangere!* [\[B\]](#) This plaintive rhetoric about "*inner conviction*" in contrast to the rude, external, unauthorised north wind of "public conviction" is the more noteworthy since the purpose of the proposal was precisely to make the inner conviction of the Assembly of the Estates external. Here too, of course, there is an inconsistency. Where it seems to the speaker more convenient, in *church controversies*, he appeals to the province.

"We," continues the speaker, "would let it" (publication) "*take place* where *we* consider this expedient, and would *restrict* it where an extension would appear to *us* purposeless or *even harmful*."

We will do what *we* like. *Sic volo, sic jubeo, stat pro ratione voluntas.* [C] It is truly the language of a ruler, which naturally has a pathetic flavour when coming from a modern baron.

Who are *we*? The *estates*. The publication of the debates is intended for the province and not for the estates, but the speaker teaches us to know better. Publication of the debates also is a *privilege* of the Assembly of the Estates, which has the right, if it thinks fit, to have its wisdom echoed by the many voices of the press.

The speaker knows only the province of the estates, not the estates of the province. The Assembly of the Estates has a province to which the privilege of its activity extends, but the province has no estates through which it could itself be active. Of course, the province has the right, under prescribed conditions, to create these gods for itself, but as soon as they are created, it must, like a fetish worshipper, forget that these gods are its own handiwork.

In this connection there is no telling, *inter alia*, why a *monarchy without a Provincial Assembly* is not of more value than a *monarchy with a Provincial Assembly*, for if the Assembly does not represent the will of the province, we have more confidence in the public intelligence of the government than in the private intelligence of landed property.

We are confronted here with the peculiar spectacle, due perhaps to the nature of the Provincial Assembly, of the province having to fight not so much through its representatives as against them. According to the speaker, the Assembly does not regard the general rights of the province as the Assembly's only privileges, for in that case the daily unabridged publication of the Assembly proceedings would be a new right of the Assembly, because it would be a new right of the province; on the contrary, according to the speaker, the province must regard the privileges of the Assembly of the Estates as the province's only rights; and why not also the privileges of some class of officials and of the nobility or the clergy!

Indeed, our speaker declares quite openly that the privileges of the Assembly of the Estates decrease in proportion as the rights of the province increase.

"Just as it seems to *him* desirable that here *in the Assembly* there should be *freedom of discussion* and that an over-anxious weighing of words should be avoided, it seems to him equally necessary, *in order to maintain this freedom of expression and this frankness of speech*, that *our words* at the time should be judged only by *those for whom they are intended*."

Precisely because freedom of discussion, the speaker concludes, is desirable in our Assembly — and what freedoms would we not find desirable where we are concerned? — precisely for that reason freedom of discussion is not desirable in the province. Because it is desirable that we speak *frankly*, it is still more desirable to keep the province in *thrall* to secrecy. Our words are not *intended* for the province.

One must acknowledge the tact with which the speaker has perceived that by unabridged publication of its debates the Assembly would become a right of the province instead of a privilege of the Assembly of the Estates, that the Assembly, having become an immediate object of the public spirit, would have to decide to be a personification of the latter, and that, having been put in the light of the general consciousness, it would have to renounce its particular nature in favour of the general one.

But whereas the knightly speaker mistakenly regards personal privileges and individual freedoms *vis-à-vis* the nation and the government as general rights, and thereby unquestionably and pertinently

expresses the exclusive spirit of his *estate*, on the other hand he interprets the spirit of the province in an absolutely wrong way by likewise transforming its general demands into personal desires.

Thus the speaker seems to impute to the province a personally passionate curiosity as regards *our words* (i.e., those of prominent persons in the Assembly of the Estates).

We assure him that the province is by no means curious about "the words" of the representatives of the estates as individuals, and only "such" words can they rightly call "their" words. On the contrary, the province demands that the words of the representatives of the estates should be converted into the publicly audible voice of the country.

The question is whether the province should be *conscious of being represented* or not! Should a new mystery of representation be added to the mystery of government? In the government, too, the people is represented. Hence a new representation of the people through the estates is quite meaningless unless its specific character is precisely that in this case matters are not dealt with on behalf of the province but, on the contrary, the province itself deals with them; that the province is not represented in it but rather represents itself. A representation which is divorced from the consciousness of those whom it represents is no representation. What I do not know, I do not worry about. It is a senseless contradiction that the functioning of the state, which primarily expresses the *self-activity* of the individual provinces, takes place without their *formal* co-operation, without their joint *knowledge*; it is a senseless contradiction that my self-activity should consist of acts unknown to me and done by another.

A publication of the Assembly proceedings that depends on the arbitrary ruling of the Assembly of the Estates, however, is worse than none at all, for if the Assembly tells me not what it is in reality, but what it wants to seem to be in my eyes, I shall take it for what it gives itself out to be, for mere semblance, and things are bad when semblance has a legal existence.

Indeed, can even daily, unabridged publication *by printing* be rightly called *unabridged* and *public*? Is there no abridgement in substituting the written for the spoken word, graphic systems for persons, action on paper for real action? Or does publicity consist only in a *real* matter being reported to the public, and not rather in its being reported to the *real public*, i.e., not to an imaginary reading public, but to the living and actually present public?

Nothing is more contradictory than that the *highest public* activity of the province is secret, that in private lawsuits the doors of the court are open to the province, but that in its own lawsuit the province has to remain outside.

In its true consistent meaning, therefore, unabridged publication of the Assembly proceedings can only be *full publicity for the activity of the Assembly*.

Our speaker, however, proceeds to regard the Assembly as a kind of club.

"From *many years' acquaintance*, a *good personal understanding* has developed among most of us in spite of the most diverse views on various matters, a relationship which is *inherited by newcomers*.

"Precisely for that reason we are most of all able to appreciate the *value of our words*, and do so the more frankly as we allow ourselves to be less subject to *external* influences, which could only be useful if they came to us in the form of *well-meaning* counsel, but not in the form of a *dogmatic judgment*, of praise or blame, seeking to influence *our personality* through *public opinion*."

The Herr Speaker appeals to our feelings.

We are so intimate together, we discuss things so openly, we weigh the *value of our* words so exactly; are we to allow our attitude, which is so patriarchal, so distinguished, so convenient, to be changed by the judgment of the province, which perhaps attaches less value to our words?

God help us! The Assembly cannot bear the light of day. We feel more at ease in the darkness of private life. If the whole province has sufficient confidence to entrust its rights to single individuals, it is obvious that these individuals are condescending enough to accept the confidence of the province, but it would be really extravagant to demand that they should repay like for like and trustingly surrender themselves, their achievements, their personalities, to the judgment of the province, which has already pronounced a significant judgment on them. In any case, it is more important that the personality of the representatives of the estates should not be endangered by the province than that the interests of the province should not be endangered by the representatives of the estates.

We want to be both fair and very gracious. It is true that we — and we are a sort of government — permit no dogmatic judgment, no praise or blame, no influence of public opinion on our *persona sacrosancta*, but we do allow *well-meaning counsel*, not in the abstract sense that it means well for the country, but in the fuller-sounding sense that it expresses a passionate tenderness for the members of the estates, a specially high opinion of their excellence.

True, one might think that if publicity is harmful to good understanding among us, then the latter must be harmful to publicity. However this sophistry forgets that the Provincial Assembly is the Assembly of the Estates and not the Assembly of the Province. And who could resist the most convincing of all arguments? If, in accordance with the constitution, the province appoints estates to *represent its general intelligence*, it thereby totally renounces *all its own judgment* and understanding, which are now solely incorporated in the chosen representatives. just as the legend has it that great inventors were put to death or, what is no legend, that they were buried alive in fortresses as soon as they had imparted their secret to the ruler, so the political reason of the province always falls on its own sword as soon as it has made its great invention of the Assembly, but of course to rise again like the phoenix for the next elections.

After these obtrusively emotional descriptions of the dangers threatening the personalities of the estates from outside, i.e., from the province, through publication of the proceedings, the speaker closes this diatribe with the guiding thought that we have traced through his speech up to now.

"*Parliamentary freedom*," a very fine-sounding expression, "is in its first period of development. It must gain by *protection* and *care* that *internal* force and *independence* which are absolutely necessary before it can be exposed without detriment to *external* storms."

Once again the old fatal antithesis of the Assembly as something *internal* and the province as something *external*.

In any case, we have long been of the opinion that *parliamentary freedom* is at the beginning of its beginning, and the above speech has convinced us afresh that the *primitiae studiorum in politicis* [\[D\]](#) have still not been completed. But by that we by no means imply — and the above speech once again confirms our opinion — that the Assembly should be given a still longer time in which to continue its independent ossification in *opposition* to the province. Perhaps by *parliamentary freedom* the speaker understands the freedom of the *old French* parliaments. According to his own admission, a many years' acquaintance

prevails among the Assembly of the Estates, its spirit is even transmitted as a *hereditary disease* to the *homines novi*, yet the time has still not come for publicity? The Twelfth Assembly may give the same reply as the Sixth, only with the more emphatic expression that it is too independent to allow itself to be deprived of the *aristocratic privilege of secret proceedings*.

Of course, the development of *parliamentary* freedom in the old French sense, independence from public opinion, and the stagnation of the caste spirit, advance most thoroughly through isolation, but to warn against precisely this development cannot be premature. A truly political assembly flourishes only under the great protection of the *public spirit*, just as living things flourish only in the *open air*. Only "exotic" plants, which have been transferred to a climate that is foreign to them, require the protection and care of a *greenhouse*. Does the speaker regard the Assembly as an "exotic" plant in the free, serene climate of the Rhine Province?

In view of the fact that our speaker from the knightly estate expounded with almost comic seriousness, with almost melancholy dignity and almost religious pathos, the thesis of the *lofty wisdom* of the Assembly of the Estates, as also of its medieval *freedom* and *independence*, the uninitiated will be surprised to see him sink in the question of the *freedom of the press* from the lofty wisdom of the *Provincial Assembly* to the general *lack of wisdom of the human race*, from the independence and freedom of the privileged social estates he had extolled only just before to the *fundamental lack of freedom and independence of human nature*. We are not surprised to encounter here one of the present-day numerous champions of the Christian-knightly, modern feudal principle, in short the romantic principle.

These gentlemen, because they want to regard freedom not as the natural gift of the universal sunlight of reason, but as the supernatural gift of a specially favourable constellation of the stars, because they regard freedom as merely an *individual property* of certain persons and social estates, are in consequence compelled to include universal reason and universal freedom among the *bad ideas* and phantoms of "*logically constructed systems*". In order to save the special freedoms of privilege, they proscribe the universal freedom of human nature. Since, however, the bad brood of the nineteenth century, and the very consciousness of the modern knights that has been infected by this century, cannot comprehend what is in itself incomprehensible, because devoid of idea, namely, how internal, essential, universal determinations prove to be linked with certain human individuals by external, fortuitous, particular features, without being connected with the human essence, with reason in general, and therefore common to all individuals — because of this they necessarily have recourse to the *miraculous* and the *mystical*. Further, because the *real* position of these gentlemen in the modern state does not at all correspond to the notion they have of that position, because they live in a world *beyond the real one*, and because therefore *imagination* is their head and heart, being dissatisfied with their practical activity, they necessarily have recourse to theory, but to the *theory of the other world*, to *religion*, which in their hands, however, is given a polemical bitterness impregnated with political tendencies and becomes more or less consciously only a holy cloak for very secular, but at the same time fantastic desires.

Thus we shall find that to practical demands our speaker counterposes a mystical religious theory of the imagination, to real theories — a pettily clever, pragmatically cunning wisdom of experience drawn from the most superficial practice, to the human understanding-superhuman holiness, and to the real holiness of ideas-the arbitrariness and disbelief characterising a base point of view. The more aristocratic, more nonchalant, and therefore more sober, language of the speaker from the princely estate is superseded here by emotional affectation and fantastically extravagant unction, which previously withdrew much more

into the background before the feeling of privilege.

"The less it is possible to deny that the press nowadays is a political power, the more erroneous seems to him the equally widespread view that truth and light will emerge from *the struggle between the good and the bad press* and can be expected to become more widely and effectively disseminated. *Man, individually and in the mass, is always one and the same. He is by his nature imperfect and immature and needs education as long as his development continues, and it ceases only with his death.* The art of education, however, does not consist in punishing prohibited actions, but in furthering good influences and keeping away evil ones. It is, however, inseparable from this *human imperfection* that the *siren song of evil* has a powerful effect on the masses and opposes the simple and sober voice of truth as an obstacle which, even if not absolute, is in any case difficult to overcome. The *bad press* appeals only to men's passions; no means are too bad for it when it is a question of attaining its *aim* by arousing passions — that aim being the *greatest possible dissemination of bad principles* and the *greatest possible furtherance of bad frames of mind*; it has at its disposal all the advantages of that most dangerous of all *offensives*, for which there are objectively no restrictions of right and subjectively no laws of morality or even of external decency. On the other hand, the *good press* is *always confined to the defensive*. For the most part its effect can only be that of *defending, restraining and consolidating*, without being able to boast of any significant progress in enemy territory. It is good fortune enough if external obstacles do not render this still more difficult".

We have given this passage in full in order not to weaken its possible emotional impression on the reader.

The speaker has put himself *à la hauteur des principes*. [E] In order to combat *freedom of the press*, the thesis of the *permanent immaturity* of the human race has to be defended. It is sheer tautology to assert that if absence of freedom is men's essence, freedom is contrary to his essence. Malicious sceptics could be daring enough not to take the speaker at his word.

If the immaturity of the human race is the mystical ground for opposing freedom of the press, then the censorship at any rate is a highly reasonable means against the maturity of the human race.

What undergoes development is imperfect. Development ends only with death. Hence it would be truly consistent to kill man in order to free him from this state of imperfection. That at least is what the speaker concludes in order to kill freedom of the press. In his view, true education consists in keeping a person wrapped up in a cradle throughout his life, for as soon as he learns to walk, he learns also to fall, and only by falling does he learn to walk. But if we all remain in swaddling-clothes, who is to wrap us in them? If we all remain in the cradle, who is to rock us? If we are all prisoners, who is to be prison warden?

Man, individually and in the mass, is imperfect by nature. *De principiis non est disputandum*. [E] Granted! What follows from that? The arguments of our speaker are imperfect, governments are imperfect, assemblies are imperfect, freedom of the press is imperfect, every sphere of human existence is imperfect. Hence if one of these spheres ought not to exist because of this imperfection, none of them has the right to exist, man in general has no right to exist.

Given man's fundamental imperfection — let us assume it is true — then we know in advance that all human institutions are imperfect. There is no need to touch on that further, it does not speak for them or against them, it is not their *specific character*, it is not their distinctive mark.

Amid all these imperfections, why should precisely the free press be perfect? Why does an imperfect provincial estate demand a perfect press?

The imperfect requires education. Is not education also human and therefore imperfect? Does not education itself also require education?

If then, by *its very existence*, everything human is imperfect, ought we therefore to lump everything together, have the same respect for everything, good and evil, truth and falsehood? The true conclusion must be that as in looking at a picture I have to leave the spot from which I see only blots of colour but not colours, irregularly intersecting lines but not a drawing, similarly I must abandon the point of view which shows me the world and human relations only in their most external appearance, and recognise that this point of view is unsuitable for judging the value of things; for how could I judge, distinguish things, from a point of view which admits only the one flat idea about the whole universe that everything in it is imperfect? This point of view itself is the most imperfect of all the imperfections it sees around it. We must therefore take the essence of the inner idea as the measure to evaluate the existence of things. Then we shall less allow ourselves to be led astray by a one-sided and trivial experience, since in such cases the result is indeed that all experience ceases, all judgment is abolished, all cows are black.

Rheinische Zeitung
No. 130, Supplement
May 10 1842

Chapter 4: [\[As a privilege of particular individuals or a privilege of the human mind?\]](#)

Footnotes

[\[A\]](#) The crux of the question.

[\[B\]](#) Touch me not!

[\[C\]](#) Thus I wish it, thus I order it; the will takes the place of reason (Juvenal *Satires*, vi, 223).

[\[D\]](#) Primary studies in politics.

[\[E\]](#) On the level of his principles.

[\[F\]](#) There can be no dispute about principles.

Table of Contents: [On Freedom of the Press](#)

Karl Marx

On Freedom of the Press

[As a privilege of particular individuals or a privilege of the human mind?]

From the standpoint of the idea, it is self-evident that freedom of the press has a justification quite different from that of censorship because it is itself an embodiment of the idea, an embodiment of freedom, a positive good, whereas censorship is an embodiment of unfreedom, the polemic of a world outlook of semblance against the world outlook of essence; it has a merely negative nature.

No! No! No! our speaker breaks in. I do not find fault with the semblance, but with the essence. Freedom is the wicked feature of freedom of the press. Freedom creates the possibility of evil. Therefore freedom is evil.

Evil freedom!

"He has stabbed her in the dark forest
And sunk the body in the depths of the Rhine! [\[A\]](#)

But:

"This time I must talk to you,
Lord and master, hear me calmly!" [\[B\]](#)

But does not freedom of the press exist in the land of censorship? The press in general is a realisation of human freedom. Consequently, where is a press there is freedom of the press.

True, in the land of censorship the state has no freedom of the press, but one organ of the state has it, viz., the *government*. Apart from the fact that official government documents enjoy perfect freedom of the press, does not the censor exercise daily an unconditional freedom of the press, if not directly, then indirectly?

Writers are, as it were, his secretaries. When the secretary does not express the opinion of his chief, the latter strikes out the botch. Hence the censorship makes the press.

The censor's deletions are for the press what the straight lines — kus — of the Chinese are for their thought. The censor's kus are the categories of literature, and it is well known that the categories are the typical souls of the whole content.

Freedom is so much the [essence](#) of man that even its opponents implement it while combating its reality; they want to appropriate for, themselves as a most precious ornament what they have rejected as an ornament of human nature.

No man combats freedom; at most he combats the freedom of others. Hence every kind of freedom has always existed, only at one time as a special privilege, at another as a universal right.

The question has now for the first time been given a *consistent meaning*. It is not a question whether freedom of the press ought to exist, for it always exists. The question is whether freedom of the press is a privilege of particular individuals or whether it is a privilege of the human mind. The question is whether a right of one side ought to be a wrong for the other side. The question is whether "*freedom of the mind*" has more right than "*freedom against the mind*".

If, however, the "*free press*" and "*freedom of the press*" as the realisation of "*universal freedom*" are to be rejected, then this applies still more to *ensorship* and the *censored press* as the realisation of a *special freedom*, for how can the *species* be good if the *genus* is bad? If the speaker were consistent he would have to reject not the free press, but the press as a whole. According to him, the press would only be good if it were not a product of freedom, i.e., not a *human* product. Hence in general only *animals* or *gods* would have the right to a press.

Or ought we perhaps — the speaker dare not say it outright — to suppose *divine inspiration* of the government and of the speaker himself?

If a private person boasts of divine inspiration, there is only one speaker in our society who can refute him officially, viz., the *psychiatrist*.

English history, however, has sufficiently well demonstrated how the assertion of divine inspiration from above gives rise to the counter-assertion of divine inspiration from below; Charles I went to the scaffold as the result of divine inspiration from below.

True, our speaker from the knightly estate proceeds, as we shall hear later, to describe censorship and freedom of the press, the censored press and the free press, as *two evils*, but he does not go so far as to admit that the press in general is an *evil*.

On the contrary! He divides the entire press into "*good*" and "*bad*".

About the *bad* press, we are told something incredible: that its aim is badness and the greatest possible dissemination of badness. We pass over the fact that the speaker has too much confidence in our credulity when he demands that we should take his word for it and believe in *badness as a profession*. We merely remind him of the axiom that everything human is imperfect. Will not, therefore, the bad press also be imperfectly bad, and therefore good, and the good press imperfectly good, and therefore bad?

The speaker, however, shows us the reverse side. He asserts that the bad press is better than the good press, for it is always on the *offensive*, whereas the good press is on the *defensive*. But he has himself told us that man's *development* ends only with his death. Of course, he has not told us much by that, he has said nothing but that life ends with death. But if human life is development and the good press is always on the defensive, acting only by "defending, restraining and consolidating" itself, does it not thereby continually oppose development, and therefore life? Hence either this good defensive press is bad, or development is the bad thing. In view of this, the speaker's previous assertion, too, that the aim of the "bad press is the greatest possible dissemination of bad principles and the greatest possible furtherance of bad frames of mind" loses its mystical incredibility in a rational interpretation: the bad feature of the bad press lies in the greatest possible dissemination of principles and the greatest possible furtherance of a frame of mind.

The relation of the good press to the bad press becomes still stranger when the speaker assures us that the

good press is *impotent* and the bad press *omnipotent*, for the former is without effect on the people, whereas the latter has an irresistible effect. For the speaker, the good press and the impotent press are identical. Does he want to say, therefore, that what is good is impotent or that what is impotent is good?

He contrasts the sober voice of the good press to the siren song of the bad press. But surely a sober voice allows of the best and most effective singing. The speaker seems to be acquainted only with the sensuous heat of passion, but not with the hot passion of truth, not with the victory-assured enthusiasm of reason, not the irresistible ardour of moral powers.

Under the frames of mind of the bad press he includes "pride, which recognises no authority in church and state", "envy", which preaches abolition of the aristocracy, and other things, which we shall deal with later. For the time being, let us be satisfied with the question: Whence does the speaker know that this isolated element is the good? If the universal powers of life are bad and we have heard that the bad is omnipotent, that it is what influences the masses, *what* or *who* has still any right to claim to be good? The arrogant assertion is this: my individuality is the good, those few individuals who are in accord with my individuality are the good, and the wicked, bad press refuses to recognise it. The bad press!

If at the beginning the speaker turned his attack on freedom of the press into an attack on freedom in general, here he turns it into an attack on the good. His fear of the bad is seen to be a fear of the good. Hence he founds censorship on a recognition of the bad and a refusal to recognise the good. Do I not despise a man to whom I say in advance: your opponent is bound to be victorious in the struggle, because, although you yourself are a very sober fellow and a very good neighbour, you are a very poor hero; because, although you bear consecrated arms, you do not know how to use them; because, although you and I, both of us, are perfectly convinced of your perfection, the world will never share this conviction; because, although things are all right as regards your intention, they are in a bad way as regards your energy?

Although the speaker's distinction between the good press and the bad press makes any further refutation superfluous, since this distinction becomes entangled in its own contradictions, nevertheless we must not lose sight of the main thing, namely, that the speaker has formulated the question quite incorrectly and has based himself on what he had to prove.

If one wants to speak of two kinds of press, the distinction between them must be drawn from the nature of the press itself, not from considerations lying outside it. The censored press or the free press, one of these two must be the good or the bad press. The debate turns precisely on whether the censored press or the free press is good or bad, i.e., whether it is in the nature of the press to have a free or unfree existence. To make the bad press a refutation of the free press is to maintain that the free press is bad and the censored press good, which is precisely what had to be proved.

Base frames of mind, personal intrigues, infamies, occur alike in the censored and the free press. Therefore the generic difference between them is not that they produce individual products of this or that kind; flowers grow also in swamps. We are concerned here with the essence, the inner character, which distinguishes the censored from the free press.

A free press that is bad does not correspond to its essence. The censored press with its hypocrisy, its lack of character, its eunuch's language, its dog-like tail-wagging, merely realises the inner conditions of its essential nature.

The censored press remains bad even when it turns out good products, for these products are good only

insofar as they represent the free press within the censored press, and insofar as it is not in their character to be products of the censored press. The free press remains good even when it produces bad products, for the latter are deviations from the essential nature of the free press. A eunuch remains a bad human being even when he has a good voice. Nature remains good even when she produces monstrosities.

The essence of the free press is the characterful, rational, moral essence of freedom. The character of the censored press is the characterless monster of unfreedom; it is a civilised monster, a perfumed abortion.

Or does it still need to be proved that freedom of the press is in accord with the essence of the press, whereas censorship contradicts it? Is it not self-evident that external barriers to a spiritual life are not part of the inner nature of this life, that they deny this life and do not affirm it?

In order really to justify censorship, the speaker would have had to prove that censorship is part of the essence of freedom of the press; instead he proves that freedom is not part of man's essence. He rejects the whole genus in order to obtain one good species, for is not freedom after all the generic essence of all spiritual existence, and therefore of the press as well? In order to abolish the possibility of evil, he abolishes the possibility of good and realises evil, for only that which is a realisation of freedom can be humanly good.

We shall therefore continue to regard the censored press as a bad press so long as it has not been proved to us that censorship arises from the very essence of freedom of the press.

But even supposing that censorship and the nature of the press come into being together, although no animal, let alone an intelligent being, comes into the world in chains, what follows from that? That freedom of the press, as it exists from the official viewpoint, that is, the censorship, also needs censorship. And who is to censor the governmental press, if not the popular press?

True, another speaker thinks that the evil of censorship would be removed by being tripled, by the local censorship being put under provincial censorship, and the latter in its turn under Berlin censorship, freedom of the press being made one-sided, and the censorship many-sided. So many roundabout ways merely to live! Who is to censor the Berlin censorship? Let us therefore return to our speaker.

At the very beginning, he informed us that no light would emerge from the struggle between the good and the bad press. But, we may now ask, does he not want to make this *useless* struggle permanent? According to his own statement, is not the struggle itself between the censorship and the press a struggle between the good and the bad press?

Censorship does not abolish the struggle, it makes it one-sided, it converts an open struggle into a hidden one, it converts a struggle over principles into a struggle of principle without power against power without principle. The true censorship, based on the very essence of freedom of the press, is criticism. This is the tribunal which freedom of the press gives rise to of itself. Censorship is criticism as a monopoly of the government. But does not criticism lose its rational character if it is not open but secret, if it is not theoretical but practical, if it is not above parties but itself a party, if it operates not with the sharp knife of reason but with the blunt scissors of arbitrariness, if it only exercises criticism but will not submit to it, if it disavows itself during its realisation, and, finally, if it is so uncritical as to mistake an individual person for universal wisdom, peremptory orders for rational statements, ink spots for patches of sunlight, the crooked deletions of the censor for mathematical constructions, and crude force for decisive arguments?

During our exposal, we have shown how the fantastic, unctuous, soft-hearted mysticism of the speaker turns into the hard-hearted-ness of pettifogging mental pragmatism and into the narrowmindedness of an unprincipled empirical calculation. In his arguments on the relation *between the censorship law and the press law, between preventive and repressive measures*, he spares us this trouble by proceeding himself to make a *conscious application* of his mysticism.

"Preventive or repressive measures, censorship or press law, this alone is the question at issue, in which connection it would not be inexpedient to examine somewhat more closely the dangers which have to be removed on one side or the other. Whereas censorship seeks to prevent what is evil, the press law seeks by punishment to guard against its repetition. Like all human institutions, both are imperfect, but the question here is which is the *less* so. Since it is a matter of purely spiritual things, one problem — indeed the most important for both of them — can never be solved. That is the problem of finding a form which expresses the intention of the legislator so clearly and definitely that right and wrong seem to be sharply separated and all arbitrariness removed. But what is arbitrariness except acting according to individual discretion? And how are the effects of individual discretion to be removed where purely spiritual things are concerned? To find the guiding line, so sharply drawn that inherent in it is the necessity of having *to be applied* in every single case in the meaning intended by the legislator, that is the philosopher's stone, which has not been discovered so far and is hardly likely to be. Hence arbitrariness, if by that one understands acting according to individual discretion, is inseparable both from censorship and from the *press law*. Therefore we have to consider both in their necessary imperfection and its consequences. If the censorship suppresses much that is good, the press law will not be capable of preventing much that is bad. Truth, however, cannot be suppressed for long. The more obstacles are put in its way, the more keenly it pursues its goal, and the more resoundingly it achieves it. But the bad word, like Greek fire, cannot be stopped after it has left the ballista, and is incalculable in its effects, because for it nothing is holy, and it is inextinguishable because it finds nourishment and means of propagation in human hearts."

The speaker is not fortunate in his comparisons. He is overcome with a poetic exultation as soon as he begins to describe the omnipotence of the bad. We have already heard how the voice of the good has an impotent, because sober, sound when pitted against the *siren song of evil*. Now evil even becomes *Greek fire*, whereas the speaker has nothing at all with which to compare truth, and if we were to put his "sober" words into a comparison, truth would be at best a *flint*, which scatters sparks the more brightly the more it is struck. A fine argument for slave traders — to bring out the Negro's human nature by flogging, an excellent maxim for the legislator — to issue repressive laws against truth so that it will the more keenly pursue its goal. The speaker seems to have respect for truth only when it becomes *primitive and spontaneous* and is manifested *tangibly*. The more barriers you put in the way of truth, the more vigorous is the truth you obtain! Up with the barriers!

But let us allow the sirens to sing!

The speaker's mystical "*theory of imperfection*" has at last borne its earthly fruits; it has thrown its moonstones at us; let us examine the moonstones!

Everything is imperfect. The censorship is imperfect, the press law is imperfect. That determines their essence. There is nothing more to say about the *correctness of their idea*, nothing remains for us to do except, from the standpoint of the very lowest empiricism, to find out by calculating probabilities on which side the most dangers lie. It is purely a difference of time whether measures are taken to prevent the evil itself by means of censorship or repetition of the evil by means of the press law.

One sees how the speaker, by the empty phrase about "human imperfection", manages to evade the essential, internal, characteristic difference between censorship and press law and transforms the controversy from a question of principle into a fairground dispute as to whether more bruised noses result from the censorship or from the press law.

If, however, a contrast is drawn between the press law and the censorship law, it is, in the first place, not a question of their consequences, but of their basis, not of their individual application, but of their legitimacy in general. Montesquieu has already taught us that despotism is more convenient to apply than legality and Machiavelli asserts that for princes the bad has better consequences than the good. Therefore, if we do not want to confirm the old Jesuitical maxim that a good end — and we doubt even the goodness of the end — justifies bad means, we have above all to investigate whether censorship by its essence is a *good* means.

The speaker is right in calling the censorship law a preventive measure, it is a precautionary measure of the police against freedom, but he is wrong in calling the press law a repressive measure. It is the rule of freedom itself which makes itself the yardstick of its own exceptions. The censorship measure is not a law. The press law is not a measure.

In the press law, freedom punishes. In the censorship law, freedom is punished. The censorship law is a law of suspicion against freedom. The press law is a vote of confidence which freedom gives itself. The press law punishes the abuse of freedom. The censorship law punishes freedom as an abuse. It treats freedom as a criminal, or is it not regarded in every sphere as a degrading punishment to be under police supervision? The censorship law has only the *form* of a law. The press law is a *real* law.

The press law is a *real law* because it is the positive existence of freedom. It regards freedom as the *normal* state of the press, the press as the mode of existence of freedom, and hence only comes into conflict with a press offence as an exception that contravenes its own rules and therefore annuls itself. Freedom of the press asserts itself as a press law, against attacks on freedom of the press itself, i.e., against press offences. The press law declares freedom to be inherent in the nature of the criminal. Hence what he has done against freedom he has done against himself and this self-injury appears to him as a *punishment* in which he sees a recognition of his freedom.

The press law, therefore, is far from being a repressive measure against freedom of the press, a mere means of preventing the repetition of a crime through fear of punishment. On the contrary, the *absence of press legislation* must be regarded as an exclusion of freedom of the press from the sphere of legal freedom, for legally recognised freedom exists in the state as law. Laws are in no way repressive measures against freedom, any more than the law of gravity is a repressive measure against motion, because while, as the law of gravitation, it governs the eternal motions of the celestial bodies, as the law of falling it kills me if I violate it and want to dance in the air. Laws are rather the positive, clear, universal norms in which freedom has acquired an impersonal, theoretical existence independent of the arbitrariness of the individual. A statute-book is a people's bible of freedom.

Therefore the *press law* is *the legal recognition of freedom of the press*. It constitutes right, because it is the positive existence of freedom. It must therefore exist, even if it is never put into application, as in North America, whereas censorship, like slavery, can never become lawful, even if it exists a thousand times over as a law.

There are no actual preventive laws. Law prevents only as a *command*. It only becomes *effective* law

when it is infringed, for it is true law only when in it the unconscious natural law of freedom has become conscious state law. Where the law is real law, i.e., a form of existence of freedom, it is the real existence of freedom for man. Laws therefore, cannot prevent a man's actions, for they are indeed the inner laws of life of his action itself, the conscious reflections of his life. Hence law withdraws into the background in the face of man's life as a life of freedom, and only when his actual behaviour has shown that he has ceased to obey the natural law of freedom does law in the form of state law compel him to be free, just as the laws of physics confront me as something alien only when my life has ceased to be the life of these laws, when it has been struck *by illness*. Hence a *preventive law* is a *meaningless contradiction*.

A preventive law, therefore, has within it no *measure*, no *rational rule*, for a rational rule can only result from the nature of a thing, in this instance of freedom. It is *without measure*, for if prevention of freedom is to be effective, it must be as all-embracing as its object, i.e., unlimited. A preventive law is therefore the contradiction of an *unlimited limitation*, and the boundary where it ceases is fixed not by necessity, but by the fortuitousness of arbitrariness, as the censorship daily demonstrates *ad oculos*. [C]

The human body is mortal by nature. Hence illnesses are inevitable. Why does a man only go to the doctor when he is ill, and not when he is well? Because not only the illness, but even the doctor is an evil. Under constant medical tutelage, life would be regarded as an evil and the human body as an object for treatment by medical institutions. Is not death more desirable than life that is a mere preventive measure against death? Does not life involve also free movement? What is any illness except life that is hampered in its freedom? A perpetual physician would be an illness in which one would not even have the prospect of dying, but only of living. Let life die; death must not live. Has not the spirit more right than the body? Of course, this right has often been interpreted to mean that for minds capable of free motion physical freedom of movement is even harmful and therefore they are to be deprived of it. The starting point of the censorship is that illness is the normal state, or that the normal state, freedom, is to be regarded as an illness. The censorship continually assures the press that it, the press, is ill; and even if the latter furnishes the best proofs of its bodily health, it has to allow itself to be treated. But the censorship is not even a learned physician who applies different internal remedies according to the illness. It is a country surgeon who knows only a single mechanical panacea for everything, the scissors. It is not even a surgeon who aims at restoring my health, it is a surgical aesthete who considers superfluous everything about my body that displeases him, and removes whatever he finds repugnant; it is a quack who drives back a rash so that it is not seen, without caring in the least whether it then affects more sensitive internal parts.

You think it wrong to put birds in cages. Is not the cage a preventive measure against birds of prey, bullets and storms? You think it barbaric to blind nightingales, but it does not seem to you meaningless at all barbaric to put out the eyes of the press with the sharp pens of the censorship. You regard it as despotic to cut a free person's hair against his will, but the censorship daily cuts into the flesh of thinking people and allows only bodies without hearts, submissive bodies which show no reaction, to pass as healthy!

Rheinische Zeitung
No. 132, Supplement
May 12 1842

Chapter 5: [\[Censorship\]](#)

Footnotes

[A] L. Uhland, *Die Rache* (paraphrased).

[B] J. Goethe, *Der Zauberlehrling*.

[C] Before one's eyes.

Table of Contents: [On Freedom of the Press](#)

Karl Marx

On Freedom of the Press

[Censorship]

We have shown how the press law expresses a right and the censorship law a wrong. The censorship itself, however, admits that it is not an end in itself, that it is not something good in and for itself, that its basis therefore is the principle: "The end justifies the means." But an end which requires unjustified means is no justifiable end, and could not the press also adopt the principle and boast: "The end justifies the means"?

The censorship law, therefore, is not a law, it is a police measure; but it is a *bad police measure*, for it does not achieve what it intends, and it does not intend what it achieves.

If the censorship law wants to *prevent freedom* as something objectionable, the result is precisely the opposite. In a country of censorship, every forbidden piece of printed matter, i.e., printed without being censored, is an event. It is considered a martyr, and there is no martyr without a halo and without believers. It is regarded as an exception, and if freedom can never cease to be of value to mankind, so much the more valuable is an exception to the general lack of freedom. Every mystery has its attraction. Where public opinion is a mystery to itself, it is won over from the outset by every piece of writing that formally breaks through the mystical barriers. The censorship makes every forbidden work, whether good or bad, into an extraordinary document, whereas freedom of the press deprives every written work of an externally imposing effect.

If the censorship is *honest* in its intention, it would like to prevent arbitrariness, but it makes arbitrariness into a law. No danger that it can avert is greater than itself. The mortal danger for every being lies in losing itself. Hence lack of freedom is the real mortal danger for mankind. For the time being, leaving aside the moral consequences, bear in mind that you cannot enjoy the advantages of a free press without putting up with its inconveniences. You cannot pluck the rose without its thorns! And what do you lose with a free press?

The free press is the ubiquitous vigilant eye of a people's soul, the embodiment of a people's faith in itself, the eloquent link that connects the individual with the state and the world, the embodied culture that transforms material struggles into intellectual struggles and idealises their crude material form. It is a people's frank confession to itself, and the redeeming power of confession is well known. It is the spiritual mirror in which a people can see itself, and self-examination is the first condition of wisdom. It is the spirit of the state, which can be delivered into every cottage, cheaper than coal gas. It is all-sided, ubiquitous, omniscient. It is the ideal world which always wells up out of the real world and flows back into it with ever greater spiritual riches and renews its soul.

In the course of our exposal we have shown that censorship and press law are as different as arbitrariness and freedom, as formal law and actual law. But what holds good of the essence, holds good also of the appearance. What rightly holds good of both, holds good also of *their application*. Just as a press law is different from a censorship law, so the *judge's* attitude to the press *differs* from the *attitude of the censor*.

Of course, our speaker, whose eyes are fixed on the heavens, sees the earth far below him as a

contemptible heap of dust, so that he has nothing to say about any flowers except that they are dusty. Here too, therefore, he sees only two measures which are *equally arbitrary* in their application, for arbitrariness is acting according to individual discretion, and the latter, he says, is inseparable from spiritual things, etc., etc. If the understanding of spiritual things is individual, how can one spiritual view be more right than another, the opinion of the censor more right than the opinion of the author? But we understand the speaker. It is notable that he goes out of his way to describe both censorship and press law as being without right in their application, in order to prove the right of the censorship, for since he knows everything in the world is imperfect, the only question for him is whether arbitrariness should be on the side of the people or on the side of the government.

His *mysticism* turns into the *licence* of putting *law* and *arbitrariness* on the same level and seeing only a formal difference where moral and legal opposites are concerned, for his polemic is directed not against the *press law*, but against *law in general*. Or is there any law which is necessarily such that in *every single case* it *must* be applied as the legislator intended and all *arbitrariness absolutely* excluded? Incredible audacity is needed to call such a meaningless task the *philosopher's stone*, since it could only be put forward by the most extreme ignorance. The law is universal. The case which has to be settled in accordance with the law is a particular case. To include the particular in the universal involves a judgment. The judgment is problematic. The law requires also a *judge*. If laws applied themselves, courts would be superfluous.

But everything human is imperfect! Therefore, *edite, bibite!* [A] Why do you want judges, since judges are human? Why do you want laws, since laws can only be executed by human beings, and all human operations are imperfect? Submit yourselves then to the goodwill of your superiors! Rhenish justice, like that of Turkey, is imperfect! Therefore, *edite, bibite!*

What a difference there is between a judge and a censor!

The censor has no law but his superiors. The judge has no superiors but the law. The judge, however, has the duty of interpreting the law, as *he understands* it after conscientious examination, in order to apply it in a particular case. The censor's duty is to understand the law as *officially interpreted* for him in a particular case. The independent judge belongs neither to me nor to the government. The dependent censor is himself a government organ. In the case of the judge, there is involved at most the unreliability of an individual intellect, in the case of the censor the unreliability of an individual character. The judge has a *definite* press offence put before him; confronting the censor is the spirit of the press. The judge judges my act according to a definite law; the censor not only punishes the crime, he *makes* it. If I am brought before the court, I am accused of disobeying an existing law, and for a law to be violated it must indeed exist. Where there is no press law there is no law which can be violated by the press. The censorship does not accuse me of violating an existing law. It condemns my opinion because it is not the opinion of the censor and his superiors. My openly performed act, which is willing to submit itself to the world and its judgment, to the state and its law, has sentence passed on it by a hidden, purely negative power, which cannot give itself the form of law, which shuns the light of day, and which is not bound by any general principles.

A censorship law is an impossibility because it seeks to punish not offences but opinions, because it cannot be anything but a *formula for the censor*, because no state has the courage to put in general legal terms what it can carry out in practice through the agency of the censor. For that reason, too, the operation of the censorship is entrusted not to the courts but to the police.

Even if censorship were in fact the same thing as justice, in the first place this would remain a fact without being a necessity. But, further, freedom includes not only what my life is, but equally *how* I live, not only that I do what is free, but also that I do it freely. Otherwise what difference would there be between an architect and a beaver except that the beaver would be an architect with fur and the architect a beaver without fur?

Our speaker returns superfluously once again to the effects of freedom of the press in the countries where it actually exists. Since we have already dwelt on this subject at length, we shall here only touch further on the *French* press. Apart from the fact that the defects of the French press are the defects of the French nation, we find that the evil is not where the speaker looks for it. The French press is not too free; it is not free enough. It is true that it is not subject to a spiritual censorship, but it is subject to a material censorship, in the shape of high money sureties. It operates materially precisely because it is taken out of its proper sphere and drawn into the sphere of large trade speculations. Moreover, large trade speculations are a matter for large towns. Hence the French press is concentrated at few points, and if a material force has a demoniac effect when concentrated at few points, why should this not apply to a spiritual force also?

If, however, you are bent on judging freedom of the press not by its idea, but by its historical existence, why do you not look for it where it historically exists? Naturalists seek by experiment to reproduce a natural phenomenon in its purest conditions. You do not need to make any experiments. You find the natural phenomenon of freedom of the press in *North America* in its purest, most natural form. But if there are great historical foundations for freedom of the press in North America, those foundations are still greater in Germany. The literature of a people, and the intellectual culture bound up with it, are indeed not only the direct historical foundations of the press, but are the latter's history itself. And what people in the world can boast of these most immediate historical foundations for freedom of the press more than the German people can?

But, our speaker again breaks in, woe to Germany's morals if its press were to become free, for freedom of the press produces "an inner *demoralization*, which seeks to undermine faith in man's higher purpose and thereby the basis of true civilisation".

It is the *censored press* that has a *demoralizing* effect. Inseparable from it is the most powerful vice, hypocrisy, and from this, its basic vice, come all its other defects, which lack even the rudiments of virtue, and its vice of passivity, loathsome even from the aesthetic point of view. The government hears only *its own voice*, it knows that it hears only its own voice, yet it harbours the illusion that it hears the voice of the people, and it demands that the people, too, should itself harbour this illusion. For its part, therefore, the people sinks partly into political superstition, partly into political disbelief, or, completely turning away from political life, becomes a *rabble of private individuals*.

Since the press daily praises the government-inspired creations in the way that God spoke of His Creations only on the Sixth day: "And, behold, it was very good", and since, however, one day necessarily contradicts the other, the press lies continually and has to deny even any consciousness of lying, and must cast off all shame.

Since the nation is forced to regard free writings as unlawful, it becomes accustomed to regard what is unlawful as free, freedom as unlawful and what is lawful as unfree. In this way censorship kills the state spirit.

But our speaker is afraid of freedom of the press owing to his concern for "*private persons*". He overlooks that censorship is a permanent attack on the rights of private persons, and still more on ideas. He grows passionate about the danger to individual persons, and ought we not to grow passionate about the danger threatening society as a whole?

We cannot draw a sharper distinction between his view and ours than by contrasting his definitions of "bad frames of mind" to ours.

A bad frame of mind, he says, is "pride, which recognises no authority in church and state". And ought we not to regard as a bad frame of mind the refusal to recognise the authority of reason and law?

"It is envy which preaches abolition of everything that the rabble calls aristocracy."

But we say, it is envy which wants to abolish the eternal aristocracy of human nature, freedom, an aristocracy about which even the rabble can have no doubt.

"It is the malicious gloating which delights in personalities, whether lies or truth, and imperiously demands publicity so that no scandal of private life will remain hidden."

It is the malicious gloating which extracts tittle-tattle and personalities from the great life of the peoples, ignores historical reason and serves up to the public only the scandals of history; being quite incapable of judging the essence of a matter, it fastens on single aspects of a phenomenon and on individuals, and imperiously demands mystery so that every blot on public life will remain hidden.

"It is the impurity of the heart and imagination which is titillated by obscene pictures."

It is the impurity of the heart and imagination which is titillated by obscene pictures of the omnipotence of evil and the impotence of good, it is the imagination which takes pride in sin, it is the impure heart which conceals its secular arrogance in mystical images.

"It is despair of one's own salvation which seeks to stifle the voice of conscience by denial of God."

It is despair of one's own salvation which makes personal weaknesses into weaknesses of mankind, in order to rid one's own conscience of them; it is despair of the salvation of mankind which prevents mankind from obeying its innate natural laws and preaches the necessity of immaturity; it is hypocrisy which shelters behind God without believing in His reality and in the omnipotence of the good; it is self-seeking which puts personal salvation above the salvation of all.

These people doubt mankind in general but canonise individuals. They draw a horrifying picture of human nature and at the same time demand that we should bow down before the holy image of certain privileged individuals. We know that man singly is weak, but we know also that the whole is strong.

Finally, the speaker recalled the words proclaimed from the branches of the tree of knowledge for whose fruits we negotiate today as *then*:

"Ye shall not surely die, in the day that ye eat thereof, then your eyes shall be opened, and ye shall be as gods, knowing good and evil."

Although we doubt that the speaker has eaten of the tree of knowledge, and that *we* (the Rhine Province Assembly of the Estates) *then* negotiated with the devil, about which at least Genesis tells us nothing, nevertheless we concur with the view of the speaker and merely remind him that the devil *did not lie to*

us then, for God himself says: "Behold, the man is become as one of us, to know good and evil."

We can reasonably let the speaker's own words be the epilogue to this speech:

"*Writing and speaking are mechanical accomplishments.*"

However much our readers may be tired of these "mechanical accomplishments", we must, for the sake of completeness, let the urban *estate*, after the princely and knightly estates, also give vent to its feelings against freedom of the press. We are faced here with the opposition of the *bourgeois*, not of the *citoyen*.

The speaker from the urban estate believes that he joins Sieyès in making the philistine remark:

"Freedom of the press is a *fine thing*, so long as *bad persons* do not meddle in it." "Against that no proven remedy has yet been found", etc., etc.

The point of view which calls freedom of the press *a thing* deserves praise at least on account of its naively. This speaker can be reproached with anything at all, but not with lack of sobriety or excess of imagination.

So freedom of the press is a fine thing, and something which embellishes the sweet customary mode of life, a pleasant, worthy thing. But there are also bad persons, who misuse speech to tell lies, the brain to plot, the hands to steal, the feet to desert. Speech and thought, hands and feet would be fine things — good speech, pleasant thought, skilful hands, most excellent feet — if only there were no bad persons to misuse them! No remedy against that has yet been found.

"Sympathy for the constitution and freedom of the press must necessarily be weakened when it is seen that they are bound up with eternally changeable conditions in that country" (France) "and with an alarming uncertainty about the future.

When for the first time the discovery in the science of the universe was made that the earth is a *mobile perpetuum*, many a phlegmatic German must have taken a tight hold of his nightcap and sighed over the eternally changeable conditions of his Fatherland, and an alarming uncertainty about the future must have made him dislike a house that turned upside down at every moment.

Rheinische Zeitung
No. 135, Supplement
May 15 1842

Chapter 6: [\[Freedom in General\]](#)

Footnotes

[\[A\]](#) Eat, drink! (Words from a German student song).

Table of Contents: [On Freedom of the Press](#)

Karl Marx

On Freedom of the Press

[Freedom in General]

Freedom of the press is as little *responsible* for the "changeable conditions" as the astronomer's telescope is for the unceasing motion of the universe. Evil astronomy! What a fine time that was when the earth, like a respectable townsman, still sat in the centre of the universe, calmly smoked its clay pipe, and did not even have to put on the light for itself, since the sun, moon and stars like so many obedient night lamps and "fine things" revolved around it.

"He who never destroys what he has built, ever stands
On this terrestrial world, which itself never stands still,"
says Hariri, who is no Frenchman by birth, but an Arab." [\[A\]](#)

The *estate* of the speaker finds expression very definitely in the thought:

"The true, honest patriot is unable to suppress his feeling that constitution and freedom of the press exist not for the welfare of the people, but to satisfy the ambition of individuals and for the domination of parties."

It is well known that a certain kind of psychology explains big things by means of small causes and, correctly sensing that everything for which man struggles is a matter of his interest, arrives at the incorrect opinion that there are only "petty" interests, only the interests of a stereotyped self-seeking. Further, it is well known that this kind of psychology and knowledge of mankind is to be found particularly in *towns*, where moreover it is considered the sign of a clever mind to see through the world and perceive that behind the passing clouds of ideas and facts there are quite small, envious, intriguing manikins, who pull the strings setting everything in motion. However, it is equally well known that if one looks too closely into a glass, one bumps *one's own head*, and hence these clever people's knowledge of mankind and the universe is primarily a mystified bump of their own heads.

Half-heartedness and indecision are also characteristic of the speaker's estate.

"His feeling of independence inclines him to favour freedom of the press" (in the sense of the mover of the motion), "but he must listen to the voice of reason and experience."

If the speaker had said in conclusion that while his reason disposed him in favour of freedom of the press his feeling of dependence set him against it, his speech would have been a perfect genre picture of urban reaction.

"He who has a tongue and does not speak,
Who has a sword and does not fight,
What is he indeed but a wretched wight?"

We come now to the *defenders of press freedom* and begin with the *main motion*. We pass over the more general material, which is aptly and well expressed in the introductory words of the motion, in order at once to stress the peculiar and characteristic standpoint of this speech.

The mover of the motion desires that *freedom of the press* should not be excluded from the *general freedom to carry on a trade*, a state of things that still prevails, and by which the inner contradiction appears as a classical example of inconsistency.

"The work of arms and legs is free, but that of the brain is under tutelage. Of cleverer brains no doubt? God forbid, that does not come into question as far as the censors are concerned. To him whom God gives an official post, He gives also understandingly!"

The first thing that strikes one is to see *freedom of the press* included under *freedom of trade*. However, we cannot simply reject the speaker's view. *Rembrandt* painted the Madonna as a Dutch peasant woman; why should our speaker not depict freedom in a form which is dear and familiar to him?

No more can we deny that the speaker's point of view has a certain *relative* truth. If the press *itself* is regarded *merely* as a trade, then, as a trade carried on by means of the brain, it deserves greater freedom than a trade carried on by means of arms and legs. The emancipation of arms and legs only becomes humanly significant through the emancipation of the brain, for it is well known that arms and legs become human arms and legs only because of the head which they serve.

Therefore, however peculiar the speaker's point of view may appear at first glance, we must absolutely prefer it to the empty, nebulous and blurry arguments of those German liberals who think freedom is honoured by being placed in the starry firmament of the imagination instead of on the solid ground of reality. It is in part to these exponents of the imagination, these sentimental enthusiasts, who shy away from any contact of their ideal with ordinary reality as a profanation, that we Germans owe the fact that freedom has remained until now a fantasy and sentimentality.

Germans are in general inclined to sentiment and high-flown extravagance, they have a weakness for music of the blue sky. It is therefore gratifying when the great problem of the idea is demonstrated to them from a tough, real standpoint derived from the immediate environment. Germans are by nature most devoted, servile and respectful. Out of sheer respect for ideas they fail to realise them. They make the worship of them into a cult, but they do not cultivate them. Hence the way adopted by the speaker seems suitable for *familiarising* Germans with his ideas, for showing them that it is not a question here of something inaccessible to them, but of their immediate interests, suitable for translating the language of the gods into that of man.

We know that the Greeks believed that in the Egyptian, Lydian and even Scythian gods they could recognise their Apollo, their Athena, their Zeus, and they disregarded the specific features of the foreign cults as subsidiary. It is no crime, therefore, if the German takes the goddess of freedom of the press, a goddess unknown to him, for one of his familiar goddesses, and accordingly calls it freedom of trade or freedom of property.

Precisely because we are able to acknowledge and appreciate the speaker's point of view, we *criticise* it the more severely.

"One could very well imagine the continued existence of crafts side by side with freedom of the press, because trade based on brain work could require a *higher degree of skill*, putting it on the same level as the seven free arts of old; but the continued unfreedom of the press alongside freedom of trade is a sin against the Holy Ghost."

Of course! The lower form of freedom is obviously considered to be without rights if the higher form has no rights. The right of the individual citizen is a folly if the right of the state is not recognised. If freedom in general is rightful, it goes without saying that a particular form of freedom is the more rightful as freedom has achieved in it a finer and better-developed existence. If the *polyp* [jellyfish] has a right to existence because the life of nature is at least dimly evident in it, how much more so the lion in which life rages and roars?

However correct the conclusion that the existence of a higher form of right can be considered proved by the existence of a lower form, the *application* is wrong when it makes the lower sphere a *measure* of the higher and turns its laws, reasonable within their own limits, into caricatures by claiming that they are not laws of their own sphere, but of a higher one. It is as if I wanted to compel a giant to live in the house of a pigmy.

Freedom of trade, freedom of property, of conscience, of the press, of the courts, are all *species* of one and the same genus, of *freedom without any specific name*. But it is quite incorrect to forget the difference because of the unity and to go so far as to make a *particular species* the measure, the standard, the sphere of other species. This is an *intolerance* on the part of one species of freedom, which is only prepared to tolerate the existence of others if they renounce themselves and declare themselves to be its vassals.

Freedom of trade is precisely freedom of trade and no other freedom because within it the nature of the trade develops unhindered according to the inner rules of its life. Freedom of the courts is freedom of the courts if they follow their own inherent laws of right and not those of some other sphere, such as religion. Every particular sphere of freedom is the freedom of a particular sphere, just as every particular mode of life is the mode of life of a particular nature. How wrong it would be to demand that the lion should adapt himself to the laws of life of the polyp! How false would be my understanding of the interconnection and unity of the bodily organism if I were to conclude: since arms and legs function in their specific way, the eye and ear — organs which take man away from his individuality and make him the mirror and echo of the universe — must have a still greater right to activity, and consequently must be *intensified* arm-and-leg activity.

As in the universe, each planet, while turning on its own axis, moves only around the sun, so in the system of freedom each of its worlds, while turning on its own axis, revolves only around the central sun of freedom. To make freedom of the press a variety of freedom of trade is a defence that kills it before defending it, for do I not abolish the freedom of a particular character if I demand that it should be free in the manner of a different character? Your freedom is not my freedom, says the press to a trade. As you obey the laws of your sphere, so will I obey the laws of my sphere. To be free in your way is for me identical with being unfree, just as a cabinet-maker would hardly feel pleased if he demanded freedom for his craft and was given as equivalent the freedom of the philosopher.

Let us lay bare the thought of the speaker. What is freedom? He replies: *Freedom of trade*, which is as if a student, when asked what is freedom, were to reply: *It is freedom to be out at night*.

With as much right as freedom of the press, one could include every kind of freedom in freedom of trade. The judge practises the trade of law, the preacher that of religion, the father of a family that of bringing up children. But does that express the essence of legal, religious and moral freedom?

One could also put it the other way round and call freedom of trade merely *a variety of freedom of the*

press. Do craftsmen work only with hands and legs and not with the brain as well? Is the language of words the only language of thought? Is not the language of the mechanic through the steam-engine easily perceptible to my ear, is not the language of the bed manufacturer very obvious to my back, that of the cook comprehensible to my stomach? Is it not a contradiction that all these varieties of freedom of the press are permitted, the sole exception being the one that speaks to my intellect through the medium of printer's ink?

In order to defend, and even to understand, the freedom of a particular sphere, I must proceed from its essential character and not its external relations. But is the press true to its character, does it act in accordance with the nobility of its nature, *is the press* free which degrades itself to the level of a trade? The writer, of course, must earn in order to be able to live and write, but he must by no means live and write to earn.

When *Béranger* sings:

Je ne vis que pour faire des chansons,
Si vous m'ôtez ma place Monseigneur
Je ferai des chansons pour vivre.

[I live only to compose songs.
If you dismiss me, Monseigneur,
I shall compose songs in order to live.]

This threat contains the ironic admission that the poet deserts his proper sphere when for him poetry becomes a means.

The writer does not at all look on his work as a *means*. It is an *end in itself*, it is so little a means for him himself and for others that, if need be, he sacrifices *his* existence to *its* existence. He is, in another way, like the preacher of religion who adopts the principle: "Obey God rather than man", including under man himself with his human needs and desires. On the other hand, what if a tailor from whom I had ordered a Parisian frock-coat were to come and bring me a Roman toga on the ground that it was more in keeping with the eternal law of beauty!

The primary freedom of the press lies in not being a trade. The writer who degrades the press into being a material means deserves as punishment for this internal unfreedom the external unfreedom of censorship, or rather his very existence is his punishment.

Of course, the press exists also as a trade, but then it is not the affair of writers, but of printers and booksellers. However, we are concerned here not with the freedom of trade of printers and booksellers, but with freedom of the press.

Indeed, our speaker does not stop at regarding the right to freedom of the press proved because of freedom of trade; he demands that freedom of the press, instead of being subject to its own laws, should be subject to the laws of freedom of trade. He even joins issue with the spokesman of the commission, who defends a higher view of freedom of the press, and he puts forward demands which can only produce a comic effect, for it becomes comic when the laws of a lower sphere are applied to a higher one, just as, conversely, it has a comic effect when children become passionate.

"He speaks of *authorised* and *unauthorised* authors. He understands by this that even in the sphere of

freedom of trade the exercise of a right that has been granted is always bound up with some condition which is more or less difficult to fulfil, depending on the occupation in question. Obviously, masons, carpenters and master builders have to fulfil conditions from which most other trades are exempt." "His motion concerns a right in *particular*, not in *general*."

First of all, *who* is to grant *authority*? Kant would not have admitted Fichte's authority as a philosopher, Ptolemy would not have admitted that Copernicus had authority as an astronomer, nor Bernard of Clairvaux Luther's authority as a theologian. Every man of learning regards his critics as "*unauthorised authors*". Or should the unlearned decide who should have the authority of a man of learning? Obviously the judgment would have to be left to the unauthorised authors, for the authorised cannot be judges in their own case. Or should authority be linked with *estate*? The cobbler Jakob Böhme was a great philosopher. [B] Many a philosopher of repute is merely a great cobbler.

By the way, when speaking of authorised or unauthorised authors, to be consistent one must not rest content with distinguishing between individual *persons*, one must divide the press as a trade into *various trades* and draw up different trade certificates for the different spheres of literary activity. Or ought the authorised writer to be able to write about everything? From the outset, the cobbler has more authority than the lawyer to write about leather. The day-labourer has just as much authority as the theologian to write about whether one should work or not on holidays. If, therefore, authority is linked with special objective conditions, every citizen will be at one and the same time an authorised and an unauthorised writer, authorised in matters concerning his profession, and unauthorised in all others.

Apart from the fact that in this way the world of the press, instead of being a bond uniting the nation, would be a sure means of dividing it, that the difference between the estates would thus be fixed intellectually, and the history of literature would sink to the level of the natural history of the particular intelligent breeds of animals; apart from the disputes over the dividing lines between them and conflicts which could neither be settled nor avoided; apart from the fact that lack of talent and narrow-mindedness would become a law for the press, for the particular can be seen intellectually and freely only in connection with the whole and therefore not in separation from it — apart from all this, since reading is as important as writing, there would have to be *authorised* and *unauthorised readers*, a consequence which was drawn in Egypt, where the priests, the authorised authors, were at the same time the sole authorised readers. And it is highly expedient that only the authorised authors should be given authority to buy and read their own works.

What inconsistency If privilege prevails, the government has every right to maintain that it is the *sole authorised author* as regards what it does or does not do. For if you consider yourself authorised as a citizen to write not only about your particular estate, but about what is most general, viz., the state, should not other mortals, whom you wish to exclude, be authorised as human beings to pass judgment on a very particular matter, viz., *your authority* and your writings?

The result would be the comical contradiction that the authorised author might write without censorship about the state, but the unauthorised author might write about the authorised author only by permission of the censorship.

Freedom of the press will certainly not be achieved by a crowd of official writers being recruited by you from your ranks. The authorised authors would be the *official* authors, *the struggle between censorship and freedom of the press would be converted into a struggle between authorised and unauthorised writers.*

Hence a member of the fourth estate correctly replies to this:

"If some restriction on the press must still exist, let it be equal for all parties, that is, that in this respect no one class of citizens is allowed more rights than another".

The censorship holds us all in subjection, just as under a despotic regime all are equal, if not in value, then in absence of value; that kind of freedom of the press seeks to introduce oligarchy in the sphere of intellectual life. The censorship declares that an author is at most inconvenient, unsuitable within the bounds of its realm. That kind of freedom of the press claims to anticipate world history, to know in advance the voice of the people, which hitherto has been the sole judge as to which writer has "authority" and which is "without authority". Whereas Solon did not venture to judge a man until *after* his life was over, *after his death*, this view presumes to judge a writer even *before his birth*.

The press is the most general way by which individuals can communicate their intellectual being. It knows no respect for persons, but only respect for intelligence. Do you want ability for intellectual communication to be determined officially by special external signs? What I cannot be for others, I am not and cannot be for myself. If I am not allowed to be a spiritual force for others, then I have no right to be a spiritual force for myself; and do you want to give certain individuals the privilege of being spiritual forces? just as everyone learns to read and write, so everyone must *have the right* to read and write.

For whom, then, is the division of writers into "authorised" and "unauthorised" intended? Obviously not for the truly authorised, for they can make their influence felt without that. Is it therefore for the "unauthorised" who want to protect themselves and impress others by means of an external privilege?

Moreover, this palliative does not even make a *press law* unnecessary, for, as a speaker from the peasant estate remarks:

"Cannot a privileged person, too, exceed his authority and be liable to punishment? Therefore, in any case, a press law would be necessary, with the result that one would encounter the same difficulties as with a *general law on the press*."

If the German looks back on his history, he will find one of the main reasons for his slow political development, as also for the wretched state of literature prior to *Lessing*, in the existence of "*authorised writers*". The learned men by profession, guild or privilege, the doctors and others, the colourless university writers of the seventeenth and eighteenth centuries, with their stiff pigtailed and their distinguished pedantry and their petty hair-splitting dissertations, interposed themselves between the people and the mind, between life and science, between freedom and mankind. It was the unauthorised writers who created our literature. *Gottsched* and *Lessing*-there you have the choice between an "authorised" and "unauthorised" writer!

In general, we have no liking for "freedom" that only holds good in the plural. England is a proof on a big historical scale how dangerous for "*freedom*" is the restricted horizon of "freedoms".

"Ce mot des libertés," says Voltaire, "des privilèges, suppose l'assujettissement. Des libertés sont des *exemptions* de la servitude *générale*." [\[C\]](#)

Further, if our speaker wants to exclude *anonymous* and *pseudonymous* writers from freedom of the press and subject them to censorship, we would point out that in the press it is not the name that matters, but that, where a press law is in force, the publisher, and through him the anonymous and pseudonymous

writer as well, is liable to prosecution in the courts. Moreover, when Adam gave names to all the animals in paradise, he forgot to give names to the German newspaper correspondents, and they will remain nameless in *saecula saeculorum*. [D]

Whereas the mover of the motion sought to impose restrictions on *persons*, the subjects of the press, other estates want to restrict the objective material of the press, the *scope of its operation and existence*. The result is a soulless bargaining and haggling as to *how much freedom freedom of the press ought to have*.

One estate wants to limit the press to discussing the material, intellectual and religious state of affairs in the Rhine Province; another wants the publication of "local newspapers", whose title indicates their restricted content; a third even wants free expression of opinion to be allowed in *one newspaper only* in each province!!!

All these attempts remind one of the gymnastics teacher who suggested that the best way to teach how to jump was to take the pupil to a big ditch and show him by means of a cotton thread how far he ought to jump across the ditch. Of course, the pupil had first to practise jumping and would not be allowed to clear the whole ditch on the first day, but from time to time the thread would be moved farther away. Unfortunately, during his first lesson the pupil fell into the ditch, and he has been lying there ever since. The teacher was a German and the pupil's name was "freedom".

According to the average *normal type*, therefore, the *defenders of freedom of the press* in the Sixth Rhine Province Assembly differ from their *opponents* not as regards content, but in their trend. The narrow-mindedness of a *particular estate* opposes the press in one case, and defends it in another; some want the government alone to have privileges, others want them to be shared among more persons; some want a full censorship, others a half censorship; some want three-eighths freedom of the press, others none at all. God save me from my friends!

Completely at variance with the *general spirit* of the Assembly, however, are the speeches of the commission's *spokesman* and those of some members of the *peasant estate*.

Among other things, the spokesman declared:

"In the life of peoples, as in that of individuals, it happens that the fetters of a too long tutelage become intolerable, that there is an urge for independence, and that everyone wants to be responsible himself for his actions. Thereupon the censorship has outlived its time; where it still exists it will be regarded as a *hateful* constraint which prohibits what is openly said from being written."

Write as you speak, and speak as you write, our primary schoolteachers taught us. Later what we are told is: say what has been prescribed for you, and write what you repeat after others.

"Whenever the inevitable progress of time causes a new, important interest to develop and gives rise to a new need, for which no adequate provision is contained in the existing legislation, new laws are necessary to regulate this new state of society. Precisely such a case confronts us here."

That is the *truly historical* view in contrast to the illusory one which kills the reason of history in order subsequently to honour its bones as historical relics.

"Of course, the problem" (of a press code) "may not be quite easy to solve; the first attempt that is made

will perhaps remain very incomplete But all states will owe a debt of gratitude to the legislator who is the first to take up this matter, and under a king like ours, it is perhaps the Prussian government that is destined to have the *honour* to precede other countries along this path, which alone can lead to the goal."

Our whole exposal has shown how *isolated* this courageous, dignified and resolute view was in the Assembly. This was also abundantly pointed out to the spokesman of the commission by the chairman himself. Finally, it was expressed also by a member of the peasant estate in an ill-humoured but excellent speech:

"The speakers have gone round and round the question before us like a cat round hot porridge." "The human spirit must develop freely *in accordance with its inherent laws* and be allowed to communicate its achievements, otherwise a clear, vitalising stream will become a pestiferous swamp. If any nation is suitable for freedom of the press it is surely the calm, good-natured German nation, which stands more in need of being roused from its torpor than of the strait jacket of censorship. For it not to be allowed freely to communicate its thoughts and feelings to its fellow men very much resembles the North American system of solitary confinement for criminals, which when rigidly enforced often leads to madness. From one who is not permitted to find fault, praise also is valueless; in absence of expression it is like a Chinese picture in which shade is lacking. Let us not find ourselves put in the same company as this enervated nation!"

If we now look back on the press debates as a whole, we cannot overcome the dreary and uneasy impression produced by an assembly of representatives of the *Rhine Province* who wavered only between the deliberate obduracy of privilege and the natural impotence of a half-hearted liberalism. Above all, we cannot help noting with displeasure the almost entire absence of general and broad points of view, as also the negligent superficiality with which the question of a free press was debated and disposed of. Once more, therefore, we ask ourselves whether the press was a matter too remote from the Assembly of the Estates, and with which they had too little real contact, for them to be able to defend freedom of the press with the thorough and serious interest that was required?

Freedom of the press presented its petition to the estates with the *most subtle captatio benevolentiae*. [\[E\]](#)

At the very beginning of the Assembly session, a debate arose in which the chairman pointed out that the *printing of the Assembly proceedings*, like all other writings, was subject to *censorship*, but that in this case *he* took the place of the censor.

On this one point, did not the question of *freedom of the press* coincide with that of *freedom of the Assembly*? The conflict here is the more interesting because the Assembly in its own person was given proof how the absence of freedom of the press makes all other freedoms illusory. One form of freedom governs another just as one limb of the body does another. Whenever a particular freedom is put in question, freedom in general is put in question.

Whenever one form of freedom is rejected, freedom in general is rejected and henceforth can have only a semblance of existence, since the sphere in which absence of freedom is dominant becomes a matter of pure chance. Absence of freedom is the rule and freedom an exception, a fortuitous and arbitrary occurrence. There can, therefore, be nothing wronger than to think that when it is a question of a particular form of existence of freedom, it is a particular question. It is the general question within a particular sphere. Freedom remains freedom whether it finds expression in printer's ink, in property, in the conscience, or in a political assembly. But the loyal friend of freedom whose sense of honour would

be offended by the mere fact that he had to vote on the question whether *freedom was to be or not to be* — this friend becomes perplexed when confronted with the peculiar material form in which freedom appears. He fails to recognise the genus in the species; because of the press, he forgets about freedom, he believes he is judging something whose essence is alien to him, and he condemns his own essence. Thus the Sixth Rhine Province Assembly condemned itself by passing sentence on freedom of the press.

The highly sage, practical bureaucrats who secretly and unjustifiably think of themselves in the way that Pericles openly and rightly boasted of himself: "I am a man who is the equal of anyone both in knowing the needs of the state and in the art of expounding them" [\[E\]](#) — these hereditary leaseholders of political intelligence will shrug their shoulders and remark with oracular good breeding that the defenders of freedom of the press are wasting their efforts, for a *mild* censorship is better than a *harsh* freedom of the press. We reply to them with the words of the Spartans Sperthias and Bulis to the Persian satrap Hydarnes:

"Hydarnes, you have not equally weighed each side in your advice to us. For you have tried the one which you advise, the other has remained untried by you. You know what it means to be a slave, but you have never yet tried freedom, to know whether it is sweet or not. For if you had tried it, you would have advised us to fight for it, not merely with spears, but also with axes." [\[G\]](#)

Rheinische Zeitung
No. 139, Supplement
May 19 1842

[The End]

Footnotes

[\[A\]](#) Marx cites these and the following lines of Hariri's poem from Friedrich Ruckert's *Die Verwandlungen des Abu Seid von Serug, oder die Makamen des Hariri*, Stuttgart, 1826.

[\[B\]](#) Cf. H. Heine, *Die romantische Schule*, II, 3.

[\[C\]](#) "This word of the *liberties*, of the *privileges*, suppose subjection. Liberties are *exemptions* from general *servitude*."

[\[D\]](#) For ever and ever.

[\[E\]](#) Attempt to arouse goodwill.

[\[F\]](#) Thucydides, *The History of the Peloponnesian War*, Vol I, Book 2, 60.

[\[G\]](#) Herodot, *Historiae*, Vol II, Book 7, 135.

Table of Contents: [On Freedom of the Press](#)

Encyclopedia of Marxism

Glossary of Places

Pr

Priboi

A [Bolshevik](#) legal printing house, founded in St. Petersburg at the beginning of 1913, existed until 1914; and resumed publishing in 1917.

Prussia

Once a part of the Holy Roman Empire, Prussia became a sovereign state in 1701 (King Fredrick I (1701-1713)), with its capital at Berlin. After the revolution of 1848, the crown (Fredrick-Wilhem IV) refused the abdicate power to the parliament.

In 1871, after the Franco-Prussian war (see also the [Paris Commune](#)) Prussia united the broken up states of Germany to form the German Empire, known as the German Confederation (later called the Second Reich), under Wilhelm I. In the German Empire Prussia remained a German state of Northern/Central Germany (1871 - 1947) extending from the Rhine Province (bordering France) — to Eastern Prussia (bordering Russia).

Prussia became the major military power in Europe through the late nineteenth and early twentieth century. After World War I Prussia was split: the Western and Central portions remained with Germany, while [Eastern Prussia](#) was seperated from the mainland by the 'Polish corridor'. Prussia was dissolved in 1947, split between West and East Germany. Area (in 1939): 294, 081 sq. km.

East Prussia: A province of Prussia on the Baltic Sea. The major cities were Danzig to the far west, Königsberg to the NorthCentral, and Tilsit on the Northern border. Eastern Prussia was split from the German main land in 1919 by the 'Polish corridor' and Danzig was made a 'free city'. In 1945 Poland and the Soviet Union split Eastern Prussia; Poland occupied the southern half while the Soviet Union occupied the northern half. Danzig was renamed Gdansk, Königsberg renamed to Kaliningrad and Tilsit changed to Sovetsk.

Rheinish Prussia: Province of Prussia, including the cities Bonn and Cologne to the North East, and Trier to the South West. Rheinish Prussia was the farthest Western province of Prussia, bordering France; named after the [Rhein River](#), that runs through it.



[Rhine Province of Prussia \(1882\)](#) ([Original — full size](#))

[Index of the Letter P](#)

[Glossary of Places](#) | [Encyclopedia of Marxism](#)

COMMENTS ON THE LATEST PRUSSIAN CENSORSHIP INSTRUCTION

Written between January 15 and February 10, 1842.

First published in the symposium *Anekdoten zur neuesten deutschen Philosophie und Publicistik*, Bd. I, 1843

We are not one of those malcontents who, even before the appearance of the new Prussian censorship decree, exclaim: *Timeo Danaos et dona ferentes*. On the contrary, since an examination of already promulgated laws is approved in the new instruction, even if it should prove not to agree with the government's views, we are making a start with this at once. *Censorship* is *official* criticism; its standards are critical standards, hence they least of all can be exempted from criticism, being on the same plane as the latter.

Certainly everyone can only approve of the general trend expressed in the introduction to the instruction:

“In order already now to free the press from improper restrictions, which are against the intentions of the All-Highest, His Majesty the King, by a supreme order issued to the royal state ministry on the 10th of this month, has been pleased to disapprove expressly of any undue constraint on the activity of writers and, recognising the value and need of frank and decent publicity, has empowered us to direct the censors anew to due observance of Article II of the censorship decree of October 18, 1819.”

Certainly! If censorship is a necessity, frank liberal censorship is still more necessary.

What might immediately arouse some surprise is the *date* of the law cited; it is dated October 18, 1819. What? Is it perhaps a law which conditions of time made it necessary to repeal? Apparently not; for the censors are only directed “*anew*” to ensure observance of it. Hence the law has existed until 1842, but it has not been observed, for it has been called to mind “in order *already now*” to free the press from improper restrictions, which are against the intentions of the All-Highest.

The press, *in spite of the law*, has until now been subjected to improper restrictions – that is the immediate conclusion to be drawn from this introduction.

Is this then an argument *against the law or against the censors*? We *can* hardly assert the latter. For twenty-two years illegal actions have been committed by an authority which has in its charge the highest interest of the citizens, *their minds*, by an authority which regulates, even more than the Roman censors did, not only the behaviour of individual citizens, but even the behaviour of the public mind. Can such unscrupulous behaviour of the highest servants of the state, such a thoroughgoing lack of loyalty, be possible in the well-organised Prussian state, which is proud of its administration? Or has the state, in continual delusion,

selected the most incapable persons for the most difficult posts? Or, finally, has the subject of the Prussian state no possibility of complaining against illegal actions? Are all Prussian writers so ignorant and foolish as to be unacquainted with the laws which concern their existence, or are they too cowardly to demand their observance?

If we put the blame on the *censors*, not only their own honour, but the honour of the Prussian state, and of the Prussian writers, is compromised.

Moreover, the more than twenty years of illegal behaviour of the censors in defiance of the law would provide *argumentum ad hominem* that the press needs other guarantees than such general instructions for such irresponsible persons; it would provide the proof that there is a basic defect in the nature of the censorship which no law can remedy.

If, however, the censors were capable, and *the law was no good*, why appeal to it afresh for removal of the evil it has caused?

Or should, perhaps, the *objective defects* of an institution be ascribed to *individuals*, in order fraudulently to give the impression of an improvement without making any essential improvement? It is the habit of *pseudo-liberalism*, when compelled to make concessions, to sacrifice persons, the instruments, and to preserve the thing itself, the institution. In this way the attention of a superficial public is diverted.

Resentment against the thing itself becomes resentment against persons. It is believed that by a change of persons the thing itself has been changed. Attention is deflected from the censorship to individual censors, and those petty writers of progress by command allow themselves petty audacities against those who have fallen out of favour and perform just as many acts of homage towards the government.

Yet another difficulty confronts us.

Some newspaper correspondents take the censorship instruction for the new censorship decree itself. They are mistaken, but their mistake is pardonable. The censorship decree of October 18, 1819, was to continue only provisionally until 1824, and it would have remained a provisional law to the present day if we had not learnt from the instruction now before us that it has never been implemented.

The 1819 decree was also an *interim* measure, with the difference that in its case a definite period of expectation of five years was indicated, whereas in the new instruction it is of unlimited duration, and that *at that time laws on the freedom of the press* were the object of expectation whereas *now* it is *laws on censorship*.

Other newspaper correspondents regard the censorship instruction as a refurbishing of the old censorship decree. Their error will be refuted by the instruction itself.

We regard the censorship instruction as the *anticipated spirit* of the presumable censorship law. In so doing we adhere strictly to the spirit of the 1819 censorship decree, according to which *laws* and *ordinances* are of equal significance for the press. (See the above-mentioned decree, Article XVI, No. 2.)

Let us return to the instruction.

“According to this law,” namely, Article II, “the censorship should not prevent serious and modest investigation of truth, nor impose undue constraint on writers, or hinder the book trade from operating freely.”

The investigation of truth which should not be prevented by the censorship is more particularly defined as one which is *serious and modest*. Both these definitions concern not the content of the investigation, but rather something which lies outside its content. From the outset they draw the investigation away from truth and make it pay attention to an unknown third thing. An investigation which continually has its eyes fixed on this third element, to which the law gives a legitimate capriciousness, will it not lose sight of the truth? Is it not the first duty of the seeker after truth to aim directly at the truth, without looking to the right or left? Will I not forget the essence of the matter, if I am obliged not to forget to state it in the prescribed form?

Truth is as little modest as light, and towards whom should it be so? Towards itself? *Verum index sui et falsi*. Therefore, *towards falsehood?*

If modesty is the characteristic feature of the investigation, then it is a sign that truth is feared rather than falsehood. It is a means of discouragement at every step forward I take. *It is the imposition on the investigation of a fear of reaching a result*, a means of guarding against the truth.

Further, truth is general, it does not belong to me alone, it belongs to all, it owns me, I do not own it. My property is the *form*, which is my spiritual individuality. *Le style c'est l'homme*. Yes, indeed! The law permits me to write, only I must write in a style that is not mine! I may show my spiritual countenance, but I must first set it in the *prescribed folds!* What man of honour will not blush at this presumption and not prefer to hide his head under the toga? Under the toga at least one has an inkling of a Jupiter's head. The prescribed folds mean nothing but *bonne mine a mauvais jeu*.

You admire the delightful variety, the inexhaustible riches of nature. You do not demand that the rose should smell like the violet, but must the greatest riches of all, the spirit, exist in only *one* variety? I am humorous, but the law bids me write seriously. I am audacious, but the law commands that my style be modest. *Grey, all grey*, is the sole, the rightful colour of freedom. Every drop of dew on which the sun shines glistens with an inexhaustible play of colours, but the spiritual sun, however many the persons and whatever the objects in which it is refracted, must produce only the *official colour!* The most essential form of the spirit is *cheerfulness, light*, but you make *shadow* the sole manifestation of the spirit; it must be clothed only in black, yet among flowers there are no black ones. The essence of the spirit is *always truth itself* but what do you make its essence? *Modesty*. Only the mean wretch is modest, says Goethe, and you want to turn the spirit into such a mean wretch? Or if modesty is to be the modesty of genius of which Schiller speaks, then first of all turn all your citizens and above all your censors into geniuses. But then the modesty of genius does not consist in what educated speech consists in, the absence of accent and dialect, but rather in speaking with the accent of the matter and in the dialect of its essence. It consists in forgetting modesty and immodesty and getting to the heart of the matter. The universal modesty of the mind is reason, that universal liberality of thought which reacts to *each thing* according to

the *latter's essential nature*.

Further, if seriousness is not to come under Tristram Shandy's definition according to which it is a hypocritical behaviour of the body in order to conceal defects of the soul, but signifies seriousness in *substance*, then the entire prescription falls to the ground. For I treat the ludicrous seriously when I treat it ludicrously, and the most serious immodesty of the mind is to be modest in the face of immodesty.

Serious and modest! What fluctuating, relative concepts! Where does seriousness cease and jocularity begin? Where does modesty cease and immodesty begin? We are dependent on the *temperament* of the censor. It would be as wrong to prescribe temperament for the censor as to prescribe style for the writer. If you want to be consistent in your aesthetic criticism, then forbid also a *too serious* and *too modest* investigation of the truth, for too great seriousness is the most ludicrous thing of all, and too great modesty is the bitterest irony.

Finally, the starting point is a completely perverted and abstract view of *truth* itself. All objects of the writer's activity are comprehended in the one general concept "truth". Even if we leave the, *subjective* side out of account, viz., that one and the same object is refracted differently as seen by different persons and its different aspects converted into as many different spiritual characters, ought the *character of the object* to have no influence, not even the slightest, on the investigation? Truth includes not only the result but also the path to it. The investigation of truth must itself be true; true investigation is developed truth, the dispersed elements of which are brought together in the result. And should not the manner of investigation alter according to the object? If the object is a matter for laughter, the manner has to seem serious, if the object is disagreeable, it has to be modest. Thus you violate the right of the object as you do that of the subject. You conceive truth abstractly and turn the spirit into an *examining magistrate*, who draws up a dry *protocol* of it.

Or is there no need of this metaphysical twisting? Is *truth* to be understood as being simply *what the government decrees*, so that *investigation* is added as a superfluous, intrusive element, but which for *etiquette's sake* is not to be entirely rejected? It almost seems so. For investigation is understood in advance as in *contradiction* to truth and therefore appears with the suspicious official accompaniment of seriousness and modesty, which of course is fitting for the layman in relation to the priest. The government's understanding is the only state reason. True, in certain circumstances of time, concessions have to be made to a different understanding and its chatter, but this understanding comes on the scene conscious of the concession and of its own lack of right, modest and submissive, serious and tedious. If Voltaire says: "*Tous les genres sont bons, excepte le genre ennuyeux*", in the present case the genre *ennuyant* becomes the exclusive one, as is already sufficiently proved by the reference to the "proceedings of the Rhine Province Assembly". Why not rather the good old German curialistic style? You may write freely, but at the same time every word must be a curtsy to the liberal censorship, which allows you to express your equally serious and modest opinions. Indeed, do not lose your feeling of reverence!

The *legal emphasis* is not on truth but on modesty and seriousness. Hence everything here arouses suspicion: seriousness, modesty and, above all, truth, the indefinite scope of which

seems to conceal a very definite but very doubtful kind of truth.

“The censorship,” the instruction states further, “should therefore by no means be implemented in a narrow-minded interpretation going beyond this law.”

By this law is meant in the first place Article II of the 1819 decree, but later the instruction refers to the “*spirit*” of the censorship decree as a whole. The two provisions are easily combined. Article II is the *concentrated spirit* of the censorship decree, the further subdivision and more detailed specification of this spirit being found in the other articles. We believe the above-mentioned spirit cannot be better characterised than by the *following expressions of it*:

Article VII. "The freedom from censorship hitherto accorded the Academy of Sciences and the universities is hereby suspended for five years."

*10. “The present temporary decision shall remain in force for five years from today. Before the expiry of this term there shall be a thorough investigation in the Bundestag of how the kind of provisions regarding freedom of the press proposed in Article 18 of the Bundesakte could be put into effect, and thereby a definite decision reached on the legitimate limits of freedom of the press in Germany.”

A law which suspends *freedom of the press* where it has hitherto existed, and makes it superfluous through *censorship* where it was to be brought into existence, can hardly be called one favourable to the press. Moreover, §10 directly admits that provisionally a *censorship law* will be introduced instead of the *freedom of the press* proposed in Article 18 of the Bundesakte and perhaps intended to be put into effect at some time. This *quid pro quo* at least reveals that the circumstances of the time called for restrictions on the press, and that the decree owes its origin to distrust of the press. This annoyance is even excused by being termed provisional, valid for only five years – unfortunately it has lasted for 22 years.

The very next line of the instruction shows how it becomes involved in a contradiction. On the one hand, it will not have the censorship implemented in any interpretation that goes beyond the decree, and at the same time it prescribes such excess:

“The censor can very well permit a frank discussion also of internal affairs.”

The censor *can*, but he does not have to, there is no necessity. Even this cautious liberalism very definitely goes not only beyond the spirit but beyond the definite demands of the censorship decree. The old censorship decree, to be exact, Article II cited in the instruction, not only does not permit any *frank discussion* of Prussian affairs, but not even of *Chinese* affairs.

“Here,” namely, among violations of the security of the Prussian state and the German Federated States, the instruction comments, “are included all attempts to present in a *favourable light* parties existing in any *country* which work for the overthrow of the state system.”

Is this the way a *frank* discussion of Chinese or Turkish national affairs is permitted? And if even such remote relations endanger the precarious security of the German Federation, how can any word of disapproval about *internal* affairs fail to do so?

Thus, on the one hand, the instruction goes beyond the spirit of Article II of the censorship decree in the direction of liberalism – an *excess* whose *content* will become clear later, but which is already *formally* suspicious inasmuch as it claims to be the consequence of Article II, of which wisely only the *first half* is quoted, the censor however being referred at the same time to the *article itself*. On the other hand, the instruction just as much goes beyond *the censorship decree in an illiberal direction* and adds *new press restrictions* to the old ones.

In the above-quoted Article II of the censorship decree it is stated:

“Its aim” (that of the censorship) “is to check all that is contrary to the general principles of religion, irrespective of the opinions and doctrines of individual religious parties and sects permitted in the state.”

In 1819, rationalism still prevailed, which understood by religion in general the so-called religion of reason. This *rationalist point of view* is also that of the censorship decree, which at any rate is so inconsistent as to adopt the irreligious point of view while its aim is to protect religion. For it is already contrary to the general principles of religion to separate them from the positive content and particular features of religion, since each religion believes itself distinguished from the various other *would-be* religions by its *special nature*, and that precisely its particular features make it the *true religion*. In quoting Article II, the new censorship instruction omits the *restrictive additional clause* by which individual religious parties and sects are excluded from inviolability, but it does not stop at this and makes the following comment:

“Anything aimed in a frivolous, hostile way against the Christian religion in general, or against a particular article of faith, must not be tolerated.”

The old censorship decree does not mention the *Christian* religion at all; on the contrary, it distinguishes between religion and *all* individual religious parties and sects. The new censorship instruction does not only convert religion in general into the Christian religion, but adds *further a particular article of faith*. A delightful product of our Christianised science! Who will still deny that it has forged new fetters for the press? Religion, it is said, must not be attacked, *whether in general or in particular*. Or do you perhaps believe that the words frivolous and hostile have made the new fetters into chains of roses? How adroitly it is written: *frivolous, hostile!* The adjective frivolous appeals to the citizen’s sense of decorum, it is the exoteric word for the world at large, but the adjective hostile is whispered into the censor’s ear, it is the legal interpretation of frivolity. We shall find in this instruction more examples of this subtle tact, which offers the public a subjective word that makes it blush and offers the censor an objective word that makes the author grow pale. In this way even *lettres de cachet* could be set to music.

And in what a remarkable contradiction the censorship instruction has entangled itself! It is only a half-hearted attack that is frivolous, one which keeps to individual aspects of a phenomenon, without being sufficiently profound and serious to touch the essence of the matter; it is precisely an attack on a *merely particular feature as such* that is frivolous. If, therefore, an attack on the Christian religion in general is forbidden, it follows that only a frivolous attack on it is permitted. On the other hand, an attack on the general principles of

religion, on its essence, on a particular feature *insofar as it is a manifestation* of the essence, is a hostile attack. Religion can only be attacked in a *hostile or a frivolous* way, there is no third way. This inconsistency in which the instruction entangles itself is, of course, only a *seeming* one, for it depends on the semblance that in general *some kind* of attack on religion is still permitted. But an unbiassed glance suffices to realise that this semblance is only a semblance. Religion must not be attacked, whether in a hostile or a frivolous way, whether in general or in particular, *therefore not at all*.

But if the instruction, in open contradiction to the 1819 censorship decree, imposes new fetters on the *philosophical press*, it should at least be sufficiently consistent as to free the *religious press* from the old fetters imposed on it by the former rationalist decree. For it declares that the aim of the censorship is also

“to oppose fanatical transference of religious articles of faith into politics and the confusion of ideas resulting therefrom”.

The new instruction, it is true, is clever enough not to mention this provision in its *commentary*, nevertheless it accepts it in *citing Article II*. What does fanatical transference of religious articles of faith into politics mean? It means making religious articles of faith, by their specific nature, a determining factor of the state; it means making the *particular nature of a religion the measuring-rod of the state*. The old censorship decree could rightly oppose this confusion of ideas, for it left a particular religion, its definite content, open to criticism. The old decree, however, was based on the shallow, superficial *rationalism* which you yourselves despised. But you, who base the state even in details on *faith and Christianity*, who want to have a *Christian state*, how can you still recommend the censorship to prevent this confusion of ideas?

The confusion of the political with the Christian-religious principle has indeed become *official doctrine*. We want to make this confusion clear in a few words. Speaking only of Christianity as the recognised religion, you have in your state Catholics and Protestants. Both make equal claims on the state, just as they have equal duties to it. They both leave their religious differences out of account and demand equally that the state should be the realisation of political and juridical reason. But you want a *Christian state*. If your state is only *Lutheran-Christian*, then for the *Catholic* it becomes a church to which he does not belong, which he must reject as heretical, and whose innermost essence is contrary to him. It is just the same the other way round. If, however, you make the *general spirit of Christianity the particular spirit of your state*, you nevertheless decide on the basis of your Protestant views what the general spirit of Christianity is. You define *what a Christian state is*, although the recent period has taught you that some government officials are unable to draw the line between the religious and the secular, between state and church. In regard to this *confusion of ideas*, it was not *censors* but *diplomats* who had, not to *decide, but to negotiate*. Finally, you are adopting a *heretical* point of view when you reject definite dogma as non-essential. If you call your state a *general Christian state*, you are admitting with a diplomatic turn of phrase that it is *un-Christian*. Hence either forbid religion to be introduced at all into politics – but you don't want that, for you want to base the state not on free reason, but on faith, religion being for you the *general sanction for what exists* – or allow also the *fanatical* introduction of religion into politics. Let religion concern itself with

politics in *its own way*, but you don't want that either. Religion has to support the secular authority, without the latter subordinating itself to religion. Once you introduce religion into politics, it is intolerable, indeed *irreligious*, arrogance to want to determine *secularly how* religion has to act in political matters. He who wants to ally himself with religion owing to religious feelings must concede it the decisive voice in all questions, or do you perhaps understand by religion the *cult of your own unlimited authority and governmental wisdom*?

There is yet another way in which the *orthodox spirit* of the new censorship instruction comes into conflict with the *rationalism* of the old censorship decree. The latter includes under the aim of the censorship also suppression of "what offends against *morality* and good manners". The instruction reproduces this passage as a *quotation* from Article II. Its *commentary*, however, while making additions as regards religion, contains omissions as regards morality. Offending against *morality and good manners* becomes violation of "propriety and manners and external decorum". One sees: *morality as such*, as the *principle of a world* that obeys its own laws, *disappears*, and in place of the essence external manifestations make their appearance, *police respectability, conventional decorum*. Honour to whom honour is due, we recognise true consistency here. The specifically Christian legislator *cannot recognise morality* as an independent sphere that is sacrosanct in itself, for he claims that its inner general essence belongs to religion. Independent morality offends against the general principles of religion, but the particular concepts of religion conflict with morality. Morality recognises only its own universal and rational religion, and religion recognises only its particular positive morality. Hence, according to this instruction, the censorship must reject the intellectual heroes of morality, such as Kant, Fichte and Spinoza, as *irreligious*, as violating propriety, manners, and external decorum. All these moralists start out from a contradiction in principle between morality and religion, for *morality* is based on the *autonomy* of the human mind, *religion on its heteronomy*. Let us turn from these undesirable innovations of the censorship – on the one hand, the weakening of its moral conscience, on the other hand, the rigorous heightening of its religious conscience – to what is more welcome, the *concessions*.

It "follows in particular that writings in which the state administration is assessed as a whole or in its individual branches, laws that have been or are still to be promulgated are examined for their inner value, mistakes and misconceptions revealed, improvements indicated or suggested, are not to be rejected because they are written in a spirit that does not agree with the government's views, as long as their formulation is decent and their *tendency well-meaning*".

Modesty and seriousness of investigation – both the new instruction and the censorship decree make this demand, but for the former *decorous* formulation is as little sufficient as truth of content. For it the *tendency* is the main criterion, indeed it is its all-pervading thought, whereas in the decree itself not even the *word* tendency is to be found. Nor does the new instruction say what constitutes tendency, but how important it is for it may be seen from the following extract:

"In this connection it is an indispensable premise that the *tendency* of remonstrances expressed against measures of the government should not be spiteful or malevolent, but well-intentioned, and goodwill and insight are

required of the censor so that he knows how to distinguish between the one case and the other. Considering this, the censors must also pay special attention to the form and tone of writings for the press and insofar as, owing to passion, vehemence and arrogance, *their tendency* is found to be pernicious, must not allow them to be printed.”

The writer, therefore, has fallen victim to the *most frightful terrorism*, and is subjected to the *jurisdiction of suspicion*. Laws against *tendency*, laws giving no objective standards, are laws of terrorism, such as were invented owing to the emergency needs of the state under Robespierre and the corruption of the state under the Roman emperors. Laws which make their main criterion not *actions as such*, but the *frame of mind* of the doer, are nothing but *positive sanctions for lawlessness*. Better like that Russian Tsar to have everyone's beard cut off by Cossacks in his service than to make the state of mind due to which I wear a beard the criterion for the cutting.

Only insofar as I *manifest* myself externally, enter the sphere of the actual, do I enter the sphere of the legislator. Apart from *my actions*, I have no existence for the law, am no object for it. My actions are the sole thing by which the law has a hold on me; for they are the sole thing for which I demand a right of existence, a *right of actuality*, owing to which therefore I come within the sphere of *actual law*. The law which punishes tendency, however, punishes me not only for what I do, but for what I think, apart from my actions. It is therefore an insult to the honour of the citizen, a vexatious law which threatens my existence.

I can turn and twist as I will, it is not a question of the facts. My existence is under suspicion, my innermost being, my individuality, is considered *bad*, and it is *for this opinion* of me that I am *punished*. The law punishes me not for any wrong I commit, but for the wrong I do not commit. I am really being punished because my action is *not against the law*, for only because of that do I compel the lenient, well-meaning judge to seize on my *bad frame of mind*, which is clever enough not to come out in the open.

The law against a frame of mind *is not a law of the state* promulgated for its *citizens*, but the *law of one party against another party*. The law which punishes tendency abolishes the equality of the citizens before the law. It is a law which divides, not one which unites, and all laws which divide are reactionary. It is not a law, but a *privilege*. One may do what another may not do, not because the latter lacks some objective quality, like a minor in regard to concluding contracts; no, because his good intentions and his frame of mind are under suspicion. The *moral state* assumes its members to have the *frame of mind of the state*, even if they act in *opposition to an organ of the state*, against the *government*. But in a society in which *one* organ imagines itself the sole, exclusive possessor of state reason and state morality, in a government which opposes the people in principle and hence regards its *anti-state frame of mind* as the general, normal frame of mind, the bad conscience of a faction invents laws against tendency, *laws of revenge*, laws against a frame of mind which has its seat only in the government members themselves. Laws against frame of mind are based on an unprincipled frame of mind on an immoral, material view of the state.

They are the involuntary cry of a bad conscience. And how is a law of this kind to be implemented? By a means more revolting than the law itself: by *spies*, or by previous

agreement to regard entire literary trends as suspicious, in which case, of course, the trend to which an individual belongs must also be inquired into. Just as in the law against tendency the *legal form contradicts the content*, just as the *government* which issues it lashes out against what it is itself, against the anti-state frame of mind, so also in each particular case it forms as it were the *reverse world* to its laws, for it applies a double measuring-rod. What for one side is right, for the other side is wrong. *The very laws issued by the government are the opposite of what they make into law.*

The *new censorship instruction*, too, becomes entangled in this dialectic. It contains the contradiction of itself doing, and making it the censor's duty to do, everything that it condemns as anti-state in the case of the press.

Thus the instruction forbids writers to cast suspicion on the frame of mind of individuals or whole classes, and in the same breath it bids the censor divide all citizens into suspicious and unsuspecting, into well-intentioned and evil-intentioned. The press is deprived of the right to criticise, but criticism becomes the daily duty of the governmental critic. This reversal, however, does not end the matter. Within the press what was anti-state as regards content appeared as something particular, but from the aspect of its form it was something universal, that is to say, subject to universal appraisal.

However, now the thing is turned upside-down: the particular now appears justified in *regard to its content*, what is anti-state appears as the view of the state, as state law; in regard to its form, however, what is anti-state appears as something particular, that cannot be brought to the general light of day, that is relegated from the open air of publicity to the office files of the governmental critic. Thus the instruction wants to protect religion, but it violates the most general principle of all religions, the sanctity and inviolability of the subjective frame of mind. It makes the censor instead of God the judge of the heart. Thus it prohibits offensive utterances and defamatory judgments on individuals, but it exposes you every day to the defamatory and offensive judgment of the censor. Thus the instruction wants the gossip of evil-minded or ill-informed persons suppressed, but it compels the censor to rely on such gossip, on spying by ill-informed and evil-minded persons, degrading judgment from the sphere of objective content to that of subjective opinion or arbitrary action. Thus suspicion must not be cast on the intention of the state, but the instruction starts out from suspicion in respect of the state. Thus no bad frame of mind must be concealed under a good appearance, but the instruction itself is based on a false appearance. Thus the instruction wants to enhance national feeling, but it is based on a view that humiliates the nation. Lawful behaviour and respect for the law are demanded of us, but at the same time we have to honour institutions which put us outside the law and introduce arbitrariness in place of law. We are required to recognise the principle of personality to such an extent that we trust the censor despite the defects of the institution of censorship, and you violate the principle of personality to such an extent that you cause personality to be judged not according to its actions but according to an opinion of the opinion of its actions. You demand modesty and your starting point is the monstrous immodesty of appointing individual servants of the state to spy on people's hearts, to be omniscient, philosophers, theologians, politicians, Delphic Apollos. On the one hand, you make it our duty to respect immodesty and, on the other hand, you forbid us to be immodest. The real immodesty consists in ascribing perfection of the genus to particular individuals. The censor is a

particular individual, but the press becomes the embodiment of the whole genus. You order us to have trust, and you give distrust the force of law. You repose so much trust in your state institutions that you think they will convert a weak mortal, an official, into a saint, and make the impossible possible for him. But you distrust your state or organism so much that you are afraid of the isolated opinion of a private person; for you treat the press as a private person. You assume that the officials will act quite impersonally, without animosity, passion, narrow-mindedness or human weakness. But what is impersonal, *ideas*, you suspect of being full of personal intrigue and subjective vileness. The instruction demands unlimited trust in the estate of officials, and it proceeds from unlimited distrust in the estate of non-officials. Why should we not pay tit for tat? Why should we not look with suspicion on precisely this estate of officials? Equally as regards character. From the outset one who is impartial should have more respect for the character of the critic who acts publicly than for the character of the critic who acts in secret.

What is at all bad remains bad, whoever personifies this badness, whether a private critic or one appointed by the government, but in the latter case the badness is authorised and regarded from above as a necessity to realise goodness from below.

The *ensorship of tendency* and the *tendency of censorship* are a *gift of the new liberal instruction*. No one will blame us if we turn to the further provisions of the instruction with a certain misgiving.

“Offensive utterances and defamatory judgments on individuals are not suitable for publication.

”Not suitable for publication! Instead of this mildness we could wish that an objective definition of offensive and defamatory judgments had been given.

“The same holds good for suspicion of the frame of mind of individuals or” (a significant or) “whole classes, for the use of party names and other such personal attacks.”

Inadmissible, therefore, also are classification by categories, attacks on whole classes, use of party names – and man, like Adam, has to give everything a name for it to exist for him; party names are essential categories for the political press,

“Because, as Dr. Sassafras supposes,
Every illness for its cure
Must first receive a name.”

All this is included in *personal attacks*. How then is one to make a start? One must not attack an individual, and just as little the class, the general, the juridical person. The state will – and here it is right – tolerate no insults, no personal attacks; but by a simple “or” the general is also included in the personal. By “or” the general comes into it, and by means of a little “and” we learn finally that the whole question has been only of personal attacks. But as a perfectly simple consequence it follows that the press is forbidden all control over officials as over such institutions that exist as a class of individuals.

“If censorship is exercised in accordance with these directives in the spirit of the censorship decree of October 18, 1819, adequate scope will be afforded for decorous and candid

publicity, and it is to be expected that thereby greater sympathy for the interests of the Fatherland will be aroused and thus national feeling enhanced."

We are ready to admit that in accordance with these directives for *decorous* publicity, decorous in the sense understood by the censorship, a more than adequate field of play is afforded – the term field of play is happily chosen, for the field is calculated for a sportive press that is satisfied with leaps in the air. Whether it is adequate for a *candid* publicity, and where its *candidness* lies, we leave to the readers' perspicacity. As for *expectations* held out by the instruction, *national feeling* may, of course, be enhanced just as the sending of a bow-string enhances the feeling of Turkish nationality: but whether the press, as modest as it is serious, will arouse sympathy for the interests of the Fatherland we shall leave it to decide for itself; a meagre press cannot be fattened with quinine. Perhaps, however, we have taken too serious a view of the passage quoted. We shall, perhaps, get at the meaning better if we regard it as merely a thorn in the wreath of roses. Perhaps this liberal thorn holds a pearl of very ambiguous value. Let us see. It all depends on the context. The enhancement of national feeling and the arousing of sympathy for the interests of the Fatherland, which in the above-cited passage are spoken of as an *expectation*, secretly turn into an *order*, which imposes a *new constraint* on our poor, consumptive *daily press*.

"In this way it may be hoped that both political literature and the daily press will realise their function better, that with the acquirement of richer material they will also adopt a more dignified tone, and in future will scorn to speculate on the curiosity of their readers through communication of baseless reports taken from foreign newspapers and originating from evil-minded or badly informed correspondents, by gossip and personal attacks – a trend against which it is the undoubted duty of the censorship to take measures."

In the way indicated it is *hoped* that political literature and the daily press will realise their function better, etc. However, *better realisation* cannot be ordered, moreover it is a fruit still to be awaited, and hope remains hope. But the instruction is much too practical to be satisfied with hopes and pious wishes. While the press is granted the hope of its future improvement *as a new consolation*, the kindly instruction at the same time deprives it of a right it has at present. In the hope of its improvement it loses what it still has. It fares like poor Sancho Panza, from whom all the food was snatched away under his eyes by the court doctor in order that his stomach should not be upset and make him incapable of performing the duties imposed on him by the duke.

At the same time we ought not to miss the opportunity of inviting the Prussian writer to adopt this kind of decorous style. In the first part of the sentence it is stated: "In this way it may be hoped *that*". This *that* governs a whole series of provisions, namely, that political literature and the daily press will realise their function better, that they will adopt a more dignified tone, etc., etc., that they will scorn communication of baseless reports, etc., taken from foreign newspapers. All these provisions are still matters for hope; but the conclusion, which is joined to the foregoing by a *dash*: "a trend against which it is the undoubted duty of the censorship to take measures", absolves the censor from the boring task of awaiting the hoped-for improvement of the daily press, and instead empowers him to delete what he finds undesirable without more ado. *Internal treatment* has been replaced by *amputation*.

“To approach this aim more closely, however, requires that great care be taken in agreeing to new publications and new editors, so that the daily press will be entrusted only to completely irreproachable persons whose scientific ability, position and character guarantee the seriousness of their efforts and the loyalty of their mode of thought.”

Before we go into details, let us make one general observation. The approval of new editors, hence of future editors in general, is entrusted wholly to the “*great care*”, naturally of the *state officials*, of the censorship, whereas at least the old censorship decree left the choice of editors, with certain guarantees, to the *discretion of the publisher*:

“Article IX. The supreme censorship authority is entitled to inform the publisher of a newspaper that a proposed editor is not such as to inspire the requisite trust, in which case the publisher is bound either to take another editor or, if he wants to retain the one designated, to furnish for him a security to be determined by our above-mentioned state ministries on the proposal of the above-mentioned supreme censorship authority.”

The new censorship instruction expresses a quite different profundity, one could call it a *romanticism* of the spirit. Whereas the old censorship decree demands an external, prosaic, hence legally definable, security, on the guarantee of which even the objectionable editor is to be allowed, the instruction on the other hand takes away *all independent will* from the publisher of a newspaper. Moreover, it draws the attention of the preventive wisdom of the government, the great care and intellectual profundity of the authorities, to internal, subjective, externally indefinable, qualities. If, however, the indefiniteness, delicate sensitivity, and subjective extravagance of *romanticism* become *purely external*, merely in the sense that external chance no longer appears in its prosaic definiteness and limitation, but in a fantastic glory, in an imaginary profundity and splendour – then the instruction, too, can hardly avoid this *romantic fate*.

The editors of the daily press, a category which includes all journalistic activity, must be completely irreproachable men. “*Scientific qualification*” is put forward in the first place as a guarantee of this complete irreproachability. Not the slightest doubt arises as to whether the censor can have the scientific qualification to pass judgment on scientific qualification of every kind. If such a crowd of universal geniuses known to the government are to be found in Prussia – every town has at least one censor – why do not these encyclopaedic minds come forward as writers? If these officials, overwhelming in their numbers and mighty owing to their scientific knowledge and genius, were all at once to rise up and smother by their weight those miserable writers, each of whom can write in only one genre, and even in that without officially attested ability, an end could be put to the irregularities of the press much better than through the censorship. Why do these experts who, like the Roman geese, could save the Capitol by their cackling remain silent? Their modesty is too great. The scientific public does not know them, but the government does.

And if these men are indeed such as no state has succeeded in discovering, for never has a state known whole classes composed solely of universal geniuses and encyclopaedic minds – how much greater must be the genius of the selectors of these men! What secret science must be theirs for them to be able to issue a certificate of universal scientific qualification to

officials unknown in the republic of science! The higher we rise in this *bureaucracy of intelligence*, the more remarkable are the minds we encounter. For a state which possesses such pillars of a perfect press, is it worth the trouble, is it expedient to make these men the *guardians* of a defective press, to degrade the perfect into a means for dealing with the imperfect?

The more of these censors you appoint, the more you deprive the realm of the press of chances of improvement. You take away the healthy from your army in order to make them physicians of the unhealthy.

Merely stamp on the ground like Pompey and a Pallas Athena in complete armour will spring from every government building. Confronted by the *official press*, the shallow daily press will disintegrate into nothing. The existence of light suffices to expel darkness. Let your light shine, and hide it not under a bushel. Instead of a defective censorship whose full effectiveness you yourselves regard as problematic, give us a perfect press to whom you have only to give an order and a model of which has been in existence for centuries in the *Chinese* state.

But to make *scientific qualification* the sole, necessary condition for writers of the daily press, is that not a provision concerning the mind, no favouring of privilege, no conventional demand? Is it not a stipulation as regards the matter, not a stipulation as regards the person?

Unfortunately the censorship instruction interrupts our panegyric. Alongside the guarantee of scientific qualification is the demand for that of *position and character*. Position and character!

Character, which follows so immediately after position, seems almost to be a mere outcome of the latter. Let us, therefore, take a look at *position* in the first place. It is so squeezed in between scientific qualification and character that one is almost tempted to doubt the good conscience that called for it.

The *general* demand for scientific qualification, how *liberal*! The *special* demand for position, how *illiberal*! Scientific qualification and position together, how *pseudo-liberal*! Since scientific qualification and character are very indefinite things, whereas position, on the other hand, is very definite, why should we not conclude that by a necessary law of logic the indefinite will be supported by the definite and obtain stability and content from it? Would it then be a great mistake on the part of the censor if he interpreted the instruction as meaning that *position* is the *external form* in which scientific qualification and character manifest themselves socially, the more so since his own position as censor is a guarantee for him that this view is the state's view? Without this interpretation it remains at least quite incomprehensible why scientific qualification and character are not adequate guarantees for a writer, why position is a necessary third. Now if the censor were to find himself in a quandary, if these guarantees were seldom or never present together, where should his choice fall? A choice has to be made, for someone has to edit newspapers and periodicals. Scientific qualification and character without position could present a problem for the censor on account of their indefiniteness, just as in general it must rightly be a surprise to him that such qualities could exist separately from position. On the other hand, ought the censor to have any doubts about character and science where position is present? In that case

he would have less confidence in the judgment of the state than in his own, whereas in the opposite case he would have more confidence in the writer than in the state. Ought a censor to be so tactless, so ill-disposed? It is not to be expected and will certainly not be expected. *Position*, because it is the decisive criterion *in case of doubt*, is in general the *absolutely decisive criterion*.

Hence, just as earlier the instruction was in conflict with the *censorship decree* owing to its *orthodoxy*, now it is so owing to its *romanticism*, which at the same time is always the poetry of *tendency*. The *cash security*, which is a prosaic, real guarantee, becomes an imaginary one, and this imaginary guarantee turns into the wholly *real* and *individual* position, which acquires a magical fictitious significance. In the same way the significance of the guarantee becomes transformed. The publisher no longer *chooses* an editor, for whom *he* gives a guarantee to the authorities, instead the authorities choose an editor *for him*, one for whom they give a guarantee to themselves. The old decree looked for the work of the editor, for which the publisher's cash security served as guarantee. The instruction, however, is not concerned with the *work* of the editor, but with his *person*. It demands a definite personal individuality, which the *publisher's money* should provide. The new instruction is just as superficial as the old decree. But whereas the latter by its nature expressed and delimited prosaically defined provisions, the instruction gives an imaginary significance to the purest chance and expresses what is merely individual with the fervour of generality.

Whereas, however, as regards the editor, the romantic instruction expresses the extremely superficial definiteness in a tone of the most easy-going indefiniteness, as regards the censor it expresses the vaguest indefiniteness in a tone of legal definiteness.

“The same caution must be exercised in the appointment of censors, so that the post of censor shall be entrusted only to men of tested frame of mind and ability, who fully correspond to the honourable trust which that office presupposes; to men who are both right-thinking and keen-sighted, who are able to separate the form from the essence of the matter and with sure tact know how to set aside doubt where the meaning and tendency of a writing do not in themselves justify this doubt.”

Instead of position and character as required of the writer, we have here the tested frame of mind, since position is already there. More significant is that whereas *scientific qualification* is demanded of the writer, what is demanded of the censor is *ability* without further definition. The old decree, which is drawn up in a rational spirit except in respect of politics, calls in Article III for “*scientifically-trained*” and even “*enlightened*” censors. In the instruction both attributes have been dropped, and instead of the *qualification* of the writer, which signifies a definite, well-developed ability that has become a reality, there appears in the case of the censor the *aptitude for qualification*, ability in general. Hence the *aptitude for ability* has to *act as censor of actual qualification*, however much in the nature of things the relationship should obviously be the reverse. Finally, merely in passing, we note that the ability of the censor is not more closely defined as regards its *objective* content, and this, of course, makes its character *ambiguous*.

Further, the post of censor is to be entrusted to men “who *fully correspond* to the honourable

trust which that office presupposes". This pleonastic pseudo-definition, to select for an office men in whom one has trust that they (*will?*) *fully correspond* to the honourable trust, certainly a very full trust, reposed in them, is not worth further discussion.

Finally, the censors must be men

"who are both right-thinking and keen-sighted, who are able to separate the form from the essence of the matter and with sure tact know how to set aside doubt where the meaning and tendency of a writing do not in themselves justify this doubt".

Earlier, on the other hand, the instruction prescribes:

"Considering this" (namely, the investigation of tendency), "the censors must also pay special attention to the form and tone of writings for the press and insofar as, owing to passion, vehemence and arrogance, their tendency is found to be pernicious, must not allow them to be printed."

On one occasion, therefore, the censor has to judge of the *tendency from the form*, on another occasion, of the *form from the tendency*. If previously content had already disappeared as a criterion for censorship, now *form* also disappears. As long as the tendency is good, *faults of form* do not matter. Even if the work cannot be regarded exactly as very serious and modest, even if it may appear to be vehement, passionate, arrogant, who would let himself be frightened by the *rough exterior*? One has to know how to distinguish between *form and essence*. All semblance of definitions had to be abandoned, the instruction had to end in a *complete contradiction with itself*; for everything by which tendency is supposed to be recognised is, on the contrary, determined by the tendency and must be recognised from the tendency. The vehemence of the patriot is holy zeal, his passionateness is the sensitiveness of the lover, his arrogance a devoted sympathy which is too immeasurable to be moderate.

All objective standards are abandoned, everything is finally reduced to the *personal* relation, and the censor's *tact* has to be called a guarantee. What then can the censor violate? Tact. But tactlessness is no crime. What is threatened as far as the writer is concerned? His existence. What state has ever made the existence of whole classes depend on the tact of individual officials?

I repeat, *all objective standards are abandoned*. As regards the writer, tendency is the ultimate content that is demanded from him and prescribed to him. Tendency as formless opinion appears as object. Tendency as subject, as opinion of opinion, is the censor's tact and his sole criterion.

But whereas the arbitrariness of the censor – and to sanction the authority of mere opinion is to sanction arbitrariness – is a logical consequence which was concealed under a semblance of objective definitions, the instruction on the other hand quite consciously expresses the arbitrariness of the *Oberprasidium*; trust is reposed in the latter without reserve, and this *trust reposed in the Oberprasident* is the ultimate *guarantee of the press*. Thus the essence of the censorship in general is based on the arrogant imaginary idea that the police state has of its officials. There is no confidence in the intelligence and goodwill of the general public

even in the simplest matter; but even the impossible is considered possible for the officials.

This fundamental defect is inherent in all our institutions. Thus, for example, in criminal proceedings judge, accuser and defender are combined in *a single person*. This combination contradicts all the laws of psychology. But the official is raised above the laws of psychology, while the general public remains under them. Nevertheless, one could excuse a defective principle of state; it becomes unpardonable, however, if it is not honest enough to be consistent. The *responsibility* of the officials ought to be as immeasurably above that of the general public as the officials are above the latter, and it is precisely here, where consistency alone could justify the principle and make it legitimate within its sphere, it is precisely here that it is abandoned and the opposite principle applied.

The censor, too, is accuser, defender and judge in a single person; *control of the mind* is entrusted to the censor; he is *irresponsible*.

The censorship could have only a *provisionally* loyal character if it was subordinated to the *regular courts*, which of course is impossible so long as there are no objective laws governing censorship. But the worst method of all is to subject the censorship to censorship again, as by an Oberprasident or supreme college of censors.

Everything that holds good Of the relation Of the press to the censorship holds good also of the relation of the censorship to the supreme censorship and that of the writer to the supreme censor, although an *intermediate link* is interposed. It is the same relation placed on a higher plane, the remarkable error of leaving matters alone and wanting to give them another nature through other persons. If the *coercive state* wanted to be loyal, it would abolish itself. Every point would require the same coercion and the same counter-pressure. The supreme censorship would have to be subjected to censorship in its turn. In order to escape from this vicious circle, it is decided to be disloyal; lawlessness now begins in the third or ninety-ninth stage. Because the bureaucratic state is vaguely conscious of this, it tries at least to place the sphere of lawlessness so high that it escapes the eye, and then believes that lawlessness has disappeared.

The real, *radical cure for the censorship* would be its *abolition*; for the institution itself is a bad one, and institutions are more powerful than people. Our view may be right or not, but in any case the Prussian writers stand to *gain through the new instruction*, either in *real freedom*, or in freedom of *ideas*, in *consciousness*.

Rara temporum feticitas, ubi quae velis sentire et quae sentias direre licet.

Signed; *By a Rhineland*

Transcribed in 1998 for marx.org by slr@marx.org



[Marx / Engels](#)

[Archive](#)



[Marxist writers'](#)

[Archives](#)

PROCEEDINGS OF THE SIXTH RHINE PROVINCE ASSEMBLY. THIRD ARTICLE.

DEBATES ON THE LAW ON THEFTS OF WOOD

Written in October 1842

First published in the Supplement to the *Rheinische Zeitung*

Nos. 298, 300, 303, 305 and 307, October 25, 27 and 30, November 1 and 3, 1842

Signed: B, a Rhinelander

Translated by Clemens Dutt

Transcribed for the Internet by director@marx.org, November 1996

Rheinische Zeitung, No. 298, Supplement

October 25 1842

RZ editorial note:

"We regret that we have not been able to publish
the *second* article for our readers.

Editorial board of the *Rheinische Zeitung*."

So far we have described two most important state acts of the Provincial Assembly, namely, its confusion over freedom of the press and its unfreedom in regard to the confusion. [2] We have now come down to ground level. Before we proceed to the really earthly question in all its life-size, the question of the parcellation of landed property, we shall give our readers some genre pictures which reflect in manifold ways the spirit and, we might say, even the actual physical nature of the Assembly.

It is true that the law on thefts of wood, like the law on offences in regard to hunting, forests and fields, deserves to be discussed not only in relation to the Assembly but equally on its own account. However, we do not have the draft of the law before us. Our material is limited to some

vaguely indicated additions made by the Assembly and its commission to laws that figure only as paragraph numbers. The Assembly proceedings themselves are reported so extremely meagerly, incoherently and apocryphally that the report looks like an attempt at mystification. To judge from the truncated torso available to us, the Assembly wanted by this passive quietude to pay an act of respect to our province.

One is immediately struck by a fact which is characteristic of these debates. The Assembly acts as a *supplementary legislator* alongside the state legislator. It will prove most interesting to examine the legislative qualities of the Assembly by means of an example. In view of this, the reader will forgive us for demanding from him patience and endurance, two virtues which had to be constantly exercised in analysing our barren subject-matter. In our account of the Assembly debates on the law on thefts we are directly describing the *Assembly's debates on its legislative function*.

At the very beginning of the debate, one of the urban deputies objected to the *title* of the law, which extends the category of "*theft*" to include simple offences against forest regulations.

A deputy of the knightly estate replied:

"It is precisely because the pilfering of wood is not regarded as theft that it occurs so often."

By analogy with this, the legislator would have to draw the conclusion: It is because a box on the ear is not regarded as murder that it has become so frequent. It should be decreed therefore that a box on the ear is murder.

Another deputy of the knightly estate finds it

"still more risky not to pronounce the word 'theft', because people who become acquainted with the discussion over this word could easily be led to believe that the Assembly does not regard the pilfering of wood also as theft".

The Assembly has to decide whether it considers pilfering of wood as theft; but if the Assembly does not declare it to be theft, people could believe that the Assembly really does not regard the pilfering of wood as theft. Hence it is best to leave this ticklish controversial question alone. It is a matter of a euphemism and euphemisms should be avoided. The forest owner prevents the legislator from speaking, for walls have ears.

The same deputy goes even further. He regards this whole examination of the expression "theft" as

"a dangerous preoccupation with *correcting formulations* on the part of the plenary assembly".

After these illuminating demonstrations, the Assembly voted the title of the law.

From the point of view recommended above, which mistakes the conversion of a citizen into a thief for a mere negligence in formulation and rejects all opposition to it as grammatical purism, it is obvious that even the *pilfering of fallen wood* or the gathering of dry wood is included under the heading of theft and punished as severely as the stealing of live growing timber.

It is true that the above-mentioned urban deputy remarks:

"Since the punishment could run to a long term of imprisonment, such severity would lead people who otherwise followed an honest path on to the path of crime. That would happen also because in prison they would be in the company of inveterate thieves; therefore he considered that the gathering or pilfering of dry fallen wood should be punished by a simple police penalty."

Another urban deputy, however, refuted him with the profound argument

"that in the forest areas of his region, at first only gashes were made in young trees, and later, when they were dead, they were treated as fallen wood".

It would be impossible to find a more elegant and at the same time more simple method of making the right of human beings give way to that of young trees. On the one hand, after the adoption of the paragraph, it is inevitable that many people not of a criminal disposition are cut off from the green tree of morality and cast like fallen wood into the hell of crime, infamy and misery. On the other hand, after rejection of the paragraph, there is the possibility that some young trees may be damaged, and it needs hardly be said that the wooden idols triumph and human beings are sacrificed!

The supreme penal code [3] includes under theft of wood only the pilfering of hewn wood and the cutting of wood for the purpose of theft. Indeed -- our Provincial Assembly will not believe it -- it states:

"If, however, in daytime someone takes fruit for eating and by its removal does no great damage, then, taking into account his personal position and the circumstances, he is to be punished by civil" (therefore, not criminal!) "proceedings."

The supreme penal code of the sixteenth century requests us to defend it against the charge of excessive humanity made by a Rhine Province Assembly of the nineteenth century, and we comply with this request.

The gathering of fallen wood and the most composite wood theft! They both have a common definition. The appropriation of wood from someone else. Therefore both are theft. That is the sum and substance of the far-sighted logic which has just issued laws.

First of all, therefore, we call attention to the *difference* between them, and if it must be admitted that the two actions are essentially different, it can hardly be maintained that they are identical from the legal standpoint.

In order to appropriate growing timber, it has to be forcibly separated from its organic association. Since this is an obvious outrage against the tree, it is therefore an obvious outrage against the owner of the tree.

Further, if felled wood is stolen from a third person, this felled wood is material that has been produced by the owner. Felled wood is wood that has been worked on. The natural connection with property has been replaced by an artificial one. Therefore anyone who takes away felled wood takes away property

In the case of fallen wood, on the contrary, nothing has been separated from property. It is only what has already been separated from property that is being separated from it. The wood thief pronounces on his own authority a sentence on property. The gatherer of fallen wood only carries out a sentence already pronounced by the very nature of the property, for the owner possesses only the tree, but the tree no longer possesses the branches that have fallen from it.

The gathering of fallen wood and the theft of wood are therefore essentially different things. The objects concerned are different, the actions in regard to them are no less different hence the frame of mind must also be different, for what objective standard can be applied to the frame of mind other than the content of the action and its form? But, in spite of this essential difference, you call both of them theft and punish both of them as theft. Indeed, you punish the gathering of fallen wood more severely than the theft of wood, for you punish it already by declaring it to be theft, a punishment which you obviously do not pronounce on the actual theft of wood. You should have called it murder of wood and punished it as murder. The law is not exempt from the general obligation to tell the truth. It is doubly obliged to do so, for it is the universal and authentic exponent of the legal nature of things. Hence the legal nature of things cannot be regulated according to the law; on the contrary, the law must be regulated according to the legal nature of things. But if the law applies the term theft to an action that is scarcely even a violation of forest regulations, then the law *lies*, and the poor are sacrificed to a legal lie.

"Il y a deux genres de corruption," says Montesquieu, "l'un lorsque le peuple n'observe point les lois; l'autre lorsqu'il est corrompu par les lois; mal incurable parce qu'il est dans le remède même." [a]

You will never succeed in making us believe that there is a crime where there is no crime, you will only succeed in converting crime itself into a legal act. You have wiped out the boundary between them, but you err if you believe that you have done so only to your advantage. The people sees the punishment, but it does not see the crime, and because it sees punishment where there is no crime, it will see no crime where there is punishment. By applying the category of theft where it ought

not to be applied, you have also exonerated it where this category ought to be applied.

And does not this crude view, which lays down a common definition for different kinds of action and leaves the difference out of account, itself bring about its own destruction? If every violation of property without distinction, without a more exact definition, is termed theft, will not all private property be theft? By my private ownership do I not exclude every other person from this ownership? Do I not thereby violate his right of ownership? If you deny the difference between essentially different kinds of the same crime, you are denying that crime itself is *different from right*, you are abolishing right itself, for every crime has an aspect in common with right. Hence it is a fact, attested equally by history and reason, that undifferentiated severity makes punishment wholly unsuccessful, for it does away with punishment as a success for right.

But what are we arguing about? The Assembly, it is true, repudiates the difference between gathering fallen wood, infringement of forest regulations, and theft of wood. It repudiates the difference between these actions, refusing to regard it as determining the character of the action, when it is a question of the *interests of the infringers of forest regulations*, but it recognises this difference when it is a question of the *interests of the forest owners*.

Thus the commission proposes the following *addition*:

"to regard it as an aggravating circumstance if growing timber is hewn or cut off with edged tools and if a saw is used instead of an axe".

The Assembly approves this distinction. The same keen-sightedness which so conscientiously distinguishes between an axe and a saw when it is a matter of its own interests, is so lacking in conscience as to refuse to distinguish between fallen wood and growing wood when it is a question of other people's interests. The difference was found to be important as an aggravating circumstance but without any significance as a mitigating circumstance, although the former cannot exist if the latter is impossible.

The same logic occurred repeatedly during the debate.

In regard to §65, an urban deputy desired

"that the *value* of the stolen wood also should be used as a measure for fixing the punishment", "which was opposed by the commission's spokesman as *unpractical*."

The same urban deputy remarked in connection with §66:

"in general there is missing from the whole law any statement of value, in accordance with which the punishment would be increased or diminished".

The importance of value in determining punishment for violations of property is self-evident.

If the concept of crime involves that of punishment, the actual crime calls for a measure of punishment. An actual crime has its limit. The punishment will therefore have to be limited in order to be actual, it must be limited in accordance with a principle of law in order to be just. The problem is to make the punishment the actual consequence of the crime. It must be seen by the criminal as the necessary result of his act, and therefore as *his own act*. Hence the limit of his punishment must be the limit of his act. The definite *content* of a violation of the law is the limit of a definite crime. The *measure* of this content is therefore the measure of the crime. In the case of property this measure is its *value*. Whereas personality, whatever its limits, is always a whole, property always exists only within a definite limit that is not only determinable but determined, not only measurable but measured. Value is the civil mode of existence of property, the logical expression through which it first becomes socially comprehensible and communicable. It is clear that this objective defining element provided by the nature of the object itself must likewise be the objective and essential defining element for the punishment. Even if legislation here, where it is a matter of figures, can only be guided by external features so as not to be lost in an infinitude of definitions, it must at least regulate. It is not a question of an exhaustive definition of differences, but of establishing differences. But the Assembly was not at all disposed to devote its distinguished attention to such trifles.

But do you consider then that you can conclude that the Assembly completely excluded value in determining punishment? That would be an ill-considered, unpractical conclusion! The forest owner -- we shall deal with this later in more detail -- does not merely demand to be compensated by the thief for the simple general value. He even gives this value an individual character and bases his demand for special compensation on this poetic individuality. We can now understand what the commission's spokesman understands by *practical*. The practical forest owner argues as follows: This legal definition is good insofar as it is useful to me, for what is useful to me is good. But this legal definition is superfluous, it is harmful, it is unpractical, insofar as it is intended to be applied to the accused on the basis of a purely theoretical legal whim. Since the accused is harmful to me, it stands to reason that everything is harmful to me that lessens the harm coming to him. That is practical wisdom.

We unpractical people, however, demand for the poor, politically and socially propertyless many what the learned and would-be learned servility of so-called historians has discovered to be the true philosopher's stone for turning every sordid claim into the pure gold of right. We demand for the poor a *customary right*, and indeed one which is not of a local character but is a customary right of the poor in all countries. We go still further and maintain that a customary right by its very nature can *only* be a right of this lowest, propertyless and elemental mass.

The so-called customs of the privileged classes are understood to mean *customs contrary to the law*. Their origin dates to the period in which human history was part of *natural history*, and in which, according to Egyptian legend, all gods concealed themselves in the shape of animals. Mankind appeared to fall into definite species of animals which were connected not by equality, but by inequality, an inequality fixed by laws. The world condition of unfreedom required laws expressing this unfreedom, for whereas human law is the mode of existence of freedom, this animal law is the mode of existence of unfreedom. *Feudalism* in the broadest sense is the *spiritual animal kingdom*, the world of divided mankind, in contrast to the human world that creates its own

distinctions and whose inequality is nothing but a refracted form of equality. In the countries of naive feudalism, in the countries of the caste system, where in the literal sense of the word people are put in separate boxes [b], and the noble, freely interchanging members of the great sacred body, the holy Humanus, are sawn and cleft asunder, forcibly torn apart, we find therefore also the *worship of animals*, animal religion in its primitive form, for man always regards as his highest being that which is his true being. The sole equality to be found in the actual life of animals is the equality between one animal and other animals of the same species; it is the equality of the given species with itself, but not the equality of the genus. The animal genus itself is seen only in the hostile behaviour of the different animal species, which assert their particular *distinctive* characteristics one against another. In the *stomach of the beast of prey*, nature has provided the battlefield of union, the crucible of closest fusion, the organ connecting the various animal species.

Similarly, under feudalism one species feeds at the expense of another, right down to the species which, like the polyp, grows on the ground and has only numerous arms with which to pluck the fruits of the earth for higher races while it itself eats dust for whereas in the natural animal kingdom the worker bees kill the drones, in the spiritual animal kingdom the drones kill the worker bees, and precisely by labour. When the privileged classes appeal from *legal right* to their *customary rights*, they are demanding instead of the human content of right, its animal form, which has now lost its reality and become a mere animal mask.

Rheinische Zeitung, No. 300, Supplement
October 27 1842

The customary rights of the aristocracy conflict by their *content* with the form of universal law. They cannot be given the form of law because they are formations of lawlessness. The fact that their content is contrary to the form of law -- universality and necessity -- proves that they are *customary wrongs* and cannot be asserted in opposition to the law, but as such opposition they must be abolished and even punished if the occasion arises, for no one's action ceases to be wrongful because it is his custom, just as the bandit son of a robber is not exonerated because banditry is a family idiosyncrasy. If someone intentionally acts contrary to law he is punished for his intention; if he acts by custom, this custom of his is punished as being a bad custom. At a time when universal laws prevail, rational customary right is nothing but the *custom of legal right*, for right has not ceased to be custom because it has been embodied in law, although it has ceased to be *merely* custom. For one who acts in accordance with right, right becomes his own custom, but it is enforced against one who violates it, although it is not his custom. Right no longer depends on chance, on whether custom is rational or not, but custom becomes rational because right is legal, because custom has become the custom of the state.

Customary right as a *separate domain* alongside legal right is therefore rational only where it exists *alongside* and *in addition to law*, where custom is the *anticipation* of a legal right. Hence one cannot speak of the customary rights of the privileged estates. The law recognises not only their rational right but often even their irrational pretensions. The privileged estates have no right

of anticipation in regard to law, for law has anticipated all possible consequences of their right. Hence, too, the customary rights are demanded only as a domain for *menus plaisirs* [c], in order that the same content which is dealt with in the law inside its rational limits should find in custom scope for whims and pretensions outside these rational limits.

But whereas these customary rights of the aristocracy are customs which are contrary to the conception of rational right, the customary rights of the poor are rights which are contrary to the customs of positive law. Their content does not conflict with legal form, but rather with its own lack of form. The form of law is not in contradiction to this content, on the contrary, the latter has not yet reached this form. Little thought is needed to perceive how *one-sidedly* enlightened legislation has treated and been compelled to treat the *customary rights of the poor*, of which the various *Germanic* rights [4] can be considered the most prolific source.

In regard to *civil law*, the most liberal legislations have been confined to formulating and raising to a universal level those rights which they found already in existence. Where they did not find any such rights, neither did they create any. They abolished particular customs, but in so doing forgot that whereas the wrong of the estates took the form of arbitrary pretensions, the right of those without social estate appeared in the form of accidental concessions. This course of action was correct in regard to those who, besides right, enjoyed custom, but it was incorrect in regard to those who had only customs without rights. Just as these legislations converted arbitrary pretensions into legal claims, insofar as some rational content of right was to be found in those pretensions, they ought also to have converted accidental concessions into necessary ones. We can make this clear by taking the monasteries as an example. The monasteries were abolished, their property was secularised, and it was right to do so. But the accidental support which the poor found in the monasteries was not replaced by any other positive source of income. When the property of the monasteries was converted into private property and the monasteries received some compensation, the poor who lived by the monasteries were not compensated. On the contrary, a new restriction was imposed on them, while they were deprived of an ancient right. This occurred in all transformations of privileges into rights. A positive aspect of these abuses -- which was also an abuse because it turned a right of one side into something accidental -- was abolished not by the accidental being converted into a necessity, but by its being left out of consideration.

These legislations were necessarily one-sided, for all customary rights of the poor were based on the fact that certain forms of property were indeterminate in character, for they were not definitely private property, but neither were they definitely common property, being a mixture of private and public right, such as we find in all the institutions of the Middle Ages. For the purpose of legislation, such ambiguous forms could be grasped only by understanding, and understanding is not only one-sided, but has the essential function of making the world one-sided, a great and remarkable work, for only one-sidedness can extract the particular from the unorganised mass of the whole and give it shape. The character of a thing is a product of understanding. Each thing must isolate itself and become isolated in order to be something. By confining each of the contents of the world in a stable definiteness and as it were solidifying the fluid essence of this content, understanding brings out the manifold diversity of the world, for the world would not be many-sided without the many one-sidednesses .

Understanding therefore abolished the hybrid, indeterminate forms of property by applying to them the existing categories of abstract civil law, the model for which was available in Roman

law. The legislative mind considered it was the more justified in abolishing the obligations of this indeterminate property towards the class of the very poor, because it also abolished the state privileges of property. It forgot, however, that even from the standpoint of civil law a twofold private right was present here: a private right of the owner and a private right of the non-owner and this apart from the fact that no legislation abolishes the privileges of property under constitutional law, but merely divests them of their strange character and gives them a civil character. If, however, every medieval form of right, and therefore of property also, was in every respect hybrid, dualistic, split into two, and understanding rightly asserted its principle of unity in respect of this contradictory determination, it nevertheless overlooked the fact that there exist objects of property which, by their very nature, can never acquire the character of predetermined private property, objects which, by their elemental nature and their accidental mode of existence, belong to the sphere of occupation rights, and therefore of the occupation right of that class which precisely because of these occupation rights, is excluded from all other property and which has the same position in civil society as these objects have in nature.

It will be found that the customs which are customs of the entire poor class are based with a sure instinct on the *indeterminate* aspect of property; it will be found not only that this class feels an urge to satisfy a natural need, but equally that it feels the need to satisfy a rightful urge. Fallen wood provides an example of this. Such wood has as little organic connection with the growing tree as the cast-off skin has with the snake. Nature itself presents as it were a model of the antithesis between poverty and wealth in the shape of the dry, snapped twigs and branches separated from organic life in contrast to the trees and stems which are firmly rooted and full of sap, organically assimilating air, light, water and soil to develop their own proper form and individual life. It is a physical representation of poverty and wealth. Human poverty senses this kinship and deduces its right to property from this feeling of kinship. If, therefore, it claims physical organic wealth for the predetermined property owners, it claims physical poverty for need and its fortuity. In this play of elemental forces, poverty senses a beneficent power more humane than human power. The fortuitous arbitrary action of privileged individuals is replaced by the fortuitous operation of elemental forces, which take away from private property what the latter no longer voluntarily foregoes. Just as it is not fitting for the rich to lay claim to alms distributed in the street, so also in regard to these *alms of nature*. But it is by its *activity*, too, that poverty acquires its right. By its act of *gathering*, the elemental class of human society appoints itself to introduce order among the products of the elemental power of nature. The position is similar in regard to those products which, because of their wild growth, are a wholly accidental appendage of property and, if only because of their unimportance, are not an object for the activity of the actual owner. The same thing holds good also in regard to gleaning after the harvest and similar customary rights.

In these customs of the poor class, therefore, there is an instinctive sense of right; their roots are positive and legitimate, and the form of *customary right* here conforms all the more to nature because up to now the *existence of the poor class itself* has been a *mere custom* of civil society, a custom which has not found an appropriate place in the conscious organisation of the state.

The debate in question affords an example of the way in which these customary rights are treated, an example which exhaustively illustrates the method and spirit of the whole procedure.

An urban deputy opposed the provision by which the gathering of bilberries and cranberries is

also treated as theft. He spoke primarily on behalf of the children of the poor, who pick these fruits to earn a trifling sum for their parents; an activity which has been permitted by the owners *since time immemorial* and has given rise to a *customary right* of the children. This fact was countered by another deputy, who remarked that

"in his area these berries have already become articles of commerce and are dispatched to Holland by the barrel".

In *one locality*, therefore, things have actually gone so far that a customary right of the poor has been turned into a *monopoly* of the rich. That is exhaustive proof that common property can be monopolised, from which it naturally follows that it must be monopolised. The nature of the object calls for monopoly because private property interests here have invented this monopoly. The modern idea conceived by some money-grabbing petty traders becomes irrefutable when it provides profit for the age-old Teutonic landed interest.

The wise legislator will prevent crime in order not to have to punish it, but he will do so not by obstructing the sphere of right, but by doing away with the negative aspect of every instinct of right, giving the latter a positive sphere of action. He will not confine himself to removing the *impossibility* for members of one class to belong to a higher sphere of right, but will raise their class itself to the *real possibility* of enjoying its rights. But if the state is not humane, rich and high-minded enough for this, it is at least the legislator's absolute duty not to convert into a *crime* what circumstances alone have caused to be an *offence*. He must exercise the utmost leniency in correcting as a social *irregularity* what it would be the height of injustice for him to punish as an anti-social crime. Otherwise he will be combating the social instinct while supposing that he is combating its anti-social form. In short, if popular customary rights are suppressed, the attempt to exercise them can only be treated as the simple *contravention of a police regulation*, but never punished as a crime. Punishment by police penalties is an expedient to be used against an act which circumstances characterise as a superficial irregularity not constituting any violation of the eternal rule of law. The punishment must not inspire more repugnance than the offence, the ignominy of crime must not be turned into the ignominy of law, the basis of the state is undermined if misfortune becomes a crime or crime becomes a misfortune. Far from upholding this point of view, the Provincial Assembly does not observe even the elementary rules of legislation.

The petty, wooden, mean and selfish soul of interest sees only one point, the point in which it is wounded, like a coarse person who regards a passer-by as the most infamous, vilest creature under the sun because this unfortunate creature has trodden on his corns. He makes his corns the basis for his views and judgment, he makes the one point where the passer-by comes into contact with him into the only point where the very nature of this man comes into contact with the world. But a man may very well happen to tread on my corns without on that account ceasing to be an honest, indeed an excellent, man. Just as you must not judge people by your corns, you must not see them through the eyes of your private interest. [d] Private interest makes the one sphere in which a person comes into conflict with this interest into this person's whole sphere of life. It makes the law a *rat-catcher*, who wants only to destroy vermin, for he is not a naturalist and therefore regards rats

only as vermin. But the state must regard the infringer of forest regulations as something more than a wood-pilferer, more than an *enemy to wood*. Is not the state linked with each of its citizens by a thousand vital nerves, and has it the right to sever all these nerves because this citizen has himself arbitrarily severed *one* of them? Therefore the state will regard even an infringer of forest regulations as a human being, a living member of the state, one in whom its heart's blood flows, a soldier who has to defend his Fatherland, a witness whose voice must be heard by the court, a member of the community with public duties to perform, the father of a family, whose existence is sacred, and, above all, a citizen of the state. The state will not light-heartedly exclude one of its members from all these functions, for the state amputates itself whenever it turns a citizen into a criminal. Above all, the *moral* legislator will consider it a most serious, most painful, and most dangerous matter if an action which previously was not regarded as blameworthy is classed among criminal acts.

Interest, however, is practical, and nothing in the world is more practical than to strike down one's enemy. "Hates any man the thing he would not kill?" we are already told by Shylock. [e] The true legislator should fear nothing but wrong, but the legislative interest knows only fear of the consequences of rights, fear of the evil-doers against whom the laws are made. Cruelty is a characteristic feature of laws dictated by cowardice, for cowardice can be energetic only by being cruel. Private interest, however, is always cowardly, for its heart, its soul, is an external object which can always be wrenched away and injured, and who has not trembled at the danger of losing heart and soul? How could the selfish legislator be human when something inhuman, an alien material essence, is his supreme essence? "*Quand il a peur, il est terrible,*" [f] says the *National* about Guizot. These words could be inscribed as a motto over all *legislation inspired by self-interest*, and therefore by *cowardice*.

When the Samoyeds kill an animal, before skinning it they assure it in the most serious tones that only Russians have done it this injury, that it is being dismembered with a Russian knife, and therefore it should revenge itself only on Russians. Even without any claim to be a Samoyed, it is possible to turn the law into *Russian knife*. Let us see how this is done.

In connection with §4, the commission proposed:

"At distances greater than two miles, the *warden who makes the charge* determines the *value* according to the existing local price."

An urban deputy protested against this as follows:

"The proposal to allow the valuation of the stolen wood to be made by the forester who brings the charge evokes serious doubt. Of course, this official has our full confidence, but only as regards the fact, by no means as regards the value. The latter should be determined according to a valuation made by the local authorities and confirmed by the district president. It is true that it has been proposed that §14, according to which the penalty imposed should accrue to the forest owner, should not be adopted", etc. "If §14 were to be retained. the proposed provision would be doubly dangerous. For, in the nature of things, the

forester who is employed by the forest owner and paid by him would certainly have to put the value of the stolen wood as high as possible."

The Provincial Assembly approved the proposal of the commission.

We see here the enactment of patrimonial jurisdiction. The patrimonial warden is at the same time in part a judge. The valuation is part of the sentence. Hence the sentence is already partly anticipated in the record of the charge. The warden who made the charge sits in the collegium of judges; he is the expert whose decision is binding for the court, he performs a function from which the other judges are excluded by him. It is foolish to oppose inquisitorial methods when there exist even patrimonial gendarmes and denouncers who at the same time act as judges.

Apart from this fundamental violation of our institutions, it is obvious from an examination of the qualifications of the warden who makes the charge how little he is objectively able to be at the same time the valuer of the stolen wood.

As warden, he personifies the protecting genius of the forest. Protection, especially personal, physical protection, calls for an effective, energetic and loving attitude to the object of his care, an attitude in which he as it were coalesces with the growing forest. The forest must be everything to him, its value for him must be absolute. The valuer's attitude to the stolen wood, on the other hand, is one of sceptical distrust. He measures it with a keen prosaic eye by an ordinary standard and reckons how much it is worth in hellers and pfennigs. A warden and a valuer are as different as a mineralogist and a trader in minerals. The forest warden cannot estimate the value of the stolen wood, for in any record for the court giving his estimate of the value of the stolen material he is estimating *his own value*, because it is the value of his own activity, and do you believe that he would not protect the *value* of the object under his care as much as the *substance* of it?

The functions entrusted to one man, for whom severity is an official duty, are contradictory not only in relation to the object under protection, but also in relation to the *persons* concerned.

As guardian of the wood, the warden has to protect the interests of the private owner, but as valuer he has just as much to protect the interests of the infringer of forest regulations against the extravagant demands of the private owner. While he has, perhaps, to use his fists on behalf of the forest, he has immediately thereafter to use his brains on behalf of the forest's enemy. While embodying the interests of the forest owner, he has at the same time to be a guarantee against these same interests.

The warden, furthermore, is the denouncer. The charge he draws up is a denunciation. The value of the object, therefore becomes the subject-matter of the denunciation. The warden loses his dignity as a judge, and the function of judge is most profoundly debased, because at that moment it is indistinguishable from the function of denouncer.

Finally, this denouncing warden, who cannot rank as an expert, whether in his capacity of denouncer or in that of warden, is in the pay and service of the forest owner. One might just as well leave the valuation, under oath, to the forest owner himself, since in the person of his warden he has actually only assumed the shape of a third person.

Instead, however, of finding this position of the denouncing warden even somewhat dubious, the

Provincial Assembly, on the contrary, regarded as dubious the sole provision which constitutes the last semblance of the state's power in the realm of forest glory, namely, *life appointment* of the denouncing wardens. This proposal evoked the most vehement protest, and the storm seems hardly to have been allayed by the explanation of the spokesman

"that already previous Provincial Assemblies had called for life appointment of wardens to be abandoned, but that the government had not agreed to this and regarded life appointment as a protection for the state's subjects."

At an earlier date, therefore, the Provincial Assembly had already tried to bargain with the government so as to make it abandon protection for its subjects, but the Assembly did not go beyond bargaining. Let us examine the arguments, as generous as they are irrefutable, advanced *against* life appointment.

A deputy from the rural communities

"finds that life appointment of wardens as a condition for confidence in them is greatly to the detriment of the small forest owners; and another deputy insists that protection must be equally effective for small and big forest owners."

A member of the princely estate remarked

"that life appointment with private persons is very inadvisable, and in France it has not been found at all necessary for ensuring confidence in the records drawn up by the wardens, but that something must of necessity be done to prevent infringements from increasing".

An *urban deputy* said:

"Credence must be given to all testimony of properly appointed and sworn forest officials. Life appointment is, so to speak, an impossibility for many communities, and especially for owners of small estates. A decision that only forest officials who have been appointed for life should be trusted, would deprive these owners of all forest protection. In a large part of the province, communities and private owners would necessarily have to entrust the protection of their wooded areas to field wardens, because their forest area is not large enough to enable them to appoint special foresters for it. It would indeed be strange if these field wardens, who have also taken an oath to protect the forests, were not to enjoy complete confidence when they reported a theft of wood, but were trusted when they testified to the infringement of forest regulations."

Rheinische Zeitung, No. 303, Supplement

October 30, 1842

Thus *town* and *countryside* and the *princely estate* have had their say. Instead of smoothing out the difference between the rights of the infringer of forest regulations and the claims of the forest owner, they found that this difference was not great enough. There was no attempt to afford equal protection to the forest owner and the infringer of forest regulations, it was only sought to make the protection of the small forest owner equal to that of the big forest owner. In this latter case, equality down to the minutest detail is imperative, whereas in the former case inequality is an axiom. Why does the small forest owner demand the same protection as the big forest owner? Because both are forest owners. But are not both the forest owners and the infringers of forest regulations citizens of the state? If small and big forest owners have the same right to protection by the state, does this not apply even more to small and big citizens of the state?

When the member of the princely estate refers to France -- for interest knows no political antipathies -- he only forgets to add that in France the warden's charge concerns the fact but not the value. Similarly, the worthy urban spokesman forgets that it is inadmissible to rely on a field warden here because it is a matter not only of registering a theft of wood but also of establishing the value of the wood.

What is the gist of all the arguments we have just heard? It is that the small forest owner does not have the *means* for appointing a warden for life. What follows from this? It follows that the small forest owner is not entitled to undertake this task. But what conclusion is drawn by the small forest owner? That he is entitled to appoint a warden as a valuer who can be given notice of dismissal. His lack of means entitles him to a privilege.

Moreover, the small forest owner does not have the means to support an independent *collegium of judges*. Therefore let the state and the accused manage without an independent collegium of judges, let a manservant of the small forest owner have a seat on the tribunal, or if he has no manservant, let it be his maidservant; and if he has no maidservant, let him sit there himself. Has not the accused the same right in regard to the executive power, which is an organ of the state, as he has in regard to the judicial power? Why then should not the tribunal also be organised in accordance with the means of the small forest owner?

Can the relation between the state and the accused be altered because of the meagre resources of a private person, the forest owner? The state has a right in relation to the accused because it confronts him as the state. An immediate consequence of this is its duty to act towards the law-breaker as the state and in the manner of the state. The state has not only the means to act in a way which is as appropriate to its reason, its universality, and its dignity as it is to the right, the life and the property of the incriminated citizen; it is its absolute duty to possess and apply these means. No one will make this demand of the forest owner, whose forest is not the state and whose soul is not the soul of the state. -- But what conclusion was drawn from that? It was concluded that since private property does not have means to raise itself to the standpoint of the state, the latter is obliged to lower itself to the irrational and illegal means of private property.

This claim on the part of private interest, the paltry soul of which was never illuminated and thrilled by thought of the state, is a serious and sound lesson for the latter. If the state, even in a single respect, stoops so low as to act in the manner of private property instead of in its own way, the immediate consequence is that it has to adapt itself in the form of its means to the narrow limits of private property. Private interest is sufficiently crafty to intensify this consequence to the point where private interest in its most restricted and paltry form makes itself the limit and rule for the action of the state. As a result of this, apart from the complete degradation of the state, we have the reverse effect that the most irrational and illegal means are put into operation against the accused; for supreme concern for the interests of limited private property necessarily turns into unlimited lack of concern for the interests of the accused. But if it becomes clearly evident here that private interest seeks to degrade, and is bound to degrade, the state into a means operating for the benefit of private interest, how can it fail to follow that a *body representing private interests*, the estates, will seek to degrade, and is bound to degrade, the state to the thoughts of private interest? Every modern state, however little it corresponds to its concept, will be compelled to exclaim at the first practical attempt at such legislative power: Your ways are not my ways, your thoughts are not my thoughts!

How completely unsound the temporary hiring of a denouncing warden is, cannot be more glaringly shown than by an argument advanced *against* life appointment, which cannot be attributed to a slip of the tongue, for it was read out. The following remark, namely, was read out by an urban deputy:

"Community forest wardens appointed for life are not, and cannot be, under such strict control as royal officials. Every *spur* to loyal fulfilment of duty is *paralysed* by life appointment. If the forest warden only half performs his duty and takes care that he cannot be charged with any real offence, he will always find sufficient advocacy in his favour to make a proposal for his dismissal under §56 useless. In such circumstances the interested parties will not even dare to put forward such a proposal."

We recall that it was decreed that the warden making the charge should be given full confidence when it was a question of entrusting him with the task of valuation. We recall that §4 was a *vote of confidence* in the warden.

We now learn for the first time that the denouncing warden needs to be controlled, and strictly controlled. For the first time he appears not merely as a man, but as a horse, since spurs and fodder are the only stimuli of his conscience, and the muscles for performing his duty are not merely slackened but completely paralysed by life appointment. We see that selfishness has a double set of weights and measures for weighing and measuring people, and two world outlooks, two pairs of spectacles, one showing everything black and the other in rosy tints. When it is a matter of making other people the victim of its tools and giving a favourable appearance to dubious means, selfishness puts on its rose-coloured spectacles, which impart an imaginary glory to these tools and means, and deludes itself and others with the unpractical, delightful dreaming of a tender and trusting soul. Every wrinkle of its countenance expresses smiling bonhomie. It presses its opponent's hand until it hurts, but it does so as a sign of its trust in him. But suddenly it is a

question of personal advantage, of carefully testing the usefulness of tools and means behind the scenes where stage illusions are absent. Being a strict judge of people, it cautiously and distrustfully puts on its world-wise dark spectacles of practice. Like an experienced horse-dealer it subjects people to a lengthy ocular inspection, overlooking no detail, and they seem to it to be as petty, as pitiful, and as dirty, as selfishness itself.

We do not intend to argue with the world outlook of selfishness, but we want to compel it to be consistent. We do not want it to reserve all worldly wisdom for itself and leave only fantasies for others. We want to make the sophisticated spirit of private interest abide for a moment by its own conclusions.

If the warden making the charge is a man such as you describe, a man whom life appointment, far from giving him a feeling of independence, security and dignity in the performance of his duty, has, on the contrary, deprived of any incentive to do his duty, how can we expect this man to behave impartially towards the accused when he is the unconditional slave of your arbitrary power? If only spurs force this man to do his duty, and if you are the wearer of the spurs, what fate must we prophesy for the accused, who wears no spurs? If even you yourself cannot exercise sufficiently strict control over this warden, how can the state or the accused side in the case control him? Does not what you say of life appointment apply instead to an appointment that can be terminated: "if the forest warden only half performs his duty, he will always find sufficient advocacy in his favour to make a proposal for his dismissal under §56 useless"? Would not all of you be advocates for him as long as he performed half his duty, namely, the protection of your interests?

The conversion of naive, excessive confidence in the forest warden into abusive, censorious distrust reveals the gist of the matter. It is not in the forest warden but in *yourselves* that you place this tremendous confidence which you want the state and the infringer of forest regulations to accept as a dogma.

It is not the warden's official position, nor his oath, nor his conscience that should be the guarantee of the accused against you; on the contrary, your sense of justice, your humanity, your disinterestedness, your moderation should be the guarantee of the accused against the forest warden. Your control is his ultimate and only guarantee. Imbued with a vague notion of your personal excellence, wrapt in poetic self-delight, you offer the parties in the case your individual qualities as a means of protection against your laws. I confess that I do not share this romantic conception of the forest owners. I do not at all believe that persons can be a guarantee against laws; on the contrary, I believe that laws must be a guarantee against persons. And can even the most daring fantasy imagine that men who in the noble work of legislation cannot for a moment rise above the narrow, practically base standpoint of self-seeking to the theoretical height of a universal and objective point of view, men who tremble even at the thought of future disadvantages and seize on anything to defend their interests, can these men become philosophers in the face of real danger? But no one, not even the most excellent legislator, can be allowed to put himself above the law he has made. No one has the right to decree a vote of confidence in himself when it entails consequences for third persons.

But whether it is permissible for you even to demand that people should place special confidence in you, may be judged from the following facts.

"He must oppose §87," stated an urban deputy, "since its provisions would give rise to extensive and fruitless investigations, as a result of which personal freedom and freedom of intercourse would be violated. It is not permissible beforehand to regard everyone as a criminal and to assume a crime before having proof that it has been committed."

Another urban deputy said that the paragraph ought to be deleted. The vexatious provision that "everyone has to prove where he obtained his wood", with the result that everyone could be under suspicion of stealing and concealing wood, was a gross and injurious intrusion into the life of the citizen. The paragraph was adopted.

In truth, you presume too much on people's inconsistency if you expect them to proclaim as a maxim that distrust is to their detriment and confidence is to your advantage, and if you expect their confidence and distrust to see through the eyes of your private interest and feel through the heart of your private interest.

Yet another argument is advanced against life appointment, an argument of which it is impossible to say whether it is more calculated to evoke contempt or ridicule.

"It is also impermissible that the *free will of private persons* should be so greatly restricted in this way, for which reason *only* appointments that can be terminated should be allowed."

The news that man possesses free will which must not be restricted in all kinds of ways, is certainly as comforting as it is unexpected. The oracles which we have so far heard have resembled the ancient oracle at Dodona. [5] They are dispensed from wood. Free will, however, does not have the quality of an estate. How are we to understand this sudden rebellious emergence of ideology, for as far as ideas are concerned we have before us only followers of Napoleon?

The will of the forest owner requires freedom to deal with the infringer of forest regulations as it sees fit and in the way it finds most convenient and least costly. This will wants the state to hand over the evil-doer to it to deal with at its discretion. It demands *plein pouvoir*. [g] It does not oppose the restriction of free will it opposes the *manner* of this restriction, which is so restrictive that it affects not only the infringer of forest regulations but also the owner of the wood. Does not this free will want to have numerous freedoms? Is it not a very free, an excellent, free will? And is it not scandalous in the nineteenth century to dare to restrict "so greatly in this way" the free will of those private persons who promulgate public laws? It is, indeed, scandalous.

Even that obstinate reformer, free will, must join the adherents of the good arguments headed by the sophistry of private interest. But this free will must have good manners, it must be a cautious loyal free will, one which is able to arrange itself in such a way that its sphere coincides with the sphere of the arbitrary power of those same privileged private persons. Only once has there been mention of free will, and on this one occasion it appears in the shape of a squat private person who hurls blocks of wood at the spirit of rational will. Indeed, what need is there for this spirit where the will is chained to the most petty and selfish interests like a galley-slave to his rowing bench?

The climax of this whole argument is summarised in the following remark, which turns the relationship in question upside-down:

"While the royal forest wardens and gamekeepers may be appointed for life, in the case of rural communities and private persons this evokes the most serious misgivings."

As if the sole source of misgivings were not in that private servants act here in the place of state officials! As if life appointment was not aimed precisely against private persons, who are the ones that *evoke misgivings!* *Rien n'est plus terrible que la logique dans l'absurdité* [h], that is to say, nothing is more terrible than the logic of selfishness.

This logic, which turns the servant of the forest owner into a state authority, *turns the authority of the state into a servant of the forest owner*. The state structure, the purpose of the individual administrative authorities, everything must get out of hand so that everything is degraded into an instrument of the forest owner and his interest operates as the soul governing the entire mechanism. All the organs of the state become ears, eyes, arms, legs, by means of which the interest of the forest owner hears, observes, appraises, protects, reaches out, and runs.

The commission proposed the addition to §62 of a conclusion demanding that inability to pay be certified by the tax-collector, the burgomaster and two local officials of the community in which the infringer of forest regulations lives. A deputy from the rural communities considered that to make use of the *tax-collector* was contrary to existing legislation. Of course, no attention was paid to this contradiction.

In connection with §20, the commission proposed:

"In the Rhine Province the competent forest owner should be authorised to hand over convicted persons to the local authority to perform penal labour in such a way that their working days will be put to the account of the manual services on communal roads which the forest owner is obliged to render in the rural community, and accordingly subtracted from this obligation."

Against this, the objection was raised

"that burgomasters cannot be used as executors for individual members of the rural community and that the labour of convicts cannot be accepted as compensation for the work which has to be performed by paid day-labourers or servants".

The spokesman commented:

"Even if it is a burdensome task for the burgomasters to see that unwilling and insubordinate prisoners convicted of infringing forest regulations are made to work, nevertheless it is one of the functions of these officials to induce disobedient and evil-minded persons in their charge to return to the path of duty, and is it not a *noble deed* to lead the convict away from the wrong road back to the right path? Who in the countryside has more means of doing this than the *burgomasters*?"

Reineke put on an anxious and sorrowful mien
Which excited the pity of many a good-natured man,
Lampe, the hare, especially was sore distressed.

[J Goethe, *Reineke Fuchs*, Sechster Gesang]

The Provincial Assembly adopted the proposal.

Rheinische Zeitung, No. 305, Supplement
November 1 1842

The good burgomaster must undertake a burdensome task and perform a noble deed in order that the forest owner can fulfil his duty to the community without expense to himself. The forest owner could with equal right make use of the burgomaster as a chief cook or head waiter. Is it not a noble deed for the burgomaster to look after the kitchen or cellar of those in his charge? The convicted criminal is not in the charge of the burgomaster, but in the charge of the prison superintendent. Does not the burgomaster lose the strength and dignity of his position if, instead of representing the community, he is made an executor for individual members, if he is turned from a burgomaster into a taskmaster? Will not the other, free members of the community be insulted if their honest work for the general good is degraded to the level of penal labour for the benefit of particular individuals?

But it is superfluous to expose these sophistries. Let the spokesman be so good as to tell us himself how worldly-wise people judge humane phrases. He makes the *forest owner* address the following reply to the *farm owner* who displays humanity:

"If some ears of corn are pilfered from a landowner, the thief would say: 'I have no bread, so I take a few ears of corn from the large amount you possess', just as the wood thief says: 'I have no firewood, so I steal some wood.' The landowner is protected by Article 444 of the Criminal Code, which punishes the taking of ears of corn with 2-5 years' imprisonment. The forest owner has no such powerful protection!"

This last envious exclamation of the forest owner contains a whole confession of faith. You farm owner, why are you so magnanimous where my interests are concerned? Because your interests are already looked after. So let there be no illusions! Magnanimity either costs nothing or brings something in. Therefore, farm owner, you cannot deceive the forest owner! Therefore, forest owner, do not deceive the burgomaster!

This intermezzo alone would suffice to prove what little meaning "noble deeds" can have in our debate, if the whole debate did not prove that moral and humane reasons occur here merely as phrases. But interest is miserly even with phrases. It invents them only in case of need, when the results are of considerable advantage. Then it becomes eloquent, its blood circulates faster, it is not sparing even with noble deeds that yield it profit at the expense of others, with flattering words and sugary endearments. And all that, all of it, is exploited only in order to convert the infringement of forest regulations into current coin for the forest owner, to make the infringer of forest regulations into a lucrative source of income, to be able to invest the capital more conveniently -- for the wood thief has become a capital for the forest owner. It is not a question of misusing the burgomaster for the benefit of the infringer of forest regulations, but of misusing the burgomaster for the benefit of the forest owner. What a remarkable trick of fate it is, what a remarkable fact, that on the rare occasions when a problematic benefit for the infringer of forest regulations is given a passing mention, the forest owner is guaranteed an unquestionable benefit!

The following is yet another example of these humane sentiments!

Spokesman: "French law does not acknowledge the commutation of imprisonment into forest labour; he considers this commutation a wise and beneficial measure, for imprisonment does not always lead to reform but very often to corruption."

Previously, when innocent persons were turned into criminals, when in connection with the gathering of fallen wood a deputy remarked that in prison they were brought into contact with inveterate thieves, prisons were said to be *good*. Suddenly reformatories have been metamorphosed into institutions for corruption, for at this moment it is of advantage to the interests of the forest owner that prisons corrupt. By reform of the criminal is understood *improvement of the percentage of profit* which it is the criminal's noble function to provide for the forest owner.

Interest has no memory, for it thinks only of itself. And the *one* thing about which it is concerned, itself, it never forgets. But it is not concerned about contradictions, for it never comes into contradiction with itself. It is a constant improviser, for it has no system, only *expedients*.

Whereas humane and rightful motives have no part to play except

Ce qu'au teal nous autres sots humains,
Nous appelons faire tapisserie, [\[1\]](#)

expedients are the most active agents in the argumentative mechanism of private interest. Among these expedients, we note two that constantly recur in this debate and constitute the main categories, namely, "*good motives*" and "*harmful results*". We see sometimes the spokesman for the commission, sometimes another member of the Assembly, defending every ambiguous provision against hostile shafts of objections by means of the shield of shrewd, wise and good motives. We see every conclusion drawn from the standpoint of right rejected by referring to its harmful or dangerous results. Let us examine for a moment these extensive expedients, these expedients *par excellence*, these expedients covering everything and a little more.

Interest knows how to denigrate right by presenting a prospect of harmful results due to its effects in the external world, it knows how to whitewash what is wrong by ascribing good motives to it, that is, by retreating into the internal world of its thoughts. Law produces bad results in the external world among bad people wrong springs from good motives in the breast of the honest man who decrees it; but both, the good motives and the harmful results, have in common the peculiar feature that they do not look at a thing in relation to itself, that they do not treat the law as an independent object, but direct attention away from the law either to the external world or to their own mind, that therefore they manoeuvre *behind the back of the law*.

What are harmful results? Our whole account has shown that they are not to be understood as harmful results for the state, the law, or the accused. Moreover, we should like to make quite clear in a few lines that they do not include harmful results for the *safety of citizens*.

We have already heard from members of the Assembly themselves that the provision by which "everyone has to prove where he obtained his wood" is a gross and injurious intrusion into the life of the citizen and makes every citizen the victim of vexatious bullying. Another provision declares that everyone in whose *keeping* stolen wood is found is to be regarded as a thief, although a deputy stated:

"This could be dangerous for many an honest man. Wood stolen by someone nearby might be thrown into his courtyard and the innocent man punished."

Under §66 any citizen who buys a broom that is not issued under monopoly is punishable by hard labour from four weeks to two years. On this, an urban deputy commented as follows:

"This paragraph threatens with hard labour each and every citizen of the Elberfeld, Lennep and Solingen districts."

Finally, supervision and management of the game and forest police have been made not only a right but a duty of the *military*, although Article 9 of the Criminal Code speaks only of officials who are under the supervision of state prosecutors and can therefore be the object of immediate proceedings on the part of the latter, which is not the case with the military. This is a threat both to the independence of the courts and to the freedom and security of citizens.

Hence, far from there being any talk of possible harmful results for the safety of citizens, their

safety itself is treated as a *circumstance having harmful results*.

What then are harmful results? Harmful is that which is harmful to the interests of the forest owner. If, therefore, the law does not result in the furtherance of his interests, its results are harmful. And in this respect interest is keen-sighted. Whereas previously it did not see what was obvious to the naked eye, it now sees even what is only visible through a microscope. The whole world is a thorn in the side of private interest, a world full of dangers, precisely because it is the world not of a single interest but of many interests. Private interest considers itself the ultimate purpose of the world. Hence if the law does not realise this ultimate purpose, it becomes inexpedient law. *Law which is harmful to private interests is therefore law with harmful results*.

Are *good motives* considered to be better than harmful results?

Interest does not think, it calculates. Motives are its figures. Motive is an incentive for abolishing the basis of law, and who can doubt that private interest will have many incentives for doing so? The goodness of a motive lies in the casual flexibility with which it can set aside the objective facts of the case and lull itself and others into the illusion that it is not necessary to keep one's mind on what is good, but that it suffices to have good thoughts while doing a bad thing.

Resuming the thread of our argument, we mention first of all a side line to the noble deeds recommended to the Herr Burgomaster.

"The commission proposed an amended version of §34 along the following lines: if the accused demands that the warden who drew up the charge be summoned, then he must also deposit with the forestry court *in advance* all the costs thereby incurred."

The state and the court must not do anything gratis in the interests of the accused. They must demand payment in advance which obviously in advance makes difficult any confrontation of the warden making the charge and the accused.

A noble deed! Just one single noble deed! A kingdom for a noble deed! But the only noble deed proposed is that which the Herr Burgomaster has to perform for the benefit of the Herr Forest Owner. The burgomaster is the representative of noble deeds, their humanised expression, and the series of noble deeds is exhausted and ended for ever with the burden which was imposed with melancholy sacrifice on the burgomaster.

If, for the good of the state and the moral benefit of the criminal, the Herr Burgomaster must do more than his duty, should not the forest owners, for the sake of the same good, demand *less* than their *private interest* requires?

One might think that the reply to this question had been given in the part of the debate already dealt with, but that is a mistake. We come to the *penal provisions*.

"A deputy from the knightly estate considered that the forest owner would still be inadequately compensated even if he received (over and above the simple replacement of the value) the amount of the fine imposed, which would often not be obtainable."

An urban deputy remarked:

"The provisions of this paragraph (§15) could have the most serious consequences. The forest owner would receive in this way *threefold* compensation, namely: the value, then the four-, six-, or eightfold fine, and in addition a special sum as compensation for loss, which will often be assessed quite arbitrarily and will be the result of a fiction rather than of reality. In any case, it seemed necessary to him to direct that the special compensation in question should be claimed at once at the forestry court and awarded in the court's sentence. It was obvious from the nature of the case that proof of loss sustained should be supplied separately and could not be based merely on the warden's report."

Opposing this, the spokesman and another member explained how the *additional value* mentioned here could arise in various cases indicated by them. The paragraph was adopted.

Crime becomes a lottery in which the forest owner, if he is lucky, can even win a prize. There can be additional value, but the forest owner, who already receives the simple value, can also make a profitable business out of the four-, six-, or eightfold fine. But if, besides the simple value, he receives special compensation for loss, the four-, six-, or eightfold fine is also sheer profit. If a member of the knightly estate thinks the money accruing as a fine is an inadequate guarantee because it would often not be obtainable, it would certainly not become more obtainable by the value and the compensation for loss having to be recovered as well. We shall see presently how this difficulty of receiving money from the accused is overcome.

Could the forest owner have any better insurance for his wood than that instituted here, whereby crime has been turned into a source of income? Like a clever general he converts the attack against him into an infallible opportunity for a profitable victory, since even the additional value of the wood, an economic fantasy, is turned into a substance by theft. The forest owner has to be guaranteed not only his wood, but also his wood business, while the convenient homage he pays to his business manager, the state, consists in not paying for its services. It is a remarkable idea to turn the punishment of crime from a victory of the law over attacks on it into a victory of selfishness over attacks on selfishness.

In particular, however, we draw the attention of our readers to the provision of §14, which compels us to abandon the customary idea that *leges barbarorum* are laws of barbaric peoples. *Punishment* as such, the restoration of the law, which must certainly be distinguished from restitution of the value and compensation for loss, the restoration of private property, is transformed from a *public punishment* into a *private compensation*, the fines going not to the state treasury, but to the private coffers of the forest owner.

True, an urban deputy stated: "This is contrary to the dignity of the state and the principles of correct criminal jurisprudence", but a deputy from the knightly estate appealed to the Assembly's sense of right and fairness to protect the rights of the forest owner, that is to say, he appealed to a *special* sense of right and fairness.

Barbaric peoples order the payment of a definite monetary compensation (atonement money) to the injured person for a definite crime. The notion of public punishment arose only in opposition to this view, which regards a crime merely as an injury to the individual, but the people and the theory have yet to be discovered which are so complacent as to allow an individual to claim for himself both the private punishment and that imposed by the state.

The Assembly of the Estates must have been led astray by a complete *qui pro quo*. The law-giving forest owner confused for a moment his two roles, that of legislator and that of forest owner. In one case as a forest owner he made the thief pay him for the wood, and in the other as a legislator he made the thief pay him for the thief's *criminal frame of mind*, and it quite accidentally happened that in both cases it was the forest owner who was paid. So we are no longer faced by the simple *droit du seigneur*. [1] We have passed through the era of public law to the era of double patrimonial right, patrimonial right raised to the second power. The patrimonial property owners have taken advantage of the progress of time, which is the refutation of their demands, to usurp not only the private punishment typical of the barbaric world outlook, but also the public punishment typical of the modern world outlook.

Owing to the refunding of the value and in addition a special compensation for loss, the relation between the wood thief and the forest owner has ceased to exist, for the infringement of forest regulations has been completely abolished. Both thief and property owner have returned to their former state in its entirety. The forest owner has suffered by the theft of wood only insofar as the wood has suffered, but not insofar as the law has been violated. Only the sensuously perceptible aspect of the crime affects him, but the criminal nature of the act does not consist in the attack on the wood as a material object, but in the attack on the wood as part of the state system, an attack on the right to property as such, the realisation of a wrongful frame of mind. Has the forest owner any private claims to a law-abiding frame of mind on the part of the thief? And what is the multiplication of the punishment for a repetition of the offence except a punishment for a criminal frame of mind? Can the forest owner present private demands where he has no private claims? Was the forest owner the state, prior to the theft of wood? He was not, but he becomes it after the theft. The wood possesses the remarkable property that as soon as it is stolen it bestows on its owner state qualities which previously he did not possess. But the forest owner can only get back what has been taken from him. If the state is given back to him -- and it is actually given him when he is given not only a private right, but the state's right over the law-breaker -- then he must have been robbed of the state, the state must have been his private property. Therefore the wood thief, like a second St. Christopher, bore the state itself on his back in the form of the stolen wood.

Public punishment is satisfaction for the crime to the reason of the state; it is therefore a right of the state, but it is a right which the state can no more transfer to private persons than one person can hand over his-conscience to another. Every right of the state in relation to the criminal is at the same time a right of the criminal in relation to the state. No interposing of intermediate links can convert the relation of a criminal to the state into a relation between him and private persons. Even if it were desired to allow the state to give up its rights, i.e., to commit suicide, such an abandonment of its obligations on the part of the state would be not merely negligence, but a crime.

It is therefore as impossible for the forest owner to obtain from the state a private right to public punishment as it is for him to have any conceivable right, in and for himself, to impose public

punishment. If, in the absence of a rightful claim to do so, I make the criminal act of a third person an independent source of income for myself, do I not thus become his accomplice? Or am I any the less his accomplice because to him falls the punishment and to me the fruit of the crime? The guilt is not attenuated by a private person abusing his status as a legislator to arrogate to himself rights belonging to the state because of a crime committed by a third person. The embezzling of public, state funds is a crime against the state, and is not the money from fines public money belonging to the state?

The wood thief has robbed the forest owner of wood, but the forest owner has made use of the wood thief to purloin the *state itself*. How literally true this is can be seen from §19, the provisions of which do not stop at imposing a fine but also lay claim to the *body and life* of the accused. According to §19, the infringer of forest regulations is handed over completely to the forest owner for whom he has to perform *forest labour*. According to an urban deputy, this "could lead to great inconvenience. He wished merely to call attention to the danger of this procedure in the case of persons of the other sex".

A deputy from the knightly estate gave the following eternally memorable reply:

"It is, indeed, as necessary as it is expedient when discussing a draft law to examine and firmly establish its principles in advance, but once this has been done, there can be no going back to them in discussing each separate paragraph."

After this, the paragraph was adopted *without opposition*.

Be clever enough to start out from bad principles, and you cannot fail to be rightfully entitled to the bad consequences. You might think, of course, that the worthlessness of the principle would be revealed in the abnormality of its consequences, but if you knew the world you would realise that the clever man takes full advantage of every consequence of what he has once succeeded in carrying through. We are only surprised that the forest owner is not allowed to heat his stove with the wood thieves. Since it is a question not of right, but of the principles which the Provincial Assembly has chosen to take as its starting point, there is not the slightest obstacle in the way of this consequence.

In direct contradiction to the dogma enunciated above, a brief retrospective glance shows us how necessary it would have been to discuss the principles afresh in respect of each paragraph; how, through the voting on paragraphs which were apparently unconnected and far remote from one another, one provision after another was surreptitiously *slipped through*, and once the first has been put through in this way, then in regard to the subsequent ones even the *semblance* of the condition under which alone the first could be accepted was discarded.

Rheinische Zeitung, No. 307, Supplement
November 3 1842

When in connection with §4 the question arose of entrusting valuation to the warden making the charge, an urban deputy remarked:

"If the proposal that fines should be paid into the state treasury is not approved, the provision under discussion will be doubly dangerous."

It is clear that the forest warden will not have the same motive for overestimating if his valuation is made for the state and not for his employer. Discussion of this point was skilfully avoided, the impression being given that §14, which awards the money from the fine to the forest owner, could be rejected. §4 was put through. After voting ten paragraphs, the Assembly arrived at §14, by which §4 was given an altered and dangerous meaning. But this connection was totally ignored; §14 was adopted, providing for fines to be paid into the private coffers of the forest owners. The main, indeed the only, reason adduced for this is that it is in the interests of the forest owner, who is not adequately compensated by the replacement of the simple value. But in §15 it has been forgotten that it was voted that the fine should be paid to the forest owner and it is decreed that he should receive, besides the simple value, a special compensation for loss, because it was thought proper that he should have an additional value, as if he had not already received such an addition thanks to the fines flowing into his coffers. It was also pointed out that the fines were not always obtainable from the accused. Thus the *impression was given* that only in regard to the money was it intended to take the place of the state, but in §19 the mask is discarded and a claim advanced not only for the money, but for the criminal himself, not only for the man's purse, but for himself.

At this point the method of the deception stands out in sharp and undisguised relief, indeed in self-confessed clarity, for there is no longer any hesitation to proclaim it as a principle.

The right to replacement of the simple value and compensation for loss obviously gave the forest owner only a *private claim* against the wood thief, for the implementation of which the civil courts were available. If the wood thief is unable to pay, the forest owner is in the position of any private person faced with an impecunious debtor, and, of course, that does not give him any right to compulsory labour, *corvée services*, or in short *temporary serfdom* of the debtor. What then is the basis of this claim of the forest owner? The *fine*. As we have seen, by appropriating the fine for himself, the forest owner claims not only his private right, but also the *state's right* to the wood thief, and so puts himself in the place of the state. In adjudging the fine to himself, however, the forest owner has cleverly concealed that he has adjudged himself the right of *punishment itself*. Whereas previously he spoke of the *fine* simply as a sum of *money*, he now refers to it as a *punishment* and triumphantly admits that by means of the fine he has converted a public right into his private property. Instead of recoiling in horror before this consequence, which is as criminal as it is revolting, people accept it precisely because it is a consequence. Common sense may maintain that it is contrary to our concept of right, to every kind of right, to hand over one citizen to another as a temporary serf, but shrugging their shoulders, people declare that the principle has been discussed, although there has been neither any principle nor any discussion. In this way, by means of the fine, the forest owner surreptitiously obtains control over the *person of the wood thief*. Only §19 reveals the double meaning of §14.

Thus we see that §4 should have been impossible because of §14, §14 because of §15, §15 because of §19, and §19 itself is simply impossible and should have made impossible the entire principle of the punishment, precisely because in it all the viciousness of this principle is revealed.

The principle of *divide et impere* [divide and rule] could not be more adroitly exploited. In considering one paragraph, no attention is paid to the next one, and when the turn of that one comes, the previous one is forgotten. One paragraph has already been discussed, the other has not yet been discussed, so for opposite reasons both of them are raised to a position above all discussion. But the acknowledged principle is "the sense of right and fairness in protecting the interests of the forest owner", which is directly opposed to the sense of right and fairness in protecting the interests of those whose property consists of life, freedom, humanity, and citizenship of the state, who own nothing except themselves.

We have, however, reached a point where the forest owner, in exchange for his piece of wood, receives what was once a human being.

Shylock. Most learned judge! -- A sentence! come, prepare!

Portia. Tarry a little; there is something else. This bond cloth give thee here no jot of blood; The words expressly are "a pound of flesh": Take then thy bond, take thou thy pound of flesh; But, in the cutting it, if thou cost shed One drop of Christian blood, thy lands and goods Are, by the laws of Venice, confiscate Unto the state of Venice.

Gratiano. O upright judge! Mark, Jew. O learned judge!

Shylock. Is that the law?

Portia. Thyself shaft see the act.

[W. Shakespeare, *The Merchant of Venice*, Act IV, Scene 1. -- *Ed.*]

You, too, should see the act!

What is the basis of your claim to make the wood thief into a serf? The fine. We have shown that you have no right to the fine money. Leaving this out of account, what is your basic principle? It is that the interests of the forest owner shall be safeguarded even if this results in destroying the world of law and freedom. You are unshakeably determined that *in some way or other* the wood thief must *compensate you* for the loss of your *wood*. This firm wooden foundation of your argument is so rotten that a single breath of sound common sense is sufficient to shatter it into a thousand fragments.

The state can and must say: I guarantee right against all contingencies. Right alone is immortal in me, and therefore I prove to you the mortality of crime by doing away with it. But the state cannot and must not say: a private interest, a particular existence of property, a wooded plot of land, a tree, a chip of wood (and compared to the state the greatest tree is hardly more than a chip of wood) is guaranteed against all contingencies, is immortal. The state cannot go against the nature of things, it cannot make the finite proof against the conditions of the finite, against accident. Just

as your property cannot be guaranteed by the state against all contingencies *before* a crime, so also a crime cannot convert this uncertain nature of your property into its opposite. Of course, the state will safeguard your private interests insofar as these can be safeguarded by rational laws and rational measures of prevention, but the state cannot concede to your private demand in respect of the criminal any other right than the right of private demands, the protection given by civil jurisdiction. If you cannot obtain any compensation from the criminal in this way owing to his lack of means, the only consequence is that *all legal means* to secure this compensation have come to an end. The world will not be unhinged on that account, nor will the state forsake the sunlit path of justice, but you will have learned that everything earthly is transitory, which will hardly be a piquant novelty for you in view of your pure religiosity, or appear more astonishing than storms, conflagrations or fevers. If, however, the state wanted to make the criminal your temporary serf, it would be sacrificing the immortality of the law to your finite private interests. It would prove thereby to the criminal the mortality of the law, whereas by punishment it ought to prove to him its immortality.

When, during the reign of King Philip, Antwerp could easily have kept the Spaniards at bay by flooding its region, the butchers' guild would not agree to this because they had fat oxen in the pastures. [6] You demand that the state should abandon its spiritual region in order to avenge your pieces of wood.

Some subsidiary provisions of §16 should also be mentioned. An urban deputy remarked:

"According to existing legislation, eight days' imprisonment is reckoned as equivalent to a fine of 5 talers. There is no sufficient reason for departing from this." (Namely, for making it fourteen days instead of eight.)

The commission proposed the following addition to the same paragraph:

"that in no case a prison sentence should be less than 24 hours".

When someone suggested that this minimum was too great, a deputy from the knightly estate retorted:

"The French forestry law does not have any punishment of less than *three* days."

In the same breath as it opposed the provision of the French law by making fourteen days' imprisonment instead of eight the equivalent of a fine of 5 talers, the Assembly, out of devotion to the French law, opposed the three days being altered to 24 hours.

The above-mentioned urban deputy remarked further:

"It would be very severe at least to impose fourteen days' imprisonment as an equivalent for a fine of 5 talers for pilfering wood, which after all cannot be regarded as a crime deserving heavy punishment. The result would be that one who has the means to buy his freedom would suffer simple punishment, whereas the punishment of a poor person would be doubled."

A deputy from the knightly estate mentioned that in the neighbourhood of Cleve many wood thefts took place merely in order to secure arrest and prison fare. Does not this deputy from the knightly estate prove precisely what he wants to refute, namely, that people are driven to steal wood by the sheer necessity of saving themselves from starvation and homelessness? Is this terrible need an aggravating circumstance?

The previously mentioned *urban deputy* said also:

"The cut in prison fare, which has already been condemned, must be regarded as too severe and, especially in the case of *penal labour*, quite impracticable."

A number of deputies denounced the reduction of food to *bread and water* as being too severe. But a deputy from a rural community remarked that in the Trier district the food cut had already been introduced and had proved to be very *effective*.

Why did the worthy speaker find that the beneficial effect in Trier was due precisely to bread and water and not, perhaps, to the *intensification of religious sentiment*, about which the Assembly was able to speak so much and so movingly? Who could have dreamed at that time that bread and water were the true means for salvation? During certain debates one could believe that the English Holy Parliament [7] had been revived. And now? Instead of prayer and trust and song, we have bread and water, prison and labour in the forest! How prodigal the Assembly is with words in order to procure the Rhinelanders a seat in heaven! How prodigal it is too, with words, in order that a whole class of Rhinelanders should be fed on bread and water and driven with whips to labour in the forest -- an idea which a Dutch planter would hardly dare to entertain in regard to his Negroes. What does all this prove? That it is easy to be holy if one is not willing to be human. That is the way in which the following passage can be understood:

"A member of the Assembly considered the provision in §23 *inhuman*; nevertheless it was adopted."

Apart from its *inhumanity*, no information was given about this paragraph.

Our whole account has shown how the Assembly degrades the executive power, the administrative authorities, the life of the accused, the idea of the state, crime itself, and punishment as well, to *material means of private interest*. It will be found consistent, therefore, that the *sentence of the court* also is treated as a mere means, and the *legal validity* of the sentence as a

superfluous prolixity.

"In §6 the commission proposed to delete the words '*legal!, valid*' since, in cases of judgment by default, their adoption would give the wood thief a ready means of avoiding an increased punishment for a repetition of the offence. Many deputies, however, protested against this, declaring that it was necessary to oppose the commission's proposed deletion of the expression '*legal!, valid sentence*' in §6 of the draft. This characterisation applied to sentences in this passage, as also in the paragraph, was certainly not made without juridical consideration. If every first sentence pronounced by the judge sufficed as grounds for imposing a severer punishment, then, of course, the intention of punishing repeated offenders more severely would be more easily and frequently achieved. It had to be considered, however, whether one was willing to sacrifice in this way an *essential legal principle to the interests of forest protection* stressed by the spokesman: One could not agree that the violation of an indisputable basic principle of judicial procedure could give such a result to a sentence which was still without legal validity. Another urban deputy also called for the rejection of the commission's amendment. He said the amendment violated the provisions of the criminal law by which there could be no increase of punishment until the first punishment had been established by a legally valid sentence. The spokesman for the commission retorted: '*The whole forms an exceptional law*, and therefore also an *exceptional provision*, such as has been proposed is permissible in it.' The commission's proposal to delete the words '*legally valid*' was *approved*."

The sentence exists merely to identify recidivism. The judicial forms seem to the greedy restlessness of private interest to be irksome and superfluous obstacles of a pedantic legal etiquette. The trial is merely a reliable escort for the adversary on his way to prison, a mere preliminary to execution, and if the trial seeks to be more than that it has to be silenced. The anxiety of self-interest spies out, calculates and conjectures most carefully how the adversary could exploit the legal terrain on which, as a necessary evil, he has to be encountered, and the most circumspect countermanoeuvres are undertaken to forestall him. In the unbridled pursuit of private interest you come up against the law itself as an obstacle and you treat it as such. You haggle and bargain with it to secure the abrogation of a basic principle here and there, you try to silence it by the most suppliant references to the right of private interest, you slap it on the shoulder and whisper in its ear: these are exceptions and there are no rules without an exception. You try, by permitting the law as it were terrorism and meticulousness in relation to the enemy, to compensate it for the slippery ease of conscience with which you treat it as a guarantee of the accused and as an independent object. The interest of the law is allowed to speak insofar as it is the law of private interest, but it has to be silent as soon as it comes into conflict with this holy of holiest

The forest owner, who himself *punishes*, is so consistent that he himself also *judges*, for he obviously acts as a judge by declaring a sentence legally binding although it has no legal validity. How altogether foolish and impractical an illusion is an impartial judge when the legislator is not impartial! What is the use of a disinterested sentence when the law favours self-interest! The judge can only puritanically formulate the self-interest of the law, only implement it without reservation. Impartiality is then only in the form, not in the content of the sentence. The content has been

anticipated by the law. If the trial is nothing but an empty form, then such a trifling formality has no independent value. According to this view, Chinese law would become French law if it was forced into the French procedure, but *material law* has its own *necessary, native form of trial*. Just as the rod necessarily figures in Chinese law, and just as torture has a place in the medieval criminal code as a form of trial, so the public, free trial, in accordance with its own nature, necessarily has a public content dictated by freedom and not by private interest. Court trial and the law are no more indifferent to each other than, for instance, the forms of plants are indifferent to the plants themselves, and the forms of animals to their flesh and blood. There must be a *single* spirit animating the trial and the law, for the trial is only the *form of life of the law*, the manifestation of its inner life.

The pirates of Tidong [8] break the arms and legs of their prisoners to ensure control over them. To ensure control over wood thieves, the Provincial Assembly has not only broken the arms and legs but has even pierced the heart of the law. We consider its merit in regard to re-establishing some categories of our trial procedure as absolutely nil; on the contrary, we must acknowledge the frankness and consistency with which it gives an unfree form to the unfree content. If private interest, which cannot bear the light of publicity, is introduced materially into our law, let it be given its appropriate form, that of secret procedure so that at least no dangerous, complacent illusions will be evoked and entertained. We consider that at the present moment it is the duty of all Rhinelanders, and especially of Rhenish jurists, to devote their main attention to the *content of the law*, so that we should not be left in the end with only an empty mask. The form is of no value if it is not the form of the content.

The commission's proposal which we have just examined and the Assembly's vote approving it are the climax to the whole debate, for here the Assembly itself becomes conscious of the *conflict between the interest of forest protection and the principles of law*, principles endorsed by our own laws. The Assembly therefore put it to the vote whether the principles of law should be sacrificed to the interest of forest protection or whether this interest should be sacrificed to the principles of law, and *interest outvoted law*. It was even realised that the whole law was an *exception to the law*, and therefore the conclusion was drawn that *every* exceptional provision it contained was permissible. The Assembly confined itself to drawing consequences that the legislator had neglected. Wherever the legislator had forgotten that it was a question of an exception to the law, and not of a law, wherever he put forward the legal point of view, our Assembly by its activity intervened with confident tactfulness to correct and supplement him, and to make private interest lay down laws to the law where the law had laid down laws to private interest.

The Provincial Assembly, therefore, *completely fulfilled its mission*. In accordance with its *function*, it represented a definite *particular interest* and treated it as the final goal. That in doing so it trampled the law under foot is a *simple consequence of its sash*, for interest by its very nature is blind, immoderate, one-sided; in short, it is lawless natural instinct, and can lawlessness lay down laws? Private interest is no more made capable of legislating by being installed on the throne of the legislator than a mute is made capable of speech by being given an enormously long speaking-trumpet.

It is with reluctance that we have followed the course of this tedious and uninspired debate, but we considered it our duty to show by means of an example what is to be expected from an *Assembly of the Estates of particular interests* if it were ever seriously called upon to make laws.

We repeat once again: our estates have fulfilled their function as such, but far be it from us to desire to justify them on that account. In them, the Rhinelander ought to have been victorious over the estate, the human being ought to have been victorious over the forest owner. They themselves are legally entrusted not only with the representation of particular interests but also with the representation of the interests of the province, and however contradictory these two tasks may be, in case of conflict there should not be a moment's delay in sacrificing representation of particular interest to representation of the interests of the province. The sense of right and legality is the *most important provincial characteristic* of the Rhinelander. But it goes without saying that a particular interest, caring no more for the province than it does for the Fatherland, has also no concern for local spirit, any more than for the general spirit. In direct contradiction to those writers of fantasy who profess to find in the representation of private interests ideal romanticism, immeasurable depths of feeling, and the most fruitful source of individual and specific forms of morality, such representation on the contrary abolishes all natural and spiritual distinctions by enthroning in their stead the immoral, irrational and soulless abstraction of a particular material object and a particular consciousness which is slavishly subordinated to this object. ,,

Wood remains wood in Siberia as in France; forest owners remain forest owners in Kamchatka as in the Rhine Province. Hence, if wood and its owners as such make laws, these laws will differ from one another only by the place of origin and the language in which they are written. This *abject materialism*, this sin against the holy spirit of the people and humanity, is an immediate consequence of the doctrine which the *Preussische Staats-Zeitung* preaches to the legislator, namely, that in connection with the law concerning wood he should think only of wood and forest and should solve each material problem *in a non-political way*, i.e., without any connection with the whole of the reason and morality of the state.

The *savages of Cuba* regarded gold as a *fetish of the Spaniards*. They celebrated a feast in its honour, sang in a circle around it and then threw it into the sea. If the Cuban savages had been present at the sitting of the Rhine Province Assembly, would they not have regarded *wood* as the *Rhinelanders' fetish*? But a subsequent sitting would have taught them that the worship of animals is connected with this fetishism, and they would have thrown the *hares* into the sea in order to save the *human beings*. [9]

NOTES

From the MECW

[1] *Proceedings of the Sixth Rhine Province Assembly. Third Article. Debates on the Law on Thefts of Wood* is one of the series of articles by Marx on the proceedings of the Rhine Province Assembly from May 23 to July 25, 1841. Marx touched on the theme of the material interests of the popular masses for the first time, coming out in their defence. Work on this and subsequent articles inspired Marx to study political economy. He wrote about this in the preface to his *A Contribution to the Critique of Political*

Economy (1859): "In the year 1842-43, as editor of the *Rheinische Zeitung*, I first found myself in the embarrassing position of having to discuss what is known as material interests. Debates of the Rhine Province Assembly on the theft of wood and the division of landed property; the official polemic started by Herr von Schaper, then Oberprasident of the Rhine Province, against the *Rheinische Zeitung* about the condition of the Mosel peasantry, and finally the debates on free trade and protective tariffs caused me in the first instance to turn my attention to economic questions."

Excerpts from the speeches by the deputies to the Assembly are cited from *Sitzungs-Protokolle des sechsten Rheinischen Provinzial-Landtags*, Koblenz, 1841.

[2] The second article written by Marx on the proceedings of the Rhine Province Assembly, banned by the censors, was devoted to the conflict between the Prussian Government and the Catholic Church or the so-called church conflict.

[3] Marx refers to the Criminal Code of Karl V (*Die peinliche Halsgerichtsordnung Kaiser Karls V. Constitutio criminalis Carolina*), approved by the Reichstag in Regensburg in 1532; it was distinguished by its extremely cruel penalties.

[4] The reference is to the so-called barbaric laws (*leges barbarorum*) compiled in the fifth-ninth centuries which were records of the common law of various Germanic tribes (Franks, Frisians, Burgundians, Langobards [Lombards], Anglo-Saxons and others).

[5] *Dodona* -- a town in Epirus, seat of a temple of Zeus. An ancient oak grew near the main entrance to the temple with a spring at its foot; oracles interpreted the will of the gods from the rustling of its leaves.

[6] The fact mentioned took place during the siege of Antwerp in 1584-85 by the troops of King Philip II of Spain, who were suppressing the Netherland's revolt against absolutist Spain.

[7] The reference is to the Barebone's, nominated, or Little Parliament summoned by Cromwell in July and dissolved in December 1653. It was composed mainly of representatives of the Congregational Churches who couched their criticism in religious mystic terms.

[8] *Tidong* -- a region in Kalimantan (Borneo).

[9] An allusion to the debate of the Sixth Rhine Province Assembly on a bill against violations of game regulations, which deprived the peasants of the right to hunt even hares.

[a] "There are two kinds of corruption," says Montesquieu, "one when the people do not observe the laws, the other when they are corrupted by the laws: an incurable evil because it is in the very remedy itself." Ch. Montesquieu, *De l'esprit des lois*, Tome premier, livre sixième, chapitre XII.

[b] A pun on the German word *Kasten*, meaning both "castes" and "boxes".

[c] "Little extras."

[d] A pun on the German words *Hühneraugen* -- corns, and *Augen* -- eyes.

[e] W. Shakespeare, *The Merchant of Venice*, Act IV, Scene 1.

[f] "When he is afraid, he is terrible."

[g] "Full powers."

[h] "Nothing is more terrible than logic carried to absurdity."

[i] What, at a ball, we simple folk call being wallflowers.

[j] Right of the (feudal) lord.



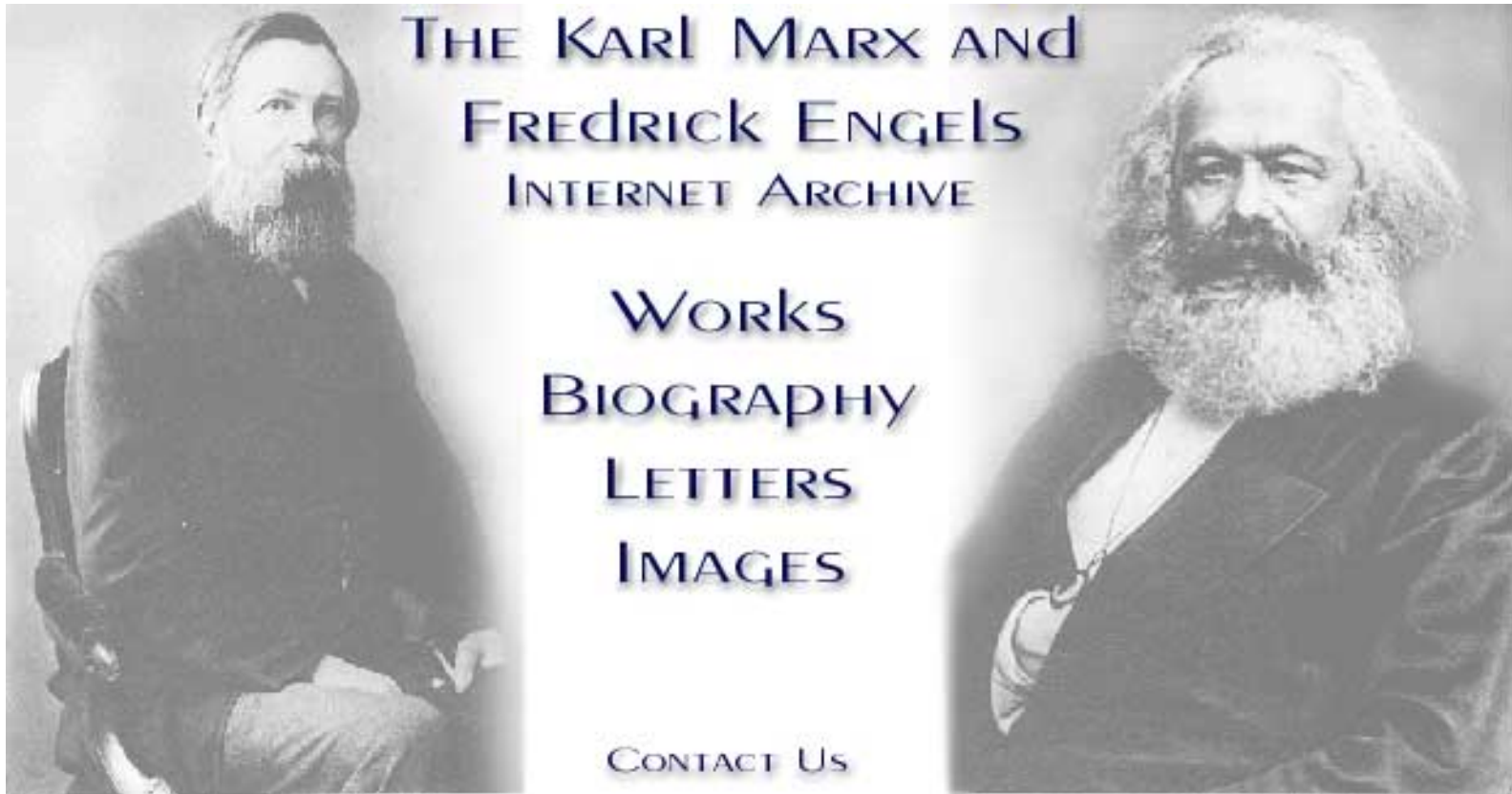
[Articles for the
Rheinische Zeitung](#)



[Marx / Engels
Archive](#)



[Marxist writers'
Archives](#)



THE KARL MARX AND
FREDRICK ENGELS
INTERNET ARCHIVE

WORKS
BIOGRAPHY
LETTERS
IMAGES

CONTACT US

[Text Index](#) | [MIA Index](#)