

under laws, are subjects in a state, consequently subjected to the coercive law, like every other fellow-member of the commonwealth; one only (physical or moral person), the head of the state, by whom only all juridical coercion can be exercised, excepted. For, could he too be compelled, he would not be the head of the state, and the series of subordination would go upwards to infinite. Were there however two (persons free from coercion); neither of them would rank under coercive laws, and the one could do the other no wrong: which is impossible.

But this thorough equality of men in a state, as its subjects, consists perfectly well with the greatest inequality of the multitude, and the degrees of their property whether it be in bodily or mental superiority over others, or in the goods of fortune without them and in rights in general (of which there may be many) respectively to others; so that the welfare of the one depends much on the will of the other (the poor on the rich), that the one must obey (as the child the parents, or the wife the husband) and the other command him, that the one serves (as a daylabourer) the other pays, and so on. But as *to right* (which, as the sentence of the universal will, can be but one, and which concerns the form of right, but not the matter or the object, in which I have a right) they are, as subjects, all equal to one another; because no one can compel any other, but by the public law (and its executor, the head of the state), by this (law), however, every other person resists him
in

in the same measure, but nobody can lose this moral faculty to compel (consequently to have a right against others) but by his own crime, and cannot relinquish it of himself, that is, he cannot cause by a contract, therefore by a juridical action, that he shall have no rights, but merely duties: because he would thereby deprive himself of the right to make a contract, consequently annull this himself.

From this idea of the equality of men in the commonwealth as subjects arises the formula: Every member of the commonwealth must be able to attain every step of rank in it (that can belong to a subject), to which his talents, his industry, and his fortune may lead him; and his fellow-subjects must not hinder him by a *hereditary prerogative* (as persons privileged for a certain class), or keep him and his posterity perpetually under.

For, as all right consists in the limitation merely of the liberty of every other to the condition, that it can subsist with mine according to an universal law, and the public law (in a commonwealth) is the state of an actual legislation merely conformable to this principle and conjoined with potency, by means of which all those belonging to a nation, as subjects, find themselves in a juridical state in general, namely, the equality of action and reaction of an arbitrament limiting one another agreeably to the universal law of liberty (which is denominated the civil state); so the *innate right* of every one in this state, (that is, previously to every juridical fact of his) in regard of the moral faculty to compel
every

every other, is, in order that he may always remain within the bounds of the unison of the use of his liberty with mine, thoroughly EQUAL. Now as birth is no *fact* of his, who is born, consequently no inequality of the juridical state and no subjection to laws of coercion, but merely to those which are common to him as a subject of the only chief legislative potency with all others, are thereby occasioned to him; so there can be no inborn prerogative of one member of the commonwealth, as a fellow-subject, before another; and nobody can transmit by inheritance to his posterity the prerogative of the *rank*, which he bears in the commonwealth, consequently, no one, as if qualified by birth for the rank of master, can hinder posterity by force to attain by proper merit the higher steps of the subordination (of *superior* and *inferiour*, of whom however neither is *imperans*, and the other *subjectus*). He may transmit by inheritance all the rest that is thing (that doth not concern personality) and can be acquired as property and also alienated by him, and thus in a series of posterity produce a considerable inequality in circumstances among the members of a commonwealth (of lessors and lessees, of proprietors of estates, farmers, husbandmen, and so on); only not to prevent these, when their talents, their industry and their fortune put it in their power, from raising themselves to such situations. For else he might compel, with being able to be compelled in his turn by the reaction of others, and thus rise above the degree of a subject. — Likewise no man, who

who lives in a juridical state of a commonwealth, can fall from this equality, but by a crime of his own, but never either by paction or by the power of war (*occupatio bellica*); for he cannot cease by any juridical fact (neither by his own, nor by that of another) to be owner of himself, and be classed with the cattle, which are used at pleasure for all services, and continued therein without their consent as long as one pleases, though with the restriction not to lame or to kill them (which is sometimes sanctioned by religion, as among the Indians). He may be supposed happy in every state, when he is but conscious to himself, that it depends but on himself (on his abilities, or earnest will) or on circumstances; with which he can charge nobody else, but not on the irresistible will of others, that he does not ascend to the same step with others who, as his fellow-subjects, have in this, as to right, no advantage at all over him.*

5. The

* If one chuses to affix a determinate conception to the word *gracious* (*gnädig*) (different from good, kind, beneficent, protecting and such like), it can be attributed but to him, against whom *no coactive right* has place. Therefore only the head of the *administration of the state*, who occasions and distributes all the good possible according to public laws, (for the *sovereign*, who gives them, is, as it were, invisible; he is the personified law itself, not agent) can be titled *gracious sir or master*, † as the only one, against whom no coactive law has place. Thus in an aristocracy even, as formerly in Venice, the *senate* was the only *gnädiger herr*; the nobles, who constituted it, were collectively subjects

† This is the literal translation of *gnädiger herr*, in our language *my lord* comes perhaps nearer to its sense, but seems to me not to express sufficiently all the abjectness of this German mode of salutation.

5. The *self-sufficiency* (*sibusufficiencia*) of a member of the commonwealth as a *citizen*, that is, a fellow-legislator. In point of legislation all, who are free and equal *under* public laws already extant, are to be esteemed equal, yet not, as to the right, to *give* these laws. Those, who are not capable of this right, are however, as members of the commonwealth, subjected to the observance of these laws, and thereby as to the protection participant of them; only not as *citizens*, but as *fellows receiving protection*. — All right depends on laws. But a public law, which determines for every body what shall be juridically permitted or prohibited, is the act of a public will, from which all right proceeds, and which itself must not therefore be able to do any body wrong. But for this no other will is possible, than that of the whole nation (where all decree with regard to all, consequently every one with regard to himself): for one's self alone can do wrong to nobody. But
if

subjects, even the Doge not excepted (for the *great council* only was the sovereign), and, as to the exercise of right, on an equality with all others, namely, that a coactive right belonged to the subject against every one of them. Princes (that is, persons to whom belong a hereditary right to governments) are however, in this view and on account of that claim named (by courtesy) *gnädige herren*; but they are but fellow-subjects, against whom a coactive right must belong to the lowest of their servants even, by means of the head of the state. There can be no more than one *gnädiger herr* in the state. But concerning the *gnädige* (more properly illustrious) *ladies*, it may be considered that their *quality* together with their *sex* (of course but relatively to the *male sex*) gives them a claim to this title, and that by means of the refinement of manners (named gallantry), according to which men believe to honour themselves the more, the more precedency they grant the fair sex.

if there is another, the mere will of one different from him cannot conclude of any thing with regard to him, which may not be wrong; therefore his law would require still another law to limite his legislation, consequently no particular will can be legislative for a commonwealth. (In order to make up this conception, the conception of external liberty, equality, and *unity* of the will of *all* properly coalesce, of the latter of which, as voting is requisite, when the two former are taken together, self-sufficiency is the condition). This fundamental law, which can spring but from the universal (united) will of the nation, is distinguished by the appellation of ORIGINAL CONTRACT.

He, who has the right to vote in this legislation, is named a CITIZEN (*citoyen*, that is, a *citizen of state*, not a burgher, *bourgeois*). The quality thereto requisite, besides the *natural* one (to be neither a child, nor a woman), is this only, to wit, He must be *his own master* (*sui juris*), consequently must have some one *property* or other (to which every art, handicraft, liberal art, or science may be numbered) which maintains him; that is, he, in those cases, where he must acquire from others in order to live, must acquire but by *alienation* of that which is *his**, not by the consent, which
he

* He, who makes an *opus*, may transfer it to another by *alienation*, as if it were his property. The *praestatio operae* however is no alienation. The house-servant, the shop-man, the daylabourer, and even the hair-dresser are *operarii* merely, not *artifices* (in the large signification of the word), and not members of state, consequently not qualified to be citizens. He, to whom I give my firewood to saw and to split, and
the

he gives others to make use of his powers, therefore he must *serve* nobody but the commonwealth in the proper sense of the word. Here artists and great (or small) landed proprietors are all equal, namely, each entitled to but one suffrage. For, as to the latter, without even starting the question, How it could have happened in justice, that any one got possession of more land, than he could make use of with his own *hands* (for the acquisition by the occupancy of war is no first acquisition); and how it happened, that many men, who else might have all acquired a constant state of possession, are thereby brought to serve those merely, in order to live? it would be repugnant to the foregoing principle of equality, if a law should invest them with the prerogative of quality, that their offspring shall either remain always great land-proprietors, (the feudal system), without being able to sell their estates, or to divide them among their issue, and thus redound to the use and profit of several of the nation, or, even in these divisions, that nobody, but those belonging to a certain class of men, arbitrarily established

N 2

blished

the taylor, to whom I give my cloth, to make a coat of, seem to be in quite similar relations towards me, yet the former is different from the latter, as the hairdresser from the wigmaker. (to whom I may have likewise given the hair for it), and as the daylabourer from the artist or the handicraftsman, who makes a work, which belongs to him till he is paid. The latter, as exercising a trade, traffics his property with the other (*opus*), the former the use of his powers which he gives to another (*operam*). — It is somewhat difficult, I own, to determine the requisite, to be able to lay claim to the station of a man, who is his own master.

blished shall be able to acquire any part of them. The great possessor of land annihilates as many smaller proprietors with their voices, as could occupy his place; therefore does not vote in their name, and has by consequence but one voice. — As it must be left to depend on the ability, on the diligence and on the fortune merely of every member of the commonwealth, that each may acquire a part of it and all the whole, but this distinction cannot be taken into the account in the universal legislation; so must according to the heads of those, who are in the state of possession, not according to the size of the possessions, be judged the number of those capable of voting for the legislature.

But *all*, who have this right of suffrage, must agree to this law of public justice; for otherwise a dispute of right would happen between those who do not agree to it and the former, which would require still a higher principle of right, in order to be ended. As the former cannot be expected from a whole nation, consequently but a majority of voices and that not ~~of~~ of the voters immediately (in a great nation), but only of these delegated for that purpose, as representatives of the nation, is that only which can be foreseen as attainable; so the principle, to be contented with this majority, as adopted by universal agreement, therefore by contract, must be the chief ground of the establishment of a civil constitution.

Consequence.

Here is now an ORIGINAL CONTRACT, upon which only a civil, therefore thoroughly juridical, constitution among men can be founded and a commonwealth established. — But this contract (named *contractus originarius*, or *pactum sociale*), as a coalition of every particular and private will of a nation to a common and public will (for the behoof of a juridical legislation merely), is by no means necessary to be presupposed as a *fact*, (nay, it is as such not at all possible); as if it must be first proved by history, that a nation, into whose rights and obligations we as descendants are entered, *once* actually performed such an act, and must have left us, either orally or scriptorily, a certain account or an instrument of it, in order to consider ourselves bound to a civil constitution already subsisting. But it is a *mere* conception of reason, *id est*, an *idea*, which has however its indubitable (practical) reality, *videlicet*, to oblige every legislator to give his laws in such a manner, that they *might* have sprung from the united will of a whole nation, and to consider every citizen, so far as he is disposed to be a citizen, as if he had voted with him for such a will. For that is the touchstone of the rightfulness of every public law. If this is of such a nature as a whole nation *could not possibly* give its concurrence thereto (as for instance that a certain class of *subjects* should have hereditarily the preference of the *condition of masters*), it is not just; but if it is *possible only* that a

nation could agree to it, is its duty to hold the law just: let us suppose also, that the nation were in such a state of its cast of mind, that, were it consulted on that head, it would in all probability refuse its consent.*

But this limitation is obviously valid but for the judgment of the lawgiver, not of the subjects. If then a nation under a certain actual legislation should judge with great likelihood to sustain the loss of its felicity; What is it to do? Shall it not make opposition? The only answer can be, There is nothing for it to do, but to obey. For the felicity which is to be expected from the foundation or the administration of the commonwealth for the subject is not under review here; but first merely right, that shall thereby be secured to every body: which is the highest principle, from which must arise all maxims that concern a commonwealth, and that principle is limited by no other. With regard to the former (felicity) no universally valid principle at all can be given for laws. For, as well the circumstances of time, as also the very inconsistent and thereby ever mutable fancy, wherein

one

* If, for example, a contribution for war proportional to all the subjects were exacted, these cannot say, though it is heavy, that it is unjust, because the war, in their opinion, is unnecessary: for they are not entitled to judge of that: but, as it always remains possible, that it is inevitable and the contribution indispensable, it must in the judgment of the subject be valid as rightful. But when certain landed men in such a war are burdened with taxes, but others of the same class exempted from them; it is evident, that a whole nation cannot acquiesce in such a law, and it is entitled to make representations at least against it, because it cannot hold just these unequal distributions of the burdens.

one places his felicity, (but wherein he ought to place it, nobody can prescribe to him) renders all stable principles impossible, and of itself only unfit for the principle of legislation. The position: *Salus publica suprema civitatis lex est*, remains in its undiminished value and consequence; but the public prosperity, which is *first* to be taken into consideration, is directly that legal constitution, which secures to every one his liberty by laws: whereby he is not deprived of the freedom to seek his felicity in every way he thinks the best, if he does but not derogate from that universal legal liberty, consequently from the rights of other fellow-subjects.

When the chief potency ordains laws, which are immediately directed towards felicity (the opulence of the citizens, the population and such like); this doth not take place as the end of the establishment of a civil constitution, but merely as the mean, to *secure* the *juridical state* chiefly against external enemies of the nation. Of this the head of the state solely has the authority to judge, whether such belong to that flourishing state of the commonwealth, which is requisite, in order to secure its strength and stability, as well internally, as against external enemies; not however to make the nation happy, as it were, against its will, but only to cause that it shall exist as a commonwealth.* In this judgment,

N 4

whether

* To that belong certain prohibitions of importation, in order that the means of acquisition may be promoted for the advantage of the subject and not for that of foreigners
and

whether that measure be taken *prudently* or not, the legislator may indeed err, but not in that, where he questions himself, Whether the law harmonize or not with the principle of right; for there he has at hand that idea of the original contract as an infallible standard *à priori*, (and needs not, as with the principle of felicity, wait for experience, which must first inform him of the fitness of his means). For when it is not inconsistent with the idea, that a whole nation could assent to it, let it be ever so burdensome to them; it is conformable to right. But if a public law, agreeably to this, consequently in regard to right is IRREPREHENSIBLE; the faculty to compel is also combined with it, and, on the other side, the prohibition, to oppose by no means actively the will of the legislator: that is, the potency in the state, which gives effect to the law, is IRRESISTIBLE, and there exists no commonwealth subsisting juridically without such a power, which beats down and crushes all internal resistance, because this would take place conformably to a maxim, which, rendered universal, would annul every civil constitution and destroy the state, in which only men can be in the possession of rights in general.

Hence follows: that all opposition to the chief legislative, all incitation in order to render active the discontentment of the subjects,

and for the encouragement of the industry of others, because the state, without opulence of the people, would not possess force enough to resist foreign enemies, or to maintain itself as a commonwealth.

jects, all insurrection or revolt, which breakes out into rebellion, is the greatest and most punishable crime in a commonwealth; because it undermines its very foundation. And this prohibition is *inconditional*, so that that potency or its agent, the head of the state, may have violated the original contract even, and thereby forfeited, according to the conception of the subject, the right to be legislator, by its authorizing the government to proceed tyrannically; yet no resistance, as counterpower, is allowed the subject. The reason of which is, That in a civil constitution already subsisting the nation has no longer a judgment amounting to a right, to determine, How it shall be administered. For let us take for granted, That the nation has such a right, in opposition to the judgment of the actual head of the state; Who shall decide, on whose side the right is? Neither of them can do it, as judge in his own cause. Therefore there must be a head still above the head, to decide between this head and the nation; which is inconsistent. — A right of necessity, (*jus in casu necessitatis*), which, as an opinative right, to do *wrong* in the greatest (physical) necessity, is besides a nonentity,* cannot intervene

N 5

here

* There is no *casus necessitatis*, but in the case, where duties, namely, *unconditional* and (perhaps great, but yet) *conditional duty*, clash with one another; for instance, when the averting of a misfortune from the state by the treason of a man, who stands in a relation to another, like father and son, is concerned. This averting of the evil from the former is unconditional duty, but that of the misfortune of the latter conditional duty only (namely, so far as he is
not

here and lift up the bar which limits the arbitrary potency of the nation. For the head of the state may as well opine to justify his severe procedure towards the subjects by their contumacy or refractoriness, as these their uproar and sedition against him by complaints of their unbecoming sufferings; and Who shall decide here now? Only he, who finds himself in possession of the chief care of the public law, and that is directly the head of the state, can decide; and therefore nobody in the commonwealth can have a right to dispute this possession with him.

However I find respectable men, who maintain this moral faculty of the subject's to counterpower over his superiors under certain circumstances, among whom I shall quote here but *Achenwall*, who is moderate, precise, and very cautious in his doctrines of the rights of nature.* He says, 'When the danger, which threatens

not guilty of a crime against the state). The notice, which the latter would give to the magistrate of the attempt of the former, would perhaps be with the greatest averseness, but urged by necessity (to wit, the moral). — But when it is said of one, who, in a shipwreck, in order to save his own life, pushed another from his plank, that he acquired a right thereto by necessity (the physical); it is quite false. For, to preserve my life, is but conditional duty (when it can be done without a crime); but it is unconditional duty, not to take the life of another person, who does me no injury, nay, who does not even *put* me in danger of losing mine. The teachers of the universal civil law proceed, however, very consequentially in the juridical moral faculty, which they allow to this help in need. For the magistrate can conjoin no *punishment* with the prohibition, because this punishment must be *death*. But it would be an absurd law, to threaten one with death, if he did not in dangerous circumstances give himself up willingly to death.

* *Jus Naturæ*, Editio 5ta, Pars posterior, §§. 205—206.

threatens the commonwealth from the longer tolerance of the injustice of the head of the state, is greater than is to be apprehended from taking up arms against him; then the nation may resist him, depart from its paction of subjection for the behoof of this right, and dethrone him as a tyrant.' And he concludes, 'The nation returns in this manner (relatively to its former supreme lord) to the state of nature.'

I willingly believe, that neither Achenwall, nor any one of the men of probity, who have reasoned sophistically with him on this subject would ever have given his advice or assent, in any one case happening, to such an enterprise; it is beyond a doubt, that, if those rebellions, by which Switzerland, the United Netherlands, and even Great Britain acquired their present constitutions, praised as so happy, had miscarried, the reader of their histories would have seen in the execution of their authors, at present so celebrated, nothing but merited punishment of great state-criminals. For the issue commonly mixes itself with our judgments of the grounds of right, though that is uncertain, but these are certain. It is however clear, that, as to the latter, — when it is granted; that by such a rebellion no wrong is done to the prince (who has violated, for example, a *joyeuse entree*, as an actually existing contract with the nation), — the nation does wrong in the highest degree to seek its right in this manner; because it (adopted as a maxim) renders every juridical constitution unsecure, and introduces a
totally

totally lawless state (*status naturalis*), where all right ceases, at least to have effect. — With regard to this propension of so many well-meaning authors to speak in behalf of the people (to their own ruin), I have to observe, that the cause of it is, partly the common illusion, when the principle of right is the subject of consideration, to found their judgments upon the principle of felicity; and partly where no instrument of an actual contract proposed to the commonwealth, accepted by its head, and sanctioned by both is to be met with, as they always supposed the idea of an original contract, which constantly forms the basis in reason, to be something, which must *actually* take place, and so were of opinion to preserve to the people the faculty to depart therefrom at pleasure in case of a gross violation, but judged by themselves to be so.*

The evil, which the principle of felicity (that is properly not capable of any determinate principle) occasions, as well in the law of state, as in moral, notwithstanding the
good

* Let the actual contract of the people with the supreme lord be ever so much violated; they cannot directly *as a commonwealth*, act in opposition, but only by plotting. The constitution hitherto subsisting is torn by the people; and the organization of a new commonwealth must take place. There now intervenes a state of anarchy with all its horrors, which are thereby possible at least; and the injustice which happens here, is that, which one party among the people does to another; as is obvious from the example cited, where the factious subjects of that state endeavoured at last to obtrude on one another a constitution which would have been much more oppressive, than that which they forsook; that is to say, they would have been eat up by nobles and clergy; whereas, they might expect more equality in the distribution of the burdens of state under an all-governing head.

good intentions of the teachers of it, is evident. The sovereign is determined to make the people happy according to his conceptions, and becomes a despot; the people will not suffer themselves to be deprived of the universal claim of mankind to proper felicity, and become rebels. Had it been first inquired. What is right (where the principles stand firm *à priori*, and no empiric can botch therein); the credit of the idea of the social contract would have remained indisputable: but not as a fact (as *Danton* would have it, without which he declares all rights and all property to be found in the actually existing civil constitution to be totally null), but only as a rational principle of the judgment of every public juridical constitution in general. And it would be perspected, that, before the universal will exists, the nation possesses no coercive right at all against its rulers, because it can compel juridically by these only; but if that exists, in the same manner no coercion to be exercised by it against these can have place, because it then would be itself the chief ruler; consequently a right of coercion (opposition in either words or deeds) never belongs to the nation against the head of the state.

We see this theory sufficiently confirmed in the praxis. In the constitution of England, of which the British nation boast so much, as if it were a pattern for all the world,* we find

* Though there may, perhaps, be scope for Parliament (when the circumstances of the times shall allow) to exercise their political wisdom in reforming and supplying defects

find that it is perfectly silent with regard to the moral faculty, which, in case the monarch should infringe the contract of 1688, belongs to the nation; consequently reserves for itself in secret a rebellion against him, should he violate it, because no law exists on this head. For, it is a palpable contradiction, that the constitution in this case shall comprise a law, which justifies the overthrowing of the subsisting constitution, from which all particular laws proceed, (suppose the contract were even violated); because it must then comprehend a *publicly constituted** counterpotency, therefore a second head of the state, to protect the rights of the nation against the first, but then a third also, to decide between both, on whose side the right is. — The leaders of that nation (or, if you chuse, the guardians), apprehensive of such an accusation, if their attempt should

fects, and Where is the human institution without such? *'Ubi homines, ibi vitia.'* And though the translator has, unquestionably, the greatest deference for the Author's profound penetration and superior judgement, he cannot but think, that Britons have at least as good reason to glory in the happy frame of their *Constitution*, as either the Prussians in their *Autocracy*, or the French in the *Sovereignty of the people*, that marvellously ridiculous stalkinghorse, by which *Jacobins* and *Illumines* deceive and outrage the unenlightened (unfortunately not the least numerous) part of the devoted French nation.

'Crimes and enormities are the legitimate offspring of a government founded in rebellion, perjury, rapine and murder.'

* No right in the state can be concealed by a secret reservation, as it were, maliciously; and still less the right, which the nation assumes to itself as one belonging to the constitution; because all its laws must be thought as sprung from a public will. Therefore if the constitution allowed a rising of the people, it must declare publicly the right thereto, and in what mode use is to be made of it.

should fail, have rather *feigned* a voluntary abdication of the government by the monarch, who was frightened away by them, than assumed to themselves the right to depose him, by which they would have put the constitution in a manifest contradiction with itself.

As I am confident not to have incurred by these my assertions the reproach of having flattered monarchs too much by this inviolableness; so I trust nobody will accuse me of maintaining too much in favour of the people, when I say, that they also have their rights against the head of the state, which are not possible to be lost, though these can be no coactive rights.

Hobbes is of the opposite opinion. According to him *de Cive*, cap. 7, §. 14, the head of the state is bound in nothing to the nation by contract, and can do no wrong to the citizen (let him dispose of him as he pleases).— This position would be perfectly right, if by wrong were understood that lésion, which grants the injured party a *coactive right* against him, who does him wrong; but, so in the general, the position is frightful.

The subject, who is not refractory, must suppose, that his supreme lord does not will to do him wrong. Consequently, as every man has rights, which he cannot possibly lose, which he cannot even relinquish, if he had a mind, and of which he is entitled to judge; but the wrong, that in his opinion is done to him, happens according to that supposition but from error or ignorance of certain consequences from laws of the chief potency: so
the

the faculty must belong to the citizen of state, and that with the permission of the supreme lord himself, to make publicly known his opinion of dispositions of the latter, which seem to him to be a wrong towards the commonwealth. For, to suppose, that the head of the state cannot even err, or be ignorant of a matter, would represent him as endowed with heavenly inspirations and elevated above humanity. Therefore, the only palladium of the rights of the nation is THE LIBERTY OF THE PEN, kept within the limits of the highest reverence and love for the constitution, under which one lives, by the liberal way of thinking of the subjects, which that instils even, (and the pens restrict one another of themselves, in order that they may not lose their liberty). For to deny the nation this liberty, is not only as much, as to deprive it of all claim to right in regard to the chief ruler, (according to Hobbes), but to take away from the latter, whose will, merely by representing the universal will of the nation, gives orders to the subjects as citizens, all knowledge of that, which, if he knew it, he himself would alter, and to put him in contradiction with himself. But to insinuate apprehension to the head of the state, that, by thinking for one's self, and, if I may use the expression, by thinking aloud, disturbance or commotion may be stirred up in the state, is as much as to excite diffidence in his own potency, or hatred against his people.

But the universal principle, according to which a nation have to judge of their rights

nega-

negatively, that is, merely to judge, what may be considered as *not enacted* by the chief legislative with its best will, is contained in the position: THE LEGISLATOR, WITH REGARD TO THE NATION, CANNOT DECREE, THAT, WHICH THE NATION CANNOT DECREE, WITH REGARD TO THEMSELVES.

When, *exempli gratia*, the question is, Whether a law, which enjoins a certain ecclesiastical constitution once established to be perpetual, can be considered as arising from the proper will of the legislator (his design)? let it first be enquired, Whether a nation can ordain it a law for itself, that certain positions and forms of faith of external religion once received shall remain for ever; and whether it can hinder its posterity from making farther progress in introspections into religion, or from altering some old errors? It is obvious, that an original contract of the nation, which constituted this a law, would in itself be void: because it jars with the destination and end of humanity; consequently a law made accordingly is not to be considered as the proper will of the monarch, against which therefore representations may be made. — But in all cases, if any thing were even so enacted by the chief legislature, universal and public judgments may, it is true, be given on it, but verbal or active resistance never can be made against it.

In every commonwealth there must be an OBEDIENCE, under the mechanism of the constitution of state according to coactive laws (which refer to the whole), but at the same

time a SPIRIT OF LIBERTY, as every one, in that which concerns the universal duty of man, requires, in order not to fall into a contradiction with himself, to be convinced by reason, that this coercion is rightful. The former, without the latter, is the immediate cause of all SECRET SOCIETIES. For it is a natural propension of humanity to communicate their thoughts to one another, especially on what concerns mankind in general; and these societies would cease, were this liberty favoured. — And by what else can come to the government the knowledge, which promotes its own essential design, than by allowing the spirit of liberty, so worthy of reverence, in both its origin and its effects, to manifest itself.

Nowhere does a praxis passing by all pure principles of reason decide with more presumption on theory, than in the question concerning the requisites to a good constitution of state. The reason is, that a legal constitution of a long continuance has accustomed the nation by degrees, to judge their felicity as well as their rights according to the state in which every thing has been hitherto in its quiet course; but not conversely to estimate the latter according to conceptions, with which reason would furnish them: but rather always to prefer that passive state to the dangerous situation, to seek a better (where that, which Hypocrates gives to encourage the physicians, is applicable, *videlicet, judicium anceps, experimentum periculosum*). As now all constitutions of a long enough duration, what-
 ever

ever imperfections they may have, yield, notwithstanding their difference, the very same result, namely, To be contented with that constitution, under which one lives: so no theory at all, when the WELFARE OF THE NATION is considered, is in fact valid, but every thing rests upon a praxis obedient to experience.

But if there is any such thing in reason, as may be expressed by the term LAW OF STATE; and if this conception has a binding power for men, who are in a state of antagonism of their liberty towards one another, consequently objective (practical) reality, without needing to look to either the welfare or the misery which may arise to them therefrom (of which the knowledge rests upon experience merely): it is founded upon principles *à priori* (for, experience cannot teach what is right; and there is a THEORY of the law of state, without a consonancy with which no praxis whatever is valid.

Against this now nothing can be advanced, but, that, though men have in their heads the idea of the rights belonging to them, they, on account of their hardheartedness, are incapable and unworthy of being treated conformably to it, and therefore a chief power proceeding according to rules of prudence merely must keep them in order. But this leap of desperation (*salto mortale*) is of such a nature, that, when once not right, but only power, is in agitation, the nation may try theirs too, and thus render every legal constitution very unsecure. If there is not something (such as

the right of man), which extorts immediate reverence through reason, every influence on the arbitrament of men is incapable to curb their liberty: But when, together with benevolence, right speaks aloud, human nature shows itself not so degenerated, as not to listen to its voice with veneration. (*Tum pietate gravem meritisque si forte virum quem Conspexere, silent arrectisque auribus adstant.* Virgil).

SECTION III

OF THE RELATION WHICH THE THEORY BEARS TO THE PRAXIS IN THE LAW OF NATIONS, CONTEMPLATED IN AN UNIVERSAL PHILANTHROPIC, THAT IS, COSMOPOLITICAL, VIEW.*

(*Against Moses Mendelssohn*).

Is the human species to be beloved on the whole; or is it an object, which one must contemplate with indignation, to which one indeed wishes (in order not to become a misanthrope) every sort of good, but never expects this from it, consequently must rather turn away from it? The answering of this question depends on the answer, which may be given to the following, to wit, Are there in human nature predispositions, from which one may infer, that the species will always proceed to the better; and that the bad of the present and of the past times will lose itself in the good of the future? For thus we may love the species, at least in its constant approximation

* It is not so immediately obvious, how a universal philanthropical presupposition leads to a cosmopolitical constitution, but this to the founding of a *law of nations*, as a state, in which only the predispositions of humanity, that render our species lovely, may be sufficiently developed; — The conclusion of this section will present this connection to view.

mation to the good, otherwise we must either hate or despise it; the affectation of universal philanthropy (which would then be at most a love of benevolence only, but not of complacency), may say to the contrary what it pleases. For that, which is and remains bad, chiefly that in the premeditated reciprocal violation of the most sacred rights of mankind, one cannot, notwithstanding the greatest exertion to force one's self to love, avoid to hate: not directly in order to do men mischief, but to have as little to do with them as possible.

Moses Mendelssohn was of the latter opinion (Jerusalem, sect. 2. p. 44—47), which he opposed to his friend Lessing's hypothesis of a divine education of the human species. It is all a fancy with him: 'that the whole, the humanity here below, shall in process of time advance always and perfectionate itself.— We see, continues he, the human species on the whole take small soarings; and it never advanced a step forwards, without falling back immediately afterwards with redoubled celerity to its former state.' (That is exactly the stone of Sisyphus; and one supposes in this manner, like the Indian, the earth to be a place of expiation for old sins, at present not possible to be remembered). — Again, 'Man goes farther, but humanity continually wavers between firm limits; but maintains, contemplated on the whole, in every period, nearly the same degree of morality, the same measure of religion and of irreligion, of virtue and of vice, of happiness (?) and of misery.' — These assertions he introduces, by saying,
Do

‘Do you wish to divine, what the views of Providence are with humanity? Invent no hypotheses’ (he a little before named this theory); ‘look but to that, which actually happens, and; could you cast an eye to the history of all times, to that, which has always happened. This is matter of fact; this must have belonged to the design, must have been approved, or at least received in the plan of wisdom.’

I am of another opinion. — If it is an aspect worthy of a Deity, to see a virtuous man struggling with adversities and temptations to bad, and yet stand out against them; it is an aspect highly unworthy, I will not say of a Deity, but even of the most common but well-meaning man, to see the human species make progress from period to period in virtue, and soon afterwards fall back just as deep into vice and misery. To behold this tragedy for a while may perhaps be affecting and edifying; but at last the curtain must drop. For at length it becomes a farce; and the actors do not tire of it, because they are fools, yet the spectator, who has enough in one act or another, becomes tired of it, when he can gather thence with reason, that the never-ending piece is perpetually the same. The punishment following at last may indeed, when it is a play merely, make amends for the disagreeable feelings by the end. But to allow vices without number (though with virtues intervening) to be actually heaped up upon one another, in order that there may one day be a great punishment, is, according to

our conceptions at least, even contrary to the morality of a wise Author and Governour of the world.

I may therefore suppose, that, as the human species is constantly advancing in regard to culture, as its end of nature, it is engaged in a progression to the better in regard to the moral end of its existence also, and that this is, it is true, sometimes *interrupted*, but never *discontinued*. It is not necessary for me to prove this presupposition; its opposers must prove. For I rest upon my innate duty, so to act on posterity, in every member of the series of generations, — wherein I (as a man in general) am, and with the requisite moral quality in me, yet not so good, as I ought to be, consequently as I could be, — that they shall always grow better (of which the possibility must also be supposed), and that thus this duty may be rightfully transmitted by inheritance from the one member of the generations to the other.

Let ever so many doubts, furnished by arguments collected from history, be made against my hopes, doubts, which, were they proving, might induce me to desist from a labour in appearance fruitless; I cannot, however, so long as this cannot be made quite certain, exchange duty (as the *liquidum*) for the rule of prudence not to labour with a view to what is impracticable (as the *illiquidum*, because it is hypothesis merely); and, how uncertain soever I may always be and remain, whether the better is to be hoped for the human species, this cannot derogate from the
maxim,

maxim, consequently not from its necessary presupposition in a practical view, that it is feasible.

This hope for better times, without which an earnest desire to do any thing conducive to the universal weal, had never warmed the human heart, has at all times had influence on the labours of the well-thinking; and the good Mendelssohn must have reckoned on this, likewise, when he exerted himself with so much zeal for the enlightening and for the welfare of the nation, to which he belonged. For to effectuate them of himself only, if others after him did not proceed farther on the same path, he could not reasonably hope. Notwithstanding the sad spectacle not so much of the evils, which afflict the human species from causes natural, as rather of those, which men do to one another; the mind becomes serene by the prospect, that, in future, things may grow better; and indeed with disinterested benevolence, when we shall have been long ago sunk into the grave, and shall not enjoy the fruit of the tree which we ourselves have planted. Empirical arguments against the success of this resolution formed on hope, avail nothing here. For, that that, which hitherto has not succeeded, will on that account never succeed, does not justify desisting from a pragmatical or even a technical purpose (as, for example, that of travelling in the air in aerostatical balloons); but still less a moral one, which, when its effecting is but not demonstratively impossible, is duty. Besides many proofs may be given, that the

human species, on the whole, is actually in our age, in comparison with all the preceding ones, considerably advanced in the moral self-reformation, (impediments of a short duration can prove nothing to the contrary): and that the clamour of its continually increasing degeneracy proceeds directly from this, to wit, that, when it stands on a higher step of morality, it sees still farther before it, and its judgment on that, which one is, in comparison with what one ought to be, consequently our self-censure, becomes always the stronger, the more steps of morality we have already ascended in the whole course of the world, with which we are become acquainted.

If we enquire, by what means this everlasting progression to the better may be maintained and accelerated, we immediately perceive, that this consequence going to infinity does not depend so much on what we do (for instance the education which we give youth), and according to what method we proceed in order to effect it; as on that, which human nature does in us and with us, in order to *force* us into a track, which we would not easily keep of ourselves. For from it, or rather (because the highest wisdom is requisite to the accomplishment of this end) from *Providence* only, can we expect a consequence, which refers to the whole and from that to the parts, whereas men with their *projects* set out but from the parts, nay, remain but with them, and can extend, it is true, their ideas, but not their influence to the whole, as such, which is too vast for them: especially
as

as they, in opposition to one another in their projects, will hardly unite of their own free determination. As violence on all sides, and the necessity arising therefrom, must finally bring a nation to the resolution, to submit themselves to the coaction, which reason itself prescribes to them as a mean, namely, to subject themselves to public law, and to enter into the state of a civil constitution; so must necessity likewise from the incessant warring, by which states endeavour to lessen and to subjugate one another, bring them at last, even against their will, either to enter into the state of a *cosmopolitical* constitution; or, if such a state of universal peace is, on the other hand, still more dangerous to liberty (as has frequently been the case with overgrown states), by bringing to pass the most horrible despotism, this necessity must compel them to put themselves into a state, which indeed is not a cosmopolitical commonwealth under one head, but a juridical state of *confederation* nevertheless according to a *law of nations* concerted in common.

For as the advancing culture of states, with the propensity increasing at the same time to aggrandize one's self at the expence of others either by cunning or by force, must multiply wars, and occasion still greater expences by armies (with constant pay) more and more augmented, maintained on a permanent footing and in discipline, and furnished with instruments of war always becoming more numerous; mean-while the prices of all the necessaries of life increase continually, without
leaving

leaving any hope, that a proportionally advancing accession of the metals representing them will accrue; besides no peace lasts so long, that the savings during it would be adequate to the expences of the next war, to which the invention of a national debt is an ingenious expedient, it is true, but annihilating itself at last: so impotency must finally effectuate what good will ought to have done, but did not: That every state become so organized in its interior, that not the head of the state, to whom the war is in fact attended with no charges (because he carries it on at the expence of another, to wit, the nation) but the nation, who actually defray the charges of it, shall have the deciding voice, Whether there shall be war or not (for which indeed the realising of that idea of the original compact must be necessarily presupposed). For I make no doubt but these, from a mere appetite for aggrandizement, or on account of an opiniative verbal offence merely, would avoid the danger of exposing themselves to indigence and misery, which the head of the state never suffers.

And this posterity (upon which no burdens are laid by its progenitors), may always advance to the better, even in a moral sense, without a love to them, but only the self-love of every age, being the cause of it: as every commonwealth, unable to offer violence to another, must adhere to right only, and may hope with reason, that other states, formed in the same manner, will assist it in this.

This

This is however but opinion and merely hypothesis: uncertain, like all judgments, which would give to an intended effect, that is not totally in our power, its only suitable cause natural; and, even as such (hypothesis), it does not contain, in a state already subsisting, a principle for the subjects to obtain it by force (as above-mentioned), but only for heads of states free from coaction. Though it does not just lie in the nature of man, according to the common order, to forego arbitrarily any thing of his power, in pressing circumstances it is not impossible; so it cannot be considered as an expression unsuitable to the moral wishes and hopes of men (with the consciousness of their inability), to look for the circumstances thereto requisite from *Providence*, who will procure a success to the end of *humanity* in its whole species for the attainment of its final destination by the free use of its powers, so far as they extend, to which success the ends of men, considered separately, act in direct opposition. For even the counter-action of the inclinations (from which arises the bad) among one another, furnishes reason with a free play, to subdue them altogether; and, instead of the bad, which destroys itself, to make the good govern, which, when it once exists, maintains itself henceforward of itself.

Human nature appears nowhere less amiable, than in the relation of whole nations to one another. Neither the self-sufficiency, nor the property, of the one state is a moment secure against the other. The will to subjugate one

one

another, or to lessen what belongs to another, always exists; and the arming for defence, which often renders peace yet more burdensome, and more destructive to the internal welfare, than even war itself, must never cease. Against this no other mean, is possible, than a law of nations founded upon public laws accompanied with potency, to which every state must subject itself (according to the analogy with a civil law or a law of state for single men). — For a constant universal peace, by the *balance of the powers of Europe* so named, is, like Swift's house, (which was built by an architect so exactly according to all the laws of equilibrium, that, a sparrow happening to perch upon it, it immediately fell to the ground) a mere fancy. — But it may be said that states will never subject themselves to such coercive laws; and the proposal of an universal state of nations, to whose power all single states shall submit themselves of their own accord, in order to obey its laws, however melodiously it may sound in the theory of a St. Pierre, or of a Rousseau, is of no validity in the praxis: as it has always been derided by great statesmen, but still more by heads of states, as a pedantic childish idea of the schools.

Whereas, for my part, I confide in the theory, which sets out from the principle of right, as the relation between men and states *ought to be*, and which recommends to the terrestrial gods the maxim, at all times to proceed so in their differences, that such an universal state of nations may be thereby introduced,

troduced, and therefore to suppose it possible (*in praxi*), and that it *can be*; but I confide at the same time (*in subsidium*) in the nature of things, which compels to go, where one does not go willingly (*fata volentem ducunt, nolentem trahunt*). In this is then taken into the account human nature which, as reverence for right and duty is always alive in it, I neither can nor will hold so immersed in the bad, that the morally practical reason after many unsuccessful essays shall not at last gain a complete victory over it, and also represent it (human nature) as amiable. We therefore maintain, that, in a cosmopolitical view, what is valid in theory from grounds of reason, is valid in the praxis likewise.

OF
THE INJUSTICE
OF
COUNTERFEITING BOOKS.

VOL. I.

P

OF
THE INJUSTICE
OF
COUNTERFEITING BOOKS.

Those, who consider the publication of a book as the use of the property in a copy (whether the possessor came by it as a manuscript from the author, or as a transcript of it from an actual editor), and then, however, by the reservation of certain rights, whether of the author's, or of the editor's, who is put in possession by him, have a mind to limit the use still to this, namely, that it is not permitted to counterfeit it, can thereby never attain the end. For the author's property in his thoughts or sentiments (though it were not granted that such a property has place according to external laws) remains to him notwithstanding the counterfeit; and, as an *express consent* of the vendees of a book to such a limitation of their property cannot have place,*

P 2

how

* Would an editor attempt to bind every body, who purchased his work, to the condition, to be accused of embezzeling the property of another intrusted to him, if either intentionally, or by his inconsiderateness, the copy, which he purchased, were used for the purpose of counterfeiting? Nobody would consent to this; because he would thereby expose himself to every sort of trouble about the inquiry and the defence. The work would therefore remain upon the editor's hands.

how much less would a merely *presumed* one suffice to their obligation?

I believe, however, to have reason to consider the publication not as the trading with goods *in one's own name*, but as *the transacting of business in the name of another*, to wit, the author, and in this manner to be able to represent easily and distinctly the wrongfulness of counterfeiting books. My argument, which proves *the editor's right*, is contained in a ratiocination; after which follows a second, wherein *the counterfeiter's pretension* shall be refuted.

I.

Deduction of the Editor's Right against the Counterfeiter.

Whoever transacts another's business in his name and yet against his will, is obliged to give up to him, or to his attorney, all the profits that may arise therefrom, and to repair all the loss, which is thereby occasioned to either the one or the other.

Now *the counterfeiter is he*, who transacts another's business (the author's) and so on.

Therefore he is obliged to give up to the author, or to his attorney (the editor) etc.

Proof of the Major.

As the agent, who intrudes himself, acts in the name of another in a manner not permitted, he has no claim to the profit, which
arises

arises from this business ; but he, in whose name he carries on the business, or another attorney, to whose charge the former has committed it, possesses the right, to appropriate this profit to himself, as the fruit of his property. Besides, as this agent injures the possessor's right by intermeddling *nullo jure* with other's affairs, he must of necessity pay all damages sustained. This lies beyond a doubt in the elementary conceptions of the law of nature.

Proof of the Minor.

The first point of the minor is, *That the editor transacts the business of another by the publication.* — Here every thing depends on the conception of a book, or of a writing in general, as a labour of the author's, and on the conception of the editor in general (whether he be attorney or not). Whether a book be a commodity, which the author, either mediately or by means of another, can traffic with the public, therefore, alienate either with or without reservation of certain rights; or whether it is not rather a mere *use of his powers (opera)*, which he can *concede*, it is true, to others, but never *alienate*? Again, Whether the editor transacts his business in his own name, or another's business in the name of another?

In a book as a writing the author *speaks* to his *reader*; and he, who printed it, speaks by his copies not for himself, but entirely in

the name of the author. The editor exhibits him as speaking publicly, and mediates! but the delivery of this speech to the public. Let the copy of this speech, whether it be in the handwriting or in print, belong to whom it will; yet to use this for one's self, or to traffic with it, is a business, which every owner of it may conduct in his own name and at pleasure. But *to let any one speak* publicly, to publish his speech as such, is as much as to say, to speak in his name, and, in a manner, to say to the public, A writer lets you know, teaches you etc, this or that literally by me. I answer for nothing, not even for the liberty, which he takes, to speak publicly through me; I am but the mediator of its coming to you; that is no doubt a business, which one can execute in the name of another only, but never in one's own (as editor). The editor furnishes in his own name *the mute instrument of the delivering of a speech of the author's to the public;** but he can *publish* the said speech by *printing*, consequently show himself as the person, *by whom the author addresses* the public, but in the name of the author.

The second point of the minor is, That the *counterfeiter* undertakes the (author's) business, not only without any permission from

* A book is the instrument of the delivering of a speech to the public, not merely of the thoughts, as pictures, a symbolical representation of an idea, or of an event. What is the most essential is, that it is no *thing*, which is thereby delivered; but an *opera*, namely, a speech, and that literal. In naming it a mute instrument, I distinguish it from what delivers the speech by a sound, as, for instance, a speaking trumpet, nay, even the mouth of others.

the proprietor, but even contrary to his will. For as he is a counterfeiter, only because he invades the province of another, who is authorized by the author himself to publish the work; the question is, Whether the author can confer the same faculty on another, and consent thereto. It is however clear, that, as then each of them, the first editor and the person afterwards usurping the publication of the work (the counterfeiter), would manage the author's business with the same public, the labour of the one must render that of the other useless and be ruinous to both; therefore a contract of the author's with an editor with the reservation, to allow to another still the publication of his work, is impossible; consequently the author was not entitled to give the permission to any other (as counterfeiter), and the latter should not have even presumed this; by consequence the counterfeit-*ing* of books is a business totally contrary to *the will* of the proprietor, and yet undertaken in his name.

From this ground it follows, that not the author, but the editor authorized by him, is lesed. For as the former has entirely given up his right to the managing of his business with the public to the editor and, without reservation, to dispose of it otherwise; so the latter is the only proprietor of the transaction of this business, and the counterfeiter encroaches on the editor, but not on the author.

But as this right of transacting a business, which, if nothing particular has been agreed on concerning it, may be done just as well

by another, is not to be considered of itself as *inalienable* (*jus personalissimum*); the editor, as he is invested with full power, has the faculty of making over his right of publication to another; and as the author must consent to this, he, who undertakes the business from the second hand, is not counterfeiter, but rightfully authorized editor, that is, one, to whom the editor, who was put in possession by the author, has transferred his plenipotence.

II.

Refutation of the Counterfeiter's pretended Right against the Editor.

The question remains still to be answered, Whether, as the editor abalienates the work of his author to the public, the consent of the former (and of course of the latter, who gave him authority) to every use of it at pleasure, consequently to reprinting it, does not follow from the property in the copy, however disagreeable it may be to him? For gain perhaps enticed him to undertake with this risk the business of editor, without excluding the purchaser from it by an express contract, because this might have been hurtful to his business. — That the property of the copy does not furnish this right I prove by the following ratiocination:

A personal positive right against another can never be derived from the property of a thing only.

But

But the right of publishing a work is a personal positive right.

Therefore it never can be derived from the property of a thing (the copy) only.

Proof of the Major.

With the property of a thing is indeed conjoined the negative right, to resist any one, who would hinder me from the use of it at pleasure; but *a positive right against a person*, to demand of him to perform something or to serve me in any thing, cannot arise from the mere property of a thing. It is true this latter might by a particular agreement be added to the contract, whereby I acquire a property from any body; for example, that, when I purchase a commodity, the vender shall send it to a certain place free from expences. But then the right against the person, to do something for me, does not proceed from the mere property of my purchased thing, but from a particular contract.

Proof of the Minor.

One has a right in the thing, which he can dispose of at pleasure *in his own name*. But what he can perform but *in the name of another*, he transacts this business so, that the other is thereby bound, as if it were transacted by himself. (*Quod quis facit per alium, ipse fecisse putandus est*). Therefore my right to the transacting of a business in the name of another is a personal positive right, namely,

to necessitate the author of the business to guaranty something, to wit, to answer for every thing, which he has done by me, or to which he obliges himself through me. The publishing of the work now is a speech to the public (by printing) in the name of the author, consequently a business in the name of another. Therefore the right to it is a right of the editor's against a person: not merely to defend himself in the use of his property at pleasure against him; but to necessitate him to acknowledge and to answer for as his own a certain business, which the editor transacts in his name, — consequently a personal positive right.

The copy, according to which the editor prints, is a *work* of the author's (*opus*), and belongs totally to the editor, after he has purchased it, either in the manuscript, or printed, and can do every thing with it he pleases, and what can be done in his own name; for that is a requisite of the complete right in a thing, *id est* property. But the use, which he cannot make of it but only *in the name of another*, (*videlicet*, the author), is a *business* (*opera*), that this other transacts by the proprietor of the copy, whereto besides the property a particular contract is requisite.

Now the publication of a book is a business, which can be transacted but in the name of another (to wit, the author, whom the editor presents as speaking to the public through him); therefore the right thereto cannot pertain to the rights, which adhere to the property of a copy, but can become rightful
but

but by a particular contract with the author. Who publishes without such a contract with the author (or, when he has already granted this right to another, as proper editor, without a contract with him) is the *counterfeiter*, who then leses the proper editor, and must make amends to him for all damages.

Universal Observation.

That the editor transacts his business of editor, not merely in his own name, but in the name of another,* (to wit, the author), and without his consent cannot transact it at all, is confirmed from certain obligations which, according to universal acknowledgment, he is laid under. If the author, after he had delivered his manuscript to the editor to be printed, and the latter had bound himself thereto, were dead; the editor has not the liberty to suppress it as his property; but the public has a right, in case of a want of heirs, either to force him to publish the book, or to give up the manuscript to another, who offers to publish it. For it is a business, which the author had a mind to transact with the public, and which he accepted as transactor. It was not necessary that the public should know of this promise of the author's,

* Though the editor is at the same time author, both businesses are different! and he publishes in the character of a trader, what he wrote in the character of a man of letters. But we may set aside this case, and restrict our exposition but to that, where the editor is not at the same time the author; it will afterwards be easy to extend the consequence to the first case likewise.

or to accept of it; it acquires this right against the editor (to perform something) by the law only. For he possesses the manuscript but on condition, to use it for the purpose of a business of the author's with the public; but this obligation towards the public remains, though that towards the author has ceased. Here a right of the public to the manuscript is not built upon, but upon a business with the author. Should the editor give out the author's work, after his death, mutilated, falsified or interpolated, or let the necessary number of copies for the demand be wanting; the public would be entitled to force him to more justness, and to augment the number of the copies, but otherwise to provide for this elsewhere. All which could not have place, were the editor's right not deduced from a business that he transacts between the author and the public *in the name of the former*.

To this obligation of the editor's, which will probably be granted, a right founded thereupon must however correspond, namely, the right to all that, without which that obligation could not be fulfilled. This is, That he shall exercise the right of publication exclusively, because the rivalry of others in his business would render the transaction of it practically impossible for him,

A copy of *works of art*, as things, which was rightfully acquired, may be imitated, or otherwise modelled at pleasure, and those imitations publicly sold, without requiring the consent of the author of the original, or of him, whom he used as the workmaster of his

his ideas. A drawing, which any one has delineated, or got engraved by another, or executed in stone, in metal, or in stucco, may be copied, and the copies publicly sold; as every thing, that one can perform with his thing *in his own name*, requires not the consent of another. *Lippert's Dactyliotec* may be imitated by every possessor of it, who understands it, and exposed to sale, and the inventor of it has no right to complain of encroachment on his business. For it is a work (*opus*, not *opera*, *alterius*) which every body, who possesses it, may, without even mentioning the name of the inventor, alienate, of course imitate, and use in public traffic in his own name as his own. But the writing of another is the speech of a person (*opera*), and whoever publishes it can speak to the public but in the name of this other, and say nothing more of himself, than that the author makes the following speech to the public through him (*IMPENSIS Bibliopola.*) For it is a contradiction, To make in his own name a speech which, according to his own notice, and conformably to the demand of the public, must be the *speech of another*. The reason why all works of art of others may be imitated for public sale, but books, which have their editor already put in possession, dare not be counterfeited; lies in this, That the former are *works* (*opera*), the latter *acts* (*operæ*), those may be as things existing of themselves, but these can have their existence, but in a person. Consequently these belong
to

to the person of the author exclusively;* and he has an inalienable right (*jus personalissimum*) always to speak himself through every other, that is, nobody dares make the same speech to the public but in his (the author's) name. But when one alters (abridges, augments, or retouches) the book of another so, that it would now be even wrong to give it out under the name of the author of the original; the retouching *in the proper name* of the publisher is no counterfeit, and therefore not prohibited. For here another author transacts by his editor another business than the first, and consequently does not intrench on his business with the public; he represents not that author, as speaking through him, but another. The translation into another language cannot be held a counterfeit; for it is not the same speech of the author, though the thoughts may be exactly the same.

Were the idea of a copyright, or of the publication of books in general, bottomed upon here, well-understood, and elaborated
(as

* The author and the proprietor of the copy may both say of it with equal right: it is my book!— but in a different sense. The former takes the book as a writing, or a speech; the latter as the mute instrument merely of the delivering of the speech to him, or to the public, that is, a copy. This right of the author's however is no right in the thing, namely, the copy (for the proprietor may burn it before his face); but an innate right, in his own person, to wit, to hinder another from reading it to the public without his consent, which consent can by no means be presumed, because he has already given it exclusively to another.

(as I flatter myself it is possible) with the elegance requisite to the Roman juridical learning; the complaint against the counterfeiter might be brought before a court, without first needing to ask on that account for a new law.

E T E R N A L P E A C E .

A NEW EDITION ENLARGED.

VOL. I.

Q