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THE ORIGIN AND DEVELOPMENT OF THE MORAL IDEAS



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THE ORIGIN AND DEVELOPMENT OF THE MORAL IDEAS

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PREFACE

THE frequent references made in the present work, on my own authority, to customs and ideas prevalent among the natives of Morocco, require a word of explanation. Seeing the close connection between moral opinions and magic and religious beliefs, I thought it might be useful for me to acquire first-hand knowledge of the folk-lore of some non-European people, and for various reasons I chose Morocco as my field of research. During the four years I spent there, largely among its country population, I have not only collected anthropological data, but tried to make myself familiar with the native way of thinking; and I venture to believe that this has helped me to understand various customs occurring at a stage of civilisation different from our own. I purpose before long to publish the detailed results of my studies in a special monograph on the popular religion and magics of the Moors.

For these researches I have derived much material support from the University of Helsingfors. I am also indebted to the Russian Minister at Tangier, M. B. de Bacheracht, for his kindness in helping me on several occasions when I was dependent on the Sultan's Government. All the time I have had the valuable assistance of my Moorish friend Shereef 'Abd-es-Salâm el-Baḳḳâli, to whom credit

is due for the kind reception I invariably received from peasants and mountaineers, not generally noted for friendliness towards Europeans.

I beg to express my best thanks to Mr. Stephen Gwynn for revising the first thirteen chapters, and to Mr. H. C. Minchin for revising the remaining portion of the book. To their suggestions I am indebted for the improvement of many phrases and expressions. I have likewise to thank my friend Mr. Alex. F. Shand for kindly reading the proofs of the earlier chapters and giving me the benefit of his opinion.

Throughout the work the reader will easily find how much I owe to British science and thought—a debt which is greater than I can ever express.

E. W.

LONDON,
January, 1906.

PREFACE TO THE SECOND EDITION

THE present edition is only a reprint of the first, with a few inaccurate expressions corrected.

E. W.

LONDON,
July, 1912.

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THE ORIGIN AND DEVELOPMENT OF THE MORAL IDEAS

THE ORIGIN AND DEVELOPMENT OF THE MORAL IDEAS

INTRODUCTORY

THE main object of this book will perhaps be best explained by a few words concerning its origin.

Its author was once discussing with some friends the point how far a bad man ought to be treated with kindness. The opinions were divided, and, in spite of much deliberation, unanimity could not be attained. It seemed strange that the disagreement should be so radical, and the question arose, Whence this diversity of opinion? Is it due to defective knowledge, or has it a merely sentimental origin? And the problem gradually expanded. Why do the moral ideas in general differ so greatly? And, on the other hand, why is there in many cases such a wide agreement? Nay, why are there any moral id at all?

Since then many years have passed, spent by the in trying to find an answer to these questions. sent work is the result of his researches and th

The first part of it will comprise a study concepts: right, wrong, duty, justice, virt Such a study will be found to require an the moral emotions, their nature and c the relations between these emotion

moral concepts. There will then be a discussion of the phenomena to which such concepts are applied—the subjects of moral judgments. The general character of these phenomena will be scrutinised, and an answer sought to the question why facts of a certain type are matters of moral concern, while other facts are not. Finally, the most important of these phenomena will be classified, and the moral ideas relating to each class will be stated, and, so far as possible, explained.

An investigation of this kind cannot be confined to feelings and ideas prevalent in any particular society or at any particular stage of civilisation. Its subject-matter is the moral consciousness of mankind at large. It consequently involves the survey of an unusually rich and varied field of research—psychological, ethnographical, historical, juridical, theological. In the present state of our knowledge, when monographs on most of the subjects involved are wanting, I presume that such an undertaking is, strictly speaking, too big for any man; at any rate it is so for the writer of this book. Nothing like completeness can be aimed at. Hypotheses of varying degrees of probability must only too often be resorted to. Even the certainty of the statements on which conclusions are based is not always beyond a doubt. But though fully conscious of the many defects of his attempt, the author nevertheless ventures to think himself justified in placing it before the public. It seems to him that one of the most important objects of human speculation cannot be

in its present state of obscurity; that at least a se of light must be thrown upon it by researches ave extended over some fifteen years; and that principles underlying the various customs of may be arrived at even without subjecting ns to such a full and minute treatment as ired of an anthropological monograph.

essay, in spite of its theoretical char- be of some practical use. Though tional side of our nature, our moral

opinions are in a large measure amenable to reason. Now in every society the traditional notions as to what is good or bad, obligatory or indifferent, are commonly accepted by the majority of people without further reflection. By tracing them to their source it will be found that not a few of these notions have their origin in sentimental likings and antipathies, to which a scrutinising and enlightened judge can attach little importance; whilst, on the other hand, he must account blamable many an act and omission which public opinion, out of thoughtlessness, treats with indifference. It will, moreover, appear that a moral estimate often survives the cause from which it sprang. And no unprejudiced person can help changing his views if he be persuaded that they have no foundation in existing facts.

CHAPTER I

THE EMOTIONAL ORIGIN OF MORAL JUDGMENTS

THAT the moral concepts are ultimately based on emotions either of indignation or approval, is a fact which a certain school of thinkers have in vain attempted to deny. The terms which embody these concepts must originally have been used—indeed they still constantly are so used—as direct expressions of such emotions with reference to the phenomena which evoked them. Men pronounced certain acts to be good or bad on account of the emotions those acts aroused in their minds, just as they called sunshine warm and ice cold on account of certain sensations which they experienced, and as they named a thing pleasant or painful because they felt pleasure or pain. But to attribute a quality to a thing is never the same as merely to state the existence of a particular sensation or feeling in the mind which perceives it. Such an attribution must mean that the thing, under certain circumstances, makes a certain impression on the mind. By calling an object warm or pleasant, a person asserts that it is apt to produce in him a sensation of heat or a feeling of pleasure. Similarly, to name an act good or bad, ultimately implies that it is apt to give rise to an emotion of approval or disapproval in him who pronounces the judgment. Whilst not affirming the actual existence of any specific emotion in the mind of the person judging or of anybody else, the predicate of a moral judgment attributes to the subject a tendency to arouse an emotion. The moral

concepts, then, are essentially generalisations of tendencies in certain phenomena to call forth moral emotions.

However, as is frequently the case with general terms, these concepts are mentioned without any distinct idea of their contents. The relation in which many of them stand to the moral emotions is complicated; the use of them is often vague; and ethical theorisers, instead of subjecting them to a careful analysis, have done their best to increase the confusion by adapting the meaning of the terms to fit their theories. Very commonly, in the definition of the goodness or badness of acts, reference is made, not to their tendencies to evoke emotions of approval or indignation, but to the causes of these tendencies, that is, to those qualities in the acts which call forth moral emotions. Thus, because good acts generally produce pleasure and bad acts pain, goodness and badness have been identified with the tendencies of acts to produce pleasure or pain. The following statement of Sir James Stephen is a clearly expressed instance of this confusion, so common among utilitarians:— "Speaking generally, the acts which are called right do promote, or are supposed to promote general happiness, and the acts which are called wrong do diminish, or are supposed to diminish it. I say, therefore, that this is what the words 'right' and 'wrong' mean, just as the words 'up' and 'down' mean that which points from or towards the earth's centre of gravity, though they are used by millions who have not the least notion of the fact that such is their meaning, and though they were used for centuries and millenniums before any one was or even could be aware of it."[1] So, too, Bentham maintained that words like "ought," "right," and "wrong," have no meaning unless interpreted in accordance with the principle of utility;[2] and James Mill was of opinion that "the very morality" of the act lies, not in the sentiments raised in the breast of him who perceives or contemplates it, but in "the consequences of the act, good or evil, and their being

[1] Stephen, *Liberty, Equality, Fraternity*, p. 338.

[2] Bentham, *Principles of Morals and Legislation*, p. 4.

within the intention of the agent."[1] He adds that a rational assertor of the principle of utility approves of an action "because it is good," and calls it good "because it conduces to happiness."[2] This, however, is to invert the sequence of the facts, since, properly speaking, an act is called good because it is approved of, and is approved of by an utilitarian in so far as it conduces to happiness.

Such confusion of terms cannot affect the real meaning of the moral concepts. It is true that he who holds that "actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness,"[3] may, by a merely intellectual process, pass judgment on the moral character of particular acts; but, if he is an utilitarian from conviction, his first principle, at least, has an emotional origin. The case is similar with many of the moral judgments ordinarily passed by men. They are applications of some accepted general rule: conformity or non-conformity to the rule decides the rightness or wrongness of the act judged of. But whether the rule be the result of a person's independent deductions, or be based upon authority, human or divine, the fact that his moral consciousness recognises it as valid implies that it has an emotional sanction in his own mind.

Whilst the import of the predicate of a moral judgment may thus in every case be traced back to an emotion in him who pronounces the judgment, it is generally assumed to possess the character of universality or "objectivity" as well. The statement that an act is good or bad does not merely refer to an individual emotion; as will be shown subsequently, it always has reference to an emotion of a more public character. Very often it even implies some vague assumption that the act must be recognised as good or bad by everybody who possesses a sufficient knowledge of the case and of all attendant circumstances, and who has a "sufficiently developed"

[1] James Mill, *Fragment on Mackintosh*, pp. 5, 376.

[2] *Ibid.* p. 368.

[3] Stuart Mill, *Utilitarianism*, p. 9 *sq.*

moral consciousness. We are not willing to admit that our moral convictions are a mere matter of taste, and we are inclined to regard convictions differing from our own as errors. This characteristic of our moral judgments has been adduced as an argument against the emotionalist theory of moral origins, and has led to the belief that the moral concepts represent qualities which are discerned by reason.

Cudworth, Clarke, Price, and Reid are names which recall to our mind a theory according to which the morality of actions is perceived by the intellect, just as are number, diversity, causation, proportion. "Morality is eternal and immutable," says Richard Price. "Right and wrong, it appears, denote what actions are. Now whatever any thing is, that it is, not by will, or degree, or power, but by nature and necessity. Whatever a triangle or circle is, that it is unchangeably and eternally. . . . The same is to be said of right and wrong, of moral good and evil, as far as they express real characters of actions. They must immutably and necessarily belong to those actions of which they are truly affirmed." [1] And as having a real existence outside the mind, they can only be discerned by the understanding. It is true that this discernment is accompanied with an emotion :—"Some impressions of pleasure or pain, satisfaction or disgust, generally attend our perceptions of virtue and vice. But these are merely their effects and concomitants, and not the perceptions themselves, which ought no more to be confounded with them, than a particular truth (like that for which Pythagoras offered a hecatomb) ought to be confounded with the pleasure that may attend the discovery of it." [2]

According to another doctrine, the moral predicates, though not regarded as expressions of "theoretical" truth, nevertheless derive all their import from reason—from "practical" or "moral" reason, as it is variously

[1] Price, *Review of the Principal Questions in Morals*, pp. 63, 74 *sq.*
[2] *Ibid.* p. 63.

called. Thus Professor Sidgwick holds that the fundamental notions represented by the word "ought" or "right," which moral judgments contain expressly or by implication, are essentially different from all notions representing facts of physical or psychical experience, and he refers such judgments to the "reason," understood as a faculty of cognition. By this he implies "that what ought to be is a possible object of knowledge, *i.e.*, that what I judge ought to be, must, unless I am in error, be similarly judged by all rational beings who judge truly of the matter." The moral judgments contain moral *truths*, and "cannot legitimately be interpreted as judgments respecting the present or future existence of human feelings or any facts of the sensible world."[1]

Yet our tendency to objectivise the moral judgments is no sufficient ground for referring them to the province of reason. If, in this respect, there is a difference between these judgments and others that are rooted in the subjective sphere of experience, it is, largely, a difference in degree rather than in kind. The æsthetic judgments, which indisputably have an emotional origin, also lay claim to a certain amount of "objectivity." By saying of a piece of music that it is beautiful, we do not merely mean that it gives ourselves æsthetic enjoyment, but we make a latent assumption that it must have a similar effect upon everybody who is sufficiently musical to appreciate it. This objectivity ascribed to judgments which have a merely subjective origin springs in the first place from the similarity of the mental constitution of men, and, generally speaking, the tendency to regard them as objective is greater in proportion as the impressions vary less in each particular case. If "there is no disputing of tastes," that is because taste is so extremely variable; and yet even in this instance we recognise a certain "objective" standard by speaking of a "bad" and a "good" taste. On the other hand, if the appearance of objectivity in the moral judgments is so illusive as to

[1] Sidgwick, *Methods of Ethics*, pp. 25, 33 *sq.*

make it seem necessary to refer them to reason, that is partly on account of the comparatively uniform nature of the moral consciousness.

Society is the school in which men learn to distinguish between right and wrong. The headmaster is Custom, and the lessons are the same for all. The first moral judgments were pronounced by public opinion; public indignation and public approval are the prototypes of the moral emotions. As regards questions of morality, there was, in early society, practically no difference of opinion; hence a character of universality, or objectivity, was from the very beginning attached to all moral judgments. And when, with advancing civilisation, this unanimity was to some extent disturbed by individuals venturing to dissent from the opinions of the majority, the disagreement was largely due to facts which in no way affected the moral principle, but had reference only to its application.

Most people follow a very simple method in judging of an act. Particular modes of conduct have their traditional labels, many of which are learnt with language itself; and the moral judgment commonly consists simply in labelling the act according to certain obvious characteristics which it presents in common with others belonging to the same group. But a conscientious and intelligent judge proceeds in a different manner. He carefully examines all the details connected with the act, the external and internal conditions under which it was performed, its consequences, its motive; and, since the moral estimate in a large measure depends upon the regard paid to these circumstances, his judgment may differ greatly from that of the man in the street, even though the moral standard which they apply be exactly the same. But to acquire a full insight into all the details which are apt to influence the moral value of an act is in many cases anything but easy, and this naturally increases the disagreement. There is thus in every advanced society a diversity of opinion regarding the moral value of certain modes of conduct which results from circumstances of a purely

intellectual character—from the knowledge or ignorance of positive facts,—and involves no discord in principle.

Now it has been assumed by the advocates of various ethical theories that all the differences of moral ideas originate in this way, and that there is some ultimate standard which must be recognised as authoritative by everybody who understands it rightly. According to Bentham, the rectitude of utilitarianism has been contested only by those who have not known their own meaning:—"When a man attempts to combat the principle of utility . . . his arguments, if they prove anything, prove not that the principle is wrong, but that, according to the applications he supposes to be made of it, it is misapplied."[1] Mr. Spencer, to whom good conduct is that "which conduces to life in each and all," believes that he has the support of "the true moral consciousness," or "moral consciousness proper," which, whether in harmony or in conflict with the "pro-ethical" sentiment, is vaguely or distinctly recognised as the rightful ruler.[2] Samuel Clarke, the intuitionist, again, is of opinion that if a man endowed with reason denies the eternal and necessary moral differences of things, it is the very same "as if a man that has the use of his sight, should at the same time that he beholds the sun, deny that there is any such thing as light in the world; or as if a man that understands Geometry or Arithmetick, should deny the most obvious and known proportions of lines or numbers."[3] In short, all disagreement as to questions of morals is attributed to ignorance or misunderstanding.

The influence of intellectual considerations upon moral judgments is certainly immense. We shall find that the evolution of the moral consciousness to a large extent consists in its development from the unreflecting to the reflecting, from the unenlightened to the enlightened. All higher emotions are determined by cognitions, they arise

[1] Bentham, *Principles of Morals and Legislation*, p. 4 *sq.*

[2] Spencer, *Principles of Ethics*, i. 45, 337 *sq.*

[3] Clarke, *Discourse concerning the Unchangeable Obligations of Natural Religion*, p. 179.

from "the presentation of determinate objective conditions";[1] and moral enlightenment implies a true and comprehensive presentation of those objective conditions by which the moral emotions, according to their very nature, are determined. Morality may thus in a much higher degree than, for instance, beauty be a subject of instruction and of profitable discussion, in which persuasion is carried by the representation of existing data. But although in this way many differences may be accorded, there are points in which unanimity cannot be reached even by the most accurate presentation of facts or the subtlest process of reasoning.

Whilst certain phenomena will almost of necessity arouse similar moral emotions in every mind which perceives them clearly, there are others with which the case is different. The emotional constitution of man does not present the same uniformity as the human intellect. Certain cognitions inspire fear in nearly every breast; but there are brave men and cowards in the world, independently of the accuracy with which they realise impending danger. Some cases of suffering can hardly fail to awaken compassion in the most pitiless heart; but the sympathetic dispositions of men vary greatly, both in regard to the beings with whose sufferings they are ready to sympathise, and with reference to the intensity of the emotion. The same holds good for the moral emotions. The existing diversity of opinion as to the rights of different classes of men and of the lower animals, which springs from emotional differences, may no doubt be modified by a clearer insight into certain facts, but no perfect agreement can be expected as long as the conditions under which the emotional dispositions are formed remain unchanged. Whilst an enlightened mind *must* recognise the complete or relative irresponsibility of an animal, a child, or a madman, and *must* be influenced in its moral judgment by the motives of an act—no intellectual enlightenment, no scrutiny of facts, can decide how far the interests of the

[1] Marshall, *Pain, Pleasure, and Aesthetics*, p. 83.

lower animals should be regarded when conflicting with those of men, or how far a person is bound, or allowed, to promote the welfare of his nation, or his own welfare, at the cost of that of other nations or other individuals. Professor Sidgwick's well-known moral axiom, "I ought not to prefer my own lesser good to the greater good of another,"[1] would, if explained to a Fuegian or a Hottentot, be regarded by him, not as self-evident, but as simply absurd; nor can it claim general acceptance even among ourselves. Who is that "Another" to whose greater good I ought not to prefer my own lesser good? A fellow-countryman, a savage, a criminal, a bird, a fish —all without distinction? It will, perhaps, be argued that on this, and on all other points of morals, there would be general agreement, if only the moral consciousness of men were sufficiently developed.[2] But then, when speaking of a "sufficiently developed" moral consciousness (beyond insistence upon a full insight into the governing facts of each case), we practically mean nothing else than agreement with our own moral convictions. The expression is faulty and deceptive, because, if intended to mean anything more, it presupposes an objectivity of the moral judgments which they do not possess, and at the same time seems to be proving what it presupposes. We may speak of an intellect as sufficiently developed to grasp a certain truth, because truth is objective; but it is not proved to be objective by the fact that it is recognised as true by a "sufficiently developed" intellect. The objectivity of truth lies in the recognition of facts as true by all who understand them *fully*, whilst the appeal to a *sufficient* knowledge assumes their objectivity. To the verdict of a perfect intellect, that is, an intellect which knows everything existing, all would submit; but we can form no idea of a moral consciousness which could lay claim to a similar authority. If the believers in an all-

[1] Sidgwick, *op. cit.* p. 383.

[2] This, in fact, was the explanation given by Professor Sidgwick himself in a conversation which I had with him regarding his moral axioms.

good God, who has revealed his will to mankind, maintain that they in this revelation possess a perfect moral standard, and that, consequently, what is in accordance with such a standard must be objectively right, it may be asked what they mean by an "all-good" God. And in their attempt to answer this question, they would inevitably have to assume the objectivity they wanted to prove.

The error we commit by attributing objectivity to moral estimates becomes particularly conspicuous when we consider that these estimates have not only a certain quality, but a certain quantity. There are different degrees of badness and goodness, a duty may be more or less stringent, a merit may be smaller or greater.[1] These quantitative differences are due to the emotional origin of all moral concepts. Emotions vary in intensity almost indefinitely, and the moral emotions form no exception to this rule. Indeed, it may be fairly doubted whether the same mode of conduct ever arouses exactly the same degree of indignation or approval in any two individuals. Many of these differences are of course too subtle to be manifested in the moral judgment; but very frequently the intensity of the emotion is indicated by special words, or by the way in which the judgment is pronounced. It should be noticed, however, that the quantity of the estimate expressed in a moral predicate is not identical with the intensity of the moral emotion which a certain mode of conduct arouses on a special occasion. We are liable to feel more indignant if an injury is committed before our eyes than if we read of it in a newspaper, and yet we admit that the degree of wrongness is in both cases the same. The quantity of moral estimates is determined by the intensity of the emotions which their objects tend to evoke under exactly similar external circumstances.

[1] It will be shown in a following chapter why there are no degrees of rightness. This concept implies accordance with the moral law. The adjective "right" means that duty is fulfilled.

Besides the relative uniformity of moral opinions, there is another circumstance which tempts us to objectivise moral judgments, namely, the authority which, rightly or wrongly, is ascribed to moral rules. From our earliest childhood we are taught that certain acts *are* right and that others *are* wrong. Owing to their exceptional importance for human welfare, the facts of the moral consciousness are emphasised in a much higher degree than any other subjective facts. We are allowed to have our private opinions about the beauty of things, but we are not so readily allowed to have our private opinions about right and wrong. The moral rules which are prevalent in the society to which we belong are supported by appeals not only to human, but to divine, authority, and to call in question their validity is to rebel against religion as well as against public opinion. Thus the belief in a moral order of the world has taken hardly less firm hold of the human mind than the belief in a natural order of things. And the moral law has retained its authoritativeness even when the appeal to an external authority has been regarded as inadequate. It filled Kant with the same awe as the star-spangled firmament. According to Butler, conscience is "a faculty in kind and in nature supreme over all others, and which bears its own authority of being so."[1] Its supremacy is said to be "felt and tacitly acknowledged by the worst no less than by the best of men."[2] Adam Smith calls the moral faculties the "vicegerents of God within us," who "never fail to punish the violation of them by the torments of inward shame and self-condemnation; and, on the contrary, always reward obedience with tranquillity of mind, with contentment, and self-satisfaction."[3] Even Hutcheson, who raises the question why the moral sense should not vary in different men as the palate does, considers it

[1] Butler, 'Sermon II.—Upon Human Nature,' in *Analogy of Religion, &c.* p. 403.

[2] Dugald Stewart, *Philosophy of the Active and Moral Powers of Man*, i. 302.

[3] Adam Smith, *Theory of Moral Sentiments*, p. 235.

"to be naturally destined to command all the other powers."[1]

Authority is an ambiguous word. It may indicate knowledge of truth, and it may indicate a rightful power to command obedience. The authoritativeness attributed to the moral law has often reference to both kinds of authority. The moral lawgiver lays down his rules in order that they should be obeyed, and they are authoritative in so far as they have to be obeyed. But he is also believed to know what is right and wrong, and his commands are regarded as expressions of moral truths. As we have seen, however, this latter kind of authority involves a false assumption as to the nature of the moral predicates, and it cannot be justly inferred from the power to command. Again, if the notion of an external lawgiver be put aside, the moral law does not generally seem to possess supreme authority in either sense of the word. It does not command obedience in any exceptional degree; few laws are broken more frequently. Nor can the regard for it be called the mainspring of action; it is only one spring out of many, and variable like all others. In some instances it is the ruling power in a man's life, in others it is a voice calling in the desert; and the majority of people seem to be more afraid of the blame or ridicule of their fellowmen, or of the penalties with which the law threatens them, than of "the vicegerents of God" in their own hearts. That mankind prefer the possession of virtue to all other enjoyments, and look upon vice as worse than any other misery,[2] is unfortunately an imagination of some moralists who confound men as they are with men as they ought to be.

It is said that the authority of the moral law asserts itself every time the law is broken, that virtue bears in itself its own reward, and vice its own punishment. But, to be sure, conscience is a very unjust retributer. The more a person habituates himself to virtue the more he

[1] Hutcheson, *System of Moral Philosophy*, i. 61.

[2] *Idem, Inquiry into the Original of our Ideas of Beauty and Virtue*, p. 248.

sharpens its sting, the deeper he sinks in vice the more he blunts it. Whilst the best men have the most sensitive consciences, the worst have hardly any conscience at all. It is argued that the habitual sinner has rid himself of remorse at a great cost;[1] but it may be fairly doubted whether the loss is an adequate penalty for his wickedness. We are reminded that men are rewarded for good and punished for bad acts by the moral feelings of their neighbours. But public opinion and law judge of detected acts only. Their judgment is seldom based upon an exhaustive examination of the case. They often apply a standard which is itself open to criticism. And the feelings with which men regard their fellow-creatures, and which are some of the main sources of human happiness and suffering, have often very little to do with morality. A person is respected or praised, blamed or despised, on other grounds than his character. Nay, the admiration which men feel for genius, courage, pluck, strength, or accidental success, is often superior in intensity to the admiration they feel for virtue.

In spite of all this, however, the supreme authority assigned to the moral law is not altogether an illusion. It really exists in the minds of the best, and is nominally acknowledged by the many. By this I do not refer to the universal admission that the moral law, whether obeyed or not, ought under all circumstances to be obeyed; for this is the same as to say that what ought to be ought to be. But it is recognised, in theory at least, that morality, either alone or in connection with religion, possesses a higher value than anything else; that rightness and goodness are preferable to all other kinds of mental superiority, as well as of physical excellence. If this theory is not more commonly acted upon, that is due to its being, in most people, much less the outcome of their own feelings than of instruction from the outside. It is ultimately traceable to some great teacher whose own mind was ruled by the ideal of moral perfection, and whose

[1] Ziegler, *Social Ethics*, p. 103.

words became sacred on account of his supreme wisdom, like Confucius or Buddha,[1] or on religious grounds, like Jesus. The authority of the moral law is thus only an expression of a strongly developed, overruling moral consciousness. It can hardly, as Mr. Sidgwick maintains, be said to "depend upon" the conception of the objectivity of duty.[2] On the contrary, it must be regarded as a cause of this conception—not only, as has already been pointed out, where it is traceable to some external authority, but where it results from the strength of the individual's own moral emotions. As clearness and distinctness of the conception of an object easily produces the belief in its truth, so the intensity of a moral emotion makes him who feels it disposed to objectivise the moral estimate to which it gives rise, in other words, to assign to it universal validity. The enthusiast is more likely than anybody else to regard his judgments as true, and so is the moral enthusiast with reference to his moral judgments. The intensity of his emotions makes him the victim of an illusion.

The presumed objectivity of moral judgments thus being a chimera, there can be no moral truth in the sense in which this term is generally understood. The ultimate reason for this is, that the moral concepts are based upon emotions, and that the contents of an emotion fall entirely outside the category of truth. But it may be true or not that we have a certain emotion, it may be true or not that a given mode of conduct has a tendency to evoke in us moral indignation or moral approval. Hence a moral judgment is true or false according as its subject has or has not that tendency which the predicate attributes to it. If I say that it is wrong to resist evil, and yet resistance to evil has no tendency whatever to call

[1] "Besides the ideal king, the personification of Power and Justice, another ideal has played an important part in the formation of early Buddhist ideas regarding their Master. . . . It was the ideal of a perfectly Wise Man, the personification of Wisdom, the Buddha" (Rhys Davids, *Hibbert Lectures on Some Points in the History of Buddhism*, p. 141).

[2] Sidgwick, *op. cit.* p. 104.

forth in me an emotion of moral disapproval, then my judgment is false.

If there are no general moral truths, the object of scientific ethics cannot be to fix rules for human conduct, the aim of all science being the discovery of some truth. It has been said by Bentham and others that moral principles cannot be proved because they are first principles which are used to prove everything else.[1] But the real reason for their being inaccessible to demonstration is that, owing to their very nature, they can never be true. If the word "Ethics," then, is to be used as the name for a science, the object of that science can only be to study the moral consciousness as a fact.[2]

Ethical subjectivism is commonly held to be a dangerous doctrine, destructive to morality, opening the door to all sorts of libertinism. If that which appears to each man as right or good, stands for that which is right or good; if he is allowed to make his own law, or to make no law at all; then, it is said, everybody has the natural right to follow his caprice and inclinations, and to hinder him from doing so is an infringement on his rights, a constraint with which no one is bound to comply provided that he has the power to evade it. This inference was long ago drawn from the teaching of the Sophists,[3] and it will no doubt be still repeated as an argument against any theorist who dares to assert that nothing can be said to be truly right or wrong.

To this argument may, first, be objected that a scientific theory is not invalidated by the mere fact that it is likely to cause mischief. The unfortunate circumstance that there do exist dangerous things in the world, proves that something may be dangerous and yet true. Another question is whether any scientific truth really is mis-

[1] Bentham, *Principles of Morals and Legislation*, p. 4. *Cf.* Höffding, *Etik*, p. 43.

[2] *Cf.* Simmel, *Einleitung in die Moralwissenschaft*, i. p. iii. *sq.*; Westermarck, 'Normative und psychologische Ethik,' in *Dritter Internationaler Congress für Psychologie in München*, p. 428 *sqq.*

[3] Zeller, *History of Greek Philosophy*, ii. 475.

chievous on the whole, although it may cause much discomfort to certain people. I venture to believe that this, at any rate, is not the case with that form of ethical subjectivism which I am here advocating. The charge brought against the Sophists does not at all apply to it. I do not even subscribe to that beautiful modern sophism which admits every man's conscience to be an infallible guide. If we had to recognise, or rather if we did recognise, as right everything which is held to be right by anybody, savage or Christian, criminal or saint, morality would really suffer a serious loss. But we do not, and we cannot, do so. My moral judgments are my own judgments; they spring from my own moral consciousness; they judge of the conduct of other men not from their point of view but from mine, not with primary reference to their opinions about right and wrong, but with reference to my own. Most of us indeed admit that, when judging of an act, we also ought to take into consideration the moral conviction of the agent, and the agreement or disagreement between his doing and his idea of what he ought to do. But although we hold it to be wrong of a person to act against his conscience, we may at the same time blame him for having such a conscience as he has. Ethical subjectivism covers all such cases. It certainly does not allow everybody to follow his own inclinations; nor does it lend sanction to arbitrariness and caprice. Our moral consciousness belongs to our mental constitution, which we cannot change as we please. We approve and we disapprove because we cannot do otherwise. Can we help feeling pain when the fire burns us? Can we help sympathising with our friends? Are these phenomena less necessary or less powerful in their consequences, because they fall within the subjective sphere of experience? So, too, why should the moral law command less obedience because it forms part of our own nature?

Far from being a danger, ethical subjectivism seems to me more likely to be an acquisition for moral practice.

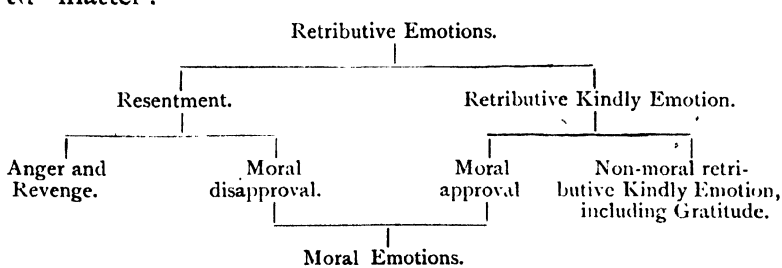
Could it be brought home to people that there is no absolute standard in morality, they would perhaps be somewhat more tolerant in their judgments, and more apt to listen to the voice of reason. If the right has an objective existence, the moral consciousness has certainly been playing at blindman's buff ever since it was born, and will continue to do so until the extinction of the human race. But who does admit this? The popular mind is always inclined to believe that it possesses the knowledge of what *is* right and wrong, and to regard public opinion as the reliable guide of conduct. We have, indeed, no reason to regret that there are men who rebel against the established rules of morality; it is more deplorable that the rebels are so few, and that, consequently, the old rules change so slowly. Far above the vulgar idea that the right is a settled something to which everybody has to adjust his opinions, rises the conviction that it has its existence in each individual mind, capable of any expansion, proclaiming its own right to exist, and, if need be, venturing to make a stand against the whole world. Such a conviction makes for progress.

CHAPTER II

THE NATURE OF THE MORAL EMOTIONS

In the preceding chapter it was asserted, in general terms, that the moral concepts are based on emotions, and the leading arguments to the contrary were met. We shall now proceed to examine the nature of the moral emotions.

These emotions are of two kinds: disapproval, or indignation, and approval. They have in common characteristics which make them moral emotions, in distinction from others of a non-moral character, but at the same time both of them belong to a wider class of emotions, which I call retributive emotions. Again, they differ from each other in points which make each of them allied to certain non-moral retributive emotions, disapproval to anger and revenge, and approval to that kind of retributive kindly emotion which in its most developed form is gratitude. They may thus, on the one hand, be regarded as two distinct divisions of the moral emotions, whilst, on the other hand, disapproval, like anger and revenge, forms a sub-species of resentment, and approval, like gratitude, forms a sub-species of retributive kindly emotion. The following diagram will help to elucidate the matter:—



That moral disapproval is a kind of resentment and akin to anger and revenge, and that moral approval is a kind of retributive kindly emotion and akin to gratitude, are, of course, statements which call for proof. An analysis of all these emotions, and a detailed study of the causes which evoke them, will, I hope, bear out the correctness of my classification. In this connection only the analysis can be attempted. The study of causes will be involved in the treatment of the subjects of moral judgments.

Resentment may be described as an aggressive attitude of mind towards a cause of pain. Anger is sudden resentment, in which the hostile reaction against the cause of pain is unrestrained by deliberation. Revenge, on the other hand, is a more deliberate form of non-moral resentment, in which the hostile reaction is more or less restrained by reason and calculation.[1] It is impossible, however, to draw any distinct limit between these two types of resentment, as also to discern where an actual desire to inflict pain comes in. In its primitive form, anger, even when directed against a living being, contains a vehement impulse to remove the cause of pain without any real desire to produce suffering.[2] Anger is strikingly shown by many fish, and notoriously by sticklebacks when their territory is invaded by other sticklebacks. In such circumstances of provocation the whole animal changes colour, and, darting at the trespasser, shows rage and fury in every movement;[3] but we can hardly believe that any idea of inflicting pain is present to its mind. As we proceed still lower down the scale of animal life we find the conative element itself gradually dwindle away until nothing is left but mere reflex action.

That the fury of an injured animal turns against the real or assumed cause of its injury is a matter of notoriety, and everybody knows that the same is the case with the

[1] *Cf.* Ribot, *Psychology of the Emotions*, p. 220 *sqq.*

[2] There are some good remarks on this in Mr. Hiram Stanley's *Studies in the Evolutionary Psychology of Feeling*, p. 138 *sq.*

[3] Romanes, *Animal Intelligence*, p. 246 *sqq.*

anger of a child. No doubt, as Professor Sully observes, "hitting out right and left, throwing things down on the floor and breaking them, howling, wild agitated movements of the arms and whole body, these are the outward vents which the gust of childish fury is apt to take."[1] But, on the other hand, we know well enough that Darwin's little boy, who became a great adept at throwing books and sticks at any one who offended him,[2] was in this respect no exceptional child. Towards the age of one year, according to M. Perez, children "will beat people, animals, and inanimate objects if they are angry with them; they will throw their toys, their food, their plate, anything, in short, that is at hand, at the people who have displeased them."[3] That a similar discrimination characterises the resentment of a savage is a fact upon which it is necessary to dwell at some length for the reason that it has been disputed, and because there are some seeming anomalies which require an explanation.

In a comprehensive work,[4] Dr. Steinmetz has made the feeling of revenge the object of a detailed investigation, which cannot be left unnoticed. The ultimate conclusions at which he has arrived are these:—Revenge is essentially rooted in the feeling of power and superiority. It arises consequently upon the experience of injury, and its aim is to enhance the "self-feeling" which has been lowered or degraded by the injury suffered. It answers this purpose best if it is directed against the aggressor himself, but it is not essential to it that it should take any determinate direction, for, *per se*, and originally, it is "undirected."[5]

[1] Sully, *Studies in Childhood*, p. 232 *sq.*

[2] Darwin, 'Biographical Sketch of an Infant,' in *Mind*, ii. 288.

[3] Perez, *First Three Years of Childhood*, p. 66 *sq.*

[4] *Ethnologische Studien zur ersten Entwicklung der Strafe.*

[5] Strictly speaking, this theory is not new. Dr. Paul Rée, in his book *Die Entstehung des Gewissens*, has pronounced revenge to be a reaction against the feeling of inferiority which the aggressor impresses upon his victim. The injured man, he says (*ibid.* p. 40), is naturally reluctant to feel himself inferior to another man, and consequently strives, by avenging the aggression, to show himself equal or even superior to the aggressor. A similar view was pre-

We are told, in fact, that the first stage through which revenge passed within the human race was characterised by a total, or almost total, want of discrimination. The aim of the offended man was merely to raise his injured "self-feeling" by inflicting pain upon somebody else, and his savage desire was satisfied whether the man on whom he wreaked his wrath was guilty or innocent.[1] No doubt, there were from the outset instances in which the offender himself was purposely made the victim, especially if he was a fellow-tribesman; but it was not really due to the feeling of revenge if the suffering was inflicted upon him, in preference to others. Even primitive man must have found out that vengeance directed against the actual culprit, besides being a strong deterrent to others, was a capital means of making a dangerous person harmless. However, Dr. Steinmetz adds, these advantages should not be overestimated, as even indiscriminate revenge has a deterring influence on the malefactor.[2] In early times, then, vengeance, according to Dr. Steinmetz, was in the main "undirected."

At the next stage it becomes, he says, somewhat less indiscriminate. A proper victim is sought for even in cases of what we should call natural death, which the savage generally attributes to the ill-will of some foe skilled in sorcery;[3] though indeed Dr. Steinmetz doubts whether in such cases the unfortunate sufferer is really supposed to have committed the deed imputed to him.[4] At all events, a need is felt of choosing somebody for a victim, and "undirected" vengeance gradually gives way to "directed" vengeance. A rude specimen of this is the blood-feud, in which the individual culprit is left out of consideration, but war is carried on against the group of which he is a member, either his family or his tribe. And

viously expressed by Schopenhauer (*Parerga und Paralipomena*, ii. 475 *sq.*). But Dr. Steinmetz has elaborated his theory with an independence and fulness which make any question of priority quite insignificant.

[1] Steinmetz, *op. cit.* i. 355, 356, 359, 561.

[2] *Ibid.* i. 362.

[3] *Ibid.* i. 356 *sq.*

[4] *Ibid.* i. 359 *sq.*

from this system of joint responsibility we finally come, by slow degrees, says Dr. Steinmetz, to the modern conception, according to which punishment should be inflicted upon the criminal and nobody else.[1] Dr. Steinmetz believes that the *vis agens* in this long process of evolution lies in the intellectual development of the human race: man found out more and more distinctly that the best means of restraining wrongs was to punish a certain person, namely, the wrong-doer.[2] On this utilitarian calculation our author lays much stress in the latter part of his investigation; whereas in another place he observes that a revenge which is directed against the offender is particularly apt to remove the feeling of inferiority, by effectually humiliating the hitherto triumphant foe.[3]

In this historical account the main points of interest are the initial stage of "undirected" vengeance, and the way in which such vengeance gradually became discriminate. If, in primitive times, a man did not care in the least on whom he retaliated an injury, then of course the direction of his vengeance could not be essential to the revenge itself, but would be merely a later appendix to it. The question is, what evidence can Dr. Steinmetz adduce to support his theory? Of primitive man we have no direct experience; no savage people now existing is a faithful representative of him, either physically or mentally. Yet however greatly the human race has changed, primitive man is not altogether dead. Traits of his character still linger in his descendants; and of primitive revenge, we are told, there are sufficient survivals left.[4]

Under the heading "Perfectly Undirected Revenge," Dr. Steinmetz sets out several alleged cases of such so-called survivals[5] 1. An Indian of the Omaha tribe, who was kicked out of a trading establishment which he had been forbidden to enter, declared in a rage that he would revenge himself for an injury so gross, and, "seeking some object to destroy, he encountered a

[1] Steinmetz, *op. cit.* i. 361.
[2] *Ibid.* i. 358, 359, 361 *sq.*
[3] *Ibid.* i. 111.
[4] *Ibid.* i. 364.
[5] *Ibid.* i. 318 *sqq.*

sow and pigs, and appeased his rage by putting them all to death." 2. The people of that same tribe believe that if a man who has been struck by lightning is not buried in the proper way, and in the place where he has been killed, his spirit will not rest in peace, but will walk about till another person is slain by lightning and laid beside him. 3. At the burial of a Loucheux Indian, the relatives sometimes will cut and lacerate their bodies, or, as sometimes happens, will, "in a fit of revenge against fate," stab some poor, friendless person who may be sojourning among them. 4. The Navahoes, when jealous of their wives, are apt to wreak their spleen and ill-will upon the first person whom they chance to meet. 5. The Great Eskimo, as it is reported, once after a severe epidemic swore to kill all white people who might venture into their country. 6. The Australian father, whose little child happens to hurt itself, attacks his innocent neighbours, believing that he thus distributes the pain among them and consequently lessens the suffering of the child. 7. The Brazilian Tupis ate the vermin which molested them, for the sake of revenge; and if one of them struck his foot against a stone, he raged over it and bit it, whilst, if he were wounded with an arrow, he plucked it out and gnawed the shaft. 8. The Dacotahs avenge theft by stealing the property of the thief or of somebody else. 9. Among the Tshatrali (Pamir), if a man is robbed of his meat by a neighbour's dog, he will, in a fit of rage, not only kill the offending dog, but will, in addition, kick his own. 10. In New Guinea the bearers of evil tidings sometimes get knocked on the head during the first outburst of indignation evoked by their news. 11. Some natives of Motu, who had rescued two shipwrecked crews and safely brought them to their home in Port Moresby, were attacked there by the very friends of those they had saved, the reason for this being that the Port Moresby people were angry at the loss of the canoes, and could not bear that the Motuans were happy while they themselves were in trouble. 12. Another story from New Guinea tells us of a man who killed some innocent persons, because he had been disappointed in his plans and deprived of valuable property. 13. Among the Maoris it sometimes happened that the friends of a murdered man killed the first man who came in their way, whether enemy or friend. 14. Among the same people, chiefs who had suffered some loss often used to rob their subjects of property in order to make good the damage. 15. If the son of a Maori is hurt, his maternal relatives, to whose tribe he is considered to belong, come to pillage his father's house or village. 16. If

a tree falls on a Kuki his fellows chop it up, and if one of that tribe kills himself by falling from a tree the tree from which he fell is promptly cut down. 17. In some parts of Daghestan, when the cause of a death is unknown, the relatives of the deceased declare some person chosen at random to have murdered him, and retaliate his death upon that person.

I have been obliged to enumerate all these cases for the reason that a theory cannot be satisfactorily refuted unless on its own ground. I may confess at once that I scarcely ever saw an hypothesis vindicated by the aid of more futile evidence. The cases 7 and 16 illustrate just the reverse of "undirected" revenge, and, when we take into consideration the animistic beliefs of savages, present little to astonish us. In case 17 the guilt is certainly imputed to somebody at random, but only when the culprit is unknown. Cases 1, 4, 10 and 12 and perhaps also 11, imply that revenge is taken upon an innocent party in a fit of passion; in cases 1 and 12 the offender himself cannot be got at, in case 10 the man who is knocked on the head appears for the moment as the immediate cause of the grief or indignation evoked, while case 11 exhibits envy combined with extreme ingratitude. In case 9 the anger is chiefly directed against the "guilty" dog, and against the "innocent" one evidently by an association of ideas. Cases 8 and 14 illustrate indemnification for loss of property, and in case 8 the thief himself is specifically mentioned first. In case 15 the revenging attack is made upon the property of those people among whom the child lives, and who may be considered responsible for the loss its maternal clan sustains by the injury. Case 6 merely shows the attempt of a superstitious father to lessen the suffering of his child. As regards case 5, Petitot, who has recorded it, says expressly that the white people were supposed to have caused the epidemic by displeasing the god Tornrark.[1] Case 2 points to a superstitious belief which is interesting enough in itself, but which, so far as I can see, is without any bearing whatever on the point we are discussing. Case 3 looks like a death-offering. The stabbing of an innocent person is mentioned in connection with, or rather as an alternative to, the self-laceration of the mourners, which last has probably a sacrificial character. Moreover, there is in this case no question of a culprit. In case 13, finally, the idea of sacrifice is very conspicuous. Dr. Steinmetz has borrowed his statement from Waitz, whose account is incomplete. Dieffenbach, the original authority, says that the custom in question was called by the Maori *taua tapu*, *i.e.*, sacred fight,

[1] Petitot, *Les Grands Esquimaux*, p. 207 *sq.*

or *taua toto*, *i.e.*, fight for blood. He describes it as follows:—"If blood has been shed, a party sally forth and kill the first person they fall in with, whether an enemy or belonging to their own tribe; even a brother is sacrificed. If they do not fall in with anybody, the *tohunga* (that is, the priest) pulls up some grass, throws it into a river, and repeats some incantation. After this ceremony, the killing of a bird, or any living thing that comes in their way, is regarded as sufficient, provided that blood is actually shed. All who participate in such an excursion are *tapu*, and are not allowed either to smoke or to eat anything but indigenous food."[1] It seems probable that this ceremony was undertaken in order to appease the enraged spirit of the dead,[2] and at the same time it may have been intended to refresh the spirit with blood.[3] The question, however, is, Why was not his death avenged upon the actual culprit? To this Dr. Steinmetz would answer that the deceased was thought to be indiscriminate in his craving for vengeance.[4] But so far as the resentment of the dead is concerned, the "sacred fight" of the Maoris only seems to illustrate the impulsive character of anger. From Dieffenbach's description of it, it is obvious that the friends of the slain man considered it to be a matter of paramount importance that blood should be shed immediately. If no human being came in their way, an animal was killed, but then an incantation was uttered beforehand. I presume that the reason for this was the terror which the supposed wrath of the dead man's spirit struck into the living, combined perhaps with the idea that it was in immediate need of fresh blood. The Maoris considered all spirits of the dead to be maliciously inclined towards them,[5] and the ghost of a person who had died a violent death was certainly looked upon as especially dangerous. The craving for instantaneous shedding of blood is even more conspicuous in another case which may be appropriately mentioned in this connection. The Aëtas of the Philippine Islands, we are told, "do not always

[1] Dieffenbach, *Travels in New Zealand*, ii 127.

[2] *Cf. ibid.* ii. 129.

[3] The latter object is suggested by some funeral ceremonies which will be noticed in a following chapter. Among the Dyaks, "a father who lost his child would go out and kill the first man he met, as a funeral ceremony," believing that he thus provided the deceased with a slave to accompany him to the habitation of souls (Tylor, *Primitive Culture*, i. 459). Among the Garos, it was formerly the practice, "whenever the death of a great man amongst them occurred, to send out a party of assassins to murder and bring back the head of the first Bengali they met. The victims so immolated would, it was supposed, be acceptable to their gods" (Dalton, *Descriptive Ethnology of Bengal*, p. 68).

[4] *Cf.* Steinmetz, *op. cit.* i. 343.

[5] Taylor, *Te Ika a Maui*, p. 221.

wait for the death of the afflicted before they bury him. Immediately after the body has been deposited in the grave, it becomes necessary, according to their usages, that his death should be avenged. The hunters of the tribe go out with their lances and arrows to kill the first living creature they meet with, whether a man, a stag, a wild hog, or a buffalo."[1] Dr. Steinmetz himself quotes some other instances from the same group of islands, in which, when a man dies, his nearest kinsmen go out to requite his death by the death of the first man who comes in their way.[2] It is worth noticing that the Philippine Islanders have the very worst opinion of their ghosts, and believe that these are particularly bloodthirsty soon after death.[3]

Dr. Steinmetz also refers to some statements according to which, among certain Australian tribes, the relatives of a person who dies avenge his death by killing an innocent man.[4] But in these cases the avenged death, though "natural" according to our terminology, is, in the belief of the savages, caused by sorcery, and the revenge is not so indiscriminate as Dr. Steinmetz seems to assume. Among the Wellington tribe, as appears from a statement which he quotes himself, it is the sorcerer's life that must be taken for satisfaction.[5] In New South Wales, after the dead man has been interrogated as to the cause of his death, his kinsmen are resolute in taking vengeance, if they "imagine that they have got sure indications of the perpetrator of the wrong."[6] Among the Central Australian natives, "not infrequently the dying man will whisper in the ear of a *Railtchawa*, or medicine man, the name of the man whose magic is killing him," and if this be not done, "there is no difficulty, by some other method, of fixing sooner or later on the guilty party"; but only after the culprit has been revealed by the medicine man is it decided by a council of the old men whether an avenging party is to be arranged or not.[7] Among the aborigines of West Australia, the survivors are "pretty busy in seeking out" the sorcerer who is supposed to have caused the death of their friend.[8]

[1] Earl, *Papuans*, p. 132.
[2] Steinmetz, *op. cit.* i. 335 *sq.*
[3] Blumentritt, 'Der Ahnencultus der Malaien des Philippinen-Archipels,' in *Mittheilungen der Geogr. Gesellsch. in Wien*, xxv. 166 *sqq.* De Mas, *Informe sobre el estado de las Islas Filipinas en* 1842, *Orijen, &c.* p. 15.
[4] Steinmetz, *op. cit.* i. 337 *sq.*
[5] Hale, *U.S. Exploring Expedition. Vol. VI.—Ethnography and Philology*, p. 115; quoted by Steinmetz, *op. cit.* i. 337.
[6] Fraser, *Aborigines of New South Wales*, p. 86.
[7] Spencer and Gillen, *Native Tribes of Central Australia*, p 476 *sq.*
[8] Calvert, *Aborigines of Western Australia*, p. 20 *sq.*

To sum up: all the facts which Dr. Steinmetz has adduced as evidence for his hypothesis of an original stage of "undirected" revenge only show that, under certain circumstances, either in a fit of passion, or when the actual offender is unknown or out of reach, revenge may be taken on an innocent being, wholly unconnected with the inflicter of the injury which it is sought to revenge. There is such an intimate connection between the experience of injury and the hostile reaction by which the injured individual gives vent to his passion, that the reaction does not fail to appear even when it misses its aim. Anger, as Seneca said, "does not rage merely against its object, but against every obstacle which it encounters on its way."[1] Many infants, when angry and powerless to hurt others, "strike their heads against doors, posts, walls of houses, and sometimes on the floor."[2] Well known are the "amucks" of the Malays, in which "the desperado assails indiscriminately friend and foe," and, with dishevelled hair and frantic look, murders or wounds all whom he meets without distinction.[3] But all this is not revenge; it is sudden anger or blind rage. Nor is it revenge in the true sense of the word if a person who has been humiliated by his superior retaliates on those under him. It is only the outburst of a wounded "self-feeling," which, when not directed against its proper object, can afford no adequate consolation to a revengeful man.

In the institution of the blood-feud some sort of collective responsibility is usually involved.[4] If the

[1] Seneca, *De ira*, iii. 1.

[2] Stanley Hall, 'A Study of Anger,' in *American Jour. of Psychology*, x. 554.

[3] Crawfurd, *History of the Indian Archipelago*, i. 67. *Cf.* Ellis, 'The Amok of the Malays,' in *Jour. of Mental Science*, xxxix. 325 *sqq.* In the Andaman Islands, it is not uncommon for a man "to vent his ill-temper, or show his resentment at any act, by destroying his own property as well as that of his neighbours" (Man, 'Aboriginal Inhabitants of the Andaman Islands,' in *Jour. Anthr. Inst.* xii. 111). Among the Kar Nicobarese, when a quarrel takes place, in serious cases, a man will probably burn his own house down (Kloss, *In the Andamans and Nicobars*, p. 310). But in these instances it is not certain whether the offended party destroys his own property in blind rage, or with some definite object in view.

[4] *Cf.* Post, *Anfänge des Staats- und Rechtsleben*, p. 180; Rée, *op. cit.* p. 49 *sq.*; Steinmetz, *op. cit.* i ch. vi.

offender is of another family than his victim, some of his relatives may have to expiate his deed.[1] If he belongs to another clan, the whole clan may be held responsible for it.[2] And if he is a member of another tribe, the vengeance may be wreaked upon his fellow-tribesmen indiscriminately.[3]

"Among the Fuegians," says Mr. Bridges, "etiquette and custom require that all the relatives of a murdered person should . . . visit their displeasure upon every connection of the manslayers, each personally." The avengers of blood would by no means be satisfied with a party of natives if they should actually deliver up into their hands a manslayer, or kill him themselves, "but would yet exact from all the murderer's friends tribute or infliction of injuries with sticks or stones."[4] Among the Indians of British Columbia and Vancouver Island, "grudges are handed down from father to son for generations, and friendly relations are never free from the risk of being interrupted."[5] Among the Greenlanders, the revenge for a murder generally "costs the executioner himself, his children, cousins, or other relatives their lives; or if these are inaccessible, some other acquaintance in the neighbourhood."[6] Among the Maoris, blood-revenge might be taken on any relative of the homicide, "no matter how distant."[7] In Tana,

[1] Besides the authorities quoted *infra*, see Leuschner, in Steinmetz, *Rechtsverhaltnisse von eingeborenen Völkern in Afrika und Ozeanien*, p. 23 (Bakwiri); *ibid.* p. 49 (Banaka and Bapuku); Rautanen, *ibid.* p. 341 (Ondonga); Walter, *ibid.* p. 390 (natives of Nossi-Bé and Mayotte, near Madagascar); von Langsdorf, *Voyages and Travels*, i. 132 (Nukahivans); Forbes, *A Naturalist's Wanderings in the Eastern Archipelago*, p. 473 (Timorese); Foreman, *Philippine Islands*, p. 213 (Igorrotes of Luzon); Kovalewsky, in *Jour. Anthr. Inst.* xxv. 113 (people of Daghestan); *Idem*, *Coutume contemporaine et loi ancienne*, p. 248 *sq.* (Ossetes); Merzbacher, *Aus den Hochregionen des Kaukasus*, ii. 51 (Khevsurs).

[2] Bridges, in *A Voice for South America*, xiii. 207 (Fuegians). Dorsey, 'Omaha Sociology,' in *Ann. Rep. Bur. Ethn.* iii. 369. Ridley, in *Jour. Anthr. Inst.* ii. 268 (Kamilaroi in Australia). Godwin-Austen, *ibid.* ii. 394 (Garo Hill tribes).

[3] von Martius, *Beitrage zur Ethnographie Amerika's*, i. 127 *sqq.* (Brazilian Indians). Crawfurd, *op. cit.* iii. 124 (natives of Celebes). Kohler, in *Zeitschr. f. vgl. Rechtswiss.* vii. 383 (Goajiros of Columbia). *Ibid.* vii. 376 (Papuans of New Guinea). Curr, *The Australian Race*, i. 70. Scaramucci and Giglioli, 'Notizie sui Danakil,' in *Archivio per l'antropologia e la etnologia*, xiv. 39. Leuschner, in Steinmetz, *Rechtswerhaltnisse*, p. 23 (Bakwiri). *Ibid.* p. 49 (Banaka and Bapuku).

[4] Bridges, in *South American Missionary Magazine*, xiii. 151 *sqq.*

[5] Macfie, *Vancouver Island and British Columbia*, p. 470.

[6] Cranz, *History of Greenland*, i. 178.

[7] Shortland, *Traditions and Superstitions of the New Zealanders*, p. 213 *sq.* *Cf. ibid.* p. 218 *sq.*

revenge "is often sought in the death of the brother, or some other near relative of the culprit."[1] Among the Kabyles, "la vengeance peut porter sur chacun des membres de la famille du meurtrier, quel qu'il soit."[2] The Bedouins, according to Burckhardt, "claim the blood not only from the actual homicide, but from all his relations; and it is these claims that constitute the right of *thár*, or the blood-revenge."[3] Among the people of Ibrim, in Nubia, on the other hand, the same traveller observes, "it is not considered as sufficient to retaliate upon any person within the fifth degree of consanguinity, as among the Bedouins of Arabia; only the brother, son, or first cousin can supply the place of the murderer."[4] Traces of collective responsibility in connection with blood-revenge are found among the Hebrews.[5] It has prevailed, or still prevails, among the Japanese[6] and Coreans,[7] the Persians[8] and Hindus,[9] the ancient Greeks[10] and Teutons.[11] It was a rule among the Welsh[12] and the Scotch in former days,[13] and is so still in Corsica,[14] Albania,[15] and among some of the Southern Slavs.[16] In Montenegro, if a homicide who cannot be caught himself has no relatives, revenge is sometimes taken on some inhabitant of the village or district to which he belongs, or even on a person who only is of the same religion and nationality as the murderer.[17] In Albania, under similar circumstances, the victim may be a person who has had nothing else to do with the offender than that he has perhaps once been speaking to him.[18]

There is no difficulty in explaining these facts. The following statement made by Mr. Romilly with reference

[1] Turner, *Samoa*, p. 317.

[2] Hanoteau and Letourneux, *La Kabylie*, iii. 61.

[3] Burckhardt, *Notes on the Bedouins and Wahábys*, p. 85. See, also, Layard, *Discoveries in the Ruins of Nineveh and Babylon*, p. 306; Lane, *Manners and Customs of the Modern Egyptians*, i. 133.

[4] Burckhardt, *Travels in Nubia*, p. 128.

[5] 2 *Samuel*, xiv. 7. *Cf. ibid.* xxi.

[6] Dautremer, 'The Vendetta or Legal Revenge in Japan,' in *Trans. Asiatic Soc. Japan*, xiii. 84.

[7] Griffis, *Corea*, p. 227.

[8] Spiegel, *Erânische Alterthumskunde*, iii. 687. Polak, *Persien*, ii. 96.

[9] Dubois, *Description of the Character, Manners, and Customs of the People of India*, p. 195.

[10] Leist, *Alt-arisches Jus Gentium*, p. 424.

[11] *Gotlands-Lagen*, 13.

[12] Walter, *Das alte Wales*, p. 138.

[13] Mackintosh, *History of Civilisation in Scotland*, ii. 279.

[14] Gregorovius, *Wanderings in Corsica*, i. 179.

[15] Gopčević, *Oberalbanien und seine Liga*, p. 324 *sqq.*

[16] Miklosich, 'Die Blutrache bei den Slaven,' in *Denkschriften der kaiserl. Akademie d. Wissensch. Philos.-histor. Classe*, Vienna, xxxvi. 131, 146 *sq.* Krauss, *Sitte und Brauch der Südslaven*, p. 39.

[17] Lago, *Memorie sulla Dalmazia*, ii. 90.

[18] Gopčević, *op. cit.* p. 325.

to the Solomon Islanders has, undoubtedly, a much wider application :—"In the cases which call for punishment, the difficulties in the way of capturing the actual culprits are greater than any one, who has not been engaged in this disagreeable work, can imagine." [1] Though it may happen that a manslayer is abandoned by his own people,[2] the system of blood-revenge more often seems to imply, not only that all the members of a group are engaged, more or less effectually, in the act of revenge, but that they mutually protect each other against the avengers. A homicide frequently provokes a war,[3] in which family stands against family, clan against clan, or tribe against tribe. In such cases the whole group take upon themselves the deed of the perpetrator, and any of his fellows, because standing up for him, becomes a proper object of revenge. The guilt extends itself, as it were, in the eyes of the offended party. So, also, any person who lives on friendly terms with the offender, or is supposed to sympathise with him, is liable to arouse a feeling of resentment, and may consequently, in extreme cases, have to expiate his crime. Moreover, because of the close relationship which exists between the members of the same group, the actual culprit will be mortified by any successful attack that the avengers make on his people, and, if he be dead, its painful and humiliating effects may still be supposed to reach his spirit. "When the offender himself is beyond the reach of direct attack," says Mr. Wilkins, "it is not beneath a Bengali's view to try to wound him through his children or other members of his family." [4] Among the South Slavonians, in a similar case, the avengers of blood first attempt to kill the father, brother,

[1] Romilly, *Western Pacific and New Guinea*, p. 81. *Cf.* Friedrichs, 'Mensch und Person,' in *Das Ausland*, 1891, p. 299.

[2] See, *e.g.*, Scott Robertson, *The Káfirs of the Hindu-Kush*, p. 440.

[3] Dr. Post's statement (*Die Geschlechtsgenossenschaft der Urzeit*, p. 156) that the blood-revenge "charakterisirt sich . . . ganz und gar als ein Privatkrieg zwischen zwei Geschlechtsgenossenschaften," however, is not quite correct in this unqualified form, as may be seen, *e.g.*, from von Martius's description of the blood-revenge of the Brazilian Indians, *op. cit.* i. 127 *sqq.*

[4] Wilkins, *Modern Hinduism*, p. 411.

or grown-up son of the murderer, "so as to inflict upon him a very heavy and painful loss"; and only when this has been tried in vain, are more distant relatives attacked.[1] The Bedouins of the Euphrates even prefer killing the chief man among the murderer's relations within the second degree to taking his own life, on the principle, "You have killed my cousin, I will kill yours."[2] And the Californian Nishinam "consider that the keenest and most bitter revenge which a man can take is, not to slay the murderer himself, but his dearest friend."[3] In these instances vengeance is exacted with reference rather to the loss suffered by the survivors than to the injury committed against the murdered man, the culprit being subjected to a deprivation similar to that which he has inflicted himself. So, also, among the Marea, if a commoner is slain by a nobleman, his death is not avenged directly on the slayer, but on some commoner who is subservient to him.[4] If, again, among the Quianganes of Luzon, a noble is killed by a plebeian, another nobleman, of the kin of the murderer, must be killed, while the murderer himself is ignored.[5] If, among the Igorrotes, a man slays a woman of another house, her nearest kinsman endeavours to slay a woman belonging to the household of the homicide, but to the guilty man himself he does nothing.[6] In all these cases the culprit is not lost sight of; vengeance is invariably wreaked upon somebody connected with him. But any consideration of guilt or innocence is overshadowed by the blind subordination to that powerful rule which requires strict equivalence between injury and punishment—an eye for an eye and a tooth for a tooth—and which, when strained to the utmost, cannot allow the life of a man to be sacrificed for that of a woman, or the life of a nobleman to be

[1] Krauss, *op. cit.* p. 39.
[2] Blunt, *Bedouin Tribes of the Euphrates*, ii. 206 *sq.*
[3] Powers, *Tribes of California*, p. 320.
[4] Munzinger, *Ostafrikanische Studien*, p. 243.
[5] Blumentritt, quoted by Spencer, *Principles of Ethics*, i. 370 *sq.*
[6] Jagor, *Travels in the Philippines*, p. 213.

sacrificed for that of a commoner, or the life of a commoner to expiate the death of a noble. This rule, as we shall see later on, is not suggested by revenge itself, but is due to the influence of other factors which intermingle with this feeling, and help, with it, to determine the action.

Nevertheless, the strong tendency to discrimination which characterises resentment, is not wholly lost even behind the veil of common responsibility. Mr. Howitt has come to the conclusion that, among the Australian Kurnai, if a homicide has been committed by an alien tribe, the feud "cannot be satisfied but by the death of the offender," although it is carried on, not against him alone, but against the whole group of which he is a member.[1] It is only "if they fail to secure the guilty person" that the natives of Western Victoria consider it their duty to kill one of his nearest relatives.[2] Concerning the West Australian aborigines, Sir George Grey observes, "The first great principle with regard to punishments is, that all the relations of a culprit, in the event of his not being found, are implicated in his guilt; if, therefore, the principal cannot be caught, his brother or father will answer nearly as well, and failing these, any other male or female relative, who may fall into the hands of the avenging party."[3] Among the Papuans of the Tami Islands, revenge may be taken on some other member of the murderer's family only if it is absolutely impossible to catch the guilty person himself.[4] That the blood-revenge is in the first place directed against the malefactor, and against some relative of his only if he cannot be found out, is expressly stated with reference to various peoples in different parts of the world;[5] and it is

[1] Fison and Howitt, *Kamilaroi and Kurnai*, p. 221.

[2] Dawson, *Australian Aborigines*, p. 71.

[3] Grey, *Journals of Expeditions*, ii. 239.

[4] Bamler, quoted by Kohler, in *Zeitschr. f. vergl. Rechtswiss.* xiv. 380.

[5] Riedel, *De sluik- en kroesharige rassen tusschen Selebes en Papua*, p. 434 (natives of Wetter). Chalmers, *Pioneering in New Guinea*, p. 179. Kohler, in *Zeitschr. f. vergl. Rechtswiss.* xiv. 446 (some Marshall Islanders). Merker, quoted by Kohler, *ibid.* xv. 53 *sq.* (Wadshagga). Brett, *Indian*

probable that much more to the same effect might have been discovered, if the observers of savage life had paid more attention to this particular aspect of the matter. Among the Fuegians, the most serious riots take place when a manslayer, whom some one wishes to punish, takes refuge with his relations or friends.[1] Von Martius remarks of the Brazilian Indians in general that, even when an intertribal war ensues from the committing of homicide, the nearest relations of the killed person endeavour, if possible, to destroy the culprit himself and his family.[2] With reference to the Creek Indians, Mr. Hawkins says that though, if a murderer flies and cannot be caught, they will take revenge upon some innocent individual belonging to his family, they are "generally earnest of themselves, in their endeavours to put the guilty to death."[3] The same is decidedly the case in those parts of Morocco where the blood-feud still prevails.

Not only has Dr. Steinmetz failed to prove his hypothesis that revenge was originally "undirected," but this hypothesis is quite opposed to all the most probable ideas we can form with regard to the revenge of early man. For my own part I am convinced that we may obtain a good deal of knowledge about the primitive condition of the human race, but not by studying modern savages only. I have dealt with this question at some length in another place,[4] and wish now merely to point out that those general physical and psychical qualities which are not only common to all races of mankind, but which are shared by them with the animals most allied to man, may be assumed to have been present also in the earlier stages of

Tribes of Guiana, p. 357. Bernau, *Missionary Labours in British Guiana*, p. 57. Dall, *Alaska*, p. 416. Boas, 'The Central Eskimo,' in *Ann. Rep. Bur. Ethn.* vi. 582. Jacob, *Leben der vorislâmischen Beduinen*, p. 144. Kovalewsky, *Coutume contemporaine*, p. 248 (Ossetes). Popović, *Recht und Gericht in Montenegro*, p. 69; Lago, *op. cit.* ii. 90 (Montenegrines). Miklosich, *loc. cit.* p. 131 (Slavs). Wilda, *Strafrecht der Germanen*, p. 173 *sq.* (ancient Teutons).

[1] Hyades and Deniker, *Mission scientifique du Cap Horn*, vii. 375.

[2] von Martius, *op. cit.* i. 128.

[3] Hawkins, in *Trans. American Ethn. Soc.* iii. 67.

[4] *History of Human Marriage*, p. 3 *sqq.*

human development. Now, concerning revenge among animals, more especially among monkeys, many anecdotes have been told by trustworthy authorities, and in every case the revenge has been clearly directed against the offender.

On the authority of a zoologist "whose scrupulous accuracy was known to many persons," Darwin relates the following story:—"At the Cape of Good Hope an officer had often plagued a certain baboon, and the animal, seeing him approaching one Sunday for parade, poured water into a hole and hastily made some thick mud, which he skilfully dashed over the officer as he passed by, to the amusement of many bystanders. For long afterwards the baboon rejoiced and triumphed whenever he saw his victim."[1] Prof. Romanes considers this to be a good instance of "what may be called brooding resentment deliberately preparing a satisfactory revenge."[2] This, I think, is to put into the statement somewhat more than it really contains; but at all events it records a case of revenge, in the sense in which Dr. Steinmetz uses the word. The same may be said of other instances mentioned by so accurate observers as Brehm and Rengger in their descriptions of African and American monkeys, and of various examples of resentment in elephants and even in camels.[3] According to Palgrave, the camel possesses the passion of revenge, and in carrying it out "shows an unexpected degree of far-thoughted malice, united meanwhile with all the cold stupidity of his usual character." The following instance, which occurred in a small Arabian town, deserves to be quoted, since it seems to have escaped the notice of the students of animal psychology. "A lad of about fourteen had conducted a large camel, laden with wood, from that very village to another at half an hour's distance or so. As the

[1] Darwin, *Descent of Man*, p. 69.

[2] Romanes, *Animal Intelligence*, p. 478.

[3] Brehm, *Thierleben*, i. 156. *Idem*, *From North Pole to Equator*, p. 305. Rengger (*Naturgeschichte der Saugethiere von Paraguay*, p. 52) gives the following information about the Cay:—"Fürchtet er . . . seinen Gegner, so nimmt er seine Zuflucht zur Verstellung, und sucht sich erst dann an ihm zu rächen, wenn er ihn unvermuthet überfallen kann. So hatte ich einen Cay, welcher mehrere Personen die ihn oft auf eine grobe Art geneckt hatten, in einem Augenblicke biss, wo sie im besten Vernehmen mit ihm zu sein glaubten. Nach verübter That kletterte er schnell auf einen hohen Balken, wo man ihm nicht beikommen konnte, und grinste schadenfroh den Gegenstand seiner Rache an." See, moreover, Watson, *The Reasoning Power in Animals*, especially pp. 20, 21, 24, 156 *sq.*; Romanes, *op. cit.* p. 387 *sqq.*; but also Morgan, *Animal Life and Intelligence*, p. 401 *sq.*

animal loitered or turned out of the way, its conductor struck it repeatedly, and harder than it seems to have thought he had a right to do. But not finding the occasion favourable for taking immediate quits, it 'bodè its time'; nor was that time long in coming. A few days later the same lad had to re-conduct the beast, but unladen, to his own village. When they were about half way on the road, and at some distance from any habitation, the camel suddenly stopped, looked deliberately round in every direction, to assure itself that no one was within sight, and, finding the road far and near clear of passers-by, made a step forward, seized the unlucky boy's head in its monstrous mouth, and lifting him up in the air flung him down again on the earth with the upper part of his skull completely torn off, and his brains scattered on the ground."[1] We are also told that elephants, though very sensitive to insults, are never provoked, even under the most painful or distracting circumstances, to hurt those from whom they have received no harm.[2] Sometimes animals show a remarkable degree of discrimination in finding out the proper object for their resentment. It is hardly surprising to read that a baboon, which was molested in its cage with a stick, tried to seize, not the stick, but the hand of its tormentor.[3] More interesting is the "revenge" which an elephant at Versailles inflicted upon a certain artist who had employed his servant to tease the animal by making a feint of throwing apples into its mouth:—"This conduct enraged the elephant; and, as if it knew that the painter was the cause of this teasing impertinence, instead of attacking the servant, it eyed the master, and squirted at him from its trunk such a quantity of water as spoiled the paper on which he was drawing."[4]

I find it inconceivable that anybody, in the face of such facts, could still believe that the revenge of early man was at first essentially indiscriminating, and became gradually discriminating from considerations of social expediency. But by this I certainly do not mean to deny that violation of the "self-feeling" is an extremely common and powerful incentive to resentment. It is so

[1] Palgrave, *Narrative of a Year's Journey through Central and Eastern Arabia*, i. 40.

[2] Watson, *op. cit.* p. 26 *sq.*

[3] Aas, *Sjaeleliv og intelligens hos Dyr*, i. 72.

[4] Smellie, *Philosophy of Natural History*, i. 448.

among savage[1] and civilised men alike; even dogs and monkeys get angry when laughed at. Nothing more easily rouses in us anger and a desire for retaliation, nothing is more difficult to forgive, than an act which indicates contempt, or disregard of our feelings. Long after the bodily pain of a blow has ceased, the mental suffering caused by the insult remains and calls for vengeance. This is an old truth often told. According to Seneca, "the greater part of the things which enrage us are insults, not injuries."[2] Plutarch observes that, though different persons fall into anger for different reasons, yet in nearly all of them is to be found the idea of their being despised or neglected.[3] "Contempt," says Bacon, "is that which putteth an edge upon anger, as much, or more, than the hurt itself."[4] But, indeed, there is no need to resort to different principles in order to explain the resentment excited by different kinds of pain. In all cases revenge implies, primordially and essentially, a desire to cause pain or destruction in return for hurt suffered, whether the hurt be bodily or mental; and, if to this impulse is added a desire to enhance the wounded "self-feeling," that does not interfere with the true nature of the primary feeling of revenge. There are genuine specimens of resentment without the co-operation of self-regarding pride;[5] and, on the other hand, the reaction of the wounded "self-feeling" is not necessarily, in the first place, concerned with the infliction of pain. If a person has written a bad book which is severely criticised, he may desire to repair his reputation by writing a better book, not by humiliating his critics; and if he attempts the latter rather than the former, he does so, not merely in order to enhance his "self-feeling,"

[1] Turner, 'Ethnology of the Ungava District,' in *Ann. Rep. Bur. Ethn.* xi. 270 (Hudson Bay Indians). Georgi, *Russia*, iii. 205 (Aleuts). Sarasin, *Ergebnisse naturwiss. Forschungen auf Ceylon*, iii. 537 (Veddahs). von Wrede, *Reise in Hadhramaut*, p. 157 (Bedouins). Winterbottom, *Native Africans in the Neighbourhood of Sierra Leone*, i. 211.

[2] Seneca, *De ira*, iii. 28.

[3] Plutarch, *De cohibenda ira*, 12.

[4] Bacon, 'Essay LVII. Of Anger,' in *Essays*, p. 514.

[5] Bain, *Emotions and the Will*, p. 177.

but because he is driven on by revenge. Dr. Boas tells us that the British Columbia Indian, when his feelings are hurt, sits down or lies down sullenly for days without partaking of food, and that, "when he rises his first thought is, not how to take revenge, but to show that he is superior to his adversary."[1]

In the feeling of gratification which results from successful resentment, the pleasure of power or superiority also may form a very important element, but it is never the exclusive element.[2] As the satisfaction of every desire is accompanied by pleasure, so the satisfaction of the desire involved in resentment gives a pleasure by itself. The angry or revengeful man who succeeds in what he aims at, delights in the pain he inflicts for the very reason that he desired to inflict it.

Revenge thus only forms a link in a chain of emotional phenomena, for which "non-moral resentment" may be used as a common name. In this long chain there is no missing link. Anger without any definite desire to cause suffering, anger with such a desire, more deliberate resentment—all these phenomena are so inseparably connected with each other that no one can say where one passes into another. Their common characteristic is that they are mental states marked by an aggressive attitude towards the cause of pain.

As to their origin, the evolutionist can hardly entertain a doubt. Resentment, like protective reflex action, out of which it has gradually developed, is a means of protection for the animal. Its intrinsic object is to remove a cause of pain, or, what is the same, a cause of danger. Two different attitudes may be taken by an animal towards another which has made it feel pain: it may either shun or attack its enemy. In the former case its action is prompted by fear, in the latter by anger, and it depends on the circumstances which of these emotions is the actual

[1] Boas, *First General Report on the Indians of British Columbia*, read at the Newcastle-upon-Tyne meeting of the British Association, 1889, p. 19.

[2] *Cf.* Ribot, *op. cit.* p. 221 *sq.*

determinant. Both of them are of supreme importance for the preservation of the species, and may consequently be regarded as elements in the animal's mental constitution which have been acquired by means of natural selection in the struggle for existence. We have already noted that, originally, the impulse of attacking the enemy could hardly have been guided by a representation of the enemy as suffering. But, as a successful attack is necessarily accompanied by such suffering, the desire to produce it naturally, with the increase of intelligence, entered as an important element in resentment. The need for protection thus lies at the foundation of resentment in all its forms.

This view is not new. More than one hundred and fifty years before Darwin, Shaftesbury wrote of resentment in these words :—"Notwithstanding its immediate aim be indeed the ill or punishment of another, yet it is plainly of the sort of those [affections] which tend to the advantage and interest of the self-system, the animal himself; and is withal in other respects contributing to the good and interest of the species."[1] A similar opinion is expressed by Butler, according to whom the reason and end for which man was made liable to anger is, that he might be better qualified to prevent and resist violence and opposition, while deliberate resentment "is to be considered as a weapon, put into our hands by nature, against injury, injustice, and cruelty."[2] Adam Smith, also, believes that resentment has "been given us by nature for defence, and for defence only," as being "the safeguard of justice and the security of innocence."[3] Exactly the same view is taken by several modern evolutionists as regards the "end" of resentment, though they, of course, do not rest contented with saying that this feeling has been given us by nature, but try to explain in what way it has developed. "Among members of the same species," says Mr. Herbert Spencer, "those individuals which have not, in any considerable degree, resented aggressions, must have ever tended to disappear, and to have left behind those which have with some effect made counter-aggressions."[4] Mr.

[1] Shaftesbury, 'Inquiry concerning Virtue or Merit,' ii. 2. 2, in *Characteristicks*, ii. 145.

[2] Butler, 'Sermon VIII.—Upon Resentment,' *op. cit.* p. 457.

[3] Adam Smith, *Theory of Moral Sentiments*, p. 113.

[4] Spencer, *Principles of Ethics*, i. 361.

Hiram Stanley, too, quoting Junker's statement regarding the pigmies of Africa, that "they are much feared for their revengeful spirit,"[1] observes that, "other things being equal, the most revengeful are the most successful in the struggle for self-conservation and self-furtherance."[2] This evolutionist theory of revenge has been criticised by Dr. Steinmetz, but in my opinion with no success. He remarks that the *feeling* of revenge could not have been of any use to the animal, even though the *act* of vengeance might have been useful.[3] But this way of reasoning, according to which the whole mental life would be excluded from the influence of natural selection, is based on a false conception of the relation between mind and body, and, ultimately, on a wrong idea of cause and effect.

From non-moral resentment we shall pass to the emotion of moral indignation. That this is closely connected with anger is indicated by language itself: we may feel indignant on other than moral grounds, and we may feel "righteous anger." The relationship between these emotions is also conspicuous in their outward expressions, which, when the emotion is strong enough, present similar characteristics. When possessed with strong moral indignation, a person looks as if he were angry,[4] and so he really is, in the wider sense of the term. This relationship has not seldom been recognised by moralists, though it has more often been forgotten. Some two thousand years ago Polybius wrote:—"If a man has been rescued or helped in an hour of danger, and, instead of showing gratitude to his preserver, seeks to do him harm, it is clearly probable that the rest will be displeased and offended with him when they know it, sympathising with their neighbour and imagining themselves in his case. Hence arises a notion in every breast of the meaning and theory of duty, which is in fact the beginning and end of justice."[5] Hartley regarded resentment and gratitude

[1] Junker, *Travels in Africa during the Years* 1882-1886, p. 85.

[2] Hiram Stanley, *op. cit.* p. 180. *Cf.* also Guyau, *Esquisse d'une Morale sans obligation ni sanction*, p. 162 *sq.*

[3] Steinmetz, *Ethnol. Studien, &c.* i. 135.

[4] Notice, for instance, Michelangelo's Moses.

[5] Polybius, *Historiae*, vi. 6.

as "intimately connected with the moral sense."[1] Adam Smith made the resentment of "the impartial spectator" a corner-stone of his theory of the moral sentiments.[2] Butler found the essential difference between sudden and deliberate anger to consist in this, that the "natural proper end" of the latter is "to remedy or prevent only that harm which implies, or is supposed to imply, injury or moral wrong."[3] And to Stuart Mill, the sentiment of justice, at least, appeared to be derived from "the animal desire to repel or retaliate a hurt or damage to oneself, or to those with whom one sympathises."[4]

Moral indignation, or disapproval, like non-moral resentment, is a reactionary attitude of mind directed towards the cause of inflicted pain. In a subsequent chapter we shall see that both are in a similar way determined by the answer given to the question, What is the cause of the pain?—a fact which, whilst strongly confirming their affinity, throws light upon some of the chief characteristics of the moral consciousness. Nay, moral indignation resembles non-moral resentment even in this respect that, in various cases, the aggressive reaction turns against innocent persons who did not commit the injury which gave rise to it. The collective responsibility assumed in certain types of blood-revenge is an evidence of this in so far as such revenge is not merely a matter of individual practice, but has the sanction of custom. And even punishment, which, in the strict sense of the term, is a more definite expression of public, or moral, indignation than the custom of private retaliation, is often similarly indiscriminate.

Like revenge, and for similar reasons, punishment sometimes falls on a relative of the culprit in cases when he himself cannot be caught. In Fiji, says Mr. Williams, "the virtue of vicarious suffering is recognised." It once happened that a warrior left his charged musket so

[1] Hartley, *Observations on Man*, i. 520.
[2] Adam Smith, *op. cit. passim*.
[3] Butler, *op. cit.* p. 458.
[4] Stuart Mill, *Utilitarianism*, p. 79.

carelessly that it went off and killed and wounded some individuals, whereupon he fled himself. His case was judged worthy of death by the chiefs of the tribe, and the offender's aged father was in consequence seized and strangled.[1]

In other cases an innocent person is killed for the offence of another, not because the offender cannot be seized, but with a view to inflicting on him a loss, according to the rule of like for like. The punishment, then, is meant for the culprit, though the chief sufferer is somebody else. According to the Laws of Hammurabi, "if a builder has built a house for a man and has not made strong his work, and the house he built has fallen, and he has caused the death of the owner, that builder shall be put to death." But "if he has caused the son of the owner of the house to die, one shall put to death the son of that builder."[2] Similarly, "if a man has struck a gentleman's daughter and caused her to drop what is in her womb, he shall pay ten shekels of silver for what was in her womb." But "if that woman has died, one shall put to death his daughter."[3] The following custom which Mr. Gason reports as existing among the Australian Dieyerie, in case a man should unintentionally kill another in a fight, is probably based on a similar principle:— "Should the offender have an elder brother, then he must die in his place; or, should he have no elder brother, then his father must be his substitute; but in case he has no male relative to suffer for him, then he himself must die."[4]

This extreme disregard of the suffering of guiltless persons is probably not so much due to downright callousness as to a strong feeling of family solidarity. The same feeling is very obvious in those numerous instances in which both the criminal himself and members of his family are implicated in the punishment.

[1] Williams and Calvert, *Fiji*, p. 24.
[2] *Laws of Hammurabi*, 229 *sq.*
[3] *Ibid.* 209 *sq.*
[4] Gason, 'Manners and Customs of the Dieyerie Tribe,' in Woods, *Native Tribes of South Australia*, p. 265.

Among the Atkha Aleuts, the punishment for certain offences was sometimes carried so far as to include the wife of the offender.[1] Among the Ewe-speaking peoples of the Slave Coast, "a person found guilty of having procured, or endeavoured to procure, the death of another through the agency of the gods Huntin and Loko, is put to death, and his family is generally enslaved as well."[2] Among the Matabele, if a person is declared by the witch-doctor to have caused injury to somebody else by making charms, he "is immediately put to death, his wife and the whole of his family sharing his fate."[3] Among the Shilluks of the White Nile, "murder is punished with death to the criminal and the forfeiture of wives and children to the Sultan, who retains them in bondage."[4] Among the Kafirs, in cases of trespasses against the king, the sentence falls not only on the individual, but on his whole house.[5] In Madagascar, the code of native laws, up to recent time, reduced for many offences the culprit's wife and children to slavery.[6] In some parts of the Malay Archipelago, according to Crawfurd, a father and child are considered almost inseparable, hence when the one is punished the other seldom escapes.[7] In Bali, the law prescribes that for certain kinds of sorcery the offender shall be put to death. It adds, "If the matter be very clearly made out, let the punishment of death be extended to his father and his mother, to his children and to his grand-children; let none of them live; let none connected with one so guilty remain on the face of the land, and let their goods be in like manner confiscated."[8]

The Chinese doctrine of responsibility is to a great extent based upon family solidarity; in great crimes all the male relatives of the offender are held responsible for his deed. Every male relative, of whatever degree, who may be dwelling under the roof of a man guilty of treason, is doomed to death, with the exception of young boys, who are allowed their lives, but on the condition that they are made eunuchs for service in the imperial palace.[9] In ancient Mexico, traitors and conspirators were not only themselves killed, but their children and relatives

[1] Petroff, 'Report on Alaska,' in *Tenth Census of the United States*, p. 158.
[2] Ellis, *Ewe-speaking Peoples of the Slave Coast*, p. 225.
[3] Decle, *Three Years in Savage Africa*, p. 153.
[4] Petherick, *Travels in Central Africa*, ii. 3.
[5] Ratzel, *History of Mankind*, ii. 445.
[6] Sibree, *The Great African Island*, p. 181. Ellis, *History of Madagascar*, i. 174, 175, 193.
[7] Crawfurd, *op. cit.* i. 82.
[8] *Ibid.* iii. 138.
[9] Douglas, *Society in China*, p. 71 *sq.* *Tu Tsing Leu Lee*, sec. ccliv. p. 270.

were made slaves to the fourth generation.[1] According to an Athenian law, a man who committed sacrilege or betrayed his country was banished with all his children.[2] Aristotle mentions a case of sacrilege in which "the bones of the guilty dead were disentombed and cast beyond the borders of Attica; the living clan were condemned to perpetual exile, and the city was subsequently purified."[3] The Macedonian law involved in punishment the kindred of conspirators against the monarch.[4] Dionysius of Halicarnassus states that some of the Greeks "think it reasonable to put to death the sons of tyrants together with their fathers, whereas others punish them with perpetual banishment"; and he contrasts this with the Roman principle that "the sons shall be exempted from all punishment, whose fathers are offenders, whether they happen to be the sons of tyrants, of parricides, or of traitors."[5] But after the end of the Marsic, and civil wars, this rule was transgressed;[6] and later on Arcadius, though expressly ordaining that the punishment of the crime shall extend to the criminal alone,[7] took a different view of the punishment for treason. By a special extension of his imperial clemency, he allows the sons of the criminal to live, although in strict justice, being tainted with hereditary guilt, they ought to suffer the punishment of their father. But they shall be incapable of inheritance; they shall be abandoned to the extreme of poverty and perpetual indigence; they shall be excluded from all honours and from the participation of religious rites; the infamy of their father shall ever attend them, and such shall be the misery of their condition, that life shall be a punishment and death a comfort.[8] Among the Anglo-Saxons, before the time of Cnut, the child, even the infant in the cradle, was liable to be sold into slavery for the payment of penalties incurred by the father, being "held by the covetous to be equally guilty as if it had discretion."[9] Even later, the child of an outlaw, following the condition of the father, also became an outlaw; and this grievance was only partly remedied by Edward the Confessor, who relieved from the consequences of the father's outlawry such children as were born before he was

[1] Bancroft, *Native Races of the Pacific States*, ii. 459.

[2] Meursius, *Themis Attica*, ii. 2, in Gronovius, *Thesaurus Graecarum Antiquitatum*, v. 1968.

[3] Aristotle, *De republica Atheniensium*, i. *Cf. ibid.* 20.

[4] Curtius Rufus, *De gestis Alexandri Magni*, vi. 11. 20.

[5] Dionysius of Halicarnassus, *Antiquitates Romanae*, viii. 80.

[6] *Ibid.* viii. 80.

[7] *Codex Iustinianus*, ix. 47. 22.

[8] *Ibid.* ix. 8. 5.

[9] *Laws of Cnut*, ii. 77. *Cf.* Lappenberg, *History of England under the Anglo-Saxon Kings*, ii. 414; Wilda, *op. cit.* p. 906.

outlawed, but not such as were born afterwards.[1] During the Middle Ages it was the invariable rule to confiscate the entire property of an impenitent heretic, a rule which was justified on the ground that his crime is so great that something of his impurity falls upon all related to him.[2] The Pope Alexander IV. also excluded the descendants of an heretic to the second generation from all offices in the Church.[3] Owing to religious influence, illegitimate children were not only deprived of the title to inheritance, but they were treated by some law-books as almost rightless beings, on a par with robbers and thieves.[4] If a person committed suicide, his goods were confiscated, and, according to a French mediæval law, his wife was besides deprived of her own private property.[5] Even in the latter half of the eighteenth century, in France, in the case of an attempt made against the life of the king, the whole family of the criminal was banished.[6] Nay, in various European countries, up to quite recent times—in England till 1870—forfeiture of property has been the punishment prescribed for certain crimes, including suicide;[7] which means, if not actually the imposition of penalties on the survivors in a case where the culprit himself is out of reach, at least a gross disregard of their ordinary rights of property. It is hardly necessary to point out how often, in the very society in which we live, "social punishments" are inflicted upon children for their father's wrongs.

For the explanation of these facts we have to remember what has been said before about collective responsibility in the case of revenge. Speaking of the Chinese doctrine of family solidarity, Dr. de Groot observes that, "under the influence of this doctrine, families, not men individually, came to be regarded, from the Government's point of view, as the smallest particles, the molecules of the nation, each individual being swallowed up in the circle of his kinsfolk."[8] Such a doctrine assumes that the other members of the family-group are, in a way, acces-

[1] *Leges Edwardi Confessoris*, 19.

[2] Lecky, *History of Rationalism in Europe*, ii. 36, n. 1. Eicken, *Geschichte und System der mittelalterlichen Weltanschauung*, p. 572 *sq.* Paramo, *De origine et progressu Sancti Inquisitionis*, p. 587 *sq.*

[3] Eicken, *op. cit.* p. 573.

[4] *Ibid.* p. 573.

[5] Du Boys, *Histoire du droit criminel des peuples modernes*, ii. 236.

[6] Hertz, *Voltaire und die französische Strafrechtspflege im achtzehnten Jahrhundert*, p. 27.

[7] Stephen, *History of the Criminal Law of England*, i. 487 *sq.*; iii. 105.

[8] de Groot, *Religious System of China* (vol. ii. book) i. 539.

sories to any crime committed by a fellow-member. "Human nature," says Lord Kames, "is not so perverse, as without veil or disguise to punish a person acknowledged to be innocent. An irregular bias of imagination, which extends the qualities of the principal to its accessories, paves the way to that unjust practice. This bias, strengthened by indignation against an atrocious criminal, leads the mind hastily to conclude, that all his connections are partakers of his guilt."[1] Among the ancients we also meet with a strong belief that, according to the course of nature, wicked fathers have wicked sons. "That which is begot," says Plutarch, "is not, like some production of art unlike the begetter, for it proceeds from him, and is not merely produced by him, so that it appropriately receives his share, whether that be honour or punishment."[2] To destroy, or to make harmless, the family of an offender may be, not only an act of retaliation, but a precaution; according to an old Greek adage, "a man is a fool if he kills the father and leaves the sons alive."[3] This especially holds good for treason, which generally suggests accomplices; and of all crimes for which penalties are imposed upon other individuals besides the culprit, treason is probably the most common. This crime is also particularly apt to evoke the hatred of those who have the power to punish, hence the punishment of it, being closely allied to an act of revenge, is often inflicted without due discrimination. Moreover, by being extended to the criminal's family, the punishment falls more heavily upon himself as well. Again, in case the crime is of a sacrilegious character, it is supposed to pollute everybody connected with the criminal, and even the whole community where he dwells.

In their administration of justice, gods are still more indiscriminate than men. They hold the individual responsible for the whole to which he belongs. They

[1] Kames, *Sketches of the History of Man*, iv. 148.

[2] Plutarch, *De sera numinis vindicta*, 16. *Cf.* Dionysius of Halicarnassus, *op. cit.* viii. 80.

[3] Schmidt, *Ethik der alten Griechen*, ii. 126.

punish the community for the sins of one of its members. They visit the iniquity of the fathers and forefathers upon the children and descendants.

The Sibuyaus, a tribe belonging to the Sea Dyaks, "are of opinion that an unmarried girl proving with child must be offensive to the superior powers, who, instead of always chastising the individual, punish the tribe by misfortunes happening to its members. They, therefore, on the discovery of the pregnancy fine the lovers, and sacrifice a pig to propitiate offended Heaven, and to avert that sickness or those misfortunes that might otherwise follow ; and they inflict heavy mulcts for every one who may have suffered from any severe accident, or who may have been drowned within a month before the religious atonement was made."[1] According to Chinese beliefs, whole kingdoms are punished for the conduct of their rulers by spirits who act as avengers with orders or approval from the *Tao*, or Heaven.[2] Prevalent opinion in China, continuously inspired anew by literature of all times and ages, further admits that spiritual vengeance may come down upon the culprit's offspring in the form of disease or death.[3] When a maimed or deformed child is born the Japanese say that its parents or ancestors must have committed some great sin.[4] The Vedic people ask Varuna to forgive the wrongs committed by their fathers.[5] Says the poet :—"What we ourselves have sinned in mercy pardon ; my own misdeeds do thou, O god, take from me, and for another's sin let me not suffer."[6] According to the ancient Greek theory of divine retribution, the community has to suffer for the sins of some of its members, children for the sins of their fathers.[7] Hesiod says that often a whole town is punished with famine, pestilence, barrenness of its women, or loss of its army or vessels for the misdeeds of a single individual.[8] Crœsus atoned by the forfeiture of his kingdom for the crime of Gyges, his fifth ancestor, who had murdered his master and usurped his throne.[9] Cytissorus brought down the anger of gods upon his descendants by

[1] St. John, *Life in the Forests of the Far East*, i. 63.

[2] de Groot, *op. cit.* (vol. iv. book) ii. 432, 435. Davis, *China*, ii. 34 *sq.*

[3] de Groot, *op. cit.* (vol. iv. book) ii. 452.

[4] Griffis, *Mikado's Empire*, p. 472.

[5] *Rig-Veda*, vii. 86. 5. *Cf. Atharva-Veda*, v. 30. 4 ; x. 3. 8.

[6] *Rig-Veda*, ii. 28. 9. *Cf. ibid.* vi. 51. 7 ; vii. 52. 2.

[7] Nagelsbach, *Nachhomerische Theologie des griechischen Volksglaubens*, p. 34 *sq.* Schmidt, *op. cit.* i. 67 *sqq.* Farnell, *Cults of the Greek States*, i. 76 *sq.*

[8] Hesiod, *Opera et dies*, 240 *sqq.*

[9] Herodotus, i. 91.

rescuing Athamas, whom the Achaians intended to offer up as an expiatory sacrifice on behalf of their country.[1] When hearing of the death of his wife, Theseus exclaims, "This must be a heaven-sent calamity in consequence of the sins of an ancestor, which from some remote source I am bringing on myself."[2] According to Hebrew notions, sin affects the nation through the individual and entails guilt on succeeding generations.[3] The anger of the Lord is kindled against the children of Israel on account of Achan's sin.[4] The sin of the sons of Eli is visited on his whole house from generation to generation.[5] Because Saul has slain the Gibeonites, the Lord sends, in the days of David, a three years' famine, which ceases only when seven of Saul's sons are hanged.[6] The sins of Manasseh are expiated even by the better generation under Josiah.[7] The notion of a jealous God who visits the iniquity of the fathers upon the children unto the third and fourth generation of them that hate Him,[8] is also frequently met with in the Old Testament Apocrypha. "The inheritance of sinners' children shall perish, and their posterity shall have a perpetual reproach."[9] "The seed of an unrighteous bed shall be rooted out."[10] The same idea has survived among Christian peoples. It was referred to in Canon Law as a principle to be imitated by human justice,[11] and by Innocent III. in justification of a bull which authorised the confiscation of the goods of heretics.[12] Up to quite recent times it was a common belief in Scotland that the punishment of the cruelty, oppression, or misconduct of an individual descended as a curse on his children to the third and fourth generation. It was not confined to the common people; "all ranks were influenced by it; and many believed that if the curse did not fall upon the first or second generation it would inevitably descend upon the succeeding."[13] In the dogma that the whole human race is condemned on

[1] *Ibid.* vii. 197.
[2] Euripides, *Hippolytus*, 831 *sq.*
[3] Oehler, *Theology of the Old Testament*, i. 236. Dorner, *System of Christian Doctrine*, ii. 325. Montefiore, *Hibbert Lectures*, p. 103. Robertson Smith, *Religion of the Semites*, p. 421. Schultz, *Old Testament Theology*, ii. 308. Bernard, 'Sin,' in Hastings, *Dictionary of the Bible*, iv. 530, 534.
[4] *Joshua*, vii. 1.
[5] 1 *Samuel*, ii. 27 *sqq.*
[6] 2 *Samuel*, xxi. 1 *sqq.*
[7] *Deuteronomy*, i. 37; iii. 26; iv. 21. 2 *Kings*, xxiii. 26; xxiv. 3. *Jeremiah*, xv. 4 *sqq.*
[8] *Exodus*, xx. 5; xxiv. 7, *Numbers*, xiv. 18. *Deuteronomy*, v. 9. *Cf. Leviticus*, xxvi. 39.
[9] *Ecclesiasticus*, xli. 6. *Cf. ibid.* xvi. 4; xli. 5, 7 *sqq.*
[10] *Wisdom of Solomon*, iii. 16. *Cf. ibid.* iii. 12, 13, 17 *sqq.*
[11] Eicken, *op. cit.* p. 572.
[12] Lecky, *History of Rationalism in Europe*, ii. 37 n.
[13] Stewart, *Sketches of the Character, &c., of the Highlanders of Scotland*, p. 127.

account of the sin of its first parents, the doctrine of collective responsibility has reached its pitch.

Men originally attribute to their gods mental qualities similar to their own, and imagine them to be no less fierce and vindictive than they are themselves. Thus the retribution of a god is, in many cases, nothing but an outburst of sudden anger, or an act of private revenge, and as such particularly liable to comprise, not only the offender himself, but those connected with him. Plutarch even argued that the punishments inflicted by gods on cities for ill-deeds committed by their former inhabitants allowed of a just defence, on the ground that a city is "one continuous entity, a sort of creature that never changes from age, or becomes different by time, but is ever sympathetic with and conformable to itself," and therefore "answerable for whatever it does or has done for the public weal, as long as the community by its union and federal bonds preserves its unity."[1] He further observes that a bad man is not bad only when he breaks out into crime, but has the seeds of vice in his nature, and that the deity, knowing the nature and disposition of every man, prefers stifling crime in embryo to waiting till it becomes ripe.[2]

But there are yet special reasons for extending the retribution of a god beyond the limits of individual guilt. Whilst the resentment of a man is a matter of experience, that of a god is a matter of inference. That some particular case of suffering is a divine punishment, is inferred either from its own peculiar character, suggesting the direct interference of a god, or from the assumption that a certain act, on account of its offensiveness, cannot be left unpunished. Now experience shows that, in many instances, the sinner himself escapes all punishment, leading a happy life till his death; hence the conclusion is near at hand that any grave misfortune which befalls his descendants, is the delayed retribution of the offended

[1] Plutarch, *De sera numinis vindicta*, 15.

[2] *Ibid.* 20.

god.[1] Such a conclusion is quite in harmony with the common notions of divine power. It especially forces itself upon a mind which has no idea of a hell with *post mortem* punishments for the wicked. And, where the spirit of a man after his death is believed to be still ardently concerned for the welfare of his family,[2] the affliction of his descendants naturally appears as a punishment inflicted upon himself. As Dr. de Groot observes, the doctrine of the Chinese, that spiritual vengeance may descend on the offender's offspring, tallies perfectly with their conception "that the severest punishment which may be inflicted on one, both in his present life and the next, is decline or extermination of his male issue, leaving nobody to support him in his old age, nobody to protect him after his death from misery and hunger by caring for his corpse and grave, and sacrificing to his manes."[3]

The retributive sufferings which innocent persons have to undergo in consequence of the sins of the guilty, are not always supposed to be inflicted upon them directly, as a result of divine resentment. They are often attributed to infection. Sin is looked upon in the light of a contagious matter which may be transmitted from parents to children, or be communicated by contact.

This idea is well illustrated by the funeral ceremonies of the Tahitians. "When the house for the dead had been erected, and the corpse placed upon the platform or bier, the priest ordered a hole to be dug in the earth or floor near the foot of the platform. Over this he prayed to the god by whom it was supposed the spirit of the deceased had been required. The purport of his prayer was that all the dead man's sins, and especially that for which his soul had been called to the *po*, might be deposited there, that they might not attach in any degree to the survivors, and that the anger of the god might be appeased." All who were employed in embalming the dead were also, during the process, carefully avoided by every person,

[1] *Cf.* Isocrates, *Oratio de pace*, 120; Cicero, *De natura Deorum*, iii. 38; Nagelsbach, *op. cit.* p. 33 *sq.*

[2] *Cf.* Schmidt, *op. cit.* i. 71 *sq.* (ancient Greeks).

[3] de Groot, *op. cit.* (vol. iv. book) ii. 452.

as the guilt of the crime for which the deceased had died was believed to contaminate such as came in contact with the corpse; and as soon as the ceremony of depositing the sins in the hole was over, all who had touched the body or the garments of the deceased, which were buried or destroyed, fled precipitately into the sea to cleanse themselves from the pollution.[1] In one part of New Zealand "a service was performed over an individual, by which all the sins of the tribe were supposed to be transferred to him, a fern stalk was previously tied to his person, with which he jumped into the river and there unbinding, allowed it to float away to the sea, bearing their sins with it."[2] The Iroquois White Dog Feast, which was held every year in January, February, or early in March,[3] implied, according to most authorities, a ceremony of sin-transference.[4] The following description of it is given by Mrs. Jemison, a white woman who was captured by the Indians in the year 1755:—Two white dogs, without spot or blemish, are strangled and hung near the door of the council-house. On the fourth or fifth day the "committee," consisting of from ten to twenty active men who have been appointed to superintend the festivities, "collect the evil spirit, or drive it off entirely, for the present, and also concentrate within themselves all the sins of their tribe, however numerous or heinous. On the eighth or ninth day, the committee having received all the sin, as before observed, into their own bodies, they take down the dogs, and after having transfused the whole of it into one of their own number, he, by a peculiar sleight of hand, or kind of magic, works it all out of himself into the dogs. The dogs, thus loaded with all the sins of the people, are placed upon a pile of wood that is directly set on fire. Here they are burnt, together with the sins with which they were loaded."[5] Among the Badágas of India, at a burial, "an elder, standing by the corpse, offers up a prayer that the dead may not go to hell, that the sins committed on earth may be forgiven, and that the sins may be borne by a calf, which is let loose in the jungle and used thenceforth for no manner of work."[6] At Utch-Kurgan, in Turkestan, Mr. Schuyler saw an old man, constantly

[1] Ellis, *Polynesian Researches*, i. 401 *sqq.*

[2] Taylor, *Te Ika a Maui*, p. 101.

[3] Beauchamp, 'Iroquois White Dog Feast,' in *American Antiquarian*, vii. 236 *sq.* Hale, 'Iroquois Sacrifice of the White Dog,' *ibid.* vii. 7.

[4] Beauchamp, *loc. cit.* p. 237 *sq.*

[5] Seaver, *Narrative of the Life of Mrs. Mary Jemison*, p. 158 *sqq.* *Cf.* Mr. Clark's description, quoted by Beauchamp, *loc. cit.* p. 238.

[6] Thurston, 'Badágas of the Nilgiris,' in the Madras Government Museum's *Bulletin*, ii. 4. *Cf.* Metz, *Tribes inhabiting the Neilgherry Hills*, p. 78; Graul, *Reise nach Ostindien*, iii. 296 *sqq.*

engaged in prayer, who was said to be an *iskatchi*, that is, "a person who gets his living by taking on himself the sins of the dead, and thenceforth devoting his life to prayer for their souls." [1]

In ancient Peru, an Inca, after confession of guilt, bathed in a neighbouring river, and repeated this formula:—"O thou River, receive the sins I have this day confessed unto the Sun, carry them down to the sea, and let them never more appear." [2] According to Vedic beliefs, sin is a contamination which may be inherited, or contracted in various ways,[3] and of which the sinner tries to rid himself by transferring it to some enemy,[4] or by invoking the gods of water or fire.[5] It is washed out by Varuna, in his capacity of a water-god,[6] and by Trita, another water-god,[7] and even by "the Waters" in general, as appears from the prayer addressed to them:—"O Waters, carry off whatever sin is in me and untruth." [8] For a similar reason, as it seems, water became in the later, Brahmanic age, the "essence (sap) of immortality"; [9] and the belief in its purifying power still survives in modern India. No sin is too heinous to be removed, no character too black to be washed clean, by the waters of Ganges.[10] At sacred places of pilgrimage on the banks of rivers, the Hindus perform special religious shavings for the purpose of purifying soul and body from pollution; and persons who have committed great crimes or are troubled by uneasy consciences, travel hundreds of miles to such holy places where "they may be released from every sin by first being relieved of every hair and then plunging into the sacred stream." [11] So, also, according to Hindu beliefs, contact with cows purifies, and, as in the Parsi ritual, the dung and urine of cows have the power of preventing or cleansing away not only material, but moral defilements.[12] In post-Homeric Greece, individuals and a whole people were cleansed from their sins by water or some other material means of purification.[13] Plutarch, after observing

[1] Schuyler, *Turkistan*, ii. 28.

[2] Tylor, *Primitive Culture*, ii. 435.

[3] *Atharva-Veda*, v. 30. 4; x. 3. 8; vii. 64. 1 *sq.* *Cf.* Oldenberg, *Religion des Veda*, p. 290.

[4] *Rig-Veda*, x. 36. 9; x. 37. 12.

[5] *Ibid.* x. 164. 3. *Atharva-Veda*, vii. 64. 2. *Cf.* Kaegi, *Rig-Veda*, p. 157; Oldenberg, *op. cit.* pp. 291–298, 319 *sqq.*

[6] *Cf.* Hopkins, *Religions of India*, pp. 65 n. 1, 66.

[7] *Atharva-Veda*, vi. 113. 1 *sqq.*

[8] *Rig-Veda*, i. 23. 22. Sin is also looked upon as a galling chain from the captivity of which release is besought (*ibid.* i. 24. 9, 13 *sq.*; ii. 27. 16; ii. 28. 5; v. 85. 8; vi. 74. 3; &c.).

[9] Hopkins, *op. cit.* p. 196.

[10] Monier Williams, *Brāhmanism and Hindūism*, p. 347.

[11] *Ibid.* p. 375.

[12] Barth, *Religions of India*, p. 264. *Laws of Manu*, iii. 206; v. 105, 121, 124; xi. 110, 203, 213.

[13] Stengel, *Die griechischen Kultusaltertümer*, p. 138 *sqq.*

that "there are other properties that have connection and communication, and that transfer themselves from one thing to another with incredible quickness and over immense distances," asks whether it is "more wonderful that Athens should have been smitten with a plague which started in Arabia, than that, when the Delphians and Sybarites became wicked, vengeance should have fallen on their descendants."[1] The Hebrews annually laid the sins of the people upon the head of a goat, and sent it away into the wilderness;[2] and they cleansed every impurity with consecrated water or the sprinkling of blood.[3] To this day, the Jews in Morocco, on their New-Year's day, go to the sea-shore, or to some spring, and remove their sins by throwing stones into the water. The words of the Psalmist, "wash me thoroughly from mine iniquity, and cleanse me from my sin,"[4] were not altogether a figure of speech; nor is Christian baptism originally a mere symbol. Its result is forgiveness of sins;[5] by the water, as a medium of the Holy Ghost, "the stains of sin are washed away."[6] That sin is contagious has been expressly stated by Christian writers. Novatian says that "the one is defiled by the sin of the other, and the idolatry of the transgressor passes over to him who does not transgress."[7]

In this materialistic conception of sin there is an obvious confusion between cause and effect, between the sin and its punishment. Sin is looked upon as a substance charged with injurious energy, which will sooner or later discharge itself to the discomfort or destruction of anybody who is infected with it. The sick Chinese says of his disease, "it is my sin," instead of saying, "it is the punishment of my sin."[8] Both in Hebrew and in the Vedic language the word for sin is used in a similar way.[9] "In the consciousness of the pious Israelite," Professor Schultz observes, "sin, guilt, and punishment, are ideas so directly connected that the words for them are interchangeable."[10]

[1] Plutarch, *De sera numinis vindicta*, 14.
[2] *Leviticus*, xvi.
[3] *Numbers*, viii. 7; xix. 4–9, 13 *sqq.*; xxxi. 23. *Leviticus*, xvi. 14 *sqq.*
[4] *Psalms*, li. 2.
[5] Harnack, *op. cit.* ii. 140 *sqq.*
[6] *Catechism of the Council of Trent*, ii. 2. 10, p. 162.
[7] Quoted by Harnack, *op. cit.* ii. 119.
[8] Edkins, *Religion in China*, p. 134.
[9] Holzman, 'Sünde und Sühne in den Rigvedahymnen und den Psalmen,' in *Zeitschr. f. Volkerpsychologie*, xv. 9.
[10] Schultz, *op. cit.* ii. 306. *Cf.* Curtiss, *Primitive Semitic Religion To-day*, p. 124 *sqq.*

The prophets frequently and emphatically declare that there is in sin itself a power which must destroy the sinner.[1] So, too, as M. Bergaigne points out, there is in the Vedic notion of sin, "la croyance à une sorte de vertu propre du péché, grâce à laquelle il produit de lui-même son effet nécessaire, à savoir le châtiment du pécheur."[2] Sins are thus treated like diseases, or the germs of diseases, of which patients likewise try to rid themselves by washing or burning, or which are described—in the very language often applied to sins—as fetters which hold them chained.[3] All kinds of evil are in this way materialised. The Shamanistic peoples of Siberia, says Georgi, "hold evil to be a self-existing substance which they call by an infinitude of particular names."[4] According to Moorish ideas, *l-bas*, or "misfortune," is a kind of infection, which may be contracted by contact and removed by water or fire; hence in all parts of Morocco water- and fire-ceremonies are performed annually, either on the *'âshur*-eve or at midsummer, *l-'anṣara*, for the purpose of purifying men, animals, and fruit-trees.[5] And just as the Moors, on these

[1] *Ibid.* ii. 308 *sq.*

[2] Bergaigne, *Religion védique*, iii. 163. *Cf. Rig-Veda*, x. 132. 5.

[3] Oldenberg, *op. cit.* p. 288.

[4] Georgi, *Russia*, iii. 257.

[5] The various methods of transferring or expelling evil, which abundantly illustrate the materialistic notions held about it, have been treated by Dr. Frazer with unrivalled learning (*The Golden Bough*), iii. 1 *sqq.* I have little doubt that the fire- and water-ceremonies, once practised all over Europe on a certain day every year, belong to the same group of rites. "The best general explanation of these European fire-festivals," says Dr. Frazer (*ibid.* iii. 300), "seems to be the one given by Mannhardt, namely, that they are sun-charms or magical ceremonies intended to ensure a proper supply of sunshine for men, animals, and plants." But it should be noticed that in Europe, as in Morocco, a purificatory purpose is expressly ascribed to them by the very persons by whom they are practised (see Frazer, *op. cit.* iii. 238 *sqq.*), and that they alternate with lustration by water (see Grimm, *Teutonic Mythology*, ii. 588 *sqq.*). On the other hand, in Dr. Frazer's exhaustive description of these ceremonies I fail to discover a single fact which would make Mannhardt's hypothesis at all probable. Dr. Frazer says (*op. cit.* iii. 301), "The custom of rolling a burning wheel down a hillside, which is often observed at these times, seems a very natural imitation of the sun's course in the sky." To me it appears as a method of distributing the purificatory energy over the fields or vineyards. Notice, for instance, the following statements:—In the Rhon Mountains, Bavaria, "a wheel wrapt in combustibles, was kindled and rolled down the hill; and the young people rushed about the fields with their burning torches and brooms. . . . In neighbouring villages of Hesse . . . it is thought that wherever the burning wheels roll, the fields will be safe from hail and storm" (*ibid.* iii. 243 *sq.*). At Volkmarsen, in Hesse, "in some places tar-barrels or wheels wrapt in straw used

occasions, rid themselves of *l-bas*, so, in modern Greece, the women make a fire on Midsummer Eve, and jump over it, crying, "I leave my sins."[1]

Closely connected with the primitive conception of sin, is that of a curse. In fact, the injurious energy attributed to a sinful act, is in many cases obviously due to the curse of a god. The curse is looked upon as a baneful substance, as a miasma which injures or destroys anybody to whom it cleaves. The curse of Moses was said to lie on mount Ebal, ready to descend with punishments whenever there was an occasion for it.[2] The Arabs, when being cursed, sometimes lay themselves down on the ground so that the curse, instead of hitting them, may fly over their bodies.[3] According to Teutonic notions, curses alight, settle, cling, they take flight, and turn home as birds to their nests.[4] It is the vulgar opinion in Ireland "that a curse once uttered must alight on something: it will float in the air seven years, and may descend any moment on the party it was aimed at; if his guardian angel but forsake him, it takes forthwith the shape of some misfortune, sickness or temptation, and strikes his devoted head."[5] We shall later on see that curses are communicated through material media. In some parts of Morocco, if a man is not powerful enough to avenge an infringement on his marriage-bed, he leaves seven tufts of hair on his head and goes to another tribe to ask for help. This is *l-'âr*, a conditional curse, which is first seated in the tufts, and

to be set on fire, and then sent rolling down the hillside. In others the boys light torches and whisps of straw at the bonfires and rush about brandishing them in their hands" (*ibid.* iii. 254). In Münsterland, "boys with blazing bundles of straw run over the fields to make them fruitful" (*ibid.* iii. 255). Dr. Frazer says (*ibid.* iii. 301), "The custom of throwing blazing discs, shaped liked suns, into the air is probably also a piece of imitative magic." But why should it not, in conformity with other practices, be regarded as a means of purifying the air? According to old writers, the object of Midsummer fires was to disperse the aerial dragons (*ibid.* iii. 267). It would carry me too far from my subject to enter into further details. I have dealt with the matter in my article 'Midsummer Customs in Morocco,' in *Folk-Lore*, xvi. 27–47.

[1] Grimm, *Teutonic Mythology*, ii. 623.

[2] *Deuteronomy*, xi. 29.

[3] Goldziher, *Abhandlungen zur arabischen Philologie*, i. 29. Wellhausen, *Reste arabischen Heidentums*, p. 139, n. 4.

[4] Grimm, *op. cit.* iv. 1690.

[5] *Ibid.* iii. 1227. Wood-Martin, *Traces of the Elder Faiths of Ireland*, ii. 57 *sq.*

from there transferred to those whom he invokes. Similarly, a person under the vow of blood-revenge lets his hair grow until he has fulfilled his vow. The oath clings to his hair, and will fall upon his head if he violates it.[1]

Generally, a curse follows the course which is indicated by the curser. But it does not do so in every case, and it has a tendency to spread. In ancient India,[2] and among the Arabs[3] and Hebrews,[4] there was a belief that a curse, especially if it was undeserved, might fall back on the head of him who uttered it. The same belief prevailed, or still prevails, among the Irish;[5] so, also, according to an English proverb, "curses, like chickens, come home to roost." According to Plato, the curse of a father or mother taints everything with which it comes in contact. Any one who is found guilty of assaulting a parent, shall be for ever banished from the city into the country, and shall abstain from the temples; and "if any freeman eat or drink, or have any other sort of intercourse with him, or only meeting him have voluntarily touched him, he shall not enter into any temple, nor into the agora, nor into the city, until he is purified; for he should consider that he has become tainted by a curse."[6] Plutarch asks whether Jupiter's priest was forbidden to swear for the reason that "the peril of perjury would reach in common to the whole commonwealth, if a wicked, godless, and forsworn person should have the charge and superintendence of the prayers, vows, and sacrifices made on behalf of the city."[7] The Romans believed that certain horrid imprecations had such power, that not only the object of them never escaped their influence, but that the person who used them also was sure

[1] The same practice prevailed among the ancient Arabs (Wellhausen, *op. cit.* p. 122), and some other cases are recorded by Dr. Frazer (*op. cit.* i. 370 *sq.*). I cannot accept Wellhausen's explanation (*op. cit.* p. 124) that the hair is allowed to grow for the purpose of being sacrificed when the vow is fulfilled.

[2] *Atharva-Veda*, ii. 7. 5.

[3] Goldziher, *Abhandlungen*, i. 38 *sq.*

[4] *Ecclesiasticus*, xxi. 27.

[5] Wood-Martin, *op. cit.* ii. 57 *sq.*

[6] Plato, *Leges*, ix. 881.

[7] Plutarch, *Questiones Romanae*, 44.

to be unhappy.[1] Among the Arinzes, an oath is reckoned a terrible thing:—"They do not suffer a person, who has been under the necessity of expurgating himself in so dreadful a manner, to remain among them: he is sent into exile."[2] According to Bedouin notions, a solemn oath should only be taken at a certain distance from the camp, "because the magical nature of the oath might prove pernicious to the general body of Arabs, were it to take place in their vicinity."[3] "To take an oath of any sort," says Burckhardt, "is always a matter of great concern among the Bedouins. It seems as if they attached to an oath consequences of a supernatural kind. . . . A Bedouin, even in defence of his own right, will seldom be persuaded to take a solemn oath before a kadhy, or before the tomb of a sheikh or saint, as they are sometimes required to do; and would rather forfeit a small sum than expose himself to the dreaded consequences of an oath."[4] Exactly the same holds good for the Moors. The conditional self-curse is supposed in some degree to pollute the swearer even though the condition referred to in the oath be only imaginary, in other words, though he do not perjure himself. This, I think, is the reason why, among the Berbers in the South of Morocco, persons who have been wrongly accused of a crime, sometimes entirely undress themselves in the sanctuary where they are going to swear. They believe that, if they do so, the saint will punish the accuser; and I conclude that at the bottom of this belief there is a vague idea that the absence of all clothes will prevent the oath from clinging to themselves. They say that it is bad not only to swear, but even to be present when an oath is taken by somebody else. And at Demnat, in the Great Atlas, I was told that when a person has made oath at a shrine, he avoids going back to his house the same way as he came, since otherwise, at least if he

[1] *Idem*, *Vita Cassi*, 16.
[2] Georgi, *op. cit.* iii. 54 *sq.*
[3] Burckhardt, *Bedouins and Wahábys*, p. 73.
[4] *Ibid.* p. 165.

has sworn false, his family as well as himself would have to suffer.

If a curse is infectious, it is naturally liable to contaminate those who derive their origin from the infected individual. The house of Glaucus was utterly extirpated from Sparta, in accordance with the words of the oracle, "There is a nameless son of the Oath-god who has neither hands nor feet; he pursues swiftly, until, having seized, he destroys the whole race, and all the house."[1] So, too, the Erinyes visited the sins of the fathers even on the children and grandchildren;[2] and the Erinyes were originally only personifications of curses.[3] It is said in the Ecclesiasticus:—"A man that useth much swearing shall be filled with iniquity, and the plague shall never depart from his house. . . . If he swear in vain, he shall not be innocent, but his house shall be full of calamities."[4] Casalis remarks of the Basutos, that "the dreadful consequences that the curse of Noah has had for Ham and his descendants appear quite natural to these people."[5] The Dharkâr and Majhwâr in Mirzapur, believe that a person who forswears himself will lose his property and his children;[6] but as we do not know the contents of the oath, it is possible that the destruction of the latter is not ascribed to mere contagion, but is expressly imprecated on them by the swearer.[7] Among the Rejangs of Sumatra,

[1] Herodotus, vi. 86. *Cf.* Hesiod, *Opera et dies*, 282 *sqq.*

[2] Aeschylus, *Eumenides*, 934 *sqq.*

[3] Aeschylus (*Eumenides*, 416 *sq.*) expressly designates the Erinyes by the title of "curses" (ἀραί), and Pausanias (viii. 25. 6) derives the name Erinys from an Arcadian word signifying a fit of anger. *Cf.* von Lasaulx, 'Der Fluch bei Griechen und Römern,' in *Verzeichnis der Vorlesungen an der Julius-Maximilians-Universitaet zu Wurzburg im Sommer-Semester* 1843, p. 8; Muller, *Dissertations on the Eumenides of Aeschylus*, p. 155 *sqq.*; Rohde, 'Paralipomena,' in *Rheinisches Museum fur Philologie*, 1895, p. 16 *sq.*

[4] *Ecclesiasticus*, xxiii. 11. *Cf. ibid.* xli. 5 *sqq.*; *Wisdom of Solomon*, iii. 12 *sq.*, xii. 11.

[5] Casalis, *Basutos*, p. 305.

[6] Crooke, *Tribes and Castes of the North-Western Provinces and Oudh*, ii. 287; iii. 444. *Cf. ibid.* i. 132.

[7] Among these tribes it is usual to swear by "putting a bamboo on the head," or "touching a broad-sword, touching the feet of a Brâhman, holding a cow's tail, touching Ganges water." But among many of the other tribes described by Mr. Crooke, persons swear on the heads of their children (*ibid.* i. 11, 130, 172; ii. 96, 138, 339, 357; iii. 40, 113, 251, 262; iv. 35), or with a son or grandson in the arms (*ibid.* ii. 428), and in such cases the

"any accident that happens to a man, who has been known to take a false oath, or to his children or grandchildren, is carefully recorded in memory, and attributed to this sole cause."[1] Among the Karens the following story is told:—"Anciently there was a man who had ten children, and he cursed one of his brethren, who had done him no injury; but the curse did the man no harm, and he did not die. Then the curse returned to the man who sent it, and all his ten children died."[2] The Moors are fond of cursing each other's father or mother, or grandfather, or grandfather's father, such a curse being understood to involve their descendants as well. The Rev. R. Taylor says of the Maoris, "To bid you go and cook your father would be a great curse, but to tell a person to go and cook his great-grandfather would be far worse, because it included every individual who has sprung from him."[3]

Thus, from the conception that sins and curses are contagious it follows that an innocent person may have to suffer for the sin of another. His suffering does not necessarily relieve the sinner from punishment; sin, like an infectious disease, may spread without vacating the seat of infection. But, as we have seen, it may also be transferred, and sin-transference involves vicarious suffering. At the same time, this kind of vicarious suffering must not be confounded with vicarious expiatory sacrifice. As a general rule, the scapegoat is driven or cast away, not killed. The exceptions to this rule seem to be due to two different causes. On the one hand, the scapegoat may be chased to death, or perhaps be pushed over a precipice,[4] for the sake of ridding the community as

death of the child would naturally be expected to follow perjury as a direct result of it. Among the Kol, the usual form of an oath is, "May my children die if I lie" (*ibid.* iii. 313).

[1] Marsden, *History of Sumatra*, p. 240.

[2] Mason, in *Jour Asiatic Soc. Bengal*, xxxvii. pt. ii. 137.

[3] Taylor, *Te Ika a Maui*, p. 208.

[4] According to the Mishna, the Hebrew scapegoat was not allowed to go free in the wilderness, but was killed by being pushed over a precipice (Robertson Smith, *Religion of the Semites*, p. 418). See also the ambiguous passage in Servius, *In Virgilii Aeneidos*, iii. 57.

effectively as possible of the evils loaded on the victim. Thus the Bhotiyás of Juhár take a dog, make him drunk, "and having fed him with sweetmeats, lead him round the village and let him loose. They then chase and kill him with sticks and stones, and believe that by so doing no disease or misfortune will visit the village during the year."[1] On the other hand, the transference of evil may be combined with a sacrifice. But of such a combination only a few instances are recorded, and most of them are ambiguous. Considering further that in these cases, or at least in the best known of them, the act of transference takes place *after* the victim has been killed, it seems to me extremely probable that we have here to do with a fusion of two distinct rites into one, and that the victim is not offered up as a sacrifice in its capacity of a scapegoat, but, once sacrificed, has been made use of as a conductor for all the evils with which the people are beset.

In his list of scapegoats, Dr. Frazer refers to a case of human sacrifice witnessed by the Rev. J. C. Taylor at Onitsha, on the Niger.[2] A young woman was drawn, with her face to the earth, from the king's house to the river. As the people drew her along, they cried, "Wickedness! wickedness!" so as to notify to the passers-by to screen themselves from witnessing the dismal scene. The sacrifice was to take away the iniquities of the land. The body was dragged along in a merciless manner "as if the weight of all their wickedness were thus carried away"; and it was finally drowned in the river. Our informant also heard that there was a man killed, as a sacrifice for the sins of the king. "Thus two human beings were offered as sacrifices, to propitiate their heathen deities, thinking that they would thus atone for the individual sins of those who had broken God's laws during the past year. . . . Those who had fallen into gross sins during the past year —such as incendiarisms, thefts, fornications, adulteries, witchcrafts, incests, slanders, &c.—were expected to pay in twenty-eight *ngugus*, or £2 0*s.* 7½*d.*, as a fine; and this money was taken into the interior, to purchase two sickly persons, to be

[1] Atkinson, 'Notes on the History of Religion in the Himálaya of the N.W. Provinces,' in *Jour. Asiatic Soc. Bengal*, liii. pt. i. 62.

[2] Frazer, *op. cit.* iii. 109 *sq.*

offered as a sacrifice for all these abominable crimes—one for the land, and one for the river."[1] As will be seen in a following chapter, human sacrifices to rivers are very common in the Niger country. In the cases mentioned by the English missionary, the idea of vicarious expiation is obvious. But I find no evidence of actual sin-transference.

Dr. Frazer further mentions a custom which, according to Strabo, prevailed among the Albanians of the Eastern Caucasus.[2] In the temple of the Moon they kept a number of sacred slaves, of whom many were inspired and prophesied. When one of these men exhibited more than usual symptoms of inspiration or insanity, the high priest had him bound with a sacred chain and maintained him in luxury for a year. At the end of the year he was anointed with unguents and led forth to be sacrificed. A man thrust a sacred spear into his side, piercing his heart. From the manner in which the victim fell, omens were drawn as to the welfare of the commonwealth. Then the body was carried to a certain spot where all the people stood upon it as a purificatory ceremony.[3] Dr. Frazer maintains that "the last circumstance clearly indicates that the sins of the people were transferred to the victim, just as the Jewish priest transferred the sins of the people to the scapegoat by laying his hand on the animal's head."[4] So it may be, although, in my opinion, the purificatory ceremony described by Strabo also allows of another interpretation. The victim was evidently held to be saturated with magic energy; this is commonly the case with men, or animals, or even inanimate things, that are offered in sacrifice, and in the present instance the man was regarded as holy already, long before he was slain. To stand on the corpse, then, might have been regarded as purifying in consequence of the benign virtue inherent in it, just as, according to Muhammedan notions, contact with a saint cures disease, not by transferring it to the saint, but by annihilating it or expelling it from the body of the patient. But whether the ceremony in question involved the idea of sin-transference or not, there is no indication that the sacrifice of the slave was of an expiatory character. The same may be said both of the Egyptian sacrifice of a bull, mentioned by Herodotus, and of the white dog sacrifice performed by the Iroquois. The Egyptians first invoked the god and slew the bull. They then cut off his head and flayed the body. Next

[1] Crowther and Taylor, *Gospel on the Banks of the Niger*, p. 344 *sq.*
[2] Frazer, *op. cit.* iii. 112 *sq.*
[3] Strabo, xi. 4. 7.
[4] Frazer, *op. cit.* iii. 113.

they took the head, and heaped imprecations on it, praying that, if any evil was impending either over those who sacrificed or over the land of Egypt, it might be made to fall upon that head. And finally, they either sold the head to Greek traders or threw it into the river [1]—which shows that the real scapegoat, the head, was not regarded as a sacrifice to the god. Among the Iroquois, also, the victims were slain before the sins of the people were transferred to them. According to Hale's and Morgan's accounts of this rite, which have reference to different tribes of the Iroquois, no mention of sin-transference is made in the hymn which accompanied the sacrifice.[2] Only blessings were invoked. This was the beginning of the chant: —"Now we are about to offer this victim adorned for the sacrifice, in hope that the act will be pleasing and acceptable to the All-Ruler, and that he will so adorn his children, the red men, with his blessings, when they appear before him."[3] Mr. Morgan even denies that the burning of the dog had the slightest connection with the sins of the people, and states that "in the religious system of the Iroquois, there is no recognition of the doctrine of atonement for sin, or of the absolution or forgiveness of sins."[4]

I think we can see the reason why, in some cases, a sacrificial victim is used as scapegoat. The transference of sins or evils is not looked upon as a mere "natural" process, it can hardly be accomplished without the aid of mysterious, magic energy. Among the Berbers of Ait Zeltn, in Southern Morocco, sick people used to visit a miracle-working wild olive-tree, growing in the immediate vicinity of the supposed grave of Sîdi Butlîla. They there relieve themselves of their complaints by tying a woollen string to one of its branches; in case of headache the patient previously winds the string three times round the top of his head, whilst, in case of fever, he spits on the string, and, when tying it to the tree, says, "I left my fever in thee, O wild olive-tree." He believes that he may thus transfer his disease to this tree because there is *baraka*, "benign virtue," in it; he would not expect to be cured

[1] Herodotus, ii. 39.
[2] Hale, in *American Antiquarian*, vii. 10 *sqq.* Morgan, *League of the Iroquois*, p. 217 *sq.*
[3] Hale, *loc. cit.* p. 10.
[4] Morgan, *op. cit.* p. 216.

by tying the string to any ordinary tree. This illustrates a principle of probably world-wide application. In Morocco, and, I presume, in other countries where disease-transference is believed in, rags tied to a tree are a sure indication that the tree is regarded as holy. Similarly I venture to believe that the transference of sins and evils to a scapegoat is generally supposed to require magic aid of some kind or other. Among the Hebrews, it took place on the Day of Atonement only, and the act was performed by the high-priest.[1] Among the Iroquois, it was by "a kind of magic" that the sins of the people were worked into the white dogs;[2] and that the animals themselves were held to be charged with supernatural energy, appears from the fact that, according to one account, the ashes of the pyre on which one of them was burnt were "gathered up, carried through the village, and sprinkled at the door of every house."[3] Considering, then, that sacrificial victims, owing to their close contact with the deities to whom they are offered, are held more or less sacred, the idea of employing them as scapegoats is certainly near at hand. But this does not make the sacrifice expiatory. In fact, I know of no instance of an expiatory sacrifice being connected with a ceremony of sin-transference. Hence the materialistic conception of sin hardly helps to explain the belief that the sins of a person may be atoned by another person being offered as a sacrifice to the offended god.

A sacrifice is expiatory if its object is to avert the supposed anger or indignation of a superhuman being from those on whose behalf it is offered. In various cases the offended god is thought to be appeased only by the death of a man. But it is not always necessary that the victim should be the actual offender. The death of a substitute may expiate his guilt. The expiatory sacrifice is vicarious.

We shall see, in a subsequent chapter, that, a

[1] *Leviticus*, xvi. 21.
[2] Seaver, *op. cit.* p. 160.
[3] Beauchamp, *loc. cit.*

rule, human victims are sacrificed for the purpose of saving the lives of the sacrificers: before the beginning of a battle or during a siege, previously to a dangerous sea-expedition, during epidemics, famines, or on other similar occasions, when murderous designs are attributed to some superhuman being on whose will the lives of men are supposed to depend. But these sacrifices are not always expiatory in nature. A god may desire to cause the death of men not only because he is offended, but because he delights in human flesh, or because he wants human attendants, or—no one knows exactly why. It is impossible to find out in each particular case whether the sacrifice is meant to be an expiation or not; it is not certain that the sacrificers know it themselves. Yet in many instances there can be no doubt that its object is to serve as a vicarious atonement.

In Eastern Central Africa, "if a freeman were to set fire to the grass or reeds beside a lake, and cause a great conflagration close to the chosen abode of the deity, he is liable to be offered up to the god that is thus annoyed," but if he be the owner of many slaves he can easily redeem himself by offering one of them in his place.[1] The Ojibways, it is said, were once visited with an epidemic, which they regarded as a divine punishment sent them on account of their wickedness; and when all other efforts failed, "it was decided that the most beautiful girl of the tribe should enter a canoe, push into the channel just above the Sault, and throw away her paddle."[2] In Bœotia, a drunken man having killed a priest of Dionysus Aegobolus, and a pestilence having broken out immediately after, the calamity was regarded as a judgment on the people for the sacrilege, and the oracle of Delphi ordered them to expiate it by sacrificing to the god a blooming boy.[3] In his work on the Jews, Philo of Byblus tates that "it was the custom among the ancients in cases of eat dangers, that the rulers of a city or a nation, in order to t universal destruction, should give the dearest of their n to be killed as a ransom offered to avenging demons."[4] a that sins could be expiated by the death of one who

Africana, i. 96 *sq.*

Origin of Primitive 208.

8. 2.

[4] Eusebius, *Praeparatio Evangelica*, i. 10. 40 (Migne, *Patrologia*, Ser. Gr. xxi. 85).

had not deserved it, was familiar to the Hebrews. It was said that "the death of the righteous makes atonement."[1] The passage in Isaiah liii. 12 was interpreted of Moses, who "poured out his soul unto death[2] and was numbered with the transgressors (the generation that died in the wilderness) and bare the sin of many" that he might atone for the sin of the golden calf.[3] Ezekiel suffered "that he might wipe out the transgressions of Israel."[4] And of the Maccabaean martyrs it is said, "Having become as it were a vicarious expiation for the sins of the nation, and through the blood of those godly men and their atoning death, divine providence saved Israel which had before been evil entreated."[5] In these cases, of course, there was no sacrifice in the proper sense of the term, but they obviously illustrate the same characteristic of the divine mind. In fact, the death of Christ, by which he atoned and obliterated the sins of all ages, was conceived as a sacrifice, or spoken of in sacrificial figures.[6]

It is said that, according to early ideas, "it did not essentially concern divine justice that the punishment of faults committed should fall precisely on the guilty; what did concern it was that it should fall on some one, that it should have its accomplishment."[7] Men, we are told, could not fail to discern that a transgression produces suffering as its consequence, and, seeing this, they "associate suffering with the expiation of sin, and, in atoning for their transgressions, they mark their contrition by the suffering which they inflict vicariously on the victim. They argue thus: 'I have broken a law of God. God exacts pain as a consequence of such a breach. I will therefore slay this lamb, and its sufferings shall make the atonement requisite.'"[8] But, so far as I can see, this interpretation of the idea of vicarious expiation is not supported by facts. The victim whose suffering or death is calculated to appease the wrathful god is not an

[1] Moore, in Cheyne and Black, *Encyclopaedia Biblica*, iv. 4226.
[2] *Exodus*, xxxii. 32.
[3] *Sōṭāh*, 14 A, quoted by Moore, *loc. cit.* col. 4226.
[4] *Sanhedrīn*, 39 A, quoted *ibid.* col. 4226.
[5] 4 *Maccabaeans*, xvii *ibid.* col. 4232.
[6] See Moore, *l*
[7] Réville, *Pr of Religions*,
[8] Baring-(*ment of Reli*

at random, whosoever he may be. He is a representative of the community which has incurred the anger of the god, and is accepted as a substitute on the principle of social solidarity. So, also, according to the Western Church, Christ discharged the punishment due to the sins of mankind and propitiated the justice of his Father, in his capacity of a man, as a representative of the human race; whereas in the East, where it was maintained that the *deity* suffered (though he suffered through the human nature which he had made his own), the idea of substitution could hardly take root, since, as Harnack remarks, "the dying *God*-man really represented no one."[1] The Greek Church regarded the death of Christ as a ransom for mankind paid to the devil, and this doctrine was also accepted by the most important of the Western Fathers, although it flatly contradicted their own theory of atonement.[2] There can be no doubt that expiatory sacrifices are frequently offered as ransoms, in other words, that the god or demon is supposed to be appeased, not by the suffering of the victim, but by the gift. Among men it often occurs that the offended party is induced by some material compensation to desist from avenging the injury —in many societies such placability is even prescribed by custom,—and something similar is naturally believed to be the case with gods. From this point of view, of course, it is not necessary that the victim should be a person who is connected with the offender by ties of social solidarity, although he may still be regarded as in a way a substitute. He may be an alien or a slave; or animals or inanimate things may be offered to expiate the sins of men. Among Dacotahs, "for the expiation of sins or crimes a sacri- is made of some kind of an animal."[3] Of the esian sacrifices, says Dr. Codrington, "some are ory, substituting an animal for the person who d."[4] The Shánárs of Tinnevelly offer up a

312 *sqq.*

[3] Schoolcraft, *Indian Tribes of the United States*, ii. 196.

[4] Codrington, *Melanesians*, p. 127.

goat, a sheep, or a fowl, in order "to appease the angry demon, and induce him to remove the evil he has inflicted, or abstain from the infliction he may meditate."[1] It would be almost absurd to suppose that in similar cases the suffering or death of the animal is looked upon in the light of a vicarious *punishment*. Of the Hebrew sin-offering, Professor Kuenen aptly remarks:—[2] "According to the Israelite's notion, Yahveh in his clemency permits the soul of the animal sacrificed to take the place of that of the sacrificer. No transfer of guilt to the animal sacrificed takes place: the blood of the latter is clean and remains so, as is evident from the very fact that this blood is put upon the altar; it is a token of mercy on Yahveh's part that he accepts it. . . . Nor can it be asserted that the animal sacrificed undergoes the punishment in the place of the transgressor: this is said nowhere, and therefore, in any case, gives another, more sharply defined idea than that which the Israelite must have formed for himself; moreover, it is irreconcilable with the rule that the indigent may bring the tenth part of an ephah of fine flour as a sin-offering."[3] It should also be noticed that a purifying effect was ascribed to contact with the victim's blood: the high priest should put or sprinkle some blood upon the altar "and cleanse it, and hallow it from the uncleanness of the children of Israel."[4]

To sum up:—The fact that punishments for offences are frequently inflicted, or are supposed to be inflicted, by men or gods upon individuals who have not committed those offences, is explicable from circumstances which no way clash with our thesis that moral indignation i its essence, directed towards the assumed cause of ir pain. In many cases the victim, in accordance v doctrine of collective responsibility, is punished he is considered to be involved in the guilt— he is really innocent—or because he is regar

[1] Percival, *Land of the Veda*, p. 309 *sq.* *Cf.* Caldwell, *Tinnevelly Shánárs*, p. 37.

[2] Kuenen, *Re* 266 *sq.*

[3] *Leviticus*

[4] *Ibid.* xv

representative of an offending community. In other cases, he is supposed to be polluted by a sin or a curse, owing to the contagious nature of sins and curses. The principle of social solidarity also accounts for the efficacy ascribed to vicarious expiatory sacrifices; but in many instances expiatory sacrifices only have the character of a ransom or bribe.

And whilst thus our thesis as to the true direction of moral indignation is not in the least invalidated by facts, apparently, but only apparently, contradictory, it is, on the other hand, strongly supported by the protest which the moral consciousness, when sufficiently guided by discrimination and sympathy, enters against the infliction of penal suffering upon the guiltless. Such a protest is heard from various quarters, both with reference to human justice and with reference to the resentment of gods.

Confucius taught that the vices of a father should not discredit a virtuous son.[1] Plato lays down the rule that "the disgrace and punishment of the father is not to be visited on the children"; on the contrary, he says, if the children of a criminal who has been punished capitally avoid the wrongs of their father, they shall have glory, and honourable mention shall be made of them, "as having nobly and manfully escaped out of evil into good."[2] According to Roman law, "crimen vel poena paterna nullam maculam filio infligere potest."[3] "Nothing," says Seneca, "is more unjust than that any one should inherit the quarrels of his father."[4] The Deuteronomist enjoins, "The fathers shall not be put to death for children, neither shall the children be put to death for fathers: every man shall be put to death for his own

[1] 4. *Cf. Thâi-Shang*, 4.
[2] ix. 854 *sqq.* Plato ...on for those whose ... and great-grand- ... undergone the ... persons the ... their pos- ... y of their ... wholly their appointed lot" (*ibid.* ix. 856). But this enactment had no doubt a purely utilitarian foundation, the offspring of a thoroughly wicked family being considered a danger to the city.
[3] *Digesta*, xlviii. 19. 26. *Cf. ibid.* xlviii. 19. 20.
[4] Seneca, *De ira*, ii. 34. *Cf.* Cicero, *De officiis*, i. 25.

sin."[1] Lawgivers have been anxious to restrict the blood-feud to the actual culprit. The Koran forbids the avenger of blood to kill any other person than the manslayer himself.[2] In England, according to a law of Edmund, the feud was not to be prosecuted against the kindred of the slayer, unless they made his misdeed their own by harbouring him.[3] So, also, in Sweden, in the thirteenth century, the blood feud was limited by law to the guilty individual;[4] and we meet with a similar restriction in Slavonic law-books.[5]

Passing to the vengeance of gods: according to the Atharva-Veda, Agni, who forgives sin committed through folly and averts Varuna's wrath, also frees from the consequence of a sin committed by a man's father or mother.[6] Theognis asks, "How, O king of immortals, is it just that whoso is aloof from unrighteous deeds, holding no transgression, nor sinful oath, but being righteous, should suffer what is not just?"[7] According to Bion, the deity, in punishing the children of the wicked for their fathers' crimes, is more ridiculous than a doctor administering a potion to a son or grandson for a father's or grandfather's disease.[8] The early Greek notion of an inherited curse was modified into the belief that the curse works through generations because the descendants each commit new acts of guilt.[9] The persons who prohibi
the sons of such as had been proscribed by Sylla
standing candidates for their fathers' honours, a
being admitted into the senate, were supposed
been punished by the gods for this injustice:-
cess of time," says Dionysius of Halicarnass
less punishment, the avenger of their cri

[1] *Deuteronomy*, xxiv. 16. *Cf.* 2 *Kings*, xiv. 6.
[2] *Koran*, xvii. 35.
[3] *Laws of Edmund*, ii. 1.
[4] Nordström, *Bidrag till den svenska samhalls-forfattningens historia*, ii. 103, 334, 335, 399. Wilda, *op. cit.* p. 174.
[5] Kovalewsky, *Coutume contemporaine*, p. 248. In Montenegro it was enjoined by Dan
des Staats- und
[6] *Atharva-V*
donell, *Vedic*
[7] Theognis
[8] Plutarch
19. *Cf.* *Deorum.*
[9] Far
Ancie

them, by which they themselves were brought down from the greatest height of glory, to the lowest degree of obscurity; and none, even, of their race are now left, but women."[1] Among the Hebrews, Jeremiah and Ezekiel broke with the old notion of divine vengeance. The law of individual responsibility, which had already previously been laid down as a principle of human justice, was to be extended to the sphere of religion.[2] "Every one shall die for his own iniquity: every man that eateth the sour grape, his teeth shall be set on edge."[3] "The soul that sinneth, it shall die. The son shall not bear the iniquity of the father, neither shall the father bear the iniquity of the son: the righteousness of the righteous shall be upon him, and the wickedness of the wicked shall be upon him."[4]

[1] Dionysius of Halicarnassus, *op. cit.* viii. 80.

[2] *Cf.* Montefiore, *op. cit.* p. 220; Kuenen, *op. cit.* ii. 35 *sq.*

[3] *Jeremiah*, xxxi. 30.

[4] *Ezekiel*, xviii. 20. For Talmudic views, see Deutsch, *Literary Remains*, p. 52.

CHAPTER III

THE NATURE OF THE MORAL EMOTIONS (*continued*)

It was said in the last chapter that moral disapproval is a sub-species of resentment, and that resentment is, in its essence, an aggressive attitude of mind towards an assumed cause of pain. It was shown that, in the course of mental evolution, the true direction of the hostile reaction involved in moral disapproval has become more apparent. We shall now see that, at the same time, its aggressive character has become more disguised.

This is evidenced by the changed opinion about anger and revenge which we meet at the higher stages of moral development. Retaliation is condemned, and forgiveness of injuries is laid down as a duty.

The rule that a person should be forbearing and kin to his enemy has no place in early ethics.

> "Let those that speak evil of us perish. Let th clubbed, swept away, utterly destroyed, piled in their teeth be broken. May they fall headlong ; us live, and let our enemies perish." Such v which generally concluded the prayers of savage would find nothing objectionable in t' trary, he regards revenge as a duty,[2] and f as a sign of weakness, or cowardice, or w

[1] Fison, quoted by Codrington, *Melanesians*, p. 147, n. 1.

[2] See *infra*, on Blood-revenge.

[3] *Cf.* Domenech, *Great Deserts of North America*, ii. 97, 338, 438 (Dacotahs); *the Ind* Baker (Lat

is this opinion restricted to the savage world. In the Old Testament the spirit of vindictiveness pervades both the men and their god. The last thing with which David on his deathbed charged Solomon was to destroy an enemy whom he himself had spared.[1] Sirach counts among the nine causes of a man's happiness to see the fall of his enemy.[2] The enemies of Yahveh can expect no mercy from him, but utter destruction is their lot.[3] To do good to a friend and to do harm to an enemy was a maxim of the ancient Scandinavians.[4] It was taken for a matter of course by popular opinion in Greece[5] and Rome. According to Aristotle, "it belongs to the courageous man never to be worsted"; to take revenge on a foe rather than to be reconciled is just, and therefore honourable.[6] Cicero defines a good man as a person "who serves whom he can, and injures none except when provoked by injury."[7] Except in domestic life and in the case of friends, Professor Seeley observes, "people not only did not forgive their enemies, but did not wish to do so, nor think better of themselves for having done so. That man considered himself fortunate who on his deathbed could say, in reviewing his past life, that no one had done more good to his friends or more mischief to his enemies. This was the celebrated felicity of Sulla; this the crown of Xenophon's panegyric on Cyrus the Younger."[8]

But side by side with the doctrine of resentment, we meet, among peoples of culture, the doctrine of forgiveness.

"Recompense injury with kindness," says Lao-Tsze.[9] According to Mencius, "a benevolent man does not lay up anger, cherish resentment against his brother, but only regards him with affection and love."[10] In the laws of Manu the following is laid down for the twice-born man:—"Against an enemy let him not in return show anger, let him bless

q.
xv. 7.
Hibbert Lectures,
r des Norweg-
s.
ligions de la
midt, Ethik
1.
24. Cf.
Plato,

Meno, p. 71; Xenophon, *Memorabilia*, ii. 6. 35.

[7] Cicero, *De officiis*, iii. 19. *Cf. ibid.* ii. 14; but *cf.* also *ibid.* i. 25, where it is said that nothing is more worthy of a great and a good man than placability and moderation.

[8] Seeley, *Ecce Homo*, p. 273.

[9] *Tâo Teh King*, ii. 63. 1. According to *Thâi-Shang*, 4, a bad man "broods over resentment without ceasing."

[10] Mencius, v. 1. 3. 2.

when he is cursed."[1] It is said in the Buddhistic Dhammapada:—"Hatred does not cease by hatred at any time; hatred ceases by love, this is an old rule . . . . Among men who hate us we dwell free from hatred. . . . Let a man overcome anger by love, let him overcome evil by good; let him overcome the greedy by liberality, the liar by truth."[2] According to one of the Pahlavi texts, we ought not to indulge in wrathfulness; wrath is one of the fiends besetting man, and "goodness is little in the mind of a man of wrath."[3]

In Leviticus hatred is condemned:—"Thou shalt not hate thy brother in thine heart. . . . Thou shalt not avenge, nor bear any grudge against the children of thy people."[4] Sirach, whom I have already quoted, says in another passage, "Forgive thy neighbour the hurt that he has done unto thee, so shall thy sins also be forgiven when thou prayest."[5] According to the Talmud, "whosoever does not persecute them that persecute him, whosoever takes an offence in silence, he who does good because of love, he who is cheerful under his sufferings—they are the friends of God, and of them the Scripture says, And they shall shine forth as does the sun at noonday."[6] The Koran, whilst repeating the old rule, "an eye for an eye and a tooth for a tooth,"[7] at the same time teaches that Paradise is "for those who repress their rage, and those who pardon men; God loves the kind."[8] Muhammedan tradition puts the following words in the mouth of the Prophet:—"Say not, if people do good to us, we will do good to them, and if people oppress us, we will oppress them: but resolve that if people do good to you, you will do good to them, and if they oppress you, oppress them not again."[9] Professor Goldziher emphasises Muhammed's opposition to traditional rule of the Arabs that an enemy is a prope of hatred;[10] and Syed Ameer Ali has collected varie from the writings of Muhammedan scholars, whic

[1] *Laws of Manu*, vi. 48. *Cf. ibid.* viii. 313; Monier-Williams, *Indian Wisdom*, pp. 444, 446; Muir, *Additional Moral and Religious Passages, rendered from the Sanskrit*, p. 30.

[2] *Dhammapada*, i. 5; xv. 197; xvii. 223. *Cf. Jātaka Tales*, i. 22; Oldenberg, *Buddha*, p. 298.

[3] *Dînâ-î-Maînôg-î Khirad*, ii. 16; xli. 11; xxxix. 26.

[4] *Leviticus*, xix. 17 *sq.* *Cf. Exodus*, xxiii. 4.

[5] *Ecclesiasticus*, xxviii. 2. *Cf. ibid.* x, 6; *Proverbs*, xxv. 21.

[6] Deutsch, *I* *Cf.* Katz, *De* *sq.*

[7] *Kora* gresses him you"

[8] xvi

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in spite of what has often been said to the contrary, forgiveness of injuries is by no means foreign to the spirit of Islam.[1] Thus the author of the Kashshâf prescribes, "Seek again him who drives you away; give to him who takes away from you; pardon him who injures you: for God loveth that you should cast into the depth of your souls the roots of His perfections."[2] That "the sandal-tree perfumes the axe that fells it," is a saying in everyday use among the Muhammedans of India.[3] And Lane often heard Egyptians forgivingly say, on receiving a blow from an equal, "God bless thee," "God requite thee good," "Beat me again."[4]

The principles of forgiveness had also advocates in Greece and Rome. In one of the Platonic dialogues, Socrates says, "We ought not to retaliate or render evil for evil to any one, whatever evil we may have suffered from him"; though he wisely adds that "this opinion has never been held, and never will be held, by any considerable number of persons."[5] The Stoics strongly condemned anger as unnatural and unreasonable. "Mankind is born for mutual assistance, anger for mutual ruin."[6] "Anger is a crime of the mind; . . . it often is even more criminal than the faults with which it is angry."[7] He is the best and purest "who pardons others as if he sinned himself daily, but avoids sinning as if he never pardoned."[8] "If any one is angry with you, meet his anger by returning benefits for it."[9] "The cynic loves those who beat him."[10]

Forgiveness of enemies is thus by no means an exclusively Christian tenet, although it has never before or after been inculcated with the same emphasis as it was by Jesus. "Love your enemies; bless them that curse you, do good to them that ate you, and pray for them which despitefully use you, and cute you."[11] When St. Peter asked, "Lord, how oft shall ther sin against me, and I forgive him? till seven Jesus replied, "I say not unto thee, Until seven il seventy times seven,"[12]—that is, as often as ffence. It would seem that Jesus by these forbade men to avenge themselves, or even

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tism,
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[7] *Ibid.* i. 16; ii. 6.
[8] Pliny, *Epistolæ*, ix. 22 (viii. 22).
[9] Seneca, *op. cit.* ii. 34.
[10] Epictetus, *Dissertationes*, iii. 22, 54.
[11] *St. Matthew*, v. 44. *Cf. ibid.* v. 39 *sq.*; vi. 14 *sq.*; *St. Luke*, vi. 27 *sqq.*; xvii. 3 *sq.*; *St. Mark*, xi. 25 *sq.*
[12] *St. Matthew*, xviii. 21 *sq.*

to feel resentment on their own behalf; and so also he was understood by St. Paul.[1]

The rule of retaliation and the rule of forgiveness, however, are not so radically opposed to each other as they appear to be. What the latter condemns is, in reality, not every kind of resentment, but non-moral resentment; not impartial indignation, but personal hatred. It prohibits revenge, but not punishment. According to the Laws of Manu, crime was so indispensably to be followed by punishment, that if the king pardoned a thief or a perpetrator of violence, instead of slaying or striking him, the guilt fell on the king;[2] and if Lao-tsze was an enemy to the infliction of any kind of suffering, it was because he held that in a well-governed State the necessity for punishment could not arise, as crime would cease to exist.[3] The Chinese book, *Merits and Errors Scrutinised*, which regards it as a merit to refrain from avenging an injury, adds that, "if a man should omit to avenge the injuries of his parents, it would become an error."[4] Jesus was certainly not free from righteous indignation. It does not appear that he ever forgave the legalists who sinned against the kingdom of God, and he told his disciples that, if a brother who had trespassed against his brother neglected to hear the church, he should be looked upon as a heathen and a publican.[5] Christian writers have laid much str
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give their own enemies, but not to abstain from
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to God and their neighbours. F

[1] *Romans*, xii. 19 *sqq.*; 1 *Thessalonians*, v. 14 *sq.*; *Colossians*, iii. 12 *sq.*

[2] *Laws of Manu*, viii. 316, 346 *sq.* *Cf. Gautama*, xii. 45; *Apastamba*, i. 9. 25. 5.

[3] *is*

is praiseworthy to be patient under one's own wrongs, but the height of impiety to dissemble injuries done to God.'"[1] Practically, at least, Christianity has not altered the validity of the Aristotelian rule that anger admits not only of an excess, but of a defect, and that we ought to feel angry at certain things.[2] As Plutarch says, we even think those worthy of hatred who are not vexed at hateful individuals; and we can sympathise with the man who, hearing somebody praise Charillus, king of Sparta, for his gentleness, replied, "How can Charillus be good, who is not harsh even to the bad?"[3] Moreover, the belief in a transcendental retributive justice, in an ultimate punishment of badness, which we meet with in Taouism,[4] Brahmanism, Buddhism,[5] Christianity,[6] side by side with the doctrine of forgiveness, is based upon the demand that wrong should be resented.

It is easy to see why enlightened and sympathetic minds disapprove of resentment and retaliation springing from personal motives. Such resentment is apt to be partial. It is too often directed against persons whom impartial reflection finds to be no proper objects of indignation, and

ll more frequently it is unduly excessive. As Butler ays, "we are in such a peculiar situation, with respect to njuries done to ourselves, that we can scarce any more see m as they really are, than our eye can see itself."[7]

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[6] *Cf. Romans*, xii. 19: "Vengeance is mine; I will repay, saith the Lord."

[7] Butler, 'Sermon IX.—Upon Forgiveness of Injuries,' in *Analogy of Religion, &c.* p. 469.

[8] Plutarch, *De cohibenda ira*, 11. Montaigne, *Essais*, ii. 31 (*Oeuvres*, p. 196).

view to preventing such injustice that teachers of morality have enjoined upon men to love their enemies. It would, indeed, be absurd to blame a person for expressing moral indignation at an act simply because he himself happens to be the offended party; practically we allow him to be even more indignant than the impartial spectator would be, whereas excessive placability often meets with censure. Like Aristotle, we maintain that "to submit to insult, or to overlook an insult offered to our friends, shows a slavish spirit"[1]; and we agree with the Confucian maxims, that injuries should be recompensed, not with kindness, but with justice, and that nobody but he who deserves it should be an object of hatred.[2]

At the same time, the injunctions of moralists that unjust resentment should be suppressed, are far from introducing any absolutely new element into the estimation of conduct. They only represent a higher stage of a process of moral development the early phases of which are found already in primitive societies. Even the savage who enjoins revenge as a duty, regards revenge under certain circumstances as wrong.[3] The restraining rule of like for like, as we shall see, is an instance of this.

The aggressive ch[illegible] moral disapprova[illegible]
[illegible]ore scru[illegible]

to cause, pain in return for inflicted pain. For ages it was looked upon as a matter of course that if a person had committed an offence he should have to suffer for it. This is still the notion of the multitude, as also of a host of theorisers, who, by calling punishment an expiation, or a reparation, or a restoration of the disturbed equilibrium of justice, only endeavour to give a philosophical sanction to a very simple fact, the true nature of which they too often have failed to grasp. The infliction of pain, however, is not an act which the moral consciousness regards with indifference, even in the case of a criminal; and to many enlightened minds with keen sympathy for human suffering, it has appeared both unreasonable and cruel that the State should wilfully torment him to no purpose. But whilst retributive punishment has been condemned, punishment itself has been defended; it is only looked upon in a different light, not as an end by itself, but as a means of attaining an end. It is to be inflicted, not because wrong has been done, but in order that wrong be not done. Its object is held to be, either to deter from crime, or to reform the criminal, or by means of elimination or seclusion, to make it physically impossible for him to commit fresh crimes.

nature, that they ought not to do each other harm, except for the sake of some good to be attained"; hence "man is not rightly punished by man merely for the sake of punishing"; advantage alone makes punishment right—"either the advantage of the offender, or of him who suffers by the offence, or of persons in general."[1] For a long time the view taken by Hobbes, that "the aym of Punishment is not a revenge, but terrour,"[2] remained the leading doctrine on the subject, among philosophers, as well as legislators. It was shared by Montesquieu,[3] Beccaria,[4] and Filangieri,[5] by Anselm von Feuerbach[6] and Schopenhauer,[7] and, in the main, by Bentham.[8] During the nineteenth century the principle of determent was largely superseded by the principle of reformation; whilst certain contemporary criminologists—like some previous ones[9]—are of opinion that punishment should aim to repress crime by an "absolute" or "relative elimination" of the criminal, that is, in extreme cases by killing him, but generally by incarcerating him in a criminal lunatic asylum, or by banishing him for ever or for a certain period, or by interdicting him from a particular neighbourhood.[10]

The advocates of these various theories are unanimous in condemning retributive punishment as wrong. Without the grounds of social defence, says M. Guyau, "the punishment would be as blameworthy as the crime, and . . . the lawgivers and the judges, by deliberately condemning the guilty to punishment, would become their fellows."[11] For my own part I believe, on the contrary, that those who would venture to carry out all the consequences to which the theories of social defence or of reformation might lead, would be regarded even as more criminal than those they punished, not only by the

[1] Grotius, *De iure belli et pacis*, ii. 20. 4 *sqq.*

[2] Hobbes, *Leviathan*, ii. 28, p. 243.

[3] Montesquieu, *Lettres Persanes*, 81.

[4] Beccaria, *Dei delitti e delle pene*, *passim*.

[5] Filangieri, *La scienza della legislazione*, iii. 2. 27, vol. iv. 13 *sq.*

[6] von Feuerbach-Mittermaier, *Lehrbuch des gemeinen in Deutschland gültigen Peinlichen Rechts*, p. 38 *sqq.*

[7] Schopenhauer, *Die Welt als Wille und Vorstellung*, ii. 683 *sqq.*

[8] Bentham, *Principles of Morals and Legislation*, p. 170 *sq.* n. 1: ". . . Example is the most important end of all." *Idem*, *Rationale of Punishment*, p. 19 *sqq.*

[9] See von Feuerbach-Mittermaier, *op. cit.* p. 40.

[10] Garofalo, *Criminologie*, p. 251 *sqq.* Ferri, *Criminal Sociology*, p. 204 *sqq.*

[11] Guyau, *Esquisse d'une morale sans obligation ni sanction*, p. 148.

opponents, but probably by the very supporters of the theories in question. A brief statement of some of those consequences will, I hope, suffice to prove that punishment can hardly be guided exclusively by utilitarian considerations, but requires the sanction of the retributive emotion of moral disapproval.

The principle of repressing crime by eliminating the criminal may at once be put aside, because it has no reference to the *punishment* of criminals, although it contains a suggestion—and a most excellent one indeed—as to the proper mode of treating them. Their exclusion from the company of their fellow-men—not to speak of their elimination by death—certainly entails suffering, but, according to the principle with which we are dealing, this suffering is not *intended*. On the other hand, punishment, in the ordinary sense of the word, always involves an express intention to inflict pain, whatever be the object for which pain is inflicted. We do not punish an ill-natured dog when we tie him up so as to prevent him from doing harm, nor do we punish a lunatic by confining him in a madhouse.

According to the principle of determent, the infliction of suffering in consequence of an offence is justified as a means of increasing public safety. The offender is sacrificed for the common weal. But why the offender only? It is quite probable that a more effective way of deterring from crime would be to punish his children as well; and if the notion of justice derived all its import from the result achieved by the punishment, there would be nothing unjust in doing so. The only objection which, from this point of view, might ever be raised against the practice of visiting the wrongs of the fathers upon the children, is that it is needlessly severe; the innocence of the children could count for nothing. Nor do I see why the law should not allow our own judges now and then to follow the example of their Egyptian colleague who in an intricate lawsuit caused a person avowedly innocent to be bastinadoed with the hope that whoever was the real

culprit might be induced to confess out of compassion.[1] Moreover, if the object of punishment is merely preventive, the heaviest punishment should be threatened where the strongest motive is needed to restrain. Consequently, an injury committed under great temptation, or in a passion, should be punished with particular severity; whereas a crime like parricide might be treated with more indulgence than other kinds of homicide, owing to the restraining influence of filial affection. Could the moral consciousness approve of this?

Again, if punishment were to be regulated by the principle of reforming the criminal, the result would in some cases be very astonishing. There is no more incorrigible set of offenders than habitual vagrants and drunkards, whereas experience has shown that the most easily reformed of all offenders is often some person who has committed a serious crime. According to the reformation theory, the latter should soon be set free, whilst the petty offender might have to be shut up for all his life. Nay more, if the criminal proves absolutely incorrigible, and not the slightest hope of his reformation is left, there would no longer be any reason for punishing him at all.[2] The reformationist may also be asked why he does not try some more humane method of improving people's characters than by the infliction of suffering.

It may seem strange that theories which are open to such objections should have been able to attract so many intelligent partisans. These theories must at least possess a certain plausibility. If punishment on the one hand springs from moral indignation, and on the other hand is frequently interpreted as a means either of deterring from crime or of reforming the criminal, there must obviously be some connection between these ends and the retributive aim of moral resentment. There must be certain facts which, to some extent, fill up the gap between the theory of retribution and the other theories of punishment.

[1] Burckhardt, *Arabic Proverbs*, p. 103 *sq.*

[2] *Cf.* Morrison, *Crime and its Causes*, p. 203; Durkheim, *Division du travail social*, p. 94.

The doctrine of determent regards punishment as a means of preventing crime. A crime always involves the infliction of pain; and the one thing which men try to prevent for its own sake is pain. The one thing which arouses resentment is likewise pain. There must consequently be a general coincidence between the acts which people resent and the acts which the law would punish if it were framed on the principle of determent. But the resemblance between the desire to deter and resentment is greater still. Resentment is not only aroused by pain, but is a hostile attitude towards its cause, and its intrinsic object is to remove this cause, that is, to prevent pain. An act of moral resentment is therefore apt to resemble a punishment inflicted with a view to deterring from crime, provided that the punishment is directed against the cause of crime—the criminal himself—and is not unduly severe.

The doctrine of reformation aims at the removal of a criminal disposition of mind by improving the offender. Moral resentment likewise aims at the removal of a volitional cause of pain, by bringing about repentance in the offender. That repentance ought to be followed by forgiveness, partial or total, is a widely recognised moral claim.

According to the Chinese Penal Code, whoever, having committed an injury which can be repaired by restitution or compensation, surrenders himself voluntarily, and acknowledges his guilt to a magistrate, before it is otherwise discovered, shall be freely pardoned, though all claims upon his property shall be duly liquidated.[1] In Madagascar, according to a law made in 1828, "all the fines shall be reduced one-half, according to the nature of the fines, if the persons guilty accuse themselves."[2] According to Zoroastrianism, one element of atonement consists in repentance, as manifested by avowal of the guilt and by the recital of a formula, the *Patet*.[3] It is said in the Laws of Manu:—"In proportion as a man who has done wrong, himself

[1] *Ta Tsing Leu Lee*, sec. xxv. p. 27 *sq.*
[2] Ellis, *History of Madagascar*, i. 386.
[3] Darmesteter, in *Sacred Books of the East*, iv. p. lxxxvi.

confesses it, even so far he is freed from guilt, as a snake from its slough. . . . He who has committed a sin and has repented, is freed from that sin, but he is purified only by the resolution of ceasing to sin and thinking 'I will do so no more.'"[1] According to the Rig-Veda, Varuna inflicts terrible punishments on the hardened criminal, but is merciful to him who repents; to Varuna the cry of anguish from remorse ascends, and before him the sinner comes to discharge himself of the burden of his guilt by confession.[2] So, also, Zeus pardons the repentant.[3] The main doctrine of Judaism on the subject of atonement is comprised in the single word Repentance. No teachers, says Mr. Montefiore, "exalted the place and power of repentance more than the Rabbis. There was no sin for which in their eyes a true repentance could not obtain forgiveness from God."[4] According to the Talmud, a space of only two fingers' breadth lies between Hell and Heaven: the sinner has only to repent sincerely, and the gates to everlasting bliss will spring open.[5] Jesus commanded his disciples to forgive injuries if followed by repentance:—"If thy brother trespass against thee, rebuke him; and if he repent, forgive him. And if he trespass against thee seven times in a day, and seven times in a day turn again to thee, saying, I repent; thou shalt forgive him."[6]

But repentance not only blunts the edge of moral indignation and recommends the offender to the mercy of men and gods: it is the sole ground on which pardon can be given by a scrupulous judge. When sufficiently guided by deliberation and left to itself, without being unduly checked by other emotions, the feeling of moral resentment is apt to last as long as its cause remains unaltered, that is until the will of the offender has ceased to be offensive; and it ceases to be offensive only when he acknowledges his guilt and repents. It is true that the mere performance of certain ceremonies is frequently supposed to relieve the performer of his sins,[7] and that the

[1] *Laws of Manu*, xi. 229, 231. *Cf. ibid.* xi. 228, 230.

[2] *Rig-Veda*, i. 25. 1 *sq.*; ii. 28. 5 *sqq.*; v. 85. 7 *sq.*; vii. 87. 7, 88. 6 *sq.*, 89. 1 *sqq.* Barth, *Religions of India*, p. 17.

[3] *Ilias*, ix. 502 *sqq.*

[4] Montefiore, *op. cit.* pp. 524, 335 n.

[5] Deutsch, *Literary Remains*, p. 53. *Cf. ibid.* p. 56; Katz, *Der wahre Talmudjude*, p. 87 *sq.*; Kohler, 'Atonement,' in *Jewish Encyclopedia*, ii. 279; Moore, 'Sacrifice' in Cheyne and Black, *Encyclopædia Biblica*, iv. 4224 *sq.*

[6] *St. Luke*, xvii. 3 *sq.*

[7] *Supra*, p. 53 *sqq.* Heriot, *Travels through the Canadas*, p. 378 (ancient

same end is thought to be attained by pleasing God in some way or other, by sacrifice, or alms-giving, or the like. Men even lay claim to divine forgiveness as a right belonging to them in virtue of some meritorious deeds of theirs, according to the doctrine of *opera supererogativa*—a doctrine which, in substance, is not restricted to Roman Catholicism, but is found, in a more or less developed form, in Judaism,[1] Muhammedanism,[2] Brahmanism,[3] and degenerated Buddhism.[4] But all such ideas are objectionable to the moral consciousness of a higher type. They are based on the crude notion that sin is a material substance which may be removed by material means; or on the belief that an offender may compound with the deity for sinning against him, in the same way as he pacifies his injured neighbour, by bribery or flattery; or on the assumptions that by a good or meritorious deed a man has done more than his duty, that a good deed stands in the same relation to a bad deed as a claim to a debt, that the claim is made on the same person to whom the debt is due, namely, God—even though it be only by his mercy—and that the debt consequently may be compensated by the claim in the same way as the payment of a certain sum may compensate for a loss inflicted. This doctrine attaches badness and goodness to external acts rather than to mental facts. Reparation implies compensation for a loss. The loss may be compensated by the bestowal of a corresponding advantage; but no reparation can be given for badness. Badness can only be forgiven, and moral forgiveness can be granted only on condition that the agent's mind has undergone a radical alteration for the better, that the badness of the will has given way to repentance.[5] Hence the Reformation

Mexicans). Adair, *History of the American Indians*, p. 150. Krasheninnikoff, *History of Kamschatka*, p. 178. Williams and Calvert, *Fiji*, p. 24.

[1] Montefiore, *op. cit.* p. 525 *sqq.*

[2] *Koran*, xi. 116. Sell, *Faith of Islám*, p. 220 *sq.* According to Muhammedanism, however, it is only "little sins" that are forgiven if some good actions are done, whereas "great sins" can only be forgiven after due repentance (*ibid.* p. 214).

[3] Wheeler, *History of India*, ii. 475.

[4] *Indo-Chinese Gleaner*, iii. 150, 161, 164. Davis, *China*, ii. 48.

[5] This point was certainly not over-

proscribed offerings for the redemption of sins, together with the trade in indulgences; and we meet with an analogous movement in other comparatively advanced forms of religion. In reformed Brahmanism, repentance is declared to be the only means of redeeming trespasses.[1] The idea expressed in the Psalms, that God delights not in burnt offerings, but that the sacrifices of God are a broken and a contrite heart,[2] became the prevailing opinion among the Rabbis, most of whom regarded repentance as the *conditio sine quâ non* of expiation and the forgiveness of sins.[3] Let us also remember that he who commanded his followers to forgive a brother for his sin, at the same time pronounced the qualification: "if he repent."[4]

That moral indignation is appeased by repentance, and that repentance is the only proper ground for forgiveness, is thus due, not to the specifically moral character of such indignation, but to its being a form of resentment. This is confirmed by the fact that an angry and revengeful man is apt to be in a similar way influenced by the sincere apologies of the offender. As Aristotle said, men are placable in regard to those who acknowledge and repent their guilt: "there is proof of this in the case of chastising servants; for we chastise more violently those who contradict us, and deny their guilt; but towards such as acknowledge themselves to be justly punished, we cease from our wrath."[5] To take an instance from the savage world. The Caroline Islander, according to Mr. Christian, "is inclined to be revengeful, and will bide his time patiently until his opportunity comes. Yet he is not implacable, and counts reconciliation a noble and a princely thing. There is a form of etiquette to be observed on

looked by the Catholic moralists, but even the most ardent apology cannot explain away the idea of reparation in the Catholic doctrine of the justification of man (*cf.* Manzoni, *Osservazioni sulla Morale Cattolica*, p. 100). Penance consists of contrition, confession, and satisfaction, and contrition itself is chiefly "a willingness to compensate" (*Catechism of the Council of Trent*, ii. 5. 22).

[1] Goblet d'Alviella, *Hibbert Lectures on the Origin and Growth of the Conception of God*, p. 263.

[2] *Psalms*, li. 16 *sq.*

[3] Moore, *loc. cit.* col. 4225.

[4] *Cf.* Martineau, *Types of Ethical Theory*, ii. 203.

[5] Aristotle, *Rhetorica*, ii. 3. 5.

these occasions—a present (*katom*) is made, an apology offered—a piece of sugar-cane accepted by the aggrieved party—honour is satisfied and the matter ends."[1] In the case of revenge, external satisfaction or material compensation is often allowed to take the place of genuine repentance, and the humiliation of the adversary may be sufficient to quiet the angry passion. But the revenge felt by a reflecting mind is not so readily satisfied. It wants to remove the cause which aroused it. The object which resentment is chiefly intent upon, Adam Smith observes, "is not so much to make our enemy feel pain in his turn, as to make him conscious that he feels it upon account of his past conduct, to make him repent of that conduct, and to make him sensible, that the person whom he injured did not deserve to be treated in that manner."[2] The delight of revenge, says Bacon, "seemeth to be not so much in doing the hurt, as in making the party repent."[3]

We can now see the origin of the idea that the true end of punishment is the reformation of the criminal. This idea merely emphasises the most humane element in resentment, the demand that the offender's will shall cease to be offensive. The principle of reformation has thus itself a retributive origin. This explains the fact, otherwise inexplicable, that the amendment which it has in view is to be effected by the infliction of pain. It also accounts for the inconsistent attitude of the reformationist towards incorrigible offenders, already commented upon. Resentment gives way to forgiveness only in the case of repentance, not in the case of incorrigibility. Hence, not even the reformationist regards incorrigibility as a legitimate ground for exempting a person from punishment, although this flatly contradicts his theory about the true aim of all punishment.

Thus the theories both of determent and of reformation are ultimately offspring of the same emotion that first

[1] Christian, *Caroline Islands*, p. 72.
[2] Adam Smith, *Theory of Moral Sentiments*, p. 138 *sq.*
[3] Bacon, 'Essay IV. Of Revenge,' in *Essays*, p. 45. *Cf.* Montaigne, *Essais*, ii. 27 (*Oeuvres*, p. 384).

induced men to inflict punishment on their fellow-creatures. It escaped the advocates of these theories that they themselves were under the influence of the very principle they fought against, because they failed to grasp its true import. Rightly understood, resentment is preventive in its nature, and, when sufficiently deliberate, regards the infliction of suffering as a means rather than as an end. It not only gives rise to punishment, but readily suggests, as a proper end of punishment, either determent or amendment or both. But, first of all, moral resentment wants to raise a protest against wrong. And the immediate aim of punishment has always been to give expression to the righteous indignation of the society which inflicts it.

Now it may be thought that men have no right to give vent to their moral resentment in a way which hurts their neighbours unless some benefit may be expected from it. In the case of many other emotions, we hold that the conative element in the emotion ought not to be allowed to develop into a distinct volition or act; and it would seem that a similar view might be taken with reference to the aggressiveness inherent in moral disapproval. It is a notion of this kind that lies at the bottom of the utilitarian theories of punishment. They are protests against purposeless infliction of pain, against crude ideas of retributive justice, against theories hardly in advance of the low feelings of the popular mind. Therefore, they mark a stage of higher refinement in the evolution of the moral consciousness; and if the principles of determent and reformation are open to objections which will be shared by almost everyone, that is due to other circumstances than their demand that punishment should serve a useful end. As we have seen, they ignore the fact that a punishment, in order to be recognised as just, must not transgress the limits set down by moral disapproval, that it must not be inflicted on innocent persons, that it must be proportioned to the guilt, that offenders who are amenable to discipline must not be treated more severely

than incorrigible criminals. These theories also seem to exaggerate the deterring or reforming influence which punishments exercise upon criminals,[1] whilst, in another respect, they take too narrow a view of its social usefulness. Whether its voice inspire fear or not, whether it wake up a sleeping conscience or not, punishment, at all events, tells people in plain terms what, in the opinion of the society, they ought not to do. It gives the multitude a severe lesson in public morality; and it is difficult to see how quite the same effect could be attained by any other method. Retaliation is such a spontaneous expression of indignation, that people would hardly realise the offensiveness of an act which evokes no signs of resentment. Of course, punishment, in the legal sense of the term, is only one form—the most concrete form—of public retaliation; it is, indeed, probable that public opinion exercises a greater influence on men than punishment would do without its aid.[2] But punishment, in combination with public opinion, has no doubt to some extent an educating, and not merely a deterring, influence upon the members of a society. As Sir James Stephen observes, "the sentence of the law is to the moral sentiment of the public in relation to any offence what a seal is to hot wax. It converts into a permanent final judgment what might otherwise be a transient sentiment."[3] Finally, it must not be overlooked that the infliction of punishment upon the perpetrator of a grave offence gratifies a strong general desire, and, even though the pain which always accompanies an unsatisfied desire would by itself afford no sufficient justification for subjecting the offence to such intense

[1] On the limited efficiency of punishment as a deterrent, see Ferri, *op. cit.* p. 82 *sqq.* On the moral insensibility of the instinctive and habitual criminal, and absence of remorse, see Havelock Ellis, *The Criminal*, p. 124 *sqq.*

[2] *Cf.* Locke, *Essay concerning Human Understanding*, ii. 28. 12 (*Philosophical Works*, p. 283); Shaftesbury, 'Inquiry concerning Virtue and Merit,' i. 3. 3, in *Characteristicks*, ii. 64.

[3] Stephen, *History of the Criminal Law of England*, ii. 81. *Cf.* Shaftesbury, *op. cit.* ii. 64: "As to punishments and rewards, their efficacy is not so much from the fear or expectation which they raise, as from a natural esteem of virtue, and detestation of villainy, which is awaken'd and excited by these publick expressions of the approbation and hatred of mankind in each case."

suffering, other more serious consequences might easily result from leaving him unpunished. The public indignation might find a vent in some less regular and less discriminating mode of retaliation, like lynching; or, on the other hand, by remaining unsatisfied, the desire might dwindle away from want of nourishment, and the moral standard suffer a corresponding loss.

However, it is not to be believed that, in practice, the infliction of punishment is, or ever will be, regulated merely by considerations of social utility, even within the limits of what is recognised as legitimate by the moral sentiment. The retributive desire is so strong, and appears so natural, that we can neither help obeying it, nor seriously disapprove of its being obeyed. The theory that we have a right to punish an offender only in so far as, by doing so, we promote the general happiness, really serves in the main as a justification for gratifying such a desire, rather than as a foundation for penal practice. Moreover, this theory refers, and pretends to refer, only to outward behaviour—to punishment, not to the emotion from which punishment springs. It condemns the retributive act, not the retributive desire.

But at the same time the aggressive element in the emotion itself has undergone a change, which tends to conceal its true nature by partly leading it into a new channel, or, rather, by narrowing the channel in which it discharges itself. Resentment is directed against the cause of the offence by which it was aroused—broadly speaking, the offender. But when duly reflecting upon the matter, we cannot fail to admit that the real cause was not the offender as a whole, but his will. Deliberate and discriminating resentment is therefore apt to turn against the will rather than against the willer; as we have seen, it is desirous to inflict pain on the offender chiefly as a means of removing the cause of pain suffered, *i.e.*, the existence of the bad will. If this is the case with deliberate resentment in general, it must particularly be the case with moral indignation, which is more likely to be

influenced by sympathy, and hence more discriminate, than non-moral resentment. This fact gives rise to the moral commandment that we should hate, not the sinner, but the sin. The hostile reaction should be focussed on the will of the offender, and his sensibility should be regarded merely as an instrument through which the will is worked upon. But there is little hope that such a demand can ever be strictly enforced. Professor Sidgwick justly remarks that, though moralists try to distinguish between anger directed "against the act" and anger directed "against the agent," it may be fairly doubted whether it is within the capacity of ordinary human nature to maintain this distinction in practice.[1] The will which offends, and the sensibility which suffers, cannot seriously be looked upon as two different entities the one of which should not be punished for the fault of the other. The person himself is held responsible for the offence. The hostile reaction turns against his will because only by acting upon the will can the cause of pain be removed. But since the remotest ages the aggressive attitude towards this cause has been connected with an instinctive desire to produce counter-pain; and, though we may recognise that such a desire, or rather the volition into which it tends to develop, may be morally justifiable only if it is intended to remove the cause of pain, we can hardly help being indulgent to the gratification of a human instinct which seems to be well nigh ineradicable. It is the instinctive desire to inflict counter-pain that gives to moral indignation its most important characteristic. Without it, moral condemnation and the ideas of right and wrong would never have come into existence. Without it, we should no more condemn a bad man than a poisonous plant. The reason why moral judgments are passed on volitional beings, or their acts, is not merely that they are volitional, but that they are sensitive as well; and however much we try to concentrate our indignation on the act, it derives its peculiar flavour from being directed

[1] Sidgwick, *Methods of Ethics*, p. 364.

against a sensitive agent. I have heard persons of a highly sympathetic cast of mind assert that a wrong act awakens in them only sorrow, not indignation; but though sorrow be the predominant element in their state of mind, I believe that, on a close inspection, they would find there another emotion as well, one in which there is immanent an element of hostility, however slight. It is true that the intensity of moral indignation cannot always be measured by the actual desire to cause pain to the offender; but its intensity seems nevertheless to be connected with the amount of suffering which the indignant man is willing to let the offender undergo in consequence of the offence. Which of us could ever, quite apart from any utilitarian considerations, feel the same sympathy with a person who suffers on account of his badness as with one who suffers innocently? It is one of the most interesting facts related to the moral consciousness of a higher type, that it in vain condemns the gratification of the very desire from which it sprang. It is like a man of low extraction, who, in spite of all acquired refinement, bears his origin stamped on his face.

Whilst resentment is a hostile attitude of mind towards a cause of pain, retributive kindly emotion is a friendly attitude of mind towards a cause of pleasure. Just as in the lower forms of anger there is hardly any definite desire to produce suffering, only a vehement desire to remove the cause of pain, so in the lower form of retributive kindly emotion there is hardly any definite desire to produce pleasure, only a friendly endeavour to retain the cause of the pleasure experienced. When the emotion contains a definite desire to give pleasure in return for pleasure received, and at the same time is felt by the favoured party in his capacity of being himself the object of the benefit, it is called gratitude. We often find intermingled with gratitude a feeling of indebtedness; he upon whom a benefit has been conferred feels himself as a debtor, and regards the benefactor as his creditor. This feeling has

even been represented as essential to, or as a condition of, gratitude;[1] but it is not implied in what I here understand by gratitude. It is one thing to be grateful, and another thing to feel that it is one's duty to be grateful. A depression of the "self-feeling," a feeling of humiliation, also frequently accompanies gratitude as a motive for requiting the benefit; but it is certainly not an element in gratitude itself.

Retributive kindly emotion is a much less frequent phenomenon in the animal kingdom than is the emotion of resentment. In many animal species not even the germ of it is found, and where it occurs it is generally restricted within narrow limits. Anybody may provoke an animal's anger, but only towards certain individuals it is apt to feel retributive kindliness. The limits for this emotion are marked off by the conditions under which altruistic sentiments in general tend to arise—a subject which will be discussed in another connection. Indeed, social affection is itself essentially retributive. Gregarious animals take pleasure in each other's company, and with this pleasure is intimately associated kindly feeling towards its cause, the companion himself. Social affection presupposes reciprocity; it is not only a friendly sentiment towards another individual, but towards an individual who is conceived of as a friend.

The intrinsic object of retributive kindliness being to retain a cause of pleasure, we may assume that the definite desire to produce pleasure in return for pleasure received is due to the fact that such a desire materially promotes the object in question—exactly in the same way as the definite desire to inflict pain in return for pain inflicted has become an element in resentment because such a desire promotes the intrinsic object of resentment, the removal of the cause of pain. And as natural selection accounts for the origin of resentment, so it also accounts for the

[1] Horwicz, *Psychologische Analysen*, ii. 333: "Ohne dieses Gefühl des Verbundenseins . . . . kann keine Dankbarkeit aufkommen." *Cf.* Milton, *Paradise Lost*, iv. 52 *sqq.*

origin of retributive kindly emotion. Both of these emotions are useful states of mind; by resentment evils are averted, by retributive kindliness benefits are secured. That there is such a wide difference in their prevalence is explicable from the simple facts that gregariousness—which is the root of social affection, and, largely at least, a condition of the rise of retributive kindly emotions—is an advantage only to some species, not to all, and that even gregarious animals have many enemies, but few friends.

In some cases the friendly reaction in retributive kindliness is directed towards individuals who have in no way been the cause of the pleasure which gave rise to the emotion. So intimate is the connection between the stimulus and the reaction, that he who is made happy often feels a general desire to make others happy.[1] But such an indiscriminate reaction is only an offset of the emotion with which we are here concerned. Moreover, retributive kindly emotion often confers benefits upon somebody nearly related to the benefactor, if he himself be out of reach, or in addition to benefits conferred on him. But in such cases the gratitude towards the benefactor is the real motive.

That moral approval—by which I understand that emotion of which moral praise or reward is the outward manifestation—is a kind of retributive kindly emotion and as such allied to gratitude, will probably be admitted without much hesitation.[2] Its friendly character is not, like the hostile character of moral disapproval, disguised by any apparently contradictory facts. To confer a benefit upon a person is not generally regarded as wrong, unless, indeed, it involves an encroachment on somebody's rights or is contrary to the feeling of justice. And that moral approval sometimes bestows its favours upon undeserving

[1] That a happy man wants to see glad faces around him, is also due to another cause, which has been pointed out by Dr. Hirn (*Origins of Art*, p. 83): from their expression he wants to derive further nourishment and increase for his own feeling.

[2] The relationship between gratitude and moral approval has been recognised by Hartley (*Observations on Man*, i. 520) and Adam Smith (*Theory of Moral Sentiments, passim*).

individuals for the merits of others, can no more invalidate the fact that it is essentially directed towards the cause of pleasure, than the occasional infliction of punishments upon innocent individuals invalidates the fact that moral disapproval is essentially directed against the cause of pain. Unmerited rewards are explicable on grounds analogous to those to which we have traced unmerited punishments.

The doctrine of family solidarity leads, not only to common responsibility for crimes, but to common enjoyment of merits.

In Madagascar, exemption from punishment was claimed by the descendants of persons who had rendered any particular service to the sovereign or the State, as also by other branches of the family, on the same plea.[1] According to Chinese ideas, the virtuous conduct of any individual will result, not only in prosperity to himself, but in a certain quantity of happiness to his posterity, unless indeed the personal wickedness of some of the descendants neutralise the benefits which would otherwise accrue from the virtue of the ancestor;[2] and, conversely, the Chinese Government confers titles of nobility upon the dead parents of a distinguished son.[3] The idea that the dead share in *punya* or *pâpa*, that is, the merit or demerit of the living, and that the happiness of a man in the next life depends on the good works of his descendants, was early familiar to the civilised natives of India; almost all legal deeds of gift contain the formula that the gift is made "for the increase of the *punya* of the donor and that of his father and mother."[4]

But the vicarious efficacy of good deeds is not necessarily restricted to the members of the same family.

In a hymn of the Rig-Veda we find the idea that the merits of the pious may benefit their neighbours.[5] According to one of the Pahlavi texts, persons who are wholly unable to perform good works are supposed to be entitled to a share of any supererogatory good works performed by others.[6] The Chinese believe that

[1] Ellis, *History of Madagascar*, i. 376.

[2] Giles, *Strange Stories from a Chinese Studio*, i. 426, n. 3; ii. 384, n. 63. Doolittle, *Social Life of the Chinese*, ii. 398.

[3] Giles, *op. cit.* i. 305, n. 6. Wells Williams, *Middle Kingdom*, i. 422.

[4] Barth, *Religions of India*, p. 52, n. 4.

[5] *Rig-Veda*, vii. 35. 4.

[6] *Dînâ-î Maînôg-î Khirad*, xv. 3.

whole kingdoms are blessed by benevolent spirits for the virtuous conduct of their rulers.[1] Yahveh promised not to destroy Sodom for the sake of ten righteous, provided that so many righteous could be found in the town.[2] The doctrine of vicarious reward or satisfaction through good works is, in fact, more prevalent than the doctrine of vicarious punishment. Jewish theology has a great deal more to say about the acceptance of the merits of the righteous on behalf of the wicked, than about atonement through sacrifice.[3] The Muhammedans, who know nothing of vicarious suffering as a means of expiation, confer merits upon their dead by reciting chapters of the Koran and almsgiving, and some of them allow the pilgrimage to Mecca to be done by proxy.[4] Christian theology itself maintains that salvation depends on the merit of the passion of Christ; and from early times the merits of martyrs and saints were believed to benefit other members of the Church.[5]

For the explanation of these and similar facts various circumstances have to be considered. Good deeds may be so pleasing to a god as to induce him to forgive the sins of the wicked in accordance with the rule that anger yields to joy. There is solidarity not only between members of the same family, but between members of the same social unit; hence the virtues of individuals may benefit the whole community to which they belong. The Catholic theologian argues that, since we are all regenerated unto Christ by being washed in the same baptism, made partakers of the same sacraments, and, especially, of the same meat and drink, the body and blood of Christ, we are all members of the same body. "As, then, the foot does not perform its functions solely for itself, but also for the benefit of the eyes; and as the eyes exercise their sight, not for their own, but for the common benefit of all the members; so should works of satisfaction be deemed common to all the members of the

[1] de Groot, *Religious System of China* (vol. iv. book) ii. 435.
[2] *Genesis*, xviii. 32.
[3] Robertson Smith, *Religion of the Semites*, p. 424, n. 1.
[4] Lane, *Modern Egyptians*, pp. 247, 248, 532. Sell, *op. cit.* pp. 242, 278, 287, 288, 298. *Cf.* Wallin, *Första Resa från Cairo till Arabiska öknen*, p. 103.
[5] Harnack, *History of Dogma*, ii. 133, n. 3.

Church."[1] Moreover, virtues, like sins, are believed to be in a material way transferable. In Upper Bavaria, when a dead person is laid out, a cake of flour is placed on his breast in order to absorb the virtues of the deceased, whereupon the cake is eaten by the nearest relatives.[2] And we are told that, in a certain district in the north of England, if a child is brought to the font at the same time as a body is committed to the ground, whatever was "good" in the deceased person is supposed to be transferred to the little child, since God does not allow any "goodness" to be buried and lost to the world, and such "goodness" is most likely to enter a little child coming to the sacrament of Baptism.[3] A blessing, also, no less than a curse, is looked upon in the light of material energy; goodness is not required for the acquisition of it, mere contact will do. Blessings are hereditary:—"The just man walketh in his integrity: his children are blessed after him."[4]

It is no doubt more becoming for a god to pardon the sinner on account of the merits of the virtuous, than to punish the innocent for the sins of the wicked. It shows that his compassion overcomes his wrath; and the mercy of the deity is, among all divine attributes, that on which the higher monotheistic religions lay most stress. Allah said, "Whoso doth one good act, for him are ten rewards, and I also give more to whomsoever I will; and whoso doth ill, its retaliation is equal to it, or else I forgive him."[5] Nevertheless, the moral consciousness of a higher type can hardly approve that the wicked should be pardoned for the sake of the virtuous, or that the reward for an act should be bestowed upon anybody else than the agent. The doctrine of vicarious merit or recompense is not just; it involves that badness is unduly ignored; it is based on crude ideas of goodness and merit. The theory of *opera supererogativa*, as we have seen, attaches badness

[1] *Catechism of the Council of Trent*, ii. 5. 72.
[2] *Am Urquell*, ii. 101.
[3] Peacock, 'Executed Criminals and Folk-Medicine,' in *Folk-Lore*, vii. 280.
[4] *Proverbs*, xx. 7.
[5] Lane-Poole, *Speeches and Table-Talk of Mohammad*, p. 147.

and goodness to external acts rather than to mental facts, and assumes that reparation can be given for badness, whereas the scrutinising moral judge only forgives badness in case it is superseded by repentance. If thus a bad act cannot be compensated by a good one, even though both be performed by one and the same person, it can still less be compensated by the good act of another man. From various quarters we hear protests against the notion of vicarious merit—protests which emphasise the true direction of moral reward. Ezekiel, who reproved the old idea that the children's teeth are set on edge because the fathers have eaten sour grapes, also taught that a wicked son is to reap no benefit from the blessings bestowed upon a righteous father.[1] "Fear the day," says the Koran, "wherein no soul shall pay any recompense for another soul."[2] The Buddhistic Dhammapada contains the following passage, which sums up our whole argument :— "By oneself the evil is done, by oneself one suffers; by oneself evil is left undone, by oneself one is purified. The pure and the impure stand and fall by themselves, no one can purify another."[3]

[1] *Ezekiel*, xviii. 5 *sqq.*
[2] *Koran*, ii. 44.
[3] *Dhammapada*, xii. 165.

CHAPTER IV

THE NATURE OF THE MORAL EMOTIONS (*concluded*)

We have seen that moral disapproval is a form of resentment, and that moral approval is a form of retributive kindly emotion. It still remains for us to examine in what respects these emotions differ from kindred non-moral emotions—disapproval from anger and revenge, approval from gratitude—in other words, what characterises them as specifically *moral* emotions.

It is a common opinion, held by all who regard the intellect as the source of moral concepts, that moral emotions only arise in consequence of moral judgments, and that, in each case, the character of the emotion is determined by the predicate of the judgment. We are told that, when the intellectual process is completed, when the act in question is definitely classed under such or such a moral category, then, and only then, there follows instantaneously a feeling of either approbation or disapprobation as the case may be.[1] When we hear of a murder, for instance, we must discern the wrongness of the act before we can feel moral indignation at it.

It is true that a moral judgment may be followed by a moral emotion, that the finding out the tendency of a certain mode of conduct to evoke indignation or approval is apt to call forth such an emotion, if there was none before, or otherwise to increase the one existing. It is, moreover, true that the predicate of a moral judgment, as

[1] Fleming, *Manual of Moral Philosophy*, p. 97 *sqq.* Fowler, *Principles of Morals*, ii. 198 *sqq.*

well as the generalisation leading up to such a predicate, may give a specific colouring to the approval or disapproval which it produces, quite apart from the general characteristics belonging to that emotion in its capacity of a moral emotion; the concepts of duty and justice, for instance, no doubt have a peculiar flavour of their own. But for all this, moral emotions cannot be described as resentment or retributive kindliness called forth by moral judgments. Such a definition would be a meaningless play with words. Whatever emotions may follow moral judgments, such judgments could never have been pronounced unless there had been moral emotions antecedent to them. Their predicates, as was pointed out above, are essentially based on generalisations of tendencies in certain phenomena to arouse moral emotions; hence the criterion of a moral emotion can in no case depend upon its proceeding from a moral judgment. But at the same time moral judgments, being definite expressions of moral emotions, naturally help us to discover the true nature of these emotions.

The predicate of a moral judgment always involves a notion of disinterestedness. When pronouncing an act to be good or bad, I mean that it is so, quite independently of any reference it might have to my own interests. A moral judgment may certainly have a selfish motive; but then it, nevertheless, pretends to be disinterested, which shows that disinterestedness is a characteristic of moral concepts as such. This is admitted even by the egoistic hedonist, who maintains that we approve and condemn acts from self-love. According to Helvetius, it is the love of consideration that a virtuous man takes to be in him the love of virtue; and yet everybody pretends to love virtue for its own sake, "this phrase is in every one's mouth and in no one's heart." [1]

If the moral concepts are essentially generalisations of tendencies in certain phenomena to call forth moral emotions, and, at the same time, contain the notion of

[1] Helvetius, *De l'Homme*, i. 263.

disinterestedness, we must conclude that the emotions from which they spring are felt disinterestedly. Of this fact we find an echo—more or less faithful—in the maxims of various ethical theorisers, as well as practical moralists. We find it in the utilitarian demand that, in regard to his own happiness and that of others, an agent should be "as strictly impartial as a disinterested and benevolent spectator";[1] in the "rule of righteousness" laid down by Samuel Clarke, that "We so deal with every man, as in like circumstances we could reasonably expect he should with us";[2] in Kant's formula, "Act only on that maxim which thou canst at the same time will to become a universal law";[3] in Professor Sidgwick's so-called axiom, "I ought not to prefer my own lesser good to the greater good of another";[4] in the biblical sayings, "Thou shalt love thy neighbour as thyself,"[5] and, "Whatsoever ye would that men should do to you, do ye even so to them."[6] The same fact is expressed in the Indian Mahabharata, where it is said:—"Let no man do to another that which would be repugnant to himself; this is the sum of righteousness; the rest is according to inclination. In refusing, in bestowing, in regard to pleasure and to pain, to what is agreeable and disagreeable, a man obtains the proper rule by regarding the case as like his own."[7] Similar words are ascribed to Confucius.[8] When Tsze-kung asked if there is any one word which may serve as a rule of practice for all one's life, the Master answered, "Is not Reciprocity such a word? What you do not want done to yourself, do not do to

[1] Stuart Mill, *Utilitarianism*, p. 24.

[2] Clarke, *Discourse concerning the Unchangeable Obligations of Natural Religion*, p. 201.

[3] Kant, *Grundlegung zur Metaphysik der Sitten*, sec. 2 (*Sämmtliche Werke*, iv. 269).

[4] Sidgwick, *Methods of Ethics*, p. 383. However, as we have seen above, this so-called "axiom" is not a correct representation of the disinterestedness of moral emotions.

[5] *Leviticus*, xix. 18. *St. Matthew*, xxii. 39.

[6] *St. Matthew*, vii. 12. *Cf. St. Luke*, vi. 31.

[7] *Mahabharata*, xiii. 5571 *sq.*, in Muir, *Religious and Moral Sentiments, rendered from Sanskrit Writers*, p. 107. *Cf. Panchatantra*, iii. 104 (Benfey's translation, ii. 235).

[8] *Lun Yü*, xv. 23. *Cf. ibid.* xii. 2; *Chung Yung*, xiii. 3.

others." And in another utterance Confucius showed that the rule had for him not only a negative, but a positive form. He said that, in the way of the superior man, there are four things to none of which he himself had as yet attained; to serve his father as he would require his son to serve him, to serve his prince as he would require his minister to serve him, to serve his elder brother as he would require his younger brother to serve him, and to set the example in behaving to a friend as he would require the friend to behave to him.[1]

This "golden rule" is not, as has been sometimes argued, a rule of retaliation.[2] It does not say, "Do to others what they wish to do to you"; it says, "Do to others what you wish, or require, them to do to you." It brings home to us the fact that moral rules are general rules, which ought to be obeyed irrespectively of any selfish considerations. If formulated as an injunction that we should treat our neighbour in the same manner as we consider that he, under exactly similar circumstances, ought to treat us, it is simply identical with the sentence, "Do your duty," with emphasis laid on the disinterestedness which is involved in the very conception of duty. So far, St. Augustine was right in saying that "Do as thou wouldst be done by" is a sentence which all nations under heaven are agreed upon.[3]

Disinterestedness, however, is not the only characteristic by which moral indignation and approval are distinguished from other, non-moral, kinds of resentment or retributive kindly emotion. It is, indeed, itself a form of a more comprehensive quality which characterises moral emotions —apparent impartiality. If I pronounce an act done to a friend or to an enemy to be either good or bad, that implies that I assume it to be so independently of the fact that the person to whom the act is done is my friend or my enemy. Conversely, if I pronounce an

[1] *Chung Yung*, xiii. 4.
[2] Letourneau, *L'évolution religieuse dans les diverses races humaines*, p. 553.
[3] St. Augustine, quoted by Lilly, *Right and Wrong*, p. 106.

act done by a friend or by an enemy to be good or bad, that implies that I assume the act to be either good or bad independently of my friendly or hostile feelings towards the agent. All this means that resentment and retributive kindly emotion are moral emotions in so far as they are assumed by those who feel them to be uninfluenced by the particular relationship in which they stand, both to those who are immediately affected by the acts in question, and to those who perform those acts. A moral emotion, then, is tested by an imaginary change of the relationship between him who approves or disapproves of the mode of conduct by which the emotion was evoked and the parties immediately concerned, whilst the relationship between the parties themselves is left unaltered. At the same time it is not necessary that the moral emotion should be really impartial. It is sufficient that it is tacitly assumed to be so, nay, even that it is not knowingly partial. In attributing different rights to different individuals, or classes of individuals, we are often, in reality, influenced by the relationship in which we stand to them, by personal sympathies and antipathies; and yet those rights may be moral rights, in the strict sense of the term, not mere preferences, namely, if we assume that any impartial judge would recognise our attribution of rights as just, or even if we are unaware of its partiality. Similarly, when the savage censures a homicide committed upon a member of his own tribe, but praises one committed upon a member of another tribe, his censure and praise are certainly influenced by his relations to the victim, or to the agent, or to both. He does not reason thus: it is blamable to kill a member of one's own tribe, and it is praiseworthy to kill a member of a foreign tribe —whether the tribe be mine or not. Nevertheless, his blame and his praise must be regarded as expressions of moral emotions.

Finally, a moral emotion has a certain flavour of generality. We have previously noticed that a moral judgment very frequently implies some vague assumption

that it must be shared by everybody who possesses both a sufficient knowledge of the case and a "sufficiently developed" moral consciousness. We have seen, however, that this assumption is illusory. It cannot, consequently, be regarded as a *conditio sine quâ non* for a moral judgment, unless, indeed, it be maintained that such a judgment, owing to its very nature, is necessarily a chimera—an opinion which, to my mind, would be simply absurd. But, though moral judgments cannot lay claim to universality or "objectivity," it does not follow that they are merely individual estimates. Even he who fully sees their limitations must admit that, when he pronounces an act to be good or bad, he gives expression to something more than a personal opinion, that his judgment has reference, not only to his own feelings, but to the feelings of others as well. And this is true even though he be aware that his own conviction is not shared by those around him, nor by anybody else. He then feels that it *would be* shared if other people knew the act and all its attendant circumstances as well as he does himself, and if, at the same time, their emotions were as refined as are his own. This feeling gives to his approval or indignation a touch of generality, which belongs to public approval and public indignation, but which is never found in any merely individual emotion of gratitude or revenge.

The analysis of the moral emotions which has been attempted in this and the two preceding chapters, holds good, not only for such emotions as we feel on account of the conduct of others, but for such emotions as we feel on account of our own conduct as well. Moral self-condemnation is a hostile attitude of mind towards one's self as the cause of pain, moral self-approval is a kindly attitude of mind towards one's self as a cause of pleasure. Genuine remorse, though focussed on the will of the person who feels it, involves, vaguely or distinctly, some desire to suffer. The repentant man wants to think of the wrong he has committed, he wants clearly to realise

its wickedness; and he wants to do this, not merely because he desires to become a better man, but because it gives him some relief to feel the sting in his heart. If punished for his deed, he willingly submits to the punishment. The Philippine Islander, says Mr. Foreman, if he recognises a fault by his own conscience, will receive a flogging without resentment or complaint, although, "if he is not so convinced of the misdeed, he will await his chance to give vent to his rancour."[1] We may feel actual hatred towards ourselves, we may desire to inflict bodily suffering upon ourselves as a punishment for what we have done;[2] nay, there are instances of criminals, guilty of capital offences, having given themselves up to the authorities in order to appease their consciences by suffering the penalty of the law.[3] Yet the desire to punish ourselves has a natural antagonist in our general aversion to pain, and this often blunts the sting of the conscience. Suicide prompted by remorse, which sometimes occurs even among savages,[4] is to be regarded rather as a method of putting an end to agonies, than as a kind of self-execution; and behind the self-torments of the sinner frequently lurks the hopeful prospect of heavenly bliss. Self-approval, again, is not merely joy at one's own conduct, but is a kindly emotion, a friendly attitude towards one's self. Such an attitude, for instance, lies at the bottom of the feeling that one's own conduct merits praise or reward.

Not every form of self-reproach or of self-approval is a moral emotion—no more than is every form of resentment or retributive kindly emotion towards other persons. We may be angry with ourselves on account of some act of ours which is injurious to our own interests. He who has lost at play may be as vexed at himself as he who has

[1] Foreman, *Philippine Islands*, p. 185. *Cf.* Hinde, *The Last of the Masai*, p. 34; Zoller, *Das Togoland*, p. 37.

[2] *Cf.* Jodl, *Lehrbuch der Psychologie*, p. 675.

[3] von Feuerbach, *Aktenmassige Darstellung merkwürdiger Verbrechen*, i. 249; ii. 473, 479 *sq.* von Lasaulx, *Sühnopfer der Griechen und Romer*, p. 6.

[4] See *infra*, on Suicide.

cheated at play, and the egoist may bitterly reproach himself for having yielded to a momentary impulse of benevolence, or even to conscience itself. In order to be moral emotions, our self-condemnation and self-approval must present the same characteristics as make resentment and retributive kindliness moral emotions when they are felt with reference to the conduct of other people. A person does not feel remorse when he reproaches himself from an egoistic motive, or when he afterwards regrets that he has sacrificed the interests of his children to the impartial claim of justice. Nor does a person feel moral self-approval when he is pleased with himself for having committed an act which he recognises as selfish or unjust. And besides being disinterested and apparently impartial, remorse and moral self-approval have a flavour of generality. As Professor Baldwin remarks, moral approval or disapproval, not only of other people, but of one's self, "is never at its best except when it is accompanied, in the consciousness which has it, with the knowledge or belief that it is also socially shared." [1] Indeed, almost inseparable from the moral judgments which we pass on our own conduct seems to be the image of an impartial outsider who acts as our judge.

[1] Baldwin, *Social and Ethical Interpretation in Mental Development*, p. 314.

CHAPTER V

THE ORIGIN OF THE MORAL EMOTIONS

We have found that resentment and retributive kindly emotion are easily explicable from their usefulness, both of them having a tendency to promote the interests of the individuals who feel them. This explanation also holds good for the moral emotions, in so far as they are retributive emotions: it accounts for the hostile attitude of moral disapproval towards the cause of pain, and for the friendly attitude of moral approval towards the cause of pleasure. But it still remains for us to discover the origin of those elements in the moral emotions by which they are distinguished from other, non-moral, retributive emotions. First, how shall we explain their disinterestedness?

We have to distinguish between different classes of conditions under which disinterested retributive emotions arise. In the first place, we may feel disinterested resentment, or disinterested retributive kindly emotion, on account of an injury inflicted, or a benefit conferred, upon another person with whose pain, or pleasure, we sympathise, and in whose welfare we take a kindly interest. Our retributive emotions are, of course, always reactions against pain, or pleasure, felt by ourselves; this holds true for the moral emotions as well as for revenge and gratitude. The question to be answered, then, is, Why should we, quite disinterestedly, feel pain calling forth indignation because our neighbour is hurt, and pleasure calling forth approval because he is benefited?

That a certain act causes pleasure or pain to the by-stander is partly due to the close association which exists between these feelings and their outward expressions. The sight of a happy face tends to produce some degree of pleasure in him who sees it; the sight of the bodily signs of suffering tends to produce a feeling of pain. In either case the feeling of the spectator is the result of a process of reproduction, the perception of the physical manifestation of the feeling recalling the feeling itself on account of the established association between them.

Sympathetic pain or pleasure may also be the result of an association between cause and effect, between the cognition of a certain act or situation and the feeling generally produced by this act or situation. A blow may cause pain to the spectator before he has witnessed its effect on the victim. The sympathetic feeling is of course stronger when both kinds of association concur in producing it, than when it is the result of only one. As Adam Smith observes, "general lamentations which express nothing but the anguish of the sufferer, create rather a curiosity to inquire into his situation, along with some disposition to sympathise with him, than any actual sympathy that is very sensible."[1] On the other hand, the sympathy which springs from an association between cause and effect is much enhanced by the perception of outward signs of pleasure or pain in the individual with whom we sympathise.

But the sympathetic feeling which results from association alone is not what is generally understood by sympathy. Arising merely from the habitual connection of certain cognitions with certain feelings in the experience of the spectator, it is, strictly speaking, not at all concerned with the *feelings* of the other person. It is not a reflex of what he feels—which, indeed, is a matter of complete indifference—and the activity which it calls forth is thoroughly selfish. If it is a feeling of pain, the spectator naturally, for his own sake, tries to get rid of it; but this

[1] Adam Smith, *Theory of Moral Sentiments*, p. 7.

may be done by turning the back upon the sufferer, and looking out for some diversion. The sympathetic feeling which springs from association alone, may also produce a benevolent or hostile reaction against its immediate cause: the smiling face often evokes a kindly feeling towards the smiler, and "the sight of suffering often directs irritation against the sufferer."[1] In such cases it is the other person himself, rather than his benefactor or his tormentor, that is regarded as cause by the sympathiser. When based on association alone, the sympathetic feeling thus lacks the most vital characteristic of sympathy, in the popular sense of the term: it lacks kindliness.[2]

Sympathy, in the ordinary use of the word, requires the co-operation of the altruistic sentiment or affection—a disposition of mind which is particularly apt to display itself as kindly emotion towards other beings. This sentiment,[3] only, induces us to take a kindly interest in the feelings of our neighbours. It involves a tendency, or willingness, and, when strongly developed, gives rise to an eager desire, to sympathise with their pains and pleasures. Under its influence, our sympathetic feeling is no longer a mere matter of association; we take an active part in its production, we direct our attention to any circumstance which we believe may affect the feelings of the person whom we love, to any external manifestation of his emotions. We are anxious to find out his joys and sorrows, so as to be able to rejoice with him and to suffer with him, and, especially, when he stands in need of it, to console or to help him. For the altruistic sentiment is not merely willingness to sympathise; it is above all a conative

[1] Leslie Stephen, *Science of Ethics*, p. 243.

[2] The difference between sympathy and kindly ("tender") emotion has been commented upon by Professor Ribot (*Psychology of the Emotions*, p. 233), and by Mr. Shand, in his excellent chapter on the 'Sources of Tender Emotion,' in Stout's *Groundwork of Psychology*, p. 198 *sqq.*

[3] I use the word "sentiment" in the sense proposed by Mr. Shand, in his article, 'Character and the Emotions,' in *Mind*, N.S. v. 203 *sqq.*, and adopted by Professor Stout, *op. cit.* p. 221 *sqq.* Sentiments cannot be actually felt at any one moment; "they are complex mental dispositions, and may, as divers occasions arise, give birth to the whole gamut of the emotions" (*ibid.* p. 223 *sq.*).

disposition to do good. The latter aptitude must be regarded rather as the cause than as the result of the former; affection is not, as Adam Smith maintained,[1] merely habitual sympathy, or its necessary consequence. It is true that sympathetic pain, unaided by kindliness, may induce a person to relieve the suffering of his neighbour, instead of shutting his eyes to it; but then he does so, not out of regard to the feelings of the sufferer, but simply to free himself of a painful cognition. Nor must it be supposed that the altruistic sentiment prompts to assistance only by strengthening the sympathetic feeling. The sight of the wounded traveller may have caused no less pain to the Pharisee than to the good Samaritan; yet it would have been impossible for the Samaritan to dismiss his pain by going away, since he felt a desire to assist the wounded, and his desire would have been left ungratified if he had not stopped by the wayside. To the egoist, the relief offered to the sufferer is a means of suppressing the sympathetic pain; to the altruist, the sympathetic pain is, so to say, a means of giving relief. The altruist wants to know, to feel the pain of his neighbour, because he desires to help him. Why are the most kind-hearted people often the most cheerful, if not because they think of alleviating the misery of their fellow-creatures, instead of indulging in the sympathetic pain which it evokes?

It is obvious, then, that sympathy aided by the altruistic sentiment—sympathy in the common sense—tends to produce disinterested retributive emotions. When we to some extent identify, as it were, our feelings with those of our neighbour, we naturally look upon any person who causes him pleasure or pain as the cause of our sympathetic pleasure or pain, and are apt to experience towards that person a retributive emotion similar in kind, if not always in degree, to the emotion which we feel when we are ourselves benefited or injured. In all animal species which possess altruistic sentiments in some form or other, we may be sure to find sympathetic resentment as their accompani-

[1] Adam Smith, *op. cit.* p. 323.

ment. A mammalian mother is as hostile to the enemy of her young as to her own enemy. Among social animals whose gregarious instinct has developed into social affection,[1] sympathetic resentment is felt towards the enemy of any member of the group; they mutually defend each other, and this undoubtedly involves some degree of sympathetic anger. With reference to animals in confinement and domesticated animals, many striking instances of this emotion might be quoted, even in cases when injuries have been inflicted on members of different species to which they have become attached. Professor Romanes' terrier, "whenever or wherever he saw a man striking a dog, whether in the house, or outside, near at hand or at a distance, ... used to rush in to interfere, snarling and snapping in a most threatening way."[2] Darwin makes mention of a little American monkey in the Zoological Gardens of London which, when seeing a great baboon attack his friend, the keeper, rushed to the rescue and by screams and bites so distracted the baboon, that the man was able to escape.[3] The dog who flies at any one who strikes, or even touches, his master, is a very familiar instance of sympathetic resentment. The Rev. Charles Williams mentions a dog at Liverpool who saved a cat from the hands of some young ruffians who were maltreating it: he rushed in among the boys, barked furiously at them, terrified them into flight, and carried the cat off in his mouth, bleeding and almost senseless, to his kennel, where he laid it on the straw, and nursed it.[4] In man, sympathetic resentment begins at an early age. Professor Sully mentions a little boy under four who was indignant at any picture where an animal suffered.[5]

The altruistic sentiments of mankind will be treated at

[1] The connection between social affection and the gregarious instinct will be discussed in a subsequent chapter.

[2] Romanes, *Animal Intelligence*, p. 440.

[3] Darwin, *Descent of Man*, p. 103. *Cf.* Fisher, in *Revue Scientifique*, xxxiii. 618. A curious instance of a terrier "avenging" the death of another terrier, his inseparable friend, is mentioned by Captain Medwin (*Angler in Wales*, ii. 162–164, 197, 216 *sq.*).

[4] Williams, *Dogs and their Ways*, p. 43.

[5] Sully, *Studies of Childhood*, p. 250.

length in subsequent chapters. We shall find reason to believe that not only maternal, but to some extent, paternal and conjugal affection, prevailed in the human race from ancient times, and that social affection arose in those days when the conditions of life became favourable to an expansion of the early family, when the chief obstacle to a gregarious life—scarcity of food—was overcome, and sociality, being an advantage to man, became his habit. There are still savages who live in families rather than in tribes, but we know of no people among whom social organisation outside the family is totally wanting. Later discoveries only tend to confirm Darwin's statement that, though single families or only two or three together, roam the solitudes of some savage lands, they always hold friendly relations with other families inhabiting the same district ; such families occasionally meeting in council and uniting for their common defence.[1] But as a general rule, to which there are few exceptions, the lower races live in communities larger than family groups, and all the members of the community are united with one another by common interests and common feelings. Of the harmony, mutual good-will, and sense of solidarity, which under normal conditions prevail in these societies, much evidence will be adduced in following pages. Mr. Melville's remark with reference to some Marquesas cannibals may be quoted as to some extent typical. "With them," he says, "there hardly appeared to be any difference of opinion upon any subject whatever. . . . They showed this spirit of unanimity in every action of life : everything was done in concert and good fellowship."[2] When a member of the group is hurt, the feeling of unanimity takes the form of public resentment. As Robertson observed long ago, "in small communities, every man is touched with the injury or affront offered to the body of which he is a member, as if it were a personal attack upon his own honour or safety. The desire of revenge is communicated from breast to breast,

[1] Darwin, *op. cit.* p. 108.

[2] Melville, *Typee*, p. 297 *sq.*

and soon kindles into rage,"[1] Speaking of some Australian savages, Mr. Fison remarks :—"To the savage, the whole gens is the individual, and he is full of regard for it. Strike the gens anywhere, and every member of it considers himself struck, and the whole body corporate rises up in arms against the striker."[2] Nobody will deny that there is a disinterested element in this public resentment, even though every member of the group consider the enemy of any other member to be actually his own enemy as well, and, partly, hate him as such.

Our explanation of what has here been called "sympathetic resentment," however, is not yet complete. This emotion, as we have seen, may be a reaction against sympathetic pain ; but it may also be directly produced by the cognition of the signs of anger. In the former case it is, strictly speaking, independent of the *emotion* of the injured individual ; we may feel resentment on his behalf though he himself feels none. In the latter case it is a reflected emotion, felt independently of the cause of the original emotion of which it is a reflection—as when the yells and shrieks of a street dog-fight are heard, and dogs from all sides rush to the spot, each dog being apparently ready to bite any of the others. In the former case, it is, by the medium of sympathetic pain, closely connected with the inflicted injury ; in the latter case it may even be the reflection of an emotion which is itself sympathetic, and the origin of which is perhaps out of sight. In an infuriated crowd the one gets angry because the other is angry, and very often the question, Why ? is hardly asked. This form of sympathetic resentment is of considerable importance both as an originator and as a communicator of moral ideas. To teach that a certain act is wrong is to teach that it is an object, and a proper object, of moral indignation, and the aim of the instructor

[1] Robertson, *History of America*, i. 350. *Cf.* Clifford's theory of the "tribal self" (*Lectures and Essays*, p. 290 *sqq.*). He says (*ibid.* p. 291), "The savage is not only hurt when anybody treads on his foot, but when anybody treads on his tribe."

[2] Fison and Howitt, *Kamilaroi and Kurnai*, p. 170.

is to inspire a similar indignation in the mind of the pupil. An intelligent teacher tries to attain this end by representing the act in such a light as to evoke disapproval independently of any appeal to authority; but, unfortunately, in many cases where the duties of current morality are to be enjoined, he cannot do so—for a very obvious reason. Of various acts which, though inoffensive by themselves, are considered wrong, he can say little more than that they are forbidden by God and man; and if, nevertheless, such acts are not only professed, but actually felt, to be wrong, that is due to the fact that men are inclined to sympathise with the resentment of persons for whom they feel regard. It is this fact that accounts for the connection between the punishment of an act and the consequent idea that it deserves to be punished. We shall see that the punishment which society inflicts is, as a rule, an expression of its moral indignation; but there are instances in which the order is reversed, and in which human, or, as it may be supposed, divine, punishment or anger is the cause, and moral disapproval the effect. Children, as everybody knows, grow up with their ideas of right and wrong graduated, to a great extent, according to the temper of the father or mother;[1] and men are not seldom, as Hobbes said, "like little children, that have no other rule of good and evill manners, but the correction they receive from their Parents, and Masters."[2] The case is the same with any outbreak of public resentment, with any punishment inflicted by society at large. However selfish it may be in its origin, to whatever extent it may spring from personal motives, it always has a tendency to become in some degree disinterested, each individual not only being angry on his own behalf, but at the same time reflecting the anger of everybody else.

Any means of expressing resentment may serve as a communicator of the emotion. Besides punishment, language deserves special mention. Moral disapproval may

[1] *Cf.* Baring-Gould, *Origin and Development of Religious Belief*, i. 212.

[2] Hobbes, *Leviathan*, i. 2, p. 76.

be evoked by the very sounds of certain words, like "murder," "theft," "cowardice," and others, which not merely indicate the commission of certain acts, but also express the opprobrium attached to them. By being called a "liar," a person is more disgraced than by any plain statement of his untruthfulness; and by the use of some strong word the orator raises the indignation of a sympathetic audience to its pitch.

All the cases of disinterested resentment which we have hitherto considered fall under the heading of sympathetic resentment. But there are other cases into which sympathy does not enter at all. Resentment is not always caused by the infliction of an injury; it may be called forth by any feeling of pain traceable to a living being as its direct or indirect cause. Quite apart from our sympathy with the sufferings of others, there are many cases in which we feel hostile towards a person on account of some act of his which in no way interferes with our interests, which conflicts with no self-regarding feeling of ours. There are in the human mind what Professor Bain calls "disinterested antipathies," sentimental aversions "of which our fellow-beings are the subjects, and on account of which we overlook our own interest quite as much as in displaying our sympathies and affections." [1] Differences of taste, habit, and opinion, are particularly apt to create similar dislikes, which, as will be seen, have played a very prominent part in the moulding of the moral consciousness. When a certain act, though harmless by itself (apart from the painful impression it makes upon the spectator), fills us with disgust or horror, we may feel no less inclined to inflict harm upon the agent, than if he had committed an offence against person, property, or good name. And here, again, our resentment is sympathetically increased by our observing a similar disgust in others. We are easily affected by the aversions and likings of our neighbours. As Tucker said, "we grow to love things we perceive

[1] Bain, *Emotions and the Will*, p. 268.

them fond of, and contract aversions from their dislikes."[1]

We have already seen that sympathy springing from an altruistic sentiment may produce, not only disinterested resentment, but disinterested retributive kindly emotion as well. When taking a pleasure in the benefit bestowed on our neighbour, we naturally look with kindness upon the benefactor; and just as sympathetic resentment may be produced by the cognition of the outward signs of resentment, so sympathetic retributive kindly emotion may be produced by the signs of retributive kindliness. Language communicates emotions by terms of praise, as well as by terms of condemnation; and a reward, like a punishment, tends to reproduce the emotion from which it sprang. Moreover, men have disinterested likings, as they have disinterested dislikes. As an instance of such likings may be mentioned the common admiration of courage when felt irrespectively of the object for which it is displayed.

Having thus found the origin of disinterested retributive emotions, we have at the same time partly explained the origin of the moral emotions. But, as we have seen, disinterestedness is not the sole characteristic by which moral indignation and approval are distinguished from other retributive emotions: a moral emotion is assumed to be impartial, or, at least, is not knowingly partial, and it is coloured by the feeling of being publicly shared. However, the real problem which we have now to solve is not how retributive emotions may become apparently impartial and be coloured by a feeling of generality, but why disinterestedness, apparent impartiality, and the flavour of generality have become characteristics by which so-called moral emotions are distinguished from other retributive emotions. The solution of this problem lies in the fact that society is the birthplace of the moral consciousness; that the first moral judgments expressed, not the private emotions of isolated individuals, but emotions which were

[1] Tucker, *Light of Nature Pursued*, i. 154.

felt by the society at large; that tribal custom was the earliest rule of duty.

Customs have been defined as public habits, as the habits of a certain circle, a racial or national community, a rank or class of society. But whilst being a habit, custom is at the same time something else as well. It not merely involves a frequent repetition of a certain mode of conduct, it is also a rule of conduct. As Cicero observes, the customs of a people "are precepts in themselves."[1] We say that "custom commands," or "custom demands," and speak of it as "strict" and "inexorable"; and even when custom simply allows the commission of a certain class of actions, it implicitly lays down the rule that such actions are not to be interfered with.

The rule of custom is conceived of as a moral rule, which decides what is right and wrong.[2] "Les loix de la conscience," says Montaigne, "que nous disons naistre de nature, naissent de la coustume."[3] Mr. Howitt once said to a young Australian native with whom he was speaking about the food prohibited during initiation, "But if you were hungry and caught a female opossum, you might eat it if the old men were not there." The youth replied, "I could not do that; it would not be right"; and he could give no other reason than that it would be wrong to disregard the customs of his people.[4] Mr. Bernau says of the British Guiana Indians:—"Their moral sense of good and evil is entirely regulated by the customs and practices inherited from their forefathers. What their predecessors believed and did must have been right, and they deem it the height of presumption to suppose that any could think and act otherwise."[5] The moral evil of the pagan Greenlanders "was all that was contrary to laws and customs, as

[1] Cicero, *De Officiis*, i. 41.

[2] *Cf.* Austin, *Lectures on Jurisprudence*, i. 104; Tönnies, 'Philosophical Terminology,' in *Mind*, N.S., viii. 304. Von Jhering (*Zweck im Recht*, ii. 23) defines the German *Sitte* as "die im Leben des Volks sich bildende verpflichtende Gewohnheit"; and a similar view is expressed by Wundt (*Ethik*, p. 128 *sq.*).

[3] Montaigne, *Essais*, i. 22 (*Œuvres*, p. 48).

[4] Fison and Howitt, *op. cit.* p. 256 *sq.*

[5] Bernau, *Missionary Labours in British Guiana*, p. 60.

regulated by the angakoks," and when the Danish missionaries tried to make them acquainted with their own moral conceptions, the result was that they "conceived the idea of virtue and sin as what was pleasing or displeasing to Europeans, as according or disaccording with their customs and laws."[1] "The Africans, like most heathens," Mr. Rowley observes, "do not regard sin, according to their idea of sin, as an offence against God, but simply as a transgression of the laws and customs of their country."[2] The Ba-Ronga call derogations of universally recognised custom *yila*, prohibited, tabooed.[3] The Bedouins of the Euphrates "make no appeal to conscience or the will of God in their distinctions between right and wrong, but appeal only to custom."[4] According to the laws of Manu, the custom handed down in regular succession since time immemorial "is called the conduct of virtuous men."[5] The Greek idea of the customary, *τὸ νόμιμον*, shows the close connection between morality and custom; and so do the words *ἔθος*, *ἦθος*, and *ἠθικά*, the Latin *mos* and *moralis*, the German *Sitte* and *Sittlichkeit*.[6] Moreover, in early society, customs are not only moral rules, but the only moral rules ever thought of. The savage strictly complies with the Hegelian command that no man must have a private conscience. The following statement, which refers to the Tinnevelly Shanars, may be quoted as a typical example:—"Solitary individuals amongst them rarely adopt any new opinions, or any new course of procedure. They follow the multitude to do evil, and they follow the multitude to do good. They think in herds."[7]

Disobedience to custom evokes public indignation. In

[1] Rink, *Greenland*, p. 201 *sq.*

[2] Rowley, *Religion of the Africans*, p. 44.

[3] Junod, *Ba-Ronga*, p. 477.

[4] Blunt, *Bedouin Tribes of the Euphrates*, ii. 224.

[5] *Laws of Manu*, ii. 18.

[6] For the history of these words, see Wundt, *op. cit.* p. 19 *sqq.* For other instances illustrating the moral character of custom, see Maclean, *Compendium of Kafir Laws and Customs*, p. 34 (Amaxosa); Macpherson, *Memorials of Service in India*, p. 94 (Kandhs); Kubary, *Ethnographische Beitrage zur Kenntniss der Karolinischen Inselgruppe*, i. 73 (Pelew Islanders); Smith, *Chinese Characteristics*, p. 119.

[7] Caldwell, *Tinnevelly Shanars*, p. 69.

the lower stages of civilisation, especially, custom is a tyrant who binds man in iron fetters, and who threatens the transgressor, not only with general disgrace, but often with bodily suffering. "To believe that man in a savage state is endowed with freedom either of thought or action," says Sir G. Grey, "is erroneous in the highest degree"; [1] and this statement is corroborated by an array of facts from all quarters of the savage world.[2] Now, as the rule of custom is a moral rule, the indignation aroused by its transgression is naturally a moral emotion. Moreover, where all the duties incumbent on a man are expressed in the customs of the society to which he belongs, it is obvious that the characteristics of moral indignation are to be sought for in its connection with custom. The most salient feature of custom is its generality. Its transgression calls forth public indignation; hence the flavour of generality which characterises moral disapproval. Custom is fixed once for all, and takes no notice of the preferences of individuals. By recognising the validity of a custom, I implicitly admit that the custom is equally binding for me and for you and for all the other members of the society. This involves disinterestedness; I admit that a breach of the custom is equally wrong whether I myself am immediately concerned in the act or not. It also involves apparent impartiality; I assume that my condemnation of the act is independent of the relationship in which the parties concerned in it stand to me personally, or, at least, I am not aware that my condemnation is influenced by any

[1] Grey, *Journals of Expeditions in North-West and Western Australia*, ii. 217.

[2] Tylor, 'Primitive Society,' in *Contemporary Review*, xxi. 706. *Idem*, *Anthropology*, p. 408 *sq.* Avebury, *Origin of Civilisation*, p. 466 *sqq.* Eyre, *Journals of Expeditions into Central Australia*, ii. 384, 385, 388. Curr, *The Australian Race*, i. 51. Mathew, 'Australian Aborigines,' in *Jour. and Proceed. Roy. Soc. N.S. Wales*, xxiii. 398. *Idem*, *Eaglehawk and Crow*, p. 93. Taplin, 'Narrinyeri,' in Woods, *Native Tribes of South Australia*, pp. 35, 136 *sq.* Hawtrey, 'Lengua Indians of the Paraguayan Chaco,' in *Jour. Anthr. Inst.* xxxi. 292. Murdoch, 'Ethnological Results of the Point Barrow Expedition,' in *Ann. Rep. Bur. Ethn.* ix. 427 *sq.* (Point Barrow Eskimo). Holm, 'Ethnologisk Skizze af Angmagsalikerne,' in *Meddelelser om Grönland*, x. 85. Nansen, *First Crossing of Greenland*, ii. 295. Johnston, *British Central Africa*, p. 452. New, *Life, Wanderings, and Labours in Eastern Africa*, p. 110 (Wanika). Scott Robertson, *Káfirs of the Hindu-Kush*, p. 183 *sq.*

such relationship. And this holds good whatever be the origin of the custom. Though customs are very frequently rooted in public sympathetic resentment or in public disinterested aversions, they may have a selfish and partial origin as well. At first the leading men of the society may have prohibited certain acts because they found them disadvantageous to themselves, or to those with whom they particularly sympathised. Where custom is an oppressor of women, this oppression may certainly be traced back to the selfishness of men. Where custom sanctions slavery, it is certainly not impartial to the slaves. Yet in the one case as in the other, I assume custom to be in the right, irrespectively of my own station, and I even expect the women and slaves themselves to be of the same opinion. Such an expectation is by no means a chimera. Under normal social conditions, largely owing to men's tendency to share sympathetically the resentment of their superiors, the customs of a society are willingly submitted to, and recognised as right, by the large majority of its members, whatever may be their station. Among the Rejangs of Sumatra, says Marsden, "a man without property, family, or connections, never, in the partiality of self-love, considers his own life as being of equal value with that of a man of substance."[1] However selfish, however partial a certain rule may be, it becomes a true custom, a moral rule, as soon as the selfishness or the partiality of its makers is lost sight of.

It will perhaps be argued that, by deriving the characteristics of moral indignation from its connection with custom, we implicitly contradict our initial assumption that moral emotions lie at the bottom of all moral judgments. But it is not so. Custom is a moral rule only on account of the indignation called forth by its transgression. In its ethical aspect it is nothing but a generalisation of emotional tendencies, applied to certain modes of conduct, and transmitted from generation to generation. Public indignation lies at the bottom of it. In its capacity

[1] Marsden, *History of Sumatra*, p. 247.

of a rule of duty, custom, *mos*, is derived from the emotion to which it gave its name.

As public indignation is the prototype of moral disapproval, so public approval, expressed in public praise, is the prototype of moral approval. Like public indignation, public approval is characterised by a flavour of generality, by disinterestedness, by apparent impartiality. But of these two emotions public indignation, being at the root of custom and leading to the infliction of punishment, is by far the more impressive. Hence it is not surprising that the term "moral" is etymologically connected with *mos*, which always implies the existence of a social rule the transgression of which evokes public indignation. Only by analogy it has come to be applied to the emotion of approval as well.

Though taking their place in the system of human emotions as public emotions felt by the society at large, moral disapproval and approval have not always remained inseparably connected with the feelings of any special society. The unanimity of opinion which originally characterised the members of the same social unit was disturbed by its advancement in civilisation. Individuals arose who found fault with the moral ideas prevalent in the community to which they belonged, criticising those ideas on the basis of their own individual feelings. Such rebels are certainly no less justified in speaking in the name of morality true and proper, than is society itself. The emotions from which their opposition against public opinion springs may be, in nature, exactly similar to the approval or disapproval felt by the society at large, though they are called forth by different facts or, otherwise, differ from these emotions in degree. They may present the same disinterestedness and apparent impartiality—indeed, dissent from the established moral ideas largely rises from the conviction that the apparent impartiality of public feelings is an illusion. As will be seen, the evolution of the moral consciousness involves a progress in impartiality and justice; it tends towards an equalisation

of rights, towards an expansion of the circle within which the same moral rules are held applicable; and this process is in no small degree effected by the efforts made by high-minded individuals to raise public opinion to their own standard of right. Nay, as we have already noticed, individual moral feelings do not even lack that flavour of generality which characterises the resentment and approval felt unanimously by a body of men. Though, perhaps, persecuted by his own people as an outcast, the moral dissenter does not regard himself as the advocate of a mere private opinion.[1] Even when standing alone, he feels that his conviction is shared at least by an ideal society, by all those who see the matter as clearly as he does himself, and who are animated with equally wide sympathies, an equally broad sense of justice. Thus the moral emotions remain to the last public emotions—if not in reality, then as an ideal.

The fact that the earliest moral emotions were public emotions implies that the original form of the moral consciousness cannot, as is often asserted, have been the individual's own conscience. Dr. Martineau's observation, that the inner springs of other men's actions may be read off only by inference from our own experience, by no means warrants his conclusion that the moral consciousness is at its origin engaged in self-estimation, instead of circuitously reaching this end through a prior critique upon our fellow-men.[2] The moral element which *may* be contained in the emotion of self-reproach or self-approval, is generally to such an extent mixed up with other and non-moral elements, that it can be disentangled only by a careful process of abstraction, guided by the feelings of other people with reference to our conduct or by our own feelings with reference to the conduct of others. The moral emotion of remorse presupposes some notion of right and wrong, and the application of this notion to one's own conduct. Hence it could never have

[1] *Cf.* Pollock, *Essays in Jurisprudence and Ethics*, p. 309.

[2] Martineau, *Types of Ethical Theory* ii. 29 *sqq.*

been distinguished as a special form of, or element in, the wider emotion of self-reproach, unless the idea of morality had been previously derived from another source. The similarity between regret and remorse is so close, that in certain European languages there is only one word for both.[1]

From what has been said above it is obvious that moral resentment is of extreme antiquity in the human race, nay, that the germ of it is found even in the lower animal world, among social animals capable of feeling sympathetic resentment. The origin of custom as a moral rule no doubt lies in a very remote period of human history. We have no knowledge of a savage people without customs, and, as will be seen subsequently, savages often express their indignation in a very unmistakable manner when their customs are transgressed. Various data prove that the lower races have some feeling of justice, the flower of all moral feelings. And the supposition that remorse is unknown among them,[2] is not only unfounded, but contradicted by facts. Indeed, genuine remorse is so hidden an emotion even among ourselves, that it cannot be expected to be very conspicuous among savages. As we have seen, it requires a certain power of abstraction, as well as great impartiality of feeling, and must therefore be sought for at the highest reaches of the moral consciousness rather than at its lowest degrees. But to suppose that savages are entirely without a conscience is quite contrary to what we may infer from the great regard in which they hold their customs, as also contrary to the direct statements of travellers who have taken some pains to examine the matter. The answer given by the young Australian when asked by Mr. Howitt whether he might not eat a female opossum if the old men were not present,[3] certainly indicates conscientious respect for a moral rule, and is, as Mr. Fison observes, "a striking instance of that 'moral

[1] As, in Swedish, the word *ånger*.
[2] Avebury, *Origin of Civilisation*, pp. 421, 426.
[3] See *supra*, p. 118.

feeling' which Sir John Lubbock denies to savages."[1] Dr. Hübbe-Schleiden asserts that, among the people whom he had in his service, he found the Negroes, in their sense of duty, not inferior, but rather superior to the Europeans.[2] Mr. New says of the Wanika :—"Conscience lives in them as the vicegerent of Almighty God, and is ever excusing or else accusing them. It may be blunted, hardened, resisted, and largely suppressed, but there it is."[3] M. Arbousset once desired some Bechuanas to tell him whether the blacks had a conscience. "Yes, all have one," they said in reply. "And what does it say to them?" "It is quiet when they do well and torments them when they sin." "What do you call sin?" "The theft, which is committed trembling, and the murder from which a man purifies and re-purifies himself, but which always leaves remorse."[4] Mr. Washington Matthews refers to a passage in a Navaho story which "shows us that he who composed this tale knew what the pangs of remorse might be, even for an act not criminal, as we consider it, but merely ungenerous and unfilial."[5]

A different opinion as to the existence of moral feelings among savages has been expressed by Lord Avebury. To him even modern savages seem to be "almost entirely wanting in moral feeling"; and he says that he has "been forced to this conclusion, not only by the direct statements of travellers, but by the general tenor of their remarks, and especially by the remarkable absence of repentance and remorse among the lower races of men."[6] The importance of the subject renders

[1] Fison and Howitt, *op. cit.* p. 257 n.

[2] Hübbe-Schleiden, *Ethiopien*, p. 184 *sq.*

[3] New, *op. cit.* p. 96.

[4] Arbousset and Daumas, *Exploratory Tour to the North-East of the Colony of the Cape of Good Hope*, p. 322.

[5] Matthews, 'Study of Ethics among the Lower Races,' in *Journal of American Folk-Lore*, xii. 7.

[6] Avebury, *op. cit.* pp. 414, 426. Lord Avebury quotes Burton's statement that in Eastern Africa, as also among the Yoruba negroes, conscience does not exist, and that "repentance" expresses regret for missed opportunities of mortal crime. Speaking of the stage of savagery represented by the Bakairi, Dr. von den Steinen likewise observes (*Unter den Naturvolkern Zentral-Brasiliens*, p. 351), "Goodness and badness exist only in the crude sense of doing to others what is agreeable or disagreeable, but the moral consciousness, and the ideal initiative, influenced neither by prospect of reward nor fear of punishment, are entirely lacking." Lippert maintains (*Kulturgeschichte der Menschheit*, i. 27) "dass sich das Gewissen beim Naturmenschen nicht als 'Selbsttadel,' sondern nur als Furcht zeigt."

it necessary to scrutinise the facts which Lord Avebury has adduced in support of his conclusion.

Mr. Neighbors states that, among the Comanches of Texas, "no individual action is considered a crime, but every man acts for himself according to his own judgment, unless some superior power—for instance, that of a popular chief—should exercise authority over him." Another writer says, "The Redskin has no moral sense whatever." Among the Basutos, according to Casalis, morality "depends so entirely upon social order that all political disorganisation is immediately followed by a state of degeneracy, which the re-establishment of order alone can rectify." Similar accounts are given as regards Central Africa and some other places. Thus at Jenna, and in the surrounding districts, "whenever a town is deprived of its chief, the inhabitants acknowledge no law—anarchy, troubles, and confusion immediately prevail, and till a successor is appointed all labour is at an end." The Damaras "seem to have no perceptible notion of right or wrong." The Tasmanians were "without any moral views and impressions." Eyre says of the Australians that they have "no moral sense of what is just and equitable in the abstract"; and a missionary had very great difficulty in conveying to those natives any idea of sin. The Kacharis had "in their own language no words for sin, for piety, for prayer, for repentance"; and of another of the aboriginal tribes of India Mr. Campbell remarks that they "are . . . said to be without moral sense." Lord Avebury in this connection even quotes a statement to the effect that the expressions which the Tonga Islanders have for ideas like vice and injustice "are equally applicable to other things." The South American Indians of the Gran Chaco are said by the missionaries to "make no distinction between right and wrong, and have therefore neither fear nor hope of any present or future punishment or reward, nor any mysterious terror of some supernatural power." Finally, Lord Avebury observes that religion, except in the more advanced races, has no moral aspect or influence, that the deities are almost invariably regarded as evil, and that the belief in a future state is not at first associated with reward or punishment.[1]

Many of the facts referred to by Lord Avebury do not at all presuppose the absence of moral feelings. It is difficult to see why the malevolence of gods should prevent men from having notions of right and wrong, and we know from the Old Testament itself that there may be a moral law without Para-

[1] Avebury, *op. cit.* p. 417 *sqq.*

dise and Hell. The statement concerning the Comanches only implies that, among them, individual freedom is great; whilst the social disorder which prevails among various peoples at times of political disorganisation indicates that the cohesiveness of the political aggregate is weak, as well as a certain discrepancy between moral ideas and moral practice. In Morocco, also, the death of a Sultan is immediately followed by almost perfect anarchy, and yet the people recognise both the moral tenets of the Koran and the still more stringent tenets of their ancient customs. As to the Basutos, Casalis expressly states that they have the idea of moral evil, and represent it in their language by words which mean ugliness, or damage, or debt, or incapacity;[1] and M. Arbousset once heard a Basuto say, on an unjust judgment being pronounced, "The judge is powerful, therefore we must be silent; if he were weak, we should all cry out about his injustice."[2] Moreover, a people may be unconscious of what is just "in the abstract," and of moral "notions," in the strict sense of the term, and at the same time, in concrete cases, distinguish between right and wrong, just and unjust. Of the Western Australians, Mr. Chauncy expressly says that they have a keen sense of justice, and mentions an instance of it;[3] whilst our latest authorities on the Central Australians observe that, though their moral code differs radically from ours, "it cannot be denied that their conduct is governed by it, and that any known breaches are dealt with both surely and severely."[4] As regards the Tonga Islanders, Mariner states that "their ideas of honour and justice do not very much differ from ours except in degree, they considering some things more honourable than we should, and others much less so"; and in another place he says that "the notions of the Tonga people, in respect to honour and justice . . . are tolerably well defined, steady and universal," though not always acted upon.[5] The statement that the American Indians have "no moral sense whatever," sounds very strange when compared with what is known about their social and moral life; Buchanan, for instance, asserts that they "have a strong innate sense of justice."[6] Of course, there may be diversity of opinion as to what constitutes the "moral sense"; if the conception of sin or other theological notions are regarded as essential to it, it is probably

[1] Casalis, *Basutos*, p. 304.
[2] Arbousset and Daumas, *op. cit.* p. 389.
[3] Brough Smyth, *Aborigines of Victoria*, ii. 228.
[4] Spencer and Gillen, *Native Tribes of Central Australia*, p. 46.
[5] Mariner, *Natives of the Tonga Islands*, ii. 159, 163.
[6] Buchanan, *Sketches of the History, &c., of the North American Indians*, p. 158.

wanting in a large portion of mankind, and not only in the least civilised. When missionaries or travellers deny to certain savages moral feelings and ideas, they seem chiefly to mean feelings or ideas similar to their own.

Of many savage and barbarous peoples it is directly affirmed that they have a sense of justice. Mr. Man says concerning the Andaman Islanders, "Certain traits which have been noticeable in their dealings with us would give colour to the belief that they are not altogether lacking in the sense of honour, and have some faint idea of the meaning of justice."[1] Colonel Dalton states that, among the Korwás on the highlands of Sirgúja, when several persons are implicated in one offence, he has found them "most anxious that to each should be ascribed his fair share of it, and no more, the oldest of the party invariably taking on himself the chief responsibility as leader or instigator, and doing his utmost to exculpate as unaccountable agents the young members of the gang."[2] The Aleuts, according to Veniaminof, are "naturally inclined to be just," and feel deeply undeserved injuries.[3] Kolben, who is nowadays recognised as a good authority,[4] wrote of the Hottentots, "The strictness and celerity of the Hottentot justice are things in which they outshine all Christendom."[5] Missionaries have wondered that, among the Zulus, "in the absence for ages of all revealed truth and all proper religious instruction, there should still remain so much of mental integrity, so much ability to discern truth and justice, and withal so much regard for these principles in their daily intercourse with one another."[6] Zöller ascribes to the Negro a well-developed feeling of justice. "No European," he says, "at least no European child, could discriminate so keenly between just and unjust punishment."[7] Mr. Hinde observes:—"One of the most marked characteristics of black people is their keen perception of justice. They do not resent merited punishment where it is coupled with justice upon other matters. The Masai have their sense of justice particularly strongly developed."[8] Dieffenbach writes of the Maoris, "There is a high natural sense of justice amongst them;

[1] Man, in *Jour. Anthr. Inst.* xii. 92.

[2] Dalton, *Descriptive Ethnology of Bengal*, p. 230.

[3] Veniaminof, quoted by Dall, *Alaska*, p. 398.

[4] Theophilus Hahn remarks (*The Supreme Being of the Khoi-Khoi*, p. 40) that Kolben's reports have been doubted by European writers without any good reason.

[5] Kolben, *Present State of the Cape of Good Hope*, i. 301. *Cf. ibid.* i. 339.

[6] Quoted by Tyler, *Forty Years among the Zulus*, p. 197.

[7] Zöller, *Kamerun*, ii. 92. *Cf. Idem*, *Das Togoland*, p. 37.

[8] Hinde, *The Last of the Masai*, p. 34. *Cf.* Foreman, *Philippine Islands*, p. 185.

and it is from us that they have learnt that many forbidden things can be done with impunity, if they can only be kept secret."[1] Justice is a virtue which always commands respect among the Bedouins, and "injustice on the part of those in power is almost impossible. Public opinion at once asserts itself; and the Sheykh, who should attempt to override the law, would speedily find himself deserted."[2]

Much less conspicuous than the emotion of public resentment is the emotion of public approval. These public emotions are largely of a sympathetic character, and, whilst a tendency to sympathetic resentment is always involved in the sentiment of social affection, a tendency to sympathetic retributive kindly emotion is not. Among the lower animals this latter emotion seems hardly to occur at all, and in men it is often deplorably defective. Resentment towards an enemy is itself, as a rule, a much stronger emotion than retributive kindly emotion towards a friend. And, as for the sympathetic forms of these emotions, it is not surprising that the altruistic sentiment is more readily moved by the sight of pain than by the sight of pleasure,[3] considering that its fundamental object is to be a means of protection for the species. Moreover, sympathetic retributive kindliness has powerful rivals in the feelings of jealousy and envy, which tend to make the individual hostile both towards him who is the object of a benefit and towards him who bestows it. As an ancient writer observes, "many suffer with their friends when the friends are in distress, but are envious of them when they prosper."[4] But though these circumstances are a hindrance to the rise of retributive kindly emotions of a sympathetic kind, they do not prevent public approval in a case when the whole society profits by a benefit, nor have they any bearing on those disinterested instinctive likings of which I have spoken above. I think, then, we may

[1] Dieffenbach, *Travels in New Zealand*, ii. 106.
[2] Blunt, *Bedouin Tribes of the Euphrates*, ii. 224 *sqq.*
[3] *Cf.* Jodl, *Lehrbuch der Psychologie*, p. 686.
[4] Schmidt, *Ethik der alten Griechen*, i. 259.

safely conclude that public praise and moral approval occurred, to some degree, even in the infancy of human society. It will appear from numerous facts recorded in following chapters, that the moral consciousness of modern savages contains not only condemnation, but praise.

CHAPTER VI

ANALYSIS OF THE PRINCIPAL MORAL CONCEPTS

We have assumed that the moral concepts are essentially generalisations of tendencies in certain phenomena to call forth moral emotions. We have further assumed that there are two kinds of moral emotions: indignation and approval. If these assumptions hold good, either indignation or approval must be at the bottom of every moral concept. That such is really the case will, I think, become evident from the present chapter, in which the principal of those concepts will be analysed.

Our analysis will be concerned with moral concepts formed by the civilised mind. Whilst the most representative of English terms for moral estimates have equivalents in the other European languages, I do not take upon myself to decide to what extent they have equivalents in non-European tongues. That all existing peoples, even the very lowest, have moral emotions is as certain as that they have customs, and there can be no doubt that they give expression to those emotions in their speech. But it is another question how far their emotions have led to such generalisations as are implied in moral concepts. Concerning the Fuegians M. Hyades observes, "Les idées abstraites sont chez eux à peu près nulles. Il est difficile de définir exactement ce qu'ils appellent un homme bon et un homme méchant; mais à coup sûr ils n'ont pas la notion de ce qui est bon ou mauvais, abstraction faite de l'individu ou de l'objet auquel ils appliqueraient l'un ou l'autre

de ces attributs."[1] The language of the Californian Karok, though rich in its vocabulary, is said to possess no equivalent for "virtue."[2] In the aboriginal tongues of the highlanders of Central India "there seem to be no expressions for abstract ideas, the few such which they possess being derived from the Hindí. . . . . The nomenclature of religious ceremony, of moral qualities, and of nearly all the arts of life they possess, are all Hindí."[3] On a strict examination of the language of the Tonga Islanders, Mariner could discover "no words essentially expressive of some of the higher qualities of human merit, as virtue, justice, humanity; nor of the contrary, as vice, injustice, cruelty, &c. They have indeed expressions for these ideas," he adds, but these expressions "are equally applicable to other things. To express a virtuous or good man, they would say, *tangata lillé*, a good man, or *tangata loto lillé*, a man with a good mind; but the word lillé, good (unlike our word virtuous), is equally applicable to an axe, canoe, or anything else."[4] Of the Australian natives about Botany Bay and Port Jackson Collins wrote, "That they have ideas of a distinction between *good* and *bad* is evident from their having terms in their language significant of these qualities." A fish of which they never ate, was *wee-re*, or bad, whereas the kangaroo was *bood-yer-re*, or good; and these expressions were used not only for qualities which they perceived by their senses, but for all kinds of badness and goodness, and were the only terms they had for wrong and right. "Their enemies were wee-re; their friends bood-yer-re. On our speaking of cannibalism, they expressed great horror at the mention, and said it was wee-re. On seeing any of our people punished or reproved for ill-treating them, they expressed their approbation, and said it was bood-yer-re, it was right."[5]

[1] Hyades and Deniker, *Mission scientifique du Cap Horn*, vii. 251.

[2] Powers, *Tribes of California*, p. 22.

[3] Forsyth, *Highlands of Central India*, p. 139.

[4] Mariner, *Natives of the Tonga Islands*, ii. 147 *sq.*

[5] Collins, *English Colony in New South Wales*, i. 548 *sq.*

Considering, moreover, that even the European languages make use of such general terms as "good" and "bad" for the purpose of expressing moral qualities, it seems likely that, originally, moral concepts were not clearly differentiated from other more comprehensive generalisations, and that they assumed a more definite shape only by slow degrees. At the same time we must not expect to find the beginning of this process reflected in the vocabularies of languages. There is every reason to believe that a savage practically distinguishes between the "badness" of a man and the "badness" of a piece of food, although he may form no clear idea of the distinction. As Professor Wundt observes, "the phenomena of language do not admit of direct translation back again into ethical processes: the ideas themselves are different from their vehicles of expression, and here as everywhere the external mark is later than the internal act for which it stands."[1] Language is a rough generaliser; even superficial resemblance between different phenomena often suffices to establish linguistic identity between them. Compare the rightness of a line with the rightness of conduct, the wrongness of an opinion with the wrongness of an act. And notice the different significations given to the verb "ought" in the following sentences:—"They ought to be in town by this time, as the train left Paris last night"; "If you wish to be healthy you ought to rise early"; "You ought always to speak the truth." Though it may be shown that in these statements the predicate "ought" signifies something which they all have in common—the reference to a rule,[2]—we must by no means assume that this constitutes the essence of the moral "ought," or gives us the clue to its origin.

Discarding all questions of etymology as irrelevant to our subject,[3] we shall, in our analysis of moral concepts,

[1] Wundt, *Ethik*, p. 36 (English translation, p. 44).

[2] *Cf.* Stephen, *Liberty, Equality, Fraternity*, p. 343 *sq.*

[3] The attempt to apply the philological method to an examination of moral concepts has, in my opinion, proved a failure—which may be seen from Mr. Baynes' book on *The Idea of God and the Moral Sense in the Light of Language.*

endeavour to fix the true import of each concept by examining how, and under what circumstances, the term expressing it is generally applied. We shall restrict ourselves to the principal, typical terms which are used as predicates in moral judgments. If we succeed in proving that they are all fundamentally derived from either moral indignation or moral approval, there can be no reasonable doubt as to the origin of the rest.

The tendency in a phenomenon to arouse moral indignation is directly expressed by the term *bad*, and a disposition of mind which is characterised by some special kind of badness is called *vice*. Closely allied to the term "bad" is the term *wrong*. But there is a difference in the use of these words. Whilst "bad" may be applied both to a person's character and to his conduct, only his conduct may be said to be "wrong." The reason for this is that the concept of moral wrongness is modelled on the idea of a moral law, the breach of which is regarded as "wrong." And, by laying down a moral law, we only enjoin a certain mode of conduct; we do not command a person to have a certain character.

The moral law is expressed by the term *ought*, a term which, in modern ethics, generally occupies a central position among moral predicates. The notion which it embodies is frequently looked upon as ultimate and incapable of analysis—"too elementary" (to quote Professor Sidgwick) "to admit of any formal definition."[1] This view, I think, instead of simplifying the matter, has been one of the chief causes of the prevailing confusion in ethical thought.

Far from being a simple notion, "ought" appears to me clearly decomposable, even though it have a special flavour of its own. First of all, it expresses a conation. When I feel that I ought to do a thing, I experience an impulse to do it, even though some opposite impulse may finally determine my action. And when I say to another man, "You ought to do this, or that," there is certainly implied

[1] Sidgwick, *Methods of Ethics*, p. 32.

a purpose to influence his action in a certain direction. In the notion of *duty*, the ethical import of which is identical with that of "ought," this conative element is not so obvious.

Closely connected with the conative nature of "ought" is the imperative character it is apt to assume. But, though frequently used imperatively, "ought" is not necessarily and essentially imperative. Even if the "ought" which I address to myself, in a figurative sense, may be styled a command, it is hardly appropriate to speak of a present command with reference to past actions. The common phrase, "You ought to have done this, or that," cannot be called a command.

The conation expressed in "ought" is determined by the idea that the mode of conduct which ought to be performed is not, or will possibly not be, performed. It is also this idea of its not being performed that determines the emotion which gives to "ought" the character of a moral predicate. The doing of what ought not to be done, or the omission of what ought not to be omitted, is apt to call forth moral indignation—this is the most essential fact involved in the notion of "ought." Every "ought"-judgment contains implicitly a negation. Nobody would ever have dreamt of laying down a moral rule if the idea of its transgression had not presented itself to his mind. We may reverse the words of the Apostle,[1] and say that where no transgression is, there is no law. When Solon was asked why he had specified no punishment for one who had murdered a father, he replied that he supposed it could not occur to any man to commit such a crime.[2] Similarly, the modern Shintoist concludes that the primæval Japanese were pure and holy from the fact that they are represented as a people who had no moral commandments.[3] It is this prohibitive character of "ought" that has imparted to duty that idea of antagonism to inclination which has found its most famous expression

[1] *Romans*, iv. 15.
[2] Diogenes Laërtius, *Solon*, 10. Cicero, *Pro S. Roscio Amerino*, 25.
[3] Griffis, *Religions of Japan*, p. 72.

in the Kantian ethics, and which made Bentham look upon the word itself as having in it "something disagreeable and repulsive."[1] It is the intrinsic connection between "ought" and "wrong" that has given to duty the most prominent place in ethical speculation whenever moral pessimism has been predominant. Whilst the ancient Greeks, with whom happiness was the state of nature, never spoke of duty, but held virtue to be the Supreme Good, Christianity, on the other hand, which looked upon man as a being born and bred in sin, regarded morals pre-eminently as the science of duty. Then, again, in modern times, Kant's categorical imperative came as a reaction against that moral optimism which once more had given the preference to virtue, considering everything in the world or in humanity as beautiful and good from the very beginning.[2] It is also worth noting that the feeling of self-complacency connected with the consciousness of having acted in accordance with the law of duty, has no distinctively expressive name in ordinary language, while the opposite feeling is known by so familiar and distinctive a term as "remorse." This is not, as has been said,[3] "a significant indication of the moral condition of mankind," but a significant indication of the true import of the notion of duty itself.

It is not, then, in the emotion of approval that we must seek for the origin of this concept. We may undoubtedly applaud him who is faithful to his duty, but the idea of duty involves no applause. There is no contradiction in the omission of an act being disapproved of and the performance of it being praised. "Ought" and "duty" express only the tendency of an omission to call forth disapproval, and say nothing about the consequences of the act's performance. The conscientious man refuses the homage paid to him, by saying, "I have only done my duty." Duty is a "stern

[1] Bentham, *Deontology*, i. 10.
[2] Ziegler, *Social Ethics*, pp. 22, 75 *q.*
[3] Murray, *Introduction to Ethics*, p. 108.

lawgiver," who threatens with punishment, but promises no reward.[1]

The ideas of "ought" and "duty" thus spring from the same source as the ideas of "bad" and "wrong." To say that a man ought to do a thing is, so far as the morality of his action is concerned, the very same thing as to say that it is bad, or wrong, of him not to do it—in other words, that the not-doing of it has a tendency to call forth moral disapproval.

"Wrong" is popularly regarded as the opposite of *right*, and they are really contradictories, but only within the sphere of positive moral valuation. We do not call the actions of irresponsible beings, like animals or infants, "right," although they are not wrong; nor do we pronounce morally indifferent actions of responsible beings to be "right," unless we wish thereby especially to mark their moral value as not being wrong. An act which is permissible is of course not wrong, and so far it may be said to be right; but it would be more accurate to say that people have *a* right to do it. The adjective "right," in its strict sense, refers to cases from which the indifferent is excluded. A right action is, on a given occasion, *the* right action, and other alternatives are wrong. "Right" is thus closely related to "ought," but at the same time "right" and "obligatory" are not identical. I cannot quite subscribe to the view of Professor Sidgwick, that "in the recognition of conduct as 'right' is involved an authoritative prescription to do it."[2] What is right is in accordance with the moral law; the adjective "right" means that duty is fulfilled. It is true that the super-obligatory also is right. But "right" takes no notice of the super-obligatory as distinct from the obligatory, and what goes

[1] The intrinsic connection between duty and disapproval has previously been noticed by Stuart Mill (in a note to James Mill's *Analysis of the Human Mind*, ii. 325), according to whom "no case can be pointed out in which we consider anything as a duty, and any act or omission as immoral or wrong, without regarding the person who commits the wrong and violates the duty as a fit object of punishment." *Cf.* also Bain, *Emotions and the Will*, ch. 15, and Gizycki, *Introduction to the Study of Ethics*, English adaptation by Stanton Coit, p. 102 *sq.*

[2] Sidgwick, *op. cit.* p. 106.

beyond duty always involves the fulfilment of some duty. It may be admitted to be "not only right," but not to be more right. Right has no comparative. A duty is either fulfilled or not, and unless it be perfectly fulfilled the conduct is wrong. There are degrees of wrongness and of goodness, as the moral indignation and the moral approval may be stronger or weaker, but there are no degrees of rightness.

The fact that the right action is a duty fulfilled accounts for the erroneous opinion so generally held by ethical writers that "right" is intrinsically connected with moral approval.[1] The choice of the right alternative may give us satisfaction and call forth in us an emotion of approval. This emotion may be the motive for our pointing out the rightness of the act, and the judgment in which we do so may even intrinsically contain applause. The manner in which the judgment "That is right," is pronounced, often shows that it is meant to be an expression of praise. But this does not imply that the concept "right" by itself has reference to moral approval and involves praise. It only means that in one word is expressed a certain concept—the concept that a duty is fulfilled—*plus* an emotion of approval. That "right" *per se* involves no praise is obvious from the fact that we regard it as perfectly right to pay a debt and to keep a promise, or to abstain from killing, robbing, or lying, although such acts or omissions generally have no tendency whatever to evoke in us an emotion of moral approval.

The concept of "right," then, as implying that the opposite mode of conduct would have been wrong, ultimately derives its moral significance from moral disapproval. This may seem strange considering that "right" is commonly looked upon as positive and "wrong" as its negation. But we must remember that language and popular conceptions in these matters start

[1] Hutcheson, *Essay on the Nature and Conduct of the Passions and Affections, with Illustrations on the Moral Sense*, p. 279. Clifford, *Lectures and Essays*, pp. 294, 304 *sq.* Fowler and Wilson, *Principles of Morals*, ii. 199. Alexander, *Moral Order and Progress*, p. 399.

from the notion of a moral rule or command. It is a matter of paramount importance that such modes of conduct as are apt to arouse moral indignation should be avoided. People try to prevent them by prohibitions and injunctions, often emphasised by threats of penalties for the transgressors. The whole moral and social discipline is based upon commands ; customs are rules of conduct, and so are laws. It is natural, then, that the notion of a command should figure uppermost in popular conceptions of morality. Obedience to the command is right, a breach of it is wrong. But the fact which gives birth to the command itself is the indignation called forth by the act which the command forbids, or by the omission of that which it enjoins.

I have spoken here of "right" as an adjective. Used as a substantive, to denote *a right*, it also, in whatever sense it be used, expresses a concept which is rooted in the emotion of moral disapproval. To have a right to do a thing is to be allowed to do it, either by positive law, in the case of a legal right, or by the moral law, in the case of a moral right ; in other words, to have a moral right to do a thing means that it is not wrong to do it. But generally the concept of "a right" means something more than this. From the fact that an act is allowable, that it is not wrong, it follows, as a rule, that it ought not to be prevented, that no hindrance ought to be put in the way of its performance ; and this character of inviolability is largely included in the very concepts of rights. That a man has a right to live does not merely mean that he commits no wrong by supporting his life, but it chiefly means that it would be wrong of other people to prevent him from living, that it is their duty not to kill him, or even, as the case may be, that it is their duty to help him to live. And in order to constitute a right in him, the duty in question must be a duty *to him*. That a right belonging to A is not merely a duty incumbent on B, but a duty *to* A incumbent on B, will become evident from an example. To kill another

person's slave may be condemned as an injury done to the slave himself, in which case it is a duty to the slave not to kill him; or to kill another person's slave may be condemned on account of the loss it causes to the master, in which case it is deemed a duty to the master not to kill the slave. In the latter case we can hardly say that the duty of not killing the slave constitutes a right to live in the slave—it only constitutes a right in the master to retain his slave alive, not to be deprived of him by an act causing his death.

So commonly does the conception of a right belonging to a person contain the idea of a duty which other persons owe him, that it seems necessary to point out the existence of rights in which no such idea is involved. A man's right to defend his country, for instance, does not intrinsically imply that it is wrong of the enemy to disable him from doing so. But, on the other hand, there are rights which are nothing else than duties towards those who have the rights. A right is not always a person's right to a certain activity, or to abstaining from a certain activity; it may have exclusive reference to other people's acts or omissions. That a man has the right to be rewarded by his country only means that his country is under an obligation to reward him. That a father has a right to be obeyed by his children only means that it is a duty incumbent on his children to obey him. That a person has the right of bodily integrity only means that it is wrong to inflict on him a bodily injury. These rights may, no doubt, if violated, give rise to certain rights of activity: a man may have a right to claim the reward which is due to him, a father to exact from his children the obedience which they owe him, a person who is wronged to defend himself. But the rights of claiming a reward, of exacting obedience, of resisting wrong, are certainly not identical with the rights of being rewarded, of being obeyed, of not being wronged.

It is commonly said that rights have their corresponding duties. But if this expression is to be used, it must be

remembered that the duty which "corresponds" to a right, as a matter of fact, is either included in that right or simply identical with it. The identity between the right and the duty, then, consists in this, that the notion of a right belonging to a person is identical with the notion of a duty towards him. Rights and duties are not identical in the sense that it is always a duty to insist on a right, though this has been urged.[1] If anybody prevents me from making use of my right it may no doubt be deemed a duty on my part not to tolerate the wrong committed against me, but nothing of the kind is involved in the concept of a right. And the same may be said with reference to the assertion that a right to do a thing is always, at the same time, a duty to do it—an assertion which is a consequence of the doctrine that there is nothing morally indifferent and nothing that goes beyond duty; in other words, that all conduct of responsible beings is either wrong or obligatory. Even if this doctrine were psychologically correct—which it is not—even if there were a constant coincidence between the acts which a person has a right to perform and acts which it is his duty to perform, that would not constitute identity between the concepts of rights and duties. According to the meaning of a right, A's right may be B's duty towards A, but A's right cannot be A's duty towards B or anybody else.

Closely connected with the notions of wrongness and rightness are the notions of *injustice* and *justice*. Injustice, indeed, is a kind of wrongness. To be unjust is always to be unjust to somebody, and this implies a doing of wrong to somebody, a violation of somebody's right. "Justice," again, is a kind of rightness. It involves the notion that a duty to somebody, a duty corresponding to a right, is fulfilled;[2] we say that justice "demands" that it should be fulfilled. As an act is "right" if its omission

[1] Alexander, *op. cit.* p. 146 *sq.*

[2] According to the *Institutiones* of Justinian (i. 1. 1) "justice is the constant and perpetual will to render to each one his right,"—"justitia est constans et perpetua voluntas jus suum cuique tribuens."

is wrong, so an act is "just," in the strict sense of the word, if its omission is unjust. But, like the adjective "right," the adjective "just" is also sometimes used in a wider sense, to denote that something is "not unjust." As non-obligatory acts that are "not wrong" can hardly be denied to be "right," so non-obligatory acts that are "not unjust" can hardly be denied to be "just," although they are not demanded by justice.

At the same time, "injustice" and "justice" are not simply other names for violating or respecting rights. Whenever we style an act "unjust," we emphasise that it involves partiality. We do not denominate murder and robbery unjust, but wrong or criminal, because the partiality involved in their commission is quite obscured by their general wrongness or criminality; but we at once admit their gross injustice when we consider that the murderer and robber indulged their own inclinations with utter disregard of their neighbours' rights. And we look upon "unjust" as an exceedingly appropriate term for a judge who condemns an innocent man with the intention to save the culprit, and for an employer who keeps for himself a profit which he ought to share with his employees. Again, when we style an act "just," in the strict sense of the term, we point out that an undue preference would have been shown to somebody by its omission. It is true that, as Adam Smith observes, "we may often fulfil all the rules of justice by sitting still and doing nothing," [1] and that the man who barely abstains from violating either the person or the estate or the reputation of his neighbours so far does justice to them; but in such a case we hardly apply the epithet "just," simply because there is no reason for emphasising the partiality involved in the opposite mode of conduct. On the other hand, we say it is just, or, more emphatically, that justice demands, that the innocent should not suffer in the place of the guilty, or that the employer should give his employees all their dues.

It is necessary to note that the impartiality which justice

[1] Adam Smith, *Theory of Moral Sentiments*, p. 117.

demands is impartiality within the recognised order of rights, whether these rights themselves have a partial origin or not. A father is unjust if he gives away property to one of his children in preference to others, in case all of them are recognised to have a right to an equal share in his property, even though it be only a conditional right; and a man is unjust if he keeps for himself a profit to which another man has an equal right. But in a society which regards slavery as a morally permissible institution, a man is not necessarily deemed unjust if he beats a slave in a case where it would have been wrong to beat a freeman. However, in the case of unequal rights, justice admits of no greater difference of treatment than what the difference in rights implies. It may be just to punish a man who by a crime has forfeited that right to be protected from wilfully inflicted pain which every law-abiding citizen possesses, but it is unjust to extend the inequality between his condition and the condition of others beyond the inequality of their rights by inflicting upon him a punishment which is unduly severe.

It is the emphasis laid on the duty of impartiality that gives justice a special prominence in connection with punishments and rewards. A man's rights depend to a great extent upon his actions. Other things being equal, the criminal has not the same rights to inviolability as regards reputation, or freedom, or property, or life, as the innocent man; the miser and egoist have not the same rights as the benefactor and the philanthropist. On these differences in rights due to differences in conduct, the terms "just" and "unjust" lay stress; for in such cases an injustice would have been committed if the rights had been equal. When we say of a criminal that he has been "justly" imprisoned we point out that he was no victim of undue partiality, as he had forfeited the general right to freedom on account of his crime. When we say of a benefactor that he has been "justly" rewarded, we point out that no favour was partially bestowed upon him in preference to others, as he had acquired the special right of being rewarded. But the

"justice" of a punishment or a reward, strictly speaking, involves something more than this; as we have seen, what is strictly "just" is always the discharge of a duty corresponding to a right which would have been in a partial manner disregarded by a transgression of the duty. If it is just that a person should be rewarded, he ought to be rewarded, and to fulfil this duty is to do him justice. Again, if it is just that a person should be punished, he ought to be punished, and his not being punished is an injustice to other persons. It is an injustice towards all those whose condemnation of the wrong act finds its recognised expression in the punishment, inasmuch as their rightful claim that the criminal should be punished, their right of resisting wrong, is thereby violated in favour of the wrong-doer. Moreover, his not being punished is an injustice towards other criminals, who have been punished for similar acts, in so far as they have a right to demand that no undue preference should be shown to anybody whose guilt is equal to theirs. Retributive justice may admit of a certain latitude as to the retribution. It may be a matter of small concern from the community's point of view whether men are fined or imprisoned for the commission of a certain crime. But it may be a demand of justice that, under equal circumstances, all of them should be punished with the same severity, since the crime has equally affected their rights.

The emphasis which "injustice" lays on the partiality of a certain mode of conduct always involves a condemnation of that partiality. Like every other kind of wrongness, "injustice" is thus a concept which is obviously based on the emotion of moral disapproval. And so is the concept of "justice," whether it involves the notion that an injustice would be committed if a certain duty were not fulfilled, or it is simply used to denote that a certain mode of conduct is "not unjust." But there is yet another sense in which the word "just" is applied. It may emphasise the impartiality of an act in a tone of praise. Considering how difficult it is to be perfectly impartial and to give every man his due, especially when one's own interests are

concerned, it is only natural that men should be applauded for being just, and consequently that to call a person just should often be to praise him. So, also, "justice" is used as the name for a virtue, "the mistress and queen of all virtues."[1] But all this does not imply that an emotion of moral approval enters into the concept of justice. It only means that one word is used to express a certain concept—a concept which, as we have seen, ultimately derives its import from moral disapproval—*plus* an emotion of approval. That the concept of justice by itself involves no reference to the emotion of moral approval appears from the fact that it is no praise to say of an act that it is "only just."

From the concepts springing from moral disapproval we pass to those springing from moral approval. Foremost among these ranks the concept *good*.[2]

Though "good," being affixed to a great variety of objects, takes different shades of meaning in different cases, there is one characteristic common to everything called "good." This is hardly, as Mr. Spencer maintains,[3] its quality of being well adapted to a given end. It is true that the good knife is one which will cut, the good gun one which carries far and true. But I fail to see that "good" in a moral sense involves any idea of an adaptation to a given purpose, and, by calling conduct

[1] Cicero, *De officiis*, iii. 6.

[2] Professor Bain, who takes a very legal view of the moral consciousness, maintains (*Emotions and the Will*, p. 292) that "positive good deeds and self-sacrifice . . . transcend the region of morality proper, and occupy a sphere of their own." A similar opinion has been expressed by Prof. Durkheim (*Division du travail social*), and, more recently, by Dr. Lagerborg, in his interesting essay, 'La nature de la morale' (*Revue internationale de Sociologie*, xi. 466). Prof. Durkheim argues (p. 30) that it would be "contraire à toute méthode" to include under the same heading acts which are obligatory and acts which are objects of admiration, and at the same time exempt from all regulation. "Si donc, pour rester fidèle à l'usage, on réserve aux premiers la qualification de moraux, on ne saurait la donner également aux seconds." But I fail to see that ordinary usage recognises regulation as the test of morality. On the contrary, terms like "goodness" and "virtue," though having no reference whatever to any moral rule, have always hitherto been applied to qualities avowedly moral.

[3] Spencer, *Principles of Ethics*, i. 21 *sqq*.

"good," we certainly do not mean that it "conduces to life in each and all." "Good" simply expresses approval or praise of something on account of some quality which it possesses. A house is praised as "good" because it fulfils the end desired, a wine because it has an agreeable taste, a man on account of his moral worth. "Good," as a moral epithet, involves a praise which is the outward expression of the emotion of moral approval, and is affixed to a subject of moral valuation on account of its tendency to call forth such an emotion.

"Good" has commonly been identified with "right," but such an identification is incorrect. A father does right in supporting his young children, inasmuch as he, by supporting them, discharges a duty incumbent upon him, but we do not say that he does a good deed by supporting them, or that it is good of him to do so. Nor do we call it good of a man not to kill or rob his neighbours, although his conduct is so far right. The antithesis between right and wrong is, in a certain sense at least, contradictory, the antithesis between good and bad is only contrary. Every act—provided that it falls within the sphere of positive moral valuation—that is not wrong is right, but every act that is not bad is not necessarily good. Just as we may say of a thing that it is "not bad," and yet refuse to call it "good," so we may object to calling the simple discharge of a duty "good," although the opposite mode of conduct would be bad. On the other hand, no confusion of ethical concepts is involved in attributing goodness to the performance of a duty, or, in other words, praising a man for an act the omission of which would have incurred blame. To say of one and the same act that it is right and that it is good, really means that we look upon it from different points of view. Since moral praise expresses a benevolent attitude of mind, it is commendable for a man not to be niggard in his acknowledgment of other people's right conduct; whereas, self-praise being objectionable, only the other point of view is deemed proper when he passes a

judgment upon himself. He may say, without incurring censure, "I have done my duty, I have done what is right," but hardly, "I have done a good deed"; and it would be particularly obnoxious to say, "I am a good man." The best man even refuses to be called good by others:—"Why callest thou me good? there is none good but one, that is, God."[1]

Whilst "goodness" is the general expression for moral praise, *virtue* denotes a disposition of mind which is characterised by some special kind of goodness. He who is habitually temperate possesses the virtue of temperance, he who is habitually just the virtue of justice. And even when a man is simply said to be "virtuous," this epithet is given to him, more or less distinctly, with reference to some branch of goodness which constitutes his virtue. A Supreme Being, to whom is attributed perfect goodness, is not called virtuous, but good.

It was the opinion of Aristotle that virtue is imperfect so long as the agent cannot do the virtuous action without a conflict of impulses. Others maintain, on the contrary, that virtue essentially expresses effort, resistance, and conquest. It has been represented as "mediation through pain";[2] according to Kant, it is "the moral disposition in struggle."[3] But I do not see that virtue presupposes struggle, nor that it is lessened by being exercised with little or no effort. A virtue consists in the disposition to will or not to will acts of a certain kind, and is by no means reduced by the fact that no rival impulses make themselves felt. It is true that by struggle and conquest a man may display more virtue, namely, the virtue of self-restraint in addition to the virtue gained by it. The vigorous and successful contest against temptation constitutes a virtue by itself. For instance, the quality of mind which is exhibited in a habitual and victorious effort to conquer strong sexual passions is a virtue distinguishable from that of chastity. But even this virtue of

[1] *St. Matthew*, xix. 17.
[2] Laurie, *Ethica*, p. 253 *sqq.*
[3] Kant, *Kritik der praktischen Vernunft*, i. 1. 3 (*Sämmtliche Werke*, v. 89).

resisting seductive impulses is not greater, *ceteris paribus*, in proportion as the victory is more difficult. Take two men with equally strong passions and equally exposed to temptations, who earnestly endeavour to lead a chaste life. He who succeeds with less struggle, thanks to his greater power of will, is surely inferior neither in chastity nor in self-restraint. Suppose, again, that the two men were exposed to different degrees of temptation. He who overcomes the greater temptation *displays* more self-restraint; yet the other man may possess this virtue in an equal degree, and his chastity is certainly not made greater thereby. He may have more merit, but merit is not necessarily proportionate to virtue.

The virtues are broad generalisations of mental dispositions which, on the whole, are regarded as laudable. Owing to their stereotyped character, it easily happens, in individual cases, that the possession of a virtue confers no merit upon the possessor; and, at least from the point of view of the enlightened moral consciousness, a man's virtues are no exact gauge of his moral worth. In order to form a just opinion of the value of a person's character, we must take into account the strength of his instinctive desires and the motives of his conduct. There are virtues that pay no regard to this. A sober man, who has no taste for intoxicants, possesses the virtue of sobriety in no less degree than a man whose sobriety is the result of a difficult conquest over a strong desire. He who is brave with a view to be applauded is not, as regards the virtue of courage, inferior to him who faces dangers merely from a feeling of duty. The only thing that the possession of a virtue presupposes is that it should have been tried and tested. We cannot say that people unacquainted with intoxicants possess the virtue of sobriety, and that a man who never had anything to spend distinguishes himself for frugality. For to attribute a virtue to somebody is always to bestow upon him some degree of praise, and it is no praise, only irony, to say of a man that he "makes a virtue of necessity."

Attempts have been made to reconcile the Aristotelian and the Kantian views of the relation between virtue and effort, by saying that virtue is the harmony won and merit is the winning of it.[1] This presupposes that a man to whom virtue is natural has had his fights. But, surely, it is not always so. Who could affirm that every temperate, or charitable, or just man has acquired the virtue only as a result of inward struggle? There are people to whom some virtues at least are natural from the beginning, and others who acquire them with a minimum of effort.

There has been much discussion about the relation between virtue and duty. It has been said that "they are co-extensive, the former describing conduct by the quality of the agent's mind, the latter by the nature of the act performed";[2] that they express the same ideal, virtue subjectively, duty objectively;[3] or that virtue, in its proper sense, is "the quality of character that fits for the discharge of duty," and that it "only lives in the performance of duty."[4] At the same time it is admitted that "the distinctive mark of virtue seems to lie in what is beyond duty," and that "though every virtue is a duty, and every duty a virtue, there are certain actions to which it is more natural to apply the term virtuous."[5] Prof. Sidgwick, again, in his elaborate chapter on 'Virtue and Duty,' remarks that he has "thought it best to employ the terms so that virtuous conduct may include the performance of duty as well as whatever good actions may be commonly thought to go beyond duty; though recognising that virtue in its ordinary use is most conspicuously manifested in the latter."[6]

It can be no matter of surprise that those who regard the notion of "duty" as incapable of being analysed, or

[1] Dewey, *Study of Ethics*, p. 133 *sq.* Simmel, *Einleitung in die Moralwissenschaft*, i. 228. *Cf.* also Shaftesbury 'Inquiry concerning Virtue and Merit,' i. 2. 4, in *Characteristicks*, ii. 36 *sqq.*

[2] Alexander, *op. cit.* p. 244.

[3] Grote, *Treatise on the Moral Ideals*, p. 22. *Cf.* Seth, *Study of Ethical Principles*, p. 239.

[4] Muirhead, *Elements of Ethics*, p. 190 n.*

[5] Alexander, *op. cit.* p. 243 *sq.*

[6] Sidgwick, *op. cit.* p. 221.

who fail to recognise its true import, are embarrassed by its relation to virtue. We do not call it a virtue if a man habitually abstains from killing or robbing, or pays his debts, or performs a great number of other duties. We do call chastity and temperance and justice virtues, although we regard it as obligatory on a man to be chaste, temperate, just. We also call hospitality, generosity, and charity virtues in cases where they go beyond the strict limits of duty. "The relation of virtue and duty is complicated," says Professor Alexander.[1] "In its common use each term seems to include something excluded from the other," observes Professor Sidgwick.[2] But, indeed, the relation is not complicated, for there is no other intrinsic relation between them than their common antagonism to "wrong." That something is a duty implies that its non-performance tends to evoke moral indignation, that it is a virtue implies that its performance tends to evoke moral approval. That the virtues actually cover a comparatively large field of the province of duty is simply owing to their being dispositions of mind. We may praise the habits of justice and gratitude, even though we find nothing praiseworthy in an isolated just or grateful act.

There has been no less confusion with regard to the relation between duty and *merit*. Like the notions of "good" and "virtue," the "meritorious" derives its origin from the emotion of moral approval; but while the former merely express a tendency to give rise to such an emotion, "meritorious" implies that the object to which it refers merits praise, that it has a just claim to praise, or, in other words, that it ought to be recognised as good. This makes the term "meritorious" more emphatic than the term "good," but at the same time it narrows its province in a peculiar way. Just as the expression that something ought to be done implies the idea of its not being done, so the word "meritorious" suggests the idea of goodness which may fail of due recognition. And as it is meaningless to speak of duty in a case where the

[1] Alexander, *op. cit.* p. 244. [2] Sidgwick, *op. cit.* p. 219.

opposite mode of conduct is entirely out of the question, so it would be an absurdity to attribute merit to somebody for an act the goodness of which is universally admitted. Thus "meritorious" involves a restriction. It would be almost blasphemous to call the acts of a God conceived to be infinitely good meritorious, since it would suggest a limitation of his goodness.

The emphatic claim to praiseworthiness made by the "meritorious" has rendered it objectionable to a great number of moralists. It has been identified with the "super-obligatory"—a conception which is to many an abomination. From what has been said above, however, it is manifest that they are not identical. As the discharge of a duty may be regarded as a good act, so it may also be regarded as an act which ought to be recognised as good. Practically, no doubt, there is a certain antagonism between duty and merit. We praise, and, especially, we regard as deserving praise, only what is above the average,[1] and we censure what is below it. No merit is conferred upon him who performs a duty which is seldom transgressed, or the transgression of which would actually incur punishment or censure. We do not think that a man ought to be praised for what his own interest prompts him to perform; and, since the transgression of a moral command which is usually obeyed is generally censured or punished, there is under ordinary circumstances nothing meritorious in performing a duty. But though thus probably most acts which are deemed meritorious fall outside the limits of duty as roughly drawn by the popular mind, we are on the other hand often disposed to attribute merit to a man on account of an act which, from a strict point of view, is his duty, but a duty which most people, under the same circumstances, would have left undischarged. This shows that the antagonism between duty and merit is not absolute. And in the concept of merit *per se* no such antagonism is involved.

[1] Merit, as Professor Alexander puts it (*op. cit.* p. 196), "expresses the interval which separates the meritorious from the average."

I confess that I fail to grasp what those writers really mean who identify the "meritorious" with the "super-obligatory," and at the same time deny the existence of any super-obligatory. Do they shut their eyes to the important psychical fact indicated by the term "merit," or do they look upon it as a chimera inconsistent with a sufficiently enlightened moral consciousness? For my own part, I cannot see how the moral consciousness could dispense with the idea that there are actions which merit praise or reward, which ought to be praised or rewarded. The denial of merit can be defended from a purely theological point of view, but then only with regard to man's relation to God. It is obvious that a fallen being who is sinning even when he does his best, could not be recognised as good by God and could have no merit. But it is hardly just, nor is it practically possible, that a man should measure his fellow-man by a superhuman standard of perfection, and try to suppress the natural emotion of moral approval and the claims springing from it, by persuading himself that there is no mortal being who ever does anything which ought to be recognised as good.

Quite distinct from the question of merit, then, is that of the *super-obligatory*. Can a man do more than his duty, or, in other words, is there anything good which is not at the same time a duty? The answer depends on the contents given to the commandments of duty, hence it may vary without affecting the concept of duty itself. If we consider that there is an obligation on every man to promote the general happiness to the very utmost of his ability, we must also maintain that nobody can ever do anything good beyond his duty. The same is the case if we regard "self-realisation," or a "normal" exercise of his natural functions, as a man's fundamental duty. In all these cases "to aim at acting beyond obligation," as Price puts it,[1] is "the same with aiming at acting contrary to obligation, and doing more than is fit to be done, the same with doing wrong." It can hardly be denied, how-

[1] Price, *Review of the Principal Questions in Morals*, p. 204 *sq.*

ever, that those who hold similar views have actually two standards of duty, one by which they measure man and his doings in the abstract, with reference to a certain ideal of life which they please to identify with duty, and another by which they are guided in their practical moral judgments upon their own and their neighbours' conduct. The conscientious man is apt to judge himself more severely than he judges others, partly because he knows his own case better than theirs,[1] and partly because he is naturally afraid of being intolerant and unjust. He may indeed be unwilling to admit that he ever can do more than his duty, seeing how difficult it is even to do what he ought to do, and impressed, as he would be, with the feeling of his own shortcomings. Yet I do not see how he could conscientiously deny that he has omitted to do many praiseworthy or heroic deeds without holding himself blamable for such omissions.

Professor Sidgwick observes that "we should not deny that it is, in some sense, a man's strict duty to do whatever action he judges most excellent, so far as it is in his power."[2] This, as it seems to me, is not a matter of course, and nothing of the kind is involved in the notion of duty itself. We must not confound the moral law with the moral ideal. Duty is the minimum of morality, the supreme moral ideal of the best man is the maximum of it. Those who sum up the whole of morality in the word "ought" identify the minimum and the maximum, but I fail to see that morality is better for this. Rather it is worse. The recognition of a "super-obligatory" does not lower the moral ideal; on the contrary it raises it, or at any rate makes it more possible to vindicate the moral law and to administer it justly. It is nowadays a recognised principle in legislation that a law loses part of its weight if it cannot be strictly enforced. If the realisation of the highest moral ideal is commanded by a moral law, such a law will always remain a dead letter, and morality will gain nothing. Far above the anxious

[1] *Cf.* Sidgwick, *op. cit.* p. 221.

[2] *Ibid.* p. 219.

effort to fulfil the commandments of duty stands the free and lofty aspiration to live up to an ideal, which, unattainable as it may be, threatens neither with blame nor remorse him who fails to reach its summits. Does not experience show that those whose thoughts are constantly occupied with the prescriptions of duty are apt to become hard and intolerant?

Those who deny the existence of anything morally "praiseworthy" which is not a duty, are also generally liable to deny the existence of anything morally *indifferent* in the conduct of responsible beings. The "super-obligatory" and the "indifferent" have this in common, that they are "ultra-obligatory," and the denial of the one as well as of the other is an expression of the same tendency to look upon the moral law as the sole fact of the moral consciousness. Even Utilitarianism cannot consistently admit of anything indifferent within the province of moral valuation, since two opposite modes of conduct can hardly produce absolutely the same sum of happiness. Such a repudiation of the "indifferent" being quite contrary to the morality of common sense, which, after all, no ethical theory can afford to neglect, considerable ingenuity has been wasted on vain attempts to show that the "indifferent" is nothing but a rude popular conception unable to keep its ground against a thoroughgoing examination. Professor Ziegler ironically asks:—"Such outward matters as eating and drinking are surely morally indifferent? And yet—is eating and drinking too much, is spending too much time in outdoor exercise, is lounging idly about, morally indifferent? or, on the other hand, is it morally allowable or wholesome to reduce oneself and make oneself weak and ill by fasting, or to become a hypochondriac by continually staying indoors?"[1] This argument, however, involves a confusion of different volitions. The fact that eating or drinking generally, or eating or drinking too much or too little, are no matters of indifference, surely does not prevent

[1] Ziegler, *ob. cit.* p. 85.

eating or drinking on some certain occasion from being indifferent. Mr. Bradley again observes:—"It is right and a duty that the sphere of indifferent detail should exist. It is a duty that I should develop my nature by private choice therein. Therefore, *because* that is a duty, it is a duty *not* to make a duty of every detail; and thus in every detail I have done my duty."[1] This statement also shows a curious confusion of entirely different facts. It may be very true that it is a duty to recognise certain actions as indifferent. This is one thing by itself. But it is quite another thing to perform those actions. And if it is a duty to recognise certain actions as indifferent how could it possibly at the same time be held a duty to perform them?

It has been maintained that the sphere of the indifferent forms the totality of "ought"; that when the same end may be reached by a variety of means, an action may be indifferent merely in relation to the choice of means, but not so far as regards the attainment of the end, and hence is only apparently indifferent.[2] "If it is my moral duty to go from one town to another," says Mr. Bradley, "and there are two roads which are equally good, it is indifferent to the proposed moral duty *which* road I take; it is not indifferent *that* I do take one or the other; and whichever road I do take, I am doing my duty on it, and hence it is far from indifferent: my walking on road A is a matter of duty in reference to the end, though not a matter of duty if you consider it against walking on road B; and so with B—but I can escape the sphere of duty neither on A nor on B." All this is true, but forms no argument against the "indifferent." The statement, "You ought to go to the town and to take either road A or B," refers to two volitions which are regarded as wrong, namely, the volition not to go to the town at all, and the volition to take any road not A or B; and it

[1] Bradley, *Ethical Studies*, p. 195, n. 1.

[2] Simmel, *op. cit.* i. 35 *sqq.* Alexander, *op. cit.* p. 50 *sqq.* Murray, *op. cit.* p. 26 *sq.* Bradley, *op. cit.* p. 195 *sq.*

refers also to two pairs of volitions in reference to which it indicates that the choice between the volitions constituting each pair is indifferent. You may choose to take road A or not to take it; you may choose to take road B or not to take it. The "indifferent" is always an alternative between contradictories. It can therefore never form part of an "ought"-totality, being itself a totality as complete as possible. This is somewhat disguised by a judgment which makes an obligation of a choice between A and B, but becomes conspicuous if we consider a simple case of indifference. Suppose that it is considered indifferent whether you speak or do not speak on a certain occasion. What is here the "ought" that forms the totality of the indifferent? Would there be any sense in saying that you ought either to speak or not to speak? or is the alternative, speaking—not speaking, only a link in an indefinite chain of alternatives, each of which is by itself indifferent, in a relative sense, but the sum of which forms the "ought"? You may be permitted—it will perhaps be argued—in a given moment to speak or to abstain from speaking, to write or to abstain from writing, to read or to abstain from reading, and so on; but however wide the province of the permissible may be, there must always be a limit inside which you ought to remain. That you do this or that may be a matter of indifference, but only of relative indifference, for it is not indifferent *what* you do on the whole; hence there is nothing absolutely indifferent. Such an argument, however, involves a misapprehension of the true meaning of the "indifferent." The predicate expressing indifference refers to certain definite volitions and their contradictories, not to the whole of a man's conduct in a certain moment. The whole of a man's conduct is never indifferent. But neither is the whole of a man's conduct ever wrong. In the moment when a murderer kills his victim he is fulfilling an endless number of duties: he abstains from stealing, lying, committing adultery, suicide, and so on. The predicate "wrong" only marks the moral

character of a special mode of conduct. Why should not the indifferent be allowed to do the same?

It has, finally, been observed that the so-called "indifferent" is something "the morality of which can only be individually determined."[1] This remark calls attention to the fact that no mode of conduct can be regarded as indifferent without a careful consideration of individual circumstances, and that much which is apparently indifferent is not really so. This, however, does not involve an abolition of the indifferent. Such an abolition would be the extreme of moral intolerance. He who tried to put it into practice would be the most insupportable of beings, and to himself life would be unbearable. Fortunately, such a man has never existed. The attempts to make every action, even the most trivial, of responsible beings a matter of moral concern, are only theoretical fancies without practical bearing, a hollow and flattering tribute to the idol of Duty.

[1] Martensen, *Christian Ethics*, p. 415.

CHAPTER VII

CUSTOMS AND LAWS AS EXPRESSIONS OF MORAL IDEAS

MORAL ideas are expressed in moral judgments. We have hitherto examined the predicates of such judgments, the import and origin of the moral concepts. Now a much wider field of research remains for us to traverse. We shall direct our attention to the subjects of moral judgments, to the mass of phenomena which, among different peoples and in different ages, have had a tendency to call forth moral blame and moral praise. We shall discuss the general characteristics which all these phenomena have in common. We shall classify the most important of them, and study the moral ideas held with reference to the phenomena of each class separately. And in both cases we shall not only analyse, but try to find an answer to the question, Why?—the ultimate aim of all scientific research. But before entering upon this vast undertaking, we must define the lines on which it is to be conducted. How can we get an insight into the moral ideas of mankind at large?

In answering this question I need not dwell upon such obvious means of information as direct experience, or records of moral maxims and sentiments found in proverbs, literary and philosophical works, and religious codes. The sources which, from an evolutionary point of view, are of the most comprehensive importance for our study, are tribal and national customs and laws. It is to these sources that the present chapter will be devoted.

We have seen that a custom, in the strict sense of the word, is not merely the habit of a certain circle of men, but at the same time involves a moral rule. There is a close connection between these two characteristics of custom: its habitualness and its obligatoriness. Whatever be the foundation for a certain practice, and however trivial it may be, the unreflecting mind has a tendency to disapprove of any deviation from it for the simple reason that such a deviation is unusual. As Abraham Tucker observes, "it is a constant argument among the common people, that a thing must be done, and ought to be done, because it always has been done."[1] Children show respect for the customary,[2] and so do savages. "If you ask a Kaffir why he does so and so, he will answer—'How can I tell? It has always been done by our forefathers.'"[3] The only reason which the Eskimo can give for some of their present customs, to which they adhere from fear of ill report among their people, is that "the old Innuits did so, and therefore they must."[4] In the behaviour of the Aleut, who "is bashful if caught doing anything unusual among his people,"[5] and in the average European's dread of appearing singular, we recognise the influence of the same force of habit.

On the other hand, it should be remembered that not every public habit is a custom, involving an obligation; certain practices, though very general in a society, may even be reprobated by almost every one of its members. The habits of a people must therefore be handled with discretion by the student of moral ideas. Yet when he has no reason to conclude as to some special habit that it is held obligatory, he may, probably always, be sure that it is either allowed, or, in spite of all assurances of its wickedness, that the disapproval of it is not generally very deep or genuine. In a community where lying is a

[1] Tucker, *Light of Nature*, ii. 593. *Cf.* also Simmel, *Einleitung in die Moralwissenschaft*, i. 65 *sqq.*

[2] Sully, *Studies of Childhood*, p. 280 *sq.*

[3] Leslie, *Among the Zulus and Amatongas*, p. 146.

[4] Hall, *Arctic Researches*, p. 569.

[5] Dall, *Alaska*, p. 396.

prevailing vice, truthfulness cannot be regarded as a very sacred duty; and where sexual immorality is widely spread, the public condemnation of it always smacks of hypocrisy. Men's standard of morality is not independent of their practice. The conscience of a community follows the same rule as the conscience of an individual. "Commit a sin twice," says the Talmud, "and you will think it perfectly allowable."[1] Hence for the study of the inmost convictions of a nation, its "bad habits" form a valuable complement to its professed opinions.

The dictates of custom being dictates of morality, it is obvious that the study of moral ideas will, to a large extent, be a study of customs. But at the same time it should be borne in mind that custom never covers the whole field of morality, and that the uncovered space grows larger in proportion as the moral consciousness develops. Being a rule of duty, custom may only indirectly be an expression of moral approval, by claiming, in certain cases, that goodness should be rewarded. But even when demanding praise, custom is not always a reliable exponent of merit; it includes politeness, and politeness is a great deceiver. Custom may compel us to praise a man for form's sake, when he deserves no praise, and to thank him when he deserves no thanks. Moreover, custom regulates external conduct only. It tolerates all kinds of volitions and opinions if not openly expressed. It does not condemn the heretical mind, but the heretical act. It demands that under certain circumstances certain actions shall be either performed or omitted, and, provided that this demand is fulfilled, it takes no notice of the motive of the agent or omitter. Again, in case the course of conduct prescribed by custom is not observed, the mental facts connected with the transgression, if regarded at all, are dealt with in a rough and ready manner, according to general rules which hardly admit of individualisation. Yet the incongruity between custom and morality which ensues from these circumstances is on

[1] Deutsch, *Literary Remains*, p. 58.

the whole more apparent than real. It is rather an incongruity between different moral standards. The unreflecting moral consciousness, like custom, cares comparatively little for the internal aspect of conduct. It does not ask whether a man goes to church on Sunday from a religious motive or from fear of public opinion; it does not ask whether he stays at home from love of ease or from dissent of belief and avoidance of hypocrisy. It is ready to blame as soon as the dictate of custom is disobeyed. The rule of custom is the rule of duty at early stages of development. Only progress in culture lessens its sway.

Finally, the moral ideas which are expressed in the customs of a certain circle of men are not necessarily shared by every one of its members. This may, in the present connection, be considered a matter of slight importance by him who regards morality as "objectively" realised in the customs of a people, and who denies the individual the right to a private conscience. But from the subjective point of view which I am vindicating, individual conviction has a claim to equal consideration with public opinion, nay frequently, to higher respect, representing as it does in many cases a higher morality, a moral standard more purified by reflection and impartiality. At the lower stages of civilisation, however, where a man is led by his feelings more than by his thoughts, such a differentiation of moral ideas hardly occurs. The opinions of the many are the opinions of all, and the customs of a society are recognised as rules of duty by all its members.

In primitive society custom stands for law, and even where social organisation has made some progress it may still remain the sole rule for conduct.[1] The authority of

[1] Cranz, *History of Greenland*, i. 170. Dall, *op. cit.* p. 381 (Tuski). Dobrizhoffer, *Account of the Abipones*, ii. 95 Shooter, *Kafirs of Natal and the Zulu Country*, p. 101 *sq.* Holden, *Past and Future of the Kaffir Races*, p. 336. Mungo Park, *Travels in the Interior of Africa*, p. 16. Scaramucci and Giglioli, 'Notizie sui Danakil,' in *Archivio per l'antropologia e la etnologia*, xiv. 39. Earl, *Papuans*, p. 105 (Arru Islanders). Forbes, *A Naturalist's Wanderings in the Eastern Archipelago*, p. 473 (Timorese). Dalton, *Ethnology of Bengal*, p. 51 (Manipuris). Rockhill, *Land of the Lamas*, p. 220 (Eastern Tibetans).

a chief does not necessarily involve a power to make laws. Even kings who are described as autocrats may be as much tied by custom as is any of their subjects.

The Rejangs of Sumatra "do not acknowledge a right in the chiefs to constitute what laws they think proper, or to repeal or alter their ancient usages, of which they are extremely tenacious and jealous." There is no word in their language which signifies law, and the chiefs, in pronouncing their decisions are not heard to say, "So the law directs," but, "Such is the custom."[1] According to Ellis, "the veneration of the Malagasy for the customs derived from tradition, or any accounts of their ancestors . . . influences both their public and private habits; and upon no individual is it more imperative than upon their monarch, who, absolute as he is in other respects, wants either the will or the power to break through the long-established regulations of a superstitious people."[2] The king of Ashanti, although represented as a despotic monarch, is nevertheless under an obligation to observe the national customs which have been handed down to the people from remote antiquity, and a practical disregard of this obligation, in the attempt to change some of the old customs, cost one of the kings his throne.[3] "The Africans," says Mr. Winwood Reade, with special reference to Dahomey, "have sometimes their enlightened kings, as the old barbarians had their sages and their priests. But it is seldom in the power of the heads of a people to alter those customs which have been held sacred from time immemorial."[4] The Basutos, among whom "the chiefs have the right of making laws and publishing regulations required by the necessities of the times," regard such laws, or *molaos*, as inferior to the *mekhoas*, "the use and wont," which constitute the real laws of the country.[5] Among the ancient Irish, there was no sovereign authority competent to enact a new law, the function of the king being merely, as chief of the tribal assembly, to see that the proper customs were observed.[6]

[1] Marsden, *History of Sumatra*, p. 217.

[2] Ellis, *History of Madagascar*, i. 359.

[3] Beecham, *Ashantee and the Gold Coast*, p 90 *sq.* *Cf.* Stuhlmann, *Mit Emin Pascha ins Herz von Afrika*, p. 523 (A-lûr).

[4] Reade, *Savage Africa*, p. 52 *sq.*

[5] Casalis, *Basutos*, p. 228.

[6] *Ancient Laws of Ireland*, iii. p. lxxxvi. *sq.* Cherry, *Growth of Criminal Law*, p. 33.

In competition with law, custom frequently carries the day. In India, especially in the South, "custom has always been to a great extent superior to the written law."[1] In the Ramnad case, the Judicial Committee expressly declared that, "under the Hindu system of law, clear proof of usage will outweigh the written text of the law."[2] It was also a maxim of the Roman jurists that laws may be abrogated by desuetude or contrary usage;[3] and in modern times the same doctrine is acted upon in Scotland.[4] Moreover, when a custom cannot abrogate the law, it may still have a paralysing influence on its execution. According to the laws of European nations, a man who has killed another in a duel is to be treated as a homicide; yet wherever the duel exists as a custom, the law against it is ineffective. So it is on the Continent, and so it was in England in the eighteenth century, when a well-informed writer could affirm that he had "not found any case of an actual execution in England in consequence of a duel fairly fought."[5] In this instance the ineffectiveness of the law is owing to the fact that the law has not been able to abolish an old custom. But the superiority of custom also shows itself in cases where the law itself is getting antiquated, and a new custom, enforced by public opinion, springs up in opposition to it. Thus, contrary to law and earlier usage, it is nowadays the custom of certain European countries that a sentence of death is not carried into execution. Even "bad habits" tend to weaken the authority of the law. Probably the two most prominent civil vices of the Chinese are bribery and gambling. Against both these vices their penal code speaks with no uncertain sound; and yet, according to

[1] Burnell, quoted by Nelson, *View of the Hindū Law*, p. 136.

[2] Mayne, *Treatise on Hindu Law and Usage*, p. 41.

[3] *Institutiones*, i. 2. 11. *Digesta*, i. 3. 32.

[4] Mackenzie, *Studies in Roman Law*, p. 54.

[5] Quoted by Bosquett, *Treatise on Duelling*, p. 80. *Cf. A Short Treatise upon the Propriety and Necessity of Duelling*, printed at Bath in 1779. In 1808, however, Major Campbell was sentenced to death and executed for killing Captain Boyd in a duel (Storr, 'Duel,' in *Encyclopædia Britannica*, vii. 514).

Professor Douglas, it is no exaggeration to say that if the law were enforced, it would make a clean sweep of ninety-nine of every hundred officials in the empire.[1] Other illustrations of the same principle may be found much nearer home.

Custom has proved stronger than law and religion combined. Sir Richard Burton writes of the Bedouins, "Though the revealed law of the Koran, being insufficient for the Desert, is openly disregarded, the immemorial customs of the *Kazi al-Arab* (the Judge of the Arabs) form a system stringent in the extreme."[2] So, also, the Turkomans are ruled, often tyrannised over, by a mighty sovereign, invisible indeed to themselves, but whose presence is plainly discerned in the word *deb*—"custom," "usage." Our authority adds:—"It is very remarkable how little the 'Deb' has suffered in its struggle of eight centuries with Mahommedanism. Many usages, which are prohibited to the Islamite, and which the Mollahs make the object of violent attack, exist in all their ancient originality."[3]

The laws themselves, in fact, command obedience more as customs than as laws. A rule of conduct which, from one point of view, is a law, is in most cases, from another point of view, a custom; for, as Hegel remarks, "the valid laws of a nation, when written and collected, do not cease to be customs."[4] There are instances of laws that were never published, the knowledge and administration of which belonged to a privileged class, and which nevertheless were respected and obeyed.[5] And among ourselves the ordinary citizen stands in no need of studying the laws under which he lives, custom being generally the safe guiding star of his conduct. Custom, as Bacon said, is "the principal magistrate of man's life,"[6] or, as the ancients put it, "the king of all men."[7]

[1] Douglas, *Society in China*, p. 82.
[2] Burton, *Pilgrimage to Al-Madinah and Meccah*, ii. 87.
[3] Vámbéry, *Travels in Central Asia*, p. 310 *sqq*.
[4] Hegel, *Philosophie des Rechts*, § 211, p. 199.
[5] Rein, *Japan*, p. 314.
[6] Bacon, 'Essay xxxix. Of Custom and Education,' in *Essays*, p. 372.
[7] Herodotus, iii. 38.

Many laws were customs before they became laws. Ancient customs lie at the foundation of all Aryan law-books. Mr. Mayne is of opinion that Hindu law is based upon customs which existed even prior to and independent of Brahmanism.[1] The Greek word *νόμος* means both custom and law, and this combination of meanings was not owing to poverty of language, but to the deep-rooted idea of the Greek people that law is, and ought to be, nothing more and nothing less than the outcome of national custom.[2] A great part of the Roman law was founded on the *mores majorum;* in the Institutes of Justinian, it is expressly said that "long prevailing customs, being sanctioned by the consent of those who use them, assume the nature of Laws."[3] The case was similar with the ancient laws of the Teutons and Irish.[4]

The transformation of customs into laws was not a mere ceremony. Law, like custom, is a rule of conduct, but, while custom is established by usage and obtains, in a more or less indefinite way, its binding force from public opinion, a law originates in a definite legislative act, being set, as Austin says, by a sovereign person, or a sovereign body of persons, to a person or persons in a state of subjection to its author.[5] By becoming laws, then, the customs were expressly formulated, and were enforced by a more definite sanction. It seems that the process in question arose both from considerations of social utility and from a sense of justice. Cicero observes that it was for the sake of equity that "laws were invented, which perpetually spoke to all men with one and the same voice."[6] From these points of view it was neither necessary nor desirable that more than a limited set of customs should pass into laws. There are customs which are too indefinite to assume the stereotyped shape of law.[7] There are others, the breach

[1] Mayne, *op. cit.* p. 4.
[2] Ziegler, *Social Ethics*, p. 30. Schmidt, *Ethik der alten Griechen*, i. 201.
[3] *Institutiones*, i. 2. 9.
[4] Joyce, *Social History of Ancient Ireland*, i. 181.
[5] Austin, *Lectures on Jurisprudence*, i. 87, 181, &c.
[6] Cicero, *De officiis*, ii. 12.
[7] *Cf.* Aristotle, *Ethica Nicomachea*, v. 10. 6.

of which excites too little public indignation, or which are of too little importance for the public welfare, to be proper objects of legislation. And there are others which may be said to exist unconsciously, that is, which are universally observed as a matter of course, and which, never being transgressed, are never thought of.

Laws which are based on customs naturally express moral ideas prevalent at the time when they are established. On the other hand, though still in existence, they are not necessarily faithful representatives of the ideas of a later age. Law may be even more conservative than custom. Though the latter exercises a very preservative influence on public opinion, it *eo ipso* changes when public opinion changes. Even among savages, in spite of their extreme regard for the customs of their ancestors, it is quite possible for changes to be introduced; the traditions of the Central Australian Arunta, for instance, indicate their own recognition of the fact that customs have varied from time to time.[1] But the legal form gives to an ancient custom such a fixity as to enable it to survive, as a law, the change of public opinion and the introduction of a new custom. In all progressive societies, as Sir Henry Maine observes, social necessities and social opinion are always more or less in advance of law. "We may come indefinitely near to the closing of the gap between them, but it has a perpetual tendency to re-open."[2]

The moral ideas of a people are less extensively represented in its laws than in its customs. This is a corollary of the fact that there are always a great number of customs which never become laws. Moreover, whilst law, like custom, directly expresses only what is obligatory, it hardly ever deals with merit, even indirectly. The Chinese have a method of rewarding and commemorating meritorious and virtuous subjects by erecting gates in their honour, and conferring upon them marks of public dis-

[1] Spencer and Gillen, *Native Tribes of Central Australia*, p. 12 *sqq*.

[2] Maine, *Ancient Law*, p. 24.

tinction;[1] and the Japanese and Coreans award prizes in the form of money or silver cups or monumental columns to signal exemplars of filial piety, arguing that, if the law punishes crime, it ought also to reward virtue.[2] In Europe we have titles and honours, pensions for distinguished service, and the like; but the distribution of them is not regulated by law, and has often little to do with morality.

Law, like custom, only deals with overt acts, or omissions, and cares nothing for the mental side of conduct, unless the law be transgressed. Yet, as will be seen subsequently, though this constitutes an essential difference between law and the enlightened moral consciousness, it throws considerable light on the moral judgments of the unreflecting mind.

Being a general, and at the same time a strictly defined, rule of conduct, a law can even less than a custom make special provision for every case so as to satisfy the demand of justice. This disadvantage, however, was hardly felt in early periods of legislation, when little account was taken of what was behind the overt act; and at later stages of development, the difficulty was overcome by leaving greater discretion to the judge. The history of legal punishments in England, for instance, shows a change from a system which, except in cases of misdemeanour, left no discretion at all to judges, to a system under which unlimited discretion is left to them in all cases except those which are still liable to capital punishment—practically, high treason and murder.[3] The study of law, then, must for our purpose be supplemented by the study of judicial practice.

Laws which represent public opinion are no more than customs safe exponents of the moral ideas held by particular members of the society. But on the other hand, there are cases in which a law, unlike a custom, may express the ideas, or simply the will, of a few, or even of

[1] de Groot, *Religious System of China* (vol. ii. book) i. 769, 789 *sq.*

[2] Griffis, *Corea*, p. 236.

[3] Stephen, *History of the Criminal Law of England*, ii. 87.

a single individual, that is, of the sovereign power only. It is obvious that laws imposed upon a barbarous people by civilised legislators may differ widely from the people's own ideas of right and wrong. For instance, when studying the moral sentiments of the Teutonic peoples from their early law-books, we must carefully set aside all elements of Roman or Christian origin. At the same time, however, it should be remembered that the moral consciousness of a people may gradually be brought into harmony with a law originally foreign to it. If the law is in advance of public opinion—as Roman law undoubtedly was in Teutonic countries—it may raise the views of the people up to its own standard by awaking in them dormant sentiments, or by teaching them greater discrimination in their judgments. And, as has been already noticed, what is forbidden and punished may, for the very reason that it is so, come to be regarded as wrong and worthy of punishment.

Finally, a law may enjoin or forbid acts which by themselves are regarded as indifferent from a moral point of view. This is, for instance, the case with the laws which require marriages to be celebrated at certain times and places only, and which forbid the cultivation of tobacco in England. Jurists divide crimes into *mala in se* and *mala quia prohibita*. The former would be wrong even if they were not prohibited by law, the latter are wrong only because they are illegal.

A law expresses a rule of duty by making an act or omission which is regarded as wrong a crime, that is, by forbidding it under pain of punishment. Law does not in all cases directly threaten[1] with punishment—I say directly, since all law is coercive, and all coercion at some stage involves the possibility of punishment.[2] Sanctions, or the consequences by which the sovereign political authority threatens to enforce the laws set by it, may

[1] "Not every sovereign can make sure of enforcing his commands; and sometimes laws are made without even any great intention of enforcing them" (Pollock, *Essays in Jurisprudence and Ethics*, p. 9 *sq.*).

[2] *Cf.* Stephen, *op. cit.* i. 2.

have in view either the indemnification of the injured party, or the suffering of the injurer. In the latter case the sanctions are called punishments. But, though highly important, the distinction between indemnification and punishment is not absolute. A person who causes harm to another would hardly have to pay damages unless some kind of guilt or quasi-guilt were imputed to him; and, on the other hand, punishment may actually consist in the damages he has to pay. Moreover, the suffering involved in punishment must be regarded as a kind of indemnification in so far as it is intended to gratify the injured party's craving for revenge. The pleasure of vengeance, says Bentham, "is a gain; it calls to mind Samson's riddle—it is sweet coming out of the terrible, it is honey dropping from the lion's mouth."[1] In cases where the injured party is allowed to decide whether the injurer shall be punished or not, or what punishment (within certain limits) shall be inflicted upon him, it is obvious that punishment is largely looked upon as a means of indemnification. However, the fact that such a privilege is granted to the injured party indicates the existence of some degree of sympathetic resentment in the public. Punishment, in all its forms, is essentially an expression of indignation in the society which inflicts it.[2] Hence it is of extreme importance for the study of moral ideas, and calls for our careful consideration.

By punishment I do not understand here every suffering inflicted upon an offender in consequence of his offence, but only such suffering as is inflicted upon him in a definite way by, or in the name of, the society of which he is a permanent or temporary member. This definition holds good whatever may be the opinion about the final object of punishment. Whether its purpose is, or is supposed to be, either reformation, or determent, or retribution, its immediate aim is always to cause suffering.

[1] Bentham, *Theory of Legislation*, p. 309.

[2] "Die Missbilligung ist das Wesentliche aller Strafe" (von Bar, *Die Grundlagen des Strafrechts*, p. 4). "La peine consiste dans une réaction passionnelle d'intensité graduée" (Durkheim, *Division du travail social*, p. 96).

We should not call it punishment if the reformation of the criminal were attempted, say, by means of hypnotism.

It is a common opinion that punishment, in this sense of the word, is a social institution of comparatively modern origin, which has sprung from, and gradually superseded, the earlier custom of individual or family revenge. This opinion may seem plausible to the student of European and Eastern law, but, as we shall see, the early history of civilised races is apt to give a somewhat erroneous idea of the evolution of punishment. Even among savages public indignation frequently assumes that definite shape which constitutes the difference between punishment and mere condemnation.[1]

Savage punishment sometimes simply consists in publicly putting the offender to shame.

In Greenland the courts of justice were the public assemblies, which at the same time supplied the national sports and entertainments. Here "nith-songs" were used for settling all sorts of crimes or breaches of public order or custom, with the exception of those which could only be expiated by death; by means of cutting capers and singing, the offender was told of his faults, and the opposite virtues were praised to all who were present.[2] The same institution is found, with only incidental differences, among several other tribes within and beyond the Arctic circle.[3] And, knowing the sensitiveness of these peoples, we may assume that the punishment in question is by no means lenient. In Greenland "it now and then happens that some one or other, wounded, perhaps, by a single word from one of his kinsfolk, runs away to the mountains, and is lost for several days at least."[4] And Adair, speaking of the public jesting by which North American Indians used to punish young people who were guilty of petty crimes, says that "they would sooner die by torture, than renew their shame by repeating the actions."[5]

[1] See Steinmetz, *Ethnologische Studien zur ersten Entwicklung der Strafe*, ii. 327 *sqq.*; Makarewicz, *Évolution de la peine*, *passim*.

[2] Rink, *Eskimo Tribes*, p. 24 *sq.* *Idem*, *Greenland*, pp. 141, 150. Cranz, *op. cit.* i. 165 *sq.* Holm, 'Ethnologisk Skizze af Angmagsalikerne,' in *Meddelelser om Grönland*, p. 87.

[3] Kane, *Arctic Explorations*, ii. 128 *sq.*

[4] Nansen, *Eskimo Life*, p. 267 *sq*

[5] Adair, *History of the American Indians*, p. 429 *sq.*

In other instances the community as a whole expresses its indignation by inflicting suffering of a more material kind upon the culprit.

In certain Australian tribes, when a native for any transgression incurs the displeasure of his tribe, custom compels him to "stand punishment," as it is called; that is, he stands with a shield at a fair distance, while the whole tribe, either simultaneously or in rapid succession, cast their spears at him. Their expertness generally enables those who are exposed to this trial to escape without serious injury, though instances of a fatal result occasionally occur; however, there is a certain propriety even in this extraordinary punishment, as the accuracy and force with which the weapons are thrown will depend very much on the opinion entertained of the enormity of the offence.[1] Among the North-West-Central Queensland aborigines, though each individual, within certain limits, can do what he pleases, "he has to reckon not only with the particular person injured, or his relatives, but also, in some cases, with the whole camp collectively. Thus the camp as a body, as a camp council, will take upon itself to mete out punishment in crimes of murder, incest, or the promiscuous use of fighting-implements within the precincts of the camping-ground: death, and probably the digging of his own grave, awaits the delinquent in the former case, while 'crippling,' generally with knives, constitutes the penalty for a violation of the latter." Again, if a woman makes herself obnoxious in the camp, especially to the female portion of it, she is liable to be set upon and "hammered" by her fellow-sisters collectively, the men on such occasions not interfering.[2] Among the Bangerang tribe of Victoria, "any one who had suffered a wrong complained of it, if at all, at night aloud to the camp, which was silent and attentive. Then the accused was heard. Afterwards those who chose, men or women, expressed their views on the subject; and if general opinion pronounced the grievance a good one, the accused accepted the penalty sanctioned by custom."[3] Among various tribes in Western Victoria, "should a person, through bad conduct, become a constant anxiety and trouble

[1] Hale, *U.S. Exploring Expedition. Vol. VI. Ethnography and Philology*, p. 114. *Cf.* Eyre, *Journals of Expeditions of Discovery into Central Australia*, ii. 388; Collins, *English Colony in New South Wales*, i. 586; Brough Smyth, *Aborigines of Victoria*, ii. 295.

[2] Roth, *Ethnological Studies among the North-West-Central Queensland Aborigines*, pp. 139, 141. Curr, *The Australian Race*, i. 61 *sq.*

[3] Curr, *Squatting in Victoria*, p. 245.

to the tribe, a consultation is held, and he is put to death."[1] Among the Mpongwe, if a man murders another, he is put to death, not by the nearest of kin, but by the whole community, being either drowned or burned alive.[2] Among the Hudson Bay Eskimo, "when a person becomes so bad in character that the community will no longer tolerate his presence he is forbidden to enter the huts, partake of food, or hold any intercourse with the rest. Nevertheless, as long as he threatens no one's life, but little attention is paid to him. Should he be guilty of a murder, several men watch their opportunity to surprise him and put him to death, usually by stoning. The executioners make no concealment of their action and are supported by public opinion in the community."[3]

Among various savage peoples expulsion from the tribe is the punishment of persons whose conduct excites great public indignation, and among others such persons are outlawed.

The Chippewyans, among whom "order is maintained in the tribe solely by public opinion," the chief having no power to punish crimes, occasionally expel from the society individuals whose conduct is exceptionally bad and threatens the general peace.[4] The Salish, or Flathead Indians, sometimes punished notorious criminals by expulsion from the tribe or band to which they belonged.[5] Sir E. F. Im Thurn, whilst praising the Indians of Guiana for their admirable morality as long as they remain in a state of nature, adds that there are exceptions to the rule, and that such individuals "are soon killed or driven out from their tribe."[6] Among the Bedouins of the Euphrates, "in extreme cases, and as the utmost penalty of the law, the offender is turned out of the tribe";[7] and the same is the case among the Beni Mzab.[8] In the Scotch Highlands, even to this day, instances are common of public opinion operating as a punishment, to the extent of forcing individuals into exile.[9] There are cases reported from various parts of the savage world of banishment being inflicted as a punishment for sexual

[1] Dawson, *Australian Aborigines*, p. 76.

[2] Burton, *Two Trips to Gorilla Land*, i. 105.

[3] Turner, 'Ethnology of the Ungava District,' in *Ann. Rep. Bur. Ethn.* xi. 186.

[4] Richardson, *Arctic Searching Expedition*, ii. 26 *sq.*

[5] Hale, *op. cit.* p. 208.

[6] Im Thurn, *Among the Indians of Guiana*, p. 213.

[7] Blunt, *Bedouin Tribes of the Euphrates*, ii. 206.

[8] Chavanne, *Sahara*, p. 315. Tristram, *Great Sahara*, p. 207.

[9] Stewart, *Highlanders of Scotland*, p. 380.

offences;[1] and other instances of expulsion are mentioned by Dr. Steinmetz.[2] In some cases, however, expulsion is to be regarded rather as a means of ridding the community from a pollution, than as a punishment in the proper sense of the term.[3]

Nearly related to the punishment of expulsion is that of outlawry. Von Wrede states that the Bedouins of Hadhramaut give a respite of three days to the banished man, and that after the lapse of this period every member of the tribe is allowed to kill him.[4] Among the Wyandots the lowest grade of outlawry consists in a declaration that, if the offender shall continue in the commission of crimes similar to that of which he has been guilty, it will be lawful for any person to kill him, whilst outlawry of the highest degree makes it the duty of any member of the tribe who may meet with the offender to kill him.[5] Among the ancient Teutons, also, outlawry was originally a declaration of war by the commonwealth against an offending member, and became only later on a regular means of compelling submission to the authority of the courts.[6]

Most generally, however, punishment is inflicted upon the culprit, not by the whole of the community, but by some person or persons invested with judicial authority. Indeed, it is not only civilised races who have judges and courts of justice. Among savages and barbarians justice is very frequently administered by a council of elders or by a chief.[7] Even people of so low a type as the Australian aborigines have their tribunals.

[1] Westermarck, *History of Human Marriage*, p. 61 *sqq.*

[2] Steinmetz, *op. cit.* ii. ch. 5.

[3] See *infra*, on Homicide.

[4] von Wrede, *Reise in Hadhramaut*, p. 51.

[5] Powell, 'Wyandot Government,' in *Ann. Rep. Bur. Ethn.* i. 68.

[6] Pollock and Maitland, *History of English Law before the time of Edward I.* i. 49.

[7] Petroff, 'Report on Alaska,' in *Tenth Census of the United States*, p. 152 (Aleuts). Morgan, *League of the Iroquois*, p. 330. Powell, in *Ann. Rep. Bur. Ethn.* i. 63, 66 *sq.* (Wyandots). *Idem*, 'Sociology,' in *American Anthropologist*, N.S. i. 706 (North American tribes). Schoolcraft, *Indian Tribes of the United States*, i. 277 (Creeks). von Martius, *Beitrage zur Ethnographie Amerika's*, i. 88 (Brazilian Indians). Cook, *Journal of a Voyage round the World*, p. 41 (Tahitians). Lister, in *Jour. Anthr. Inst.* xxi. 54 (Bowditch Islanders). Codrington, *Melanesians*, p. 345 (Solomon Islanders). Hunt, in *Jour. Anthr. Inst.* xxviii. 6 (Murray Islanders). Kohler, in *Zeitschr. f. vergl. Rechtswiss.* xiv. 448; Senfft, in Steinmetz, *Rechtsverhaltnisse*, p. 448; Kubary, 'Die Ebongruppe im Marshall's Archipel,' in *Journal des Museum Godeffroy*, i. 37 (Marshall Islanders). *Idem*, *Ethnographische Beitrage zur Kenntniss der Karolinischen Inselgruppe*, p. 73 *sqq.*; *Idem*, 'Die Palau-Inseln,' in *Journal des Museum Godeffroy*, iv.

Speaking of the native tribes of Central Australia, Messrs. Spencer and Gillen observe :—"Should any man break through the strict marriage laws, it is not only an 'impersonal power' which he has to deal with. The head men of the group or groups concerned consult together with the elder men, and, if the offender, after long consultation, be adjudged guilty and the determination be arrived at that he is to be put to death—a by no means purely hypothetical case—then the same elder men make arrangements to carry the sentence out, and a party, which is called an *ininja*, is organised for the purpose."[1] We hear of similar councils from various parts of the Australian continent. In his description of the aborigines of New South Wales, Dr. Fraser states, "The Australian council of old and experienced men—this aboriginal senate and witenagemot—has the power to decree punishment for tribal offences." The chiefs sit as magistrates to decide all cases which are brought before them, such as the divulging of sacred things, speaking to a mother-in-law, the adultery of a wife; and there is even a

42 (Pelew Islanders). von Kotzebue, *Voyage of Discovery*, iii. 208 (Caroline Islanders). Worcester, *Philippine Islands*, p. 107 (Tagbanuas of Palawan). Marsden, *History of Sumatra*, p. 217 (Rejangs). von Brenner, *Besuch bei den Kannibalen Sumatras*, p. 211 (Bataks). Forbes, *A Naturalist's Wanderings in the Eastern Archipelago*, p. 243 (Kubus of Sumatra). Man, *Sonthalia*, p. 88 *sq.* Cooper, *Mishmee Hills*, p. 238. Macpherson, *Memorials of Service in India*, p. 83 (Kandhs). Stewart, in *Jour. As. Soc. Bengal*, xxiv. 609, 620 (Nagas, Old Kukis). Dalton, *Ethnology of Bengal*, p. 45 (Kukis). Forsyth, *Highlands of Central India*, p. 361 (Bygás). Shortt, in *Trans. Ethn. Soc.* N.S. vii. 241 (Todas). Batchelor, *Ainu and their Folk-Lore*, p. 278; von Siebold, *Die Aino auf der Insel Yesso*, p. 34. From Africa a great number of instances might be quoted, *e.g.*:—Nachtigal, *Sahara und Sudan*, i. 449 (Tedâ). Petherick, *Egypt, the Soudan, and Central Africa*, i. 320 (Nouaer tribes). Beltrame, *Il Fiume Bianco*, p. 77 (Shilluk). Laing, *Travels in the Timannee, &c. Countries*, p. 365 (Soolimas). Mungo Park, *Travels in the Interior of Africa*, p. 15 *sq.* (Mandingoes). Leuschner, in Steinmetz, *Rechtsverhältnisse*, p. 22 (Bakwiri). *Ibid.* p. 47 (Banaka and Bapuku). Tellier, *ibid.* p. 175 (Kreis Kita, in the French Soudan). Bosman, *New Description of the Coast of Guinea*, p. 331 (Negroes of Fida). Casati, *Ten Years in Equatoria*, i. 158, 163 (Akkas, Mambettu). Stuhlmann, *Mit Emin Pascha ins Herz von Africa*, p. 523 (A-lûr). *Emin Pasha in Central Africa*, p. 89 (Wanyoro). Baskerville, in Steinmetz, *Rechtsverhältnisse*, p. 193 (Waganda). Beverley, *ibid.* p. 214 (Wagogo). Lang, *ibid.* p. 253 *sqq.* (Washambala). Desoignies, *ibid.* p. 279 *sq.* (Msalala). Decle, *Three Years in Savage Africa*, pp. 71, 73, 74, 487 (Barotse, Wakamba). Junod, *Les Ba-Ronga*, p. 155 *sqq.* Burton, *Zanzibar*, ii. 94 (Wanika). Holub, *Seven Years in South Africa*, ii. 319 (Marutse). Kohler, in *Zeitschr. f. vergl. Rechtswiss.* xiv. 316 (Herero). Andersson, *Lake Ngami*, p. 197 (Ovambo). Rautanen, in Steinmetz, *Rechtsverhältnisse*, p. 340 (Ondonga). Kolben, *Present State of the Cape of Good Hope*, i. 86, 297 (Hottentots). Kohler, in *Zeitschr. f. vergl. Rechtswiss.* xv. 333 (Bechuanas). Casalis, *Basutos*, pp. 224, 226. Maclean, *Compendium of Kafir Laws and Customs*, pp. 35, 110. Holden, *Past and Future of the Kaffir Races*, pp. 333, 336. Shooter, *Kafirs of Natal*, p. 99 *sq.*

[1] Spencer and Gillen, *op. cit.* p. 15.

tribal executioner. At the same time, many grievances are arranged without the intervention of the chiefs; for instance, if a man has been found stealing from his neighbour, or two men quarrel about a woman, a fight ensues, the one or the other gets his head broken, and there the matter ends.[1] The Narrinyeri have a judgment council of the elders of the clan, called *tendi*, which is presided over by the chief of the clan; and when any member of the *tendi* dies, the surviving members select a suitable man from the clan to succeed him. "All offenders are brought to this tribunal for trial. In cases of the slaying by a person or persons of one clan of the member of another clan in time of peace, the fellow-clansmen of the murdered man will send to the friends of the murderer and invite them to bring him to trial before the united *tendies*. If, after full inquiry, he is found to have committed the crime, he will be punished according to the degree of guilt."[2] Among another Australian tribe, the Gournditch-mara, again, the headman, whose office was hereditary, "settled all quarrels and disputes in the tribe. When he had heard both sides, and had given his decision in a matter, no one ever disputed it."[3]

Among the Australian aborigines, then, we find cases in which punishment is inflicted by the whole community, and other cases in which it is inflicted by a tribunal or a chief. There can be little doubt that the latter system has developed out of the former; there are obvious instances of transition from the one to the other. Among the North-West-Central Queensland natives, for instance, in cases of major offences, such as murder, incest, or physical violence, the old men are only said to "influence" aboriginal public opinion.[4] It is an inconvenient, and in larger communities a difficult, procedure for the whole group to inflict punishments in common, hence the administration of justice naturally tends to pass into the hands of the leading men or the chief. But the establishment of a judicial authority within the society may also have a different origin. Very frequently judicial organisation

[1] Fraser, *Aborigines of New South Wales*, p. 39.

[2] Taplin, 'Narrinyeri,' in Woods, *Native Tribes of South Australia*, p. 34 *sq.*

[3] Fison and Howitt, *Kamilaroi and Kurnai*, p. 277.

[4] Roth, *op. cit.* p. 141.

seems to have developed, not out of a previous system of lynch-law, but out of a previous system of private revenge.

An act of individual or family revenge is by itself, of course, an expression of private, not of public, feelings—of revenge, not of moral indignation. But the case is different with the *custom* of revenge. We shall see in a following chapter that blood-revenge is regarded not only as a right, but, very frequently, as a duty incumbent upon the relatives of the slain person. So, also, revenge may be deemed a duty in cases where there is no blood-guiltiness. Among the Australian Geawe-gal tribe, for instance, the offender, according to the magnitude of his offence, was to receive one or more spears from men who were relatives of the deceased person; or the injured man himself, when he had recovered strength, might discharge the spears at the offender. And our authority adds, "Obedience to such laws was never withheld, but would have been enforced, without doubt, if necessary, by the assembled tribe."[1] The obligatory character of revenge implies that its omission is disapproved of. It is of course the man on whom the duty of vengeance is incumbent that is the immediate object of blame, when this duty is omitted; and the blame may partly be due to contempt, especially when there is a suspicion of cowardice. But behind the public censure there is obviously a desire to see the injurer suffer. Instances may be quoted in which the society actually assists the avenger, in some way or other, in attaining his object. Speaking of the Fuegians, M. Hyades observes:—"Nous avons entendu parler d'individus coupables de meurtre sur leur femme, par exemple, et qui, poursuivis par tout un groupe de familles, finissaient, quelquefois un an ou deux après leur crime, par tomber sous les coups des parents de la victime. Il s'agit là plutôt d'un acte de justice que d'une satisfaction de vengeance. Nous devons faire remarquer en outre que, dans ces cas, le meurtrier est abandonné de tous, et qu'il ne peut se soustraire que pendant un temps

[1] Fison and Howitt, *op. cit.* p. 282.

relativement assez court au châtiment qui le menace."[1] Amongst the Central Eskimo, who have "no punishment for transgressors except the blood vengeance," if a man has committed a murder or made himself odious by other outrages, "he may be killed by any one simply as a matter of justice. The man who intends to take revenge on him must ask his countrymen singly if each agrees in the opinion that the offender is a bad man deserving death. If all answer in the affirmative he may kill the man thus condemned, and no one is allowed to revenge the murder."[2] Among the Greenlanders, in cases of extreme atrocity, the men of a village have been known to make common cause against a murderer, and kill him, though it otherwise is the business of the nearest relatives to take revenge.[3] It is also noteworthy that, among the crimes which in savage communities are punished by the community at large, incest is particularly prominent. The chief reason for this I take to be the absence of an individual naturally designated as the avenger.

Thus public indignation displays itself not only in punishment, but, to a certain extent, in the custom of revenge. In both cases the society desires that the offender shall suffer for his deed. Strictly speaking, the relationship between the custom of revenge and punishment is not, as has been often supposed, that between parent and child. It is a collateral relationship. They have a common ancestor, the feeling of public resentment.

But whilst public opinion demands that vengeance shall be exacted for injuries, it is also operative in another way. Though in some cases the resentment may seem to outsiders to be too weak or too much checked by other impulses, it may in other cases appear unduly great. As a matter of fact, we frequently find the practice of revenge being regulated by a rule which requires equivalence between the injury and the suffering inflicted in return for

[1] Hyades and Deniker, *Mission scientifique du Cap Horn*, vii. 240 *sq.*

[2] Boas 'Central Eskimo,' in *Ann. Rep. Bur. Ethn.* vi. 582.

[3] Nansen, *Eskimo Life*, p. 163.

it. Sometimes this rule demands that only one life shall be taken for one ;[1] sometimes that a death shall be avenged on a person of the same rank, sex, or age as the deceased ;[2] sometimes that a murderer shall die in the same manner as his victim ;[3] sometimes that various kinds of injuries shall be retaliated by the infliction of similar injuries on the offender.[4] This strict equivalence is not characteristic of resentment as such.[5] There is undoubtedly a certain proportion between the pain-stimulus and the reaction; other things being equal, resentment increases in intensity along with the pain by which it is excited. The more a person feels offended, the greater is his desire to retaliate by inflicting counter-pain, and the greater is the pain which he desires to inflict. But resentment involves no accurate balancing of suffering against suffering, hence there may be a crying disproportion between the act of revenge and the injury evoking it.[6] As Sir Thomas Browne observes, a revengeful mind "holds no rule in retaliations, requiring too often a head for a tooth, and the supreme revenge for trespasses, which a night's rest should obliterate."[7] If, then, the rule of

[1] Krause, *Tlinkit-Indianer*, p. 245 *sq.* Macfie, *Vancouver Island and British Columbia*, p. 470. Foreman, *Philippine Islands*, p. 213 (Negrito and Igorrote tribes in the province of La Isabela). Low, *Sarawak*, p. 212 (Dyaks). von Langsdorf, *Voyages and Travels*, i. 132 (Nukahivans).

[2] Jagor, *Travels in the Philippines*, p. 213 (Igorrotes). Blumentritt, quoted by Spencer, *Principles of Ethics*, i. 370 *sq.* (Quianganes of Luzon). Munzinger, *Ostafrikanische Studien*, p. 243 (Marea). *Koran*, ii. 173.

[3] von Martius, *op. cit.* i. 129 (Brazilian Indians). Wallace, *Travels on the Amazon*, p. 499 (Uaupés). Schoolcraft, *Indian Tribes of the United States*, iii. 246 (Dacotahs). Steller, *Kamtschatka*, p. 355. Hickson, *A Naturalist in North Celebes*, p. 198 (Sangirese of Manganitu). Fraser, *Journal of a Tour through Part of the Himālā Mountains*, p. 339 (Butias). Ellis, *History of Madagascar*, i. 371. Munzinger, *op. cit.* p. 502 (Barea and Kunáma). de Abreu, *Canary Islands*, p. 27 (aborigines of Ferro).

[4] Im Thurn, *op. cit.* p. 213 *sq.* (Guiana Indians). *Glimpses of the Eastern Archipelago*, p. 86 (Bataks). Arbousset and Daumas, *Tour to the North-East of the Colony of Good Hope*, p. 67 (Mantetis) Munzinger, *op. cit.* p. 502 (Barea and Kunáma). Post, *Afrikanische Jurisprudenz*, ii. 27 (various other African peoples). de Abreu, *op. cit.* p. 71 (aborigines of Gran Canaria).

[5] *Cf.* Tissot, *Le droit pénal*, i. 226 ; Steinmetz, *Ethnol. Studien zur ersten Entwicklung der Strafe*, i. 401 ; Makarewicz, *op. cit.* p. 13.

[6] von Martius, *op. cit.* i. 128 (Brazilian aborigines). Calder, in *Jour. Anthr. Inst.* iii. 21 (Tasmanians). Forbes, *A Naturalist's Wanderings in the Eastern Archipelago*, p. 473 (Timorese). Sarasin, *Forschungen auf Ceylon*, iii. 539 (Veddahs). Jacob, *Das Leben der vorislâmischen Beduinen*, p. 144 *sq.*

[7] Browne, *Christian Morals*, iii. 12, p. 94.

equivalence is not suggested by resentment itself, this rule must be due to other factors, which intermingle with resentment, and help, with it, to determine the action. One of these factors, I believe, is self-regarding pride, the desire to pull down the humiliating arrogance of the aggressor naturally suggesting the idea of paying him back in his own coin; and it seems probable that the natural disposition to imitate, especially in cases of sudden anger, acts in the same direction. But besides this qualitative equivalence between injury and retaliation, the *lex talionis* requires, in a rough way, quantitative equivalence, and this demand has no doubt a social origin. If the offender is a person with whose feelings men are ready to sympathise, their sympathy will keep the desire to see him suffer within certain limits; and if, under ordinary circumstances, they tend to sympathise equally with both parties, the injurer and the person injured, and, in consequence, confer upon these equal rights, they will demand a retaliation which is only equal in degree to the offence. By suffering a loss the offender compensates, as it were, for the loss which he has inflicted; and when equal regard is paid to his feelings and to those of his victim, it is deemed just that the loss required of him as a compensation should be equivalent to the loss for which he compensates, anything beyond equivalence being regarded as undeserved suffering. If this explanation is correct, the rule of equivalence must originally have been restricted to offences within the social group; for, according to early custom and law, only members of the same society have equal rights. In speaking of the tit-for-tat system prevalent among the Guiana Indians, Sir E. F. Im Thurn expressly says, "Of course all this refers chiefly to the mutual relations of members of the same tribe."[1] And when we find savages acting according to the same principle in their relations to other tribes, the reason for this may be sought partly in the strong hold which that principle has taken of their minds, and partly in the dangers accompanying intertribal revenge,

[1] Im Thurn, *op. cit.* p. 214.

which make it desirable to restrict it within reasonable limits.

The regulations to which the practice of revenge is subject, help us to understand the transition from revenge to punishment, and the establishment of a special judicial authority. As long as retaliation is in the hands of private individuals, there is no guarantee, on the one hand, that the offender will have to suffer, on the other hand, that the act of retaliation will be sufficiently discriminate.

The injured party may be too weak, or otherwise unable, to avenge himself. His readiest course, then, is to appeal to the chief for help. The chief, on his part, has an interest in interfering—he may of course expect a handsome reward for his assistance,[1]—and, in so far as the community at large wishes that the offender shall suffer, the chief may even be bound to interfere. Thus in the Sandwich Islands, the family or the friends of an injured person—who in cases of assault or murder were by common consent justified in taking revenge—used to appeal to the chief of the district or to the king, when they were too weak to attack the offender themselves.[2] Among the Wanyoro, according to Emin Pasha, should the murderer escape, the nearest relatives of the murdered man apply to the chief of the tribe to procure the punishment of the culprit.[3] The Indians of Brazil, when offended, sometimes bring their cause before the chief; but they do it seldom, since they consider it disgraceful for a man not to be able to avenge himself.[4] The judicial authority granted to the Basuto chief "also insures justice to foreigners, and to individuals who, having no relations, are deprived of their natural defenders and avengers."[5] In ancient Greece, in early times, special care was taken by the State for the protection of the weak and helpless, who otherwise had been unavenged.[6] In the Middle Ages, the

[1] Steinmetz, *Rechtsverhältnisse*, p. 311. *Cf.* Brunner, *Deutsche Rechtsgeschichte*, i. 165.

[2] Ellis, *Tour through Hawaii*, p. 429.

[3] *Emin Pasha in Central Africa*, p. 86.

[4] von Martius, *op. cit.* i. 132.

[5] Casalis, *op. cit.* p. 226.

[6] Leist, *Græco-italische Rechtsgeschichte*, p. 372.

poor and the weak were placed under the King's protection; the intervention of royal justice, as Du Boys observes, "apparaissait comme un bienfait pour les faibles et un secours pour les opprimés."[1]

Whilst resentment on behalf of injuries inflicted upon persons who are unable to avenge themselves has thus, to some extent, contributed towards the establishment of a central judicial and executive authority, the sympathy naturally felt for the object of an improper and immoderate revenge undoubtedly tended to bring about a similar result. The same feeling which checked indiscriminate revenge by establishing the rule of strict equivalence, restricted it once more, and in a more effective way, by referring the case to a judge who was less partial, and more discriminate, than the sufferer himself or his friends. Speaking of the feuds of the Teutons, Kemble remarks, "Setting aside the loss to the whole community which may arise from private feud, the moral sense of men may be shocked by its results: an individual's own estimate of the satisfaction necessary to atone for the injury done to him, may lead to the commission of a wrong on his part, greater than any he hath suffered; nor can the strict rule of 'an eye for an eye, and a tooth for a tooth,' be applied where the exaction of the penalty depends upon the measure of force between appellant and defender."[2] In the Island of Bali the judge steps in between the prosecutor and the person whom he pursues, "so as to restrain the indiscriminate animosity of the one, and to determine the criminality of the other."[3] Crawfurd, in his account of native customs in the Malay Archipelago, says that "the law even expressly interdicts all interference when there appears a character of fairness in the quarrel."[4] A Karen, we are told, always thinks himself right in taking the law into his own hands, this being the custom of the country, and "he is never interfered with, unless he is guilty of some

[1] *Du Boys, Histoire du droit criminel de l'Espagne*, p. 237.

[2] Kemble, *Saxons in England*, i. 268 *sq.*

[3] Raffles, *History of Java*, ii. p. ccxxxvii.

[4] Crawfurd, *History of the Indian Archipelago*, iii. 120.

act contrary to Karen ideas of propriety, when the elders and the villagers interfere and exercise a check upon him."[1] Among the Basutos the authority of the chief is stated to be "sufficiently respected to protect criminated persons, until their cases have been lawfully examined."[2] Among the Californian Gallinomero the avenger of blood has his option between money and the murderer's life; "but he does not seem to be allowed to wreak on him a personal and irresponsible vengeance," the chief taking the criminal and executing the punishment.[3]

Besides the desire that the offender shall suffer and the desire that his suffering shall correspond to his guilt, there is a third factor of importance which has contributed to the substitution of punishment for revenge and to the rise of a judicial organisation. For every society it is a matter of great consequence that there should be peace between its various members. Though the system of revenge helps to keep down crime,[4] it also has a tendency to cause disturbance and destruction. Any act of vengeance which goes beyond the limits fixed by custom is apt to call forth retaliation in return. Among the Ossetes, says Baron von Haxthausen, "if the retaliation does not exceed the original injury the affair terminates; but if the wound given is greater than the one received, the feud begins afresh from the other side."[5] The custom of blood-revenge certainly does not imply that the avenger of unjustifiable homicide may himself be a proper object of retaliation;[6] but in the absence of a tribunal it may be

[1] Mason, in *Jour. Asiatic Soc. Bengal*, xxxvii. pt. ii. 145. *Cf.* MacMahon, *Far Cathay and Farther India*, p. 188.

[2] Casalis, *op. cit.* p. 226.

[3] Powers, *Tribes of California*, p. 177.

[4] Taylor, *Te Ika a Maui*, p. 96 (Maori). Im Thurn, *op. cit.* pp. 213, 330 (Guiana Indians). Burckhardt, *Bedouins and Wahábys*, p. 84 *sq.*; Blunt, *Bedouins of the Euphrates*, ii. 207; Layard, *Discoveries in the Ruins of Nineveh and Babylon*, p. 305 *sq.* (Bedouins). Kohl, *Reise nach Istrien*, i. 409 *sq.* (Montenegrines). Stephen, *History of the Criminal Law of England*, i. 60 (Anglo-Saxons). Nordström, *Svenska samhälls-författningens historia*, ii. 228 (ancient Scandinavians). Steinmetz, *Ethnol. Studien zur ersten Entwicklung der Strafe*, ii. 125 *sqq.*

[5] von Haxthausen, *Transcaucasia*, p. 411.

[6] Among the aborigines of Western Victoria, when life has been taken for life, the feud is ended (Dawson, *op. cit.* p. 70). Among the Greenlanders, if the victim of revenge "be a notorious

no easy thing to decide the question of guilt, and, besides, the dictate of custom may be overruled by passion. As a matter of fact, the blood-feud often consists of a whole series of murders, the revenge itself calling forth a new act of redress, and so on, until the state of hostility may become more or less permanent.[1] In the long run this will prove injurious both to the families implicated in the feud and to society as a whole, and some method of putting a stop to the feud will readily be adopted. One such method is to substitute the payment of blood-money for revenge; another is to submit the cause to an authority invested with judicatory power. Casalis tells us that the Basutos are often heard to say, "If we were to revenge ourselves, the town or community would soon be dispersed"; and he adds that the instinctive fear of the disorders that might arise from the exercise of individual law has induced them to allow the chief of the tribe a certain right over the person of every member of the community.[2]

As may be expected, it is only by slow degrees that revenge has yielded to punishment, and the private avenger has been succeeded by the judge and the public executioner of his sentence. Among many savages the chief is said to have nothing whatever to do with jurisdiction.[3] Among

offender, or hated for his bloody deeds, or if he have no relations, the matter rests"; but more frequently the act of vengeance costs the avenger himself his life (Cranz, *op. cit.* i. 178). Among the Bedouins, "if the family of the man killed should in revenge kill two of the *dammawy*'s or homicide's family, the latter retaliate by the death of one. If one only be killed, the affair rests there and all is quiet; but the quarrel is soon revived by hatred and revenge" (Burckhardt, *Bedouins and Wahábys*, p. 86). In his book, *Das Leben der vorislâmischen Beduinen*, Dr. Jacob likewise observes (p. 144):—"Irrtümlich ist die Ansicht, dass Blut immer neues Blut fordere. War für einen Getödteten ein Anderer erschlagen, so galt die Sache in der Regel damit für erledigt und abgetan." *Cf.* Achelis, *Moderne Volkerkunde*, p. 407, n. 1.

[1] Nelson, 'Eskimo about Bering Strait,' in *Ann. Rep. Bur. Ethn.* xviii. 293. Miklosich, Blutrache bei den Slaven,' in *Denkschriften d. kaiserl. Akademie d. Wissensch. Phil.-hist. Classe*, Vienna, xxxvi. 132; &c.

[2] Casalis, *op. cit.* p. 225. *Cf.* Boyle, *Adventures among the Dyaks of Borneo*, p. 217; Marsden, *op. cit.* p. 249 *sq.* (Rejangs).

[3] Keating, *Expedition to the Source of St. Peter's River*, i. 123 (Potawatomis). Richardson, *Arctic Searching Expedition*, ii. 27 (Chippewyans), Carver, *Travels*, p. 259 (Naudowessies). Dobrizhoffer, *Account of the Abipones*, ii. 103; &c.

others he acts merely as an adviser, or is appealed to as an arbiter ;[1] or the injured party may choose between avenging himself and appealing to the chief for redress ;[2] or the judicial power with which the chief is invested is stated to be more nominal than real.[3] It is also interesting to note that in several cases the injured party or the accuser acts as executioner, but not as judge.

Thus among some Australian tribes, "a man accused of a serious offence gets a month's citation to appear before the tribunal, on pain of death if he disobeys. If he is found guilty of a private wrong, he is painted white, and made to stand out at fifty paces in front of the accuser and his friends, all fully armed. They throw at him a shower of spears and 'bumarangs,' from which he protects himself with a light shield." [4] Among the Aricara Indians of the Missouri, who, for the most part, punish murder with death, the nearest relative of the murdered man was deputed by the council to act the part of executioner.[5] With reference to the natives of Bali, Raffles says that "in the execution of the punishment awarded by the court there is this peculiarity, that the aggrieved party or his friends are appointed to inflict it."[6] In some parts of Afghanistan, "if the offended party complains to the Sirdar, or if *he* hears of a murder committed, he first endeavours to bring about a compromise, by offering the Khoon Behau, or price of blood ; but if the injured party is inexorable, the Sirdar lays the affair before the King, who orders the Cauzy to try it ; and, if the criminal is convicted, gives him up to be executed by the relations of the deceased."[7] Among the peoples round Lake Nyassa and Tanganyika and among the Bantu tribes generally, "when a murderer is caught and proved guilty he is given over

[1] Lewis and Clarke, *Travels to the Source of the Missouri River*, p. 306 *sq.* (Shoshones). Powers, *Tribes of California*, p. 45 (Karok and Yurok). Dunbar, 'Pawnee Indians,' in *Magazine of American History*, iv. 261. Arbousset and Daumas, *op. cit.* p. 67 (Mantetis). Ellis, *Yoruba-speaking Peoples of the Slave Coast*, p. 300 (Tshi- and Ewe-speaking peoples of the African West Coast). Burckhardt, *Bedouins and Wahábys*, pp. 68, 70. Blunt, *op. cit.* ii. 232 *sq.* (Bedouins of the Euphrates). von Haxthausen, *Transcaucasia*, p. 415 (Ossetes).

[2] Ellis, *Tour through Hawaii*, p. 429. Williams and Calvert, *Fiji and the Fijians*, p. 23. Forbes, *A Naturalist's Wanderings in the Eastern Archipelago*, p. 473 (Timorese).

[3] Falkner, *Description of Patagonia*, p. 123. Anderson, *Lake Ngami*, p. 231 (Damaras).

[4] Fraser, *Aborigines of New South Wales*, p. 40 *sq.*

[5] Bradbury, *Travels in the Interior of America*, p. 168.

[6] Raffles, *op. cit.* ii. p. ccxxxvii.

[7] Elphinstone, *Kingdom of Caubul*, ii. 105 *sq.*

to the relatives of the person murdered, who have power to dispose of him as they choose."[1] A similar practice prevails among the Mishmis,[2] Bataks,[3] and Kamchadales.[4] It was also recognised by early Slavonic,[5] Teutonic, and English codes.[6] According to the provisions of a code granted so late as 1231, by the Abbey of St. Bertin to the town of Arques, when a man was convicted of intentional homicide, he was handed over to the family of the murdered person, to be slain by them.[7]

But although, in innumerable cases, punishment and judicial organisation have succeeded a previous system of revenge, and thus are products of social development, their existence or non-existence among a certain people is no exact index to the general state of culture which that people has attained. Even among low savages we have noticed instances of punishments which are inflicted by the community as a whole, as also by special judicial authorities. On the other hand, we are taught by the history of European and Oriental nations, that the system of revenge is not inconsistent with a comparatively high degree of culture.[8] We can now see the reason for this apparent anomaly. In a small savage community, all the members of which are closely united with each other, an injury inflicted upon one is readily felt by all. The case may be different in a State consisting of loosely-connected social components, which, though forming a political unity, have little communication between themselves, and take no interest in each other's private dealings. And, whilst in the smaller society public resentment is thus more easily aroused, such a society also stands in more urgent need of internal peace.

Our assumption that punishment is, in the main, an expression of public indignation, is opposed to another theory, according to which the chief object of punishment, not only ought to be, but actually is, or has been,

[1] Macdonald, in *Jour. Anthr. Inst.* xxii. 108.
[2] Cooper, *Mishmee Hills*, p. 238.
[3] von Brenner, *op. cit.* p. 212.
[4] Georgi, *Russia*, iii. 137.
[5] Macieiowski, *Slavische Rechtsgeschichte*, ii. 127.
[6] Wilda, *Strafrecht der Germanen*, p. 167. *Lex Salica*, 68. *Laws of Cnut*, i. 53. *Leges Henrici I.* lxxi. 1.
[7] *Leges villæ de Arkes ab abbate S. Bertini concessæ*, 28 (d'Achery, *Spicilegium*, iii. 608).
[8] See *infra*, on Blood-revenge.

to prevent crime by deterring people from committing it. We are even told that punishment, inflicted for such a purpose, is, largely, at the root of the moral consciousness; that punishment is not the result of a sense of justice, but that the sense of justice is a result of punishment; that, by being punished by the State, certain acts gradually came to be regarded as worthy of punishment, in other words, as morally wrong.[1]

There are certain facts which seem to support the supposition that punishment has, to a large extent, been intended to act as a deterrent. We find that among various semi-civilised and civilised peoples the criminal law has assumed a severity which far surpasses the rigour of the *lex talionis*.

Speaking of the Azteks, Mr. Bancroft observes that "the greater part of their code might, like Draco's, have been written in blood—so severe were the penalties inflicted for crimes that were comparatively slight, and so brutal and bloody were the ways of carrying those punishments into execution."[2] The punishment of death was inflicted on the man who dressed himself like a woman, on the woman who dressed herself like a man,[3] on tutors who did not give a good account of the estates of their pupils,[4] on those who carried off, or changed, the boundaries placed in the fields by public authority;[5] and should an adulterer endeavour to save himself by killing the injured husband, his fate was to be roasted alive before a slow fire, his body being basted with salt and water that death might not come to his relief too soon.[6] Nor did the ancient Peruvian code economise human suffering by proportioning penalties to crimes; the punishment most commonly prescribed by it was death.[7] The penal code of China, though less cruel in various respects than the European legislation of the eighteenth century, awards death for a third and aggravated theft, for defacing the branding inflicted for former offences,[8] and for privately casting copper coin;[9] whilst for the commission of the most heinous crimes

[1] Rée, *Ursprung der moralischen Empfindungen*, p. 45 *sqq.* *Idem*, *Entstehung des Gewissens*, p. 190 *sqq.*

[2] Bancroft, *Native Races of the Pacific States*, ii. 454.

[3] Clavigero, *History of Mexico*, i. 358.

[4] *Ibid.* i. 359.

[5] *Ibid.* i. 355.

[6] Bancroft, *op. cit.* ii. 465 *sq.*

[7] Garcilasso de la Vega, *First Part of the Royal Commentaries of the Yncas*, i. 145, 151 *sq.*

[8] Wells Williams, *Middle Kingdom*, i. 512.

[9] *Ta Tsing Leu Lee*, sec. ccclix. p. 397.

the penalty is "to be cut into ten thousand pieces," which appears to amount, at least, to a license to the executioner to aggravate and prolong the sufferings of the criminal by any species of cruelty he may think proper to inflict.[1] In Japan, before the revolution of 1871, "the punishments for crime had been both rigorous and cruel; death was the usual punishment, and death accompanied by tortures was the penalty for aggravated crimes."[2] According to the Mosaic law, death is inflicted for such offences as breach of the Lord's day,[3] going to wizards,[4] eating the fat of a beast of sacrifice,[5] eating blood,[6] approaching unto a woman "as long as she is put apart for her uncleanness,"[7] and various kinds of sexual offences.[8] The laws of Manu provide capital punishment for those who forge royal edicts and corrupt royal ministers;[9] for those who break into a royal storehouse, an armoury, or a temple, and those who steal elephants, horses, or chariots;[10] for thieves who are taken with the stolen goods and the implements of burglary;[11] for cut-purses on the third conviction;[12] whilst a wife, who, proud of the greatness of her relatives or her own excellence, violates the duty which she owes to her lord, shall be devoured by dogs in a place frequented by many, and the male offender shall be burnt on a red-hot iron bed.[13]

Increasing severity has been a characteristic of European legislation up to quite modern times. Towards the end of the thirteenth century, the English law knows some seven crimes which it treats as capital, namely, treason, homicide, arson, rape, robbery, burglary, and grand larceny; but the number of capital offences grew rapidly.[14] From the Restoration to the death of George III.—a period of 160 years—no less than 187 such offences, wholly different in character and degree, were added to the criminal code; and when, in 1837, the punishment of death was removed from about 200 crimes, it was still left applicable to exactly the same offences as were capital at the end of the thirteenth century.[15] Pocket-picking was punishable with death until the year 1808;[16] horse-stealing, cattle-stealing,

[1] *Ibid.* sec. ccliv. p. 269 n. †
[2] Reed, *Japan*, i. 323. Thunberg, *Travels*, iv. 65.
[3] *Exodus*, xxxi. 14.
[4] *Leviticus*, xx. 6.
[5] *Ibid.* vii. 25.
[6] *Ibid.* vii. 27.
[7] *Ibid.* xviii. 19.
[8] *Ibid.* xviii. 6 *sqq.*
[9] *Laws of Manu*, ix. 232.
[10] *Ibid.* ix. 280.
[11] *Ibid.* ix. 270.
[12] *Ibid.* ix. 277.
[13] *Ibid.* viii. 371 *sq.*
[14] Pollock and Maitland, *op. cit.* ii. 511.
[15] May, *Constitutional History of England*, ii. 595. Mackenzie, *Studies in Roman Law*, p. 424 *sq.*
[16] Pike, *History of Crime in England*, ii. 450.

sheep-stealing, stealing from a dwelling-house, and forgery, until 1832;[1] letter-stealing and sacrilege, until 1835;[2] rape, until 1841;[3] robbery with violence, arson of dwelling-houses, and sodomy, until 1861.[4] And not only was human life recklessly sacrificed, but the mode of execution was often exceedingly cruel. In the beginning of the fifteenth century, the *Peine forte et dure*, or pressing to death with every aggravation of torture, was adopted as a manner of punishment suitable to cases where the accused refused to plead.[5] Burning alive of female offenders still occurred in England at the end of the eighteenth century,[6] being considered by the framers of the law as a commutation of the sentence of hanging required by decency.[7] Still more cruel was the punishment inflicted on male traitors: they were first hanged by the neck and cut down before life was extinct, their entrails were taken out and burned before their face, then they were beheaded and quartered, and the quarters were set up in diverse places.[8] This punishment continued to exist in England as late as in the reign of George III., and even then Sir Samuel Romilly, the great agitator against its continuance, brought upon himself the odium of the law officers of the Crown, who declared that he was "breaking down the bulwarks of the Constitution."[9] Such cruelties were not peculiar to the English. On the contrary, as Sir James Stephen observes, though English people, as a rule, have been singularly reckless about taking life, they have usually been averse to the infliction of death by torture.[10] In various parts of the Continent we find such punishments as breaking on the wheel, quartering alive, and tearing with red-hot pincers, in use down to the end of the eighteenth century.

It is interesting to compare these punishments with those practised among savages. Wanton cruelty is not a general characteristic of their public justice.

[1] *Ibid.* ii. 451. Stephen, *History of the Criminal Law of England*, i. 474.

[2] Pike, *op. cit.* ii. 451. Stephen, *op. it.* i. 474.

[3] Stephen, *op. cit.* i. 475.

[4] *Ibid.* i. 475.

[5] For the manner in which this torture was inflicted, see Andrews, *Old-Time Punishments*, p. 203 *sq.*

[6] *Ibid.* p. 198. Stephen, *op. cit.* i. 477.

[7] Andrews, *op. cit.* p. 192.

[8] Holinshed, *Chronicles of England, &c.* i. 310. Thomas Smith, *Commonwealth of England*, p. 198.

[9] Andrews, *op. cit.* p. 203. An earlier method of punishing traitors was boiling to death, which was adopted by Henry VIII. as a punishment for poisoners as well (Holinshed, *op. cit.* i. 311).

[10] Stephen, *op. cit.* i. 478. *Cf.* Thomas Smith, *op. cit.* p. 193 *sq.*

Among several uncivilised peoples capital punishment is said to be unknown or almost so.[1] Among others it is restricted to a few particularly atrocious offences. Among the Greenlanders "none are put to death but murderers, and such witches as are thought to have killed some one by their art."[2] The Aleuts punished with death murderers and betrayers of community secrets.[3] In Samoa and New Guinea murder and adultery are punished capitally;[4] among the Bataks, open robbery and murder, provided that the offender is unable to redeem his life by a sum of money;[5] among the Kukis, only treason or an attempt at violence on the person of the King.[6] Among the Mishmis, adultery committed against the consent of the husband is punished with death, but all other crimes, including murder, are punished by fines; however if the amount is not forthcoming the offender is cut up by the company assembled.[7] In Kar Nicobar the only cause for a "death penalty" that Mr. Distant could discover was madness.[8] Among the Soolimas "murder is the only crime punishable with death."[9] Among the Congo natives "the only capital crimes are stated to be those of poisoning and adultery."[10] Of the kingdom of Fida Bosman writes, "Here are very few capital crimes, which are only murthers, and committing adultery with the King's or his great men's wives."[11] Among the Wanika two crimes are visited with capital punishment—murder and an improper use of sorcery;[12] among the Wagogo[13] and Washambala,[14] witchcraft only. Among the Basutos every murderer is by law liable to death, but the sentence is generally commuted into confiscation; an incorrigible thief sometimes pays with his head, but is generally fined, whereas treason and rebellion against authority are treated with more severity.[15] Among the Kafirs, cases of assault on the persons of wives of the chiefs,

[1] von Siebold, *Ethnol. Studien über die Aino auf Yesso*, p. 35; Batchelor, *Ainu and their Folk-Lore*, p. 284. Dalton, *op. cit.* p. 115 (Kakhyens). Marsden, *op. cit.* p. 248 (Rejangs of Sumatra). Riedel, *De sluik- en kroesharige rassen tusschen Selebes en Papua*, p. 103 (Serangese). Worcester, *op. cit.* pp. 413, 492 (Mangyans and Tagbanuas). Kubary, 'Die Palau-Inseln,' in *Journal des Museum Godeffroy*, iv. 42 (Pelew Islanders). de Abreu, *op. cit.* p. 152 (Canary Islanders). Fritsch, *Die Eingeborenen Süd-Afrika's*, p. 322 (Hottentots).

[2] Cranz, *op. cit.* i. 177.

[3] Petroff, *loc. cit.* p. 152

[4] Turner, *Samoa*, p. 178. Chalmers, *Pioneering in New Guinea*, p. 179.

[5] Marsden, *op. cit.* p. 389.

[6] Dalton, *op. cit.* p. 45. Stewart, in *Jour. As. Soc. Bengal*, xxiv. p. 627.

[7] Griffith, *ibid.* vi. 332.

[8] Distant, in *Jour. Anthr. Inst.* iii. 6.

[9] Laing, *Travels*, p. 365.

[10] Tucker, *Expedition to Explore the River Zaire*, p. 383.

[11] Bosman, *op. cit.* p. 331.

[12] New, *op. cit.* p. 111.

[13] Beverley, in Steinmetz, *Rechtsverhältnisse*, p. 215.

[14] Lang, *ibid.* p. 259.

[15] Casalis, *op. cit.* p. 228.

and what are deemed aggravated cases of witchcraft, are the only crimes which usually involve the punishment of death, very summarily inflicted; whereas this punishment seldom follows even murder, when committed without the supposed aid of supernatural powers.[1]

Nor, as it seems, is savage justice fond of torturing its victims before they are killed. The Maoris exclaimed loudly against the English method of executing criminals, first telling them that they are to die, then letting them lie for days and nights in prison, and finally leading them slowly to the gallows. "If a man commits a crime worthy of death," they said, "we shoot him, or chop off his head; but we do not tell him first that we are going to do so."[2] Dr. Codrington gives the following description of the cases of burning persons alive which have occasionally happened in Pentecost Island:—"In fighting time there, if a great man were very angry with the hostile party, he would burn a wounded enemy. When peace had been made and the chiefs had ordered all to behave well that the country might settle down in quiet, if any one committed such a crime as would break up the peace, such as adultery, they would tie him to a tree, heap fire-wood round him, and burn him alive, a proof to the opposite party of their detestation of his wickedness. This was not done coolly as a matter of course in the execution of a law, but as a horrible thing to do, and done for the horror of it; a horror renewed in the voice and face of the native who told me of the roaring flames and shrieks of agony."[3] This story is not without interest when compared with the cold-blooded burning of female criminals and women suspected of witchcraft in Christian Europe.

There is sufficient evidence to show that the severe punishments adopted by peoples of a higher culture have been regarded by them as beneficial to society. The legislators themselves often refer to the deterrent effects of punishment.

The Peruvian Incas considered that light punishments gave confidence to evil-doers, whilst "through their great care in punishing a man's first delinquency, they avoided the effects of his second and third, and of the host of others that are committed in every commonwealth where no diligence is observed

[1] Maclean, *Compendium of Kafir Laws and Customs*, p. 35 *sq.*

[2] Yate, *Account of New Zealand*, p. 105.

[3] Codrington, *op. cit.* p. 347.

to root up the evil plant at the commencement."[1] According to the Prefatory Edict of the Emperor Kaung-hee, published in 1679, the chief ends proposed by the institution of punishments in the Chinese Empire "have been to guard against violence and injury, to repress inordinate desires, and to secure the peace and tranquillity of an honest and unoffending community."[2] In the Laws of Manu punishment is described as a protector of all creatures:—"If the king did not, without tiring, inflict punishment on those worthy to be punished, the stronger would roast the weaker, like fish on a spit; the crow would eat the sacrificial cake and the dog would lick the sacrificial viands, and ownership would not remain with any one, the lower ones would usurp the place of the higher ones. The whole world is kept in order by punishment, for a guiltless man is hard to find; through fear of punishment the whole world yields the enjoyments which it owes."[3] Even the gods, the Dânavas, the Gandharvas, the Râkshasas, the bird and snake deities, give the enjoyments due from them only if they are tormented by the fear of punishment.[4] In mediæval law-books determent is frequently referred to as an object of punishment.[5] And in more modern times, till the end of the eighteenth century at least, the idea that punishment should inspire fear was ever present to the minds of legislators.

The same idea is also conspicuous in the practice of punishing criminals in public.[6] A petty thief in the pillory and a scold on the cucking-stool were, in earlier times, spectacles familiar to everybody, whilst persons still living remember seeing offenders publicly whipped in the streets. "A gallows or tree with a man hanging upon it," says Mr. Wright, "was so frequent an object in the country that it seems to have been almost a natural ornament of a landscape, and it is thus introduced by no

[1] Garcilasso de la Vega, *op. cit.* i. 151 *sq.*

[2] *Ta Tsing Leu Lee*, p. lxvii.

[3] *Laws of Manu*, vii. 14, 15, 20–22, 24 *sq.*

[4] *Ibid.* vii. 23.

[5] *Leges Burgundionum*, Leges Gundebati, 52: "Rectius enim paucorum condempnatione multitudo corregitur, quam sub specie incongruae civilitatis intromittatur occasio, quae licentiam tribuat delinquendi." *Capitulare Aquisgranense An.* 802, 33: "Sed taliter hoc corripiantur, ut caeteri metum habeant talia perpetrandi" (Migne, *Patrologiæ cursus*, xcvii. 230). *Chlotar II. Edictum de Synodo Parisiensi*, 24: "In ipsum capitali sententia judicetur, qualiter alii non debeant similia perpetrare" (Migne, *op. cit.* lxxx. 454). For other instances, see Brunner, *Deutsche Rechtsgeschichte*, ii. 588, n. 6.

[6] Günther, *Die Idee der Wiedervergeltung*, i. 211 *sq.* n. 31.

means uncommonly in mediæval manuscripts."[1] In atrocious cases it was usual for the court to direct the murderer, after execution, to be hung upon a gibbet in chains near the place where the fact was committed, "with the intention of thereby deterring others from capital offences"; and in order that the body might all the longer serve this useful purpose, it was saturated with tar before it was hung in chains.[2] The popularity which mutilation as a punishment enjoyed during the Middle Ages was largely due to the opinion, that "a malefactor miserably living was a more striking example of justice than one put to death at once."[3]

We shall now consider whether these facts really contradict our thesis that punishment is essentially an expression of public indignation.

It may, first, be noticed that the punishment actually inflicted on the criminal is in many cases much less severe than the punishment with which the law threatens him. In China the execution of the law is, on the whole, lenient in comparison with its literal and *prima facie* interpretation.[4] "Many of the laws seem designed to operate chiefly *in terrorem*, and the penalty is placed higher than the punishment really intended to be inflicted, to the end that the Emperor may have scope for mercy, or, as he says, 'for leniency beyond the bounds of the law.'"[5] In Europe, during the Middle Ages, malefactors frequently received charters of pardon, and in later times it became a favourite theory that it was good policy, in framing penal statutes, to make as many offences as possible capital, and to leave to the Crown to relax the severity of the law. In England, about the beginning of the nineteenth century, the punishment of death was actually inflicted in only a small proportion of the cases in

[1] Wright, *History of Domestic Manners and Sentiments in England during the Middle Ages*, p. 346.

[2] Holinshed, *op. cit.* i. 311. Blackstone, *Commentaries on the Laws of England*, iv. 201. Cox, 'Hanging in Chains,' in *The Antiquary*, xxii. 213 *sq.*

[3] Strutt, *View of the Manners, &c. of the Inhabitants of England*, ii. 8.

[4] Staunton, in his Preface to *Ta Tsing Leu Lee*, p. xxvii. *sq.*

[5] Wells Williams, *op. cit.* i. 392 *sq.*

which sentence was passed; indeed, "not one in twenty of the sentences was carried into execution."[1] This discrepancy between law and practice bears witness, not only to the extent to which the minds of legislators were swayed by the idea of inspiring fear, but to the limitation of determent as a penal principle. It has been observed that the excessive severity of laws hinders their execution. "Society revolted against barbarities which the law prescribed. Men wronged by crimes, shrank from the shedding of blood, and forbore to prosecute: juries forgot their oaths and acquitted prisoners, against evidence: judges recommended the guilty to mercy."[2] Yet, in spite of all such deductions, there can be no doubt that the hangman had plenty to do. Hanging persons, says Mr. Andrews, was almost a daily occurrence in the earlier years of the nineteenth century, "for forging notes, passing forged notes, and other crimes which we now almost regard with indifference."[3]

Another circumstance worth mentioning is, that in earlier times the detection of criminals was much rarer and more uncertain than it is now.[4] It has been argued on utilitarian grounds that, "to enable the value of the punishment to outweigh that of the profit of the offence, it must be increased, in point of magnitude, in proportion as it falls short in point of certainty."[5] But the rareness of detection would also for purely emotional reasons tend to increase the severity of the punishment. When one criminal out of ten or twenty is caught, the accumulated indignation of the public turns against him, and he becomes a scapegoat for all the rest.

However, the chief explanation of the great severity of certain criminal codes lies in their connection with despotism or religion or both.[6] An act which is pro-

[1] Stephen, *op. cit.* i. 471. May, *op. cit.* ii. 597.

[2] May, *op. cit.* ii. 597.

[3] Andrews, *op. cit.* p. 218. *Cf.* Olivecrona, *Om dödsstraffet*, p. x.

[4] *Cf.* Morrison, *Crime and its Causes*, p. 175.

[5] Bentham, *Principles of Morals and Legislation*, p. 184. *Cf.* Paley, *Moral and Political Philosophy*, vi. 9 (*Complete Works*, ii. 371).

[6] This has been previously pointed out by Prof. Durkheim, in his interesting essay, 'Deux lois de l'évolution

hibited by law may be punished, not only on account of its intrinsic character, but for the very reason that it is illegal. When the law is, from the outset, an expression of popular feelings, the severity of the penalty with which it threatens the transgressor depends, in the first place, on the public indignation evoked by the act itself, independently of the legal prohibition of it. But the case is different with laws established by despotic rulers or ascribed to divine lawgivers. Such laws have a tendency to treat criminals not only as offenders against the individuals whom they injure or against society at large, but as rebels against their sovereign or their god. Their disobedience to the will of the mighty legislator incurs, or is supposed to incur, his anger, and is, in consequence, severely resented. But however severe they be, the punishments inflicted by the despot on disobedient subjects are not regarded as mere outbursts of personal anger. In the archaic State the king is an object of profound regard, and even of religious veneration. He is looked upon as a sacred being, and his decrees as the embodiment of divine justice. The transgression of any law he makes is, therefore, apt to evoke a feeling of public indignation proportionate to the punishment which he pleases to inflict on the transgressor. Again, as to acts which are supposed to arouse the anger of invisible powers, the people are anxious to punish them with the utmost severity so as to prevent the divine wrath from turning against the community itself. But the fear which, in such cases, lies at the bottom of the punishment, is certainly combined with genuine indignation against the offender, both because he rebels against God and religion, and because he thereby exposes the whole community to supernatural dangers.

pénale' (*L'année sociologique*, iv. [1899–1900], p. 64 *sqq.*), with which I became acquainted only when the present chapter was already in type. Montesquieu observes (*De l'esprit des lois*, vi. 9 [*Œuvres*, p. 231]), "Il serait aisé de prouver que, dans tous ou presque tous les États d'Europe, les peines ont diminué ou augmenté à mesure qu'on s'est plus approché ou plus éloigné de la liberté."

Various facts might be quoted in support of this explanation. Whilst the punishments practised among the lower races generally, are not conspicuous for their severity, there are exceptions to this rule among peoples who are governed by despotic rulers.

Under the Ashanti code, even the most trivial offences are punishable with death.[1] In Madagascar, also, "death was formerly inflicted for almost every offence."[2] In Uganda the ordinary punishments were "death by fire, being hacked to pieces by reed splinters, fine, imprisonment in the stocks *mvuba*, or in the slove fork *kaligo*, also mutilation. It is most common to see people deprived of an eye, or in some cases of both eyes; persons lacking their ears are also frequently met with."[3] Among the Wassukuma, whose chieftains used to have power of life and death over their subjects, a person who was guilty of disobedience to his ruler, or of some action which the ruler considered wicked and punishable, was condemned to death.[4] In the Sandwich Islands, "a chief takes the life of one of his own people for any offence he may commit, and no one thinks he has a right to interfere."[5]

In the old monarchies of America and Asia there was an obvious connection between the punishments prescribed by their laws and the religious-autocratic form of their governments. According to Garcilasso de la Vega, the Peruvians—among whom the most common punishment was death—maintained "that a culprit was not punished for the delinquencies he had committed, but for having broken the commandment of the Ynca, who was respected as God," and that, viewed in this light, the slightest offence merited to be punished with death.[6] In China the Emperor was regarded as the vicegerent of Heaven especially chosen to govern all nations, and was supreme in everything, holding at once the highest legislative and executive powers, without limit or control.[7] According

[1] Ellis, *Tshi-speaking Peoples of the Gold Coast*, p. 166.
[2] Ellis, *History of Madagascar*, i. 374.
[3] Ashe, *Two Kings of Uganda*, p. 293. *Cf.* Wilson and Felkin, *Uganda and the Egyptian Soudan*, i. 201.
[4] Kollmann, *Victoria Nyanza*, p. 170 *sq.*
[5] Ellis, *Tour through Hawaii*, p. 431.
[6] Garcilasso de la Vega, *op. cit.* i. 145.
[7] Wells Williams, *op. cit.* i. 393.

to ancient Japanese ideas, "the duty of a good Japanese consists in obeying the Mikado, without questioning whether his commands are right or wrong. The Mikado is god and vicar of all the gods, hence government and religion are the same."[1] In Rome the criminal law, which for a long time was characterised by great moderation,[2] gradually grew more severe according as absolutism made progress. Sylla, the dictator, not only put thousands of citizens to death by proscription without any form of trial, but fixed, in the Cornelian criminal code, for heinous offences the punishment called *aquæ et ignis interdictio*. Under the Emperors some new and cruel capital punishments were introduced, such as burning alive and exposing to wild beasts; whilst at the same time offences such as driving away horses or cattle were made capital.[3] In mediæval and modern Europe the increase of the royal power was accompanied by increasing severity of the penal codes. Every crime came to be regarded as a crime against the King. Indeed, breach of the King's peace became the foundation of the whole Criminal Law of England; the right of pardon, for instance, as a prerogative of the Crown, took its origin in the fact that the King was supposed to be injured by a crime, and could therefore waive his remedy.[4] And the King was not only regarded as the fountain of social justice, but as the earthly representative of the heavenly lawgiver and judge.[5]

Of the connection between punishment and the belief in supernatural agencies many instances are found already in the savage world.[6] The great severity with which cer-

[1] Griffis, *Religions of Japan*, p. 92. *Cf. Idem*, *Mikado's Empire*, p. 100.

[2] *Cf.* Livy, x. 9; Polybius, vi. 14; Gibbon, *History of the Decline and Fall of the Roman Empire*, v. 318, 326.

[3] Mackenzie, *Studies in Roman Law*, pp. 408, 409, 414. Gibbon, *op. cit.* v. 320. *Cf.* Mommsen, *Römisches Strafrecht*, p. 943.

[4] Cherry, *Growth of Criminal Law in Ancient Communities*, pp. 68, 105.

[5] Henke, *Grundriss einer Geschichte des deutschen peinlichen Rechts*, ii. 310. Abegg, *Die verschiedenen Strafrechtstheorieen*, p. 117. Du Boys, *Histoire du droit criminel de l'Espagne*, p. 323.

[6] Steinmetz, *Ethnol. Studien zur ersten Entwicklung der Strafe*, ii. 340 *sq.* The connection between punishment and religion has been emphasised by Prof. Durkheim (*Division du travail social*, p. 97 *sqq.*) and M. Mauss ('La religion et les origines du droit pénal,' in *Revue de l'histoire des religions*, vols. xxxiv. and xxxv.). But Prof. Durkheim

tain infractions of custom are punished has obviously a superstitious origin. In Polynesia, according to Ellis, "the prohibitions and requisitions of the tabu were strictly enforced, and every breach of them punished with death, unless the delinquents had some very powerful friends who were either priests or chiefs." [1] Among the western tribes of Torres Straits, "death was the penalty for infringing the rules connected with the initiation period *i.e.*, for sacrilege." [2] Among the Port Lincoln aborigines the women and children are not allowed to see any of the initiation ceremonies, and "any impertinent curiosity on their part is punishable with death, according to the ancient custom." [3] Among the Masai, who believe that the boiling of milk will cause the cows to run dry, "any one caught doing so can only atone for the sin with a fearfully heavy fine, or, failing that, the insult to the holy cattle will be wiped out in his blood." [4] The penalty of death which is frequently imposed on incest or other sexual offences is largely due to the influence of religious or superstitious beliefs.[5] And in various cases of sacrilege the offender is offered up as a sacrifice to the resentful god.[6]

According to Hebrew notions, it is man's duty to avenge offences against God; every crime involves a breach of God's law, and is punishable as such, and hardly any punishment is too severe to be inflicted on the ungodly.[7] These ideas were adopted by the Christian Church and by Christian governments.[8] The principle

exaggerates the importance of this connection by assuming (p. 97) that "le droit pénal à l'origine était essentiellement religieux."

[1] Ellis, *Tour through Hawaii*, p. 394. *Cf.* Olmsted, *Incidents of a Whaling Voyage*, p. 248 *sq.*; Mauss, in *op. cit.* xxxv. 55.

[2] Haddon, 'Ethnography of the Western Tribes of Torres Straits,' in *Jour. Anthr. Inst.* xix. 335.

[3] Schürmann, 'Aboriginal Tribes of Port Lincoln,' in Woods, *Native Tribes of South Australia*, p. 234.

[4] Johnston, *Kilima-njaro Expedition*, p. 425.

[5] See *infra*, on Sexual Morality.

[6] See *infra*, on Human Sacrifice.

[7] *Cf.* Robertson Smith, *Religion of the Semites*, p. 162 *sq.*

[8] von Eicken, *Geschichte und System der mittelalterlichen Weltanschauung*, p. 563 *sqq.* Abegg, *op. cit.* p. 111 *sq.* Wilda, *Strafrecht der Germanen*, p. 530 *sq.* Günther, *op. cit.* ii. 12 *sqq.* Henke, *op. cit.* ii. 310 *sq.* Brunner, *op. cit.* ii. 587.

stated in the Laws of Cnut, that "it belongs very rightly to a Christian king that he avenge God's anger very deeply, according as the deed may be,"[1] was acted upon till quite modern times, and largely contributed to the increasing severity of the penal codes. It was therefore one of the most important steps towards a more humane legislation when, in the eighteenth century, this principle was superseded by the contrary doctrine, "Il faut faire honorer la Divinité, et ne la venger jamais."[2]

From the fact, then, that crimes are punished not only as wrongs against individuals, but as wrongs against the State, and, especially, as wrongs against some despotic or semi-divine lawgiver, or against the Deity, it follows that even seemingly excessive punishments may, to a large extent, be regarded as manifestations of public resentment. This emotion does not necessarily demand like for like. The law of talion presupposes equality of rights; it is not applicable to impersonal offences, nor to offences against kings or gods. And as the demands of public resentment may exceed the *lex talionis*, so they may on the other hand fall short of it. Moreover, though the degree of punishment on the whole more or less faithfully represents the degree of indignation aroused by any particular crime in comparison with other crimes belonging to the same penal system, we must not take the comparative severity of the criminal laws of different peoples as a safe index to the intensity of their reprobation of crime. As we have seen before, the strength of moral indignation cannot be absolutely measured by the desire to cause pain to the offender. When the emotion of resentment is sufficiently refined, the infliction of suffering is regarded as a means rather than as an end.

By all this I certainly do not mean to deny that punishment, though in the main an expression of public indignation, is also applied as a means of deterring from crime. Criminal law is preventive, its object is to forbid and

[1] *Laws of Cnut*, ii. 40.

[2] Montesquieu, *De l'esprit des lois*, xii. 4 (*Œuvres*, p. 282).

to warn, and it uses punishment as a threat. But the acts which the law forbids are, as a rule, such as public opinion condemns as wrong, and it is their wrongness that in all ages has been regarded as the justification of the penalties to which they are subject. It is true that there are instances in which the law punishes acts which in themselves are not apt to evoke public resentment, and others in which the severity of the punishment does not exactly correspond with the resentment they evoke. The State may have a right to sacrifice the welfare of individuals in order to attain some desirable end. It may have a right to do so in cases where no crime has been committed, it would therefore seem to be all the more justified in doing so when the evil has been preceded by a warning. And yet, in the case of punishment, it is only within narrow limits that such a right is granted to the State. To punish a person could not simply mean that he has to suffer for the benefit of the society; there is always opprobrium connected with punishment. Hence the scope which justice leaves for determent pure and simple is not wide. Sir James Stephen observes:—"You cannot punish anything which public opinion, as expressed in the common practice of society, does not strenuously and unequivocally condemn. To try to do so is a sure way to produce gross hypocrisy and furious reaction."[1] Experience shows that the fate of all disproportionately severe laws which make too liberal use of punishment as a deterrent is that they come to be little followed in practice and are finally annulled. As Gibbon says, "whenever an offence inspires less horror than the punishment awarded to it, the rigour of penal law is obliged to give way to the common feelings of mankind."

Numerous data, to be referred to in following chapters, will show how faithfully punishment reflects the emotion of resentment, and how impossible it would be to explain it from considerations of social utility without close refer-

[1] Stephen, *Liberty, Equality, Fraternity*, p. 159. *Cf.* Mommsen, *Römisches Strafrecht*, p. 91 *sq.*

ence to the feeling of justice. Why, for instance, should the attempt to commit a crime, when its failure obviously depends on mere chance, be punished less severely than the accomplished crime, if not because the indignation it arouses is less intense? Would not the same amount of suffering be requisite to deter a person from attempting to murder his neighbour as to deter him from actually committing the murder? And is there any reason to suppose that the unsuccessful offender is less dangerous to society than he who succeeds? All the facts referring to criminal responsibility, as we shall see, suggest resentment, not determent, as the basis of punishment, and so does the gradation of the punishment conformably to the magnitude of the crime.[1] According to the principle of determent, as expressed by Anselm von Feuerbach and others, punishment should be neither more nor less severe than is necessary for the suppression of crime.[2] But if this rule were really acted upon, the penalties imposed, especially on minor offences, which the law has been utterly unable to suppress, would certainly be much less lenient than they actually are. Moreover, if there were no intrinsic connection between punishment and resentment, how could we explain the predilection of early law for the principle of talion—an eye for an eye, a tooth for a tooth, a life for a life—[3] which, as we have seen, so frequently regulates the custom of revenge?

The criminal law of a society may thus, on the whole, be taken for a faithful exponent of moral sentiments prevalent in that society at large. The attempt to make law independent of morality, and to allot to it a kingdom of its own, is really, I think, only an excuse for the moral shortcomings which it reveals if scrutinised from the standpoint of a higher morality. Law does not show us the moral consciousness in its refinement. But refinement

[1] *Cf.* Durkheim, *Division du travail social*, p. 93 *sq.*

[2] von Feuerbach, *Ueber die Strafe als Sicherungsmittel vor künftigen Beleidigungen des Verbrechers*, p. 83. von Gizycki, *Introduction to the Study of Ethics*, p. 188.

[3] On this subject, see Günther, *op. cit. passim.*

is a rare thing, and criminal law is in the main on a level with the unreflecting morality of the vulgar mind. Philosophers and theorisers on law would do better service to humanity if they tried to persuade people not only that their moral ideas require improvement, but that their laws, so far as possible, ought to come up to the improved standard, than they do by wasting their ingenuity in sophisms about the sovereignty of Law and its independence of the realm of Justice.

CHAPTER VIII

THE GENERAL NATURE OF THE SUBJECTS OF ENLIGHTENED MORAL JUDGMENTS

THE subjects of moral judgments call for a very comprehensive investigation, which will occupy the main part of this work. As already said, we shall first discuss the general nature, and afterwards the particular branches, of those phenomena which have a tendency to evoke moral condemnation or moral praise; and in each case our investigation will be both historical and explanatory. The present chapter, however, will be neither the one nor the other. It seems desirable to examine the general nature of the subjects of moral valuation from the standpoint of the enlightened moral consciousness before dealing with the influence which their various elements have come to exercise upon moral judgments in the course of evolution. By doing this, we shall be able, from the outset, to distinguish between elements which are hardly discernible, or separable, at the lower stages of mental development, as also to fix the terminology which will be used in the future discussion.

Moral judgments are commonly said to be passed upon conduct and character. This is a convenient mode of expression, but the terms need an explanation.

Conduct has been defined sometimes as "acts adjusted to ends,"[1] sometimes as acts that are not only adjusted to ends, but definitely willed.[2] The latter definition is too

[1] Spencer, *Principles of Ethics*, i. 5.

[2] *E.g.*, Mackenzie, *Manual of Ethics*, p. 85.

narrow for our present purpose, because, as will be seen, it excludes from the province of conduct many phenomena with reference to which moral judgments are passed. The same may be said of the former definition also, which, moreover, is unnecessarily wide, including as it does an immense number of phenomena with which moral judgments are never concerned. Though no definition of conduct could be restricted to such phenomena as actually evoke moral emotions, the term "conduct" seems, nevertheless, to suggest at least the possibility of moral valuation, and is therefore hardly applicable to such "acts adjusted to ends" as are performed by obviously irresponsible beings. It may be well first to fix the meaning of the word "act."

According to Bentham, acts may be distinguished as external, or acts of the body, and internal, or acts of the mind. "Thus, to strike is an external or exterior act: to intend to strike, an internal or interior one."[1] But this application of the word is neither popular nor convenient. The term "act" suggests something besides intention, whilst, at the same time, it suggests something besides muscular contractions. To intend to strike is no act, nor are the movements involved in an epileptic fit acts.

An act comprises an event and its immediate mental cause. The event is generally spoken of as the outward act, but this term seems to be too narrow, since the intentional production of a mental fact—for instance, a sensation, or an idea, or an emotion like joy or sorrow or anger—may be properly styled an act. The objection will perhaps be raised that I confound acts with their consequences, and that what I call the "event" is, as Austin maintains, nothing but bodily movements. But Austin himself admits that he must often speak of "acts" when he means "acts and their consequences," since "most of the names which seem to be names of acts, are names of acts, coupled with certain of their consequences,

[1] Bentham, *Principles of Morals and Legislation*, p. 73.

and it is not in our power to discard these forms of speech."[1] I regard the so-called consequences of acts, in so far as they are intended, as acts by themselves, or as parts of acts.

The very expression "outward act" implies that acts also have an inner aspect. Intention, says Butler, "is part of the action itself."[2] By intention I understand a volition or determination to realise the idea of a certain event; hence there can be only one intention in one act. Certain writers distinguish between the immediate and the remote intentions of an act. Suppose that a tyrant, when his enemy jumped into the sea to escape him, saved his victim from drowning with a view to inflicting upon him more exquisite tortures. The immediate intention, it is maintained, was to save the enemy from drowning, the remote intention was to inflict upon him tortures.[3] But I should say that, in this case, we have to distinguish between two acts, of which the first was a means of producing the event belonging to the second, and that, when the former was accomplished, the latter was still only in preparation. A distinction has, moreover, been drawn between the direct and the indirect intention of an act:— "If a Nihilist seeks to blow up a train containing an Emperor and others, his direct intention may be simply the destruction of the Emperor, but indirectly also he intends the destruction of the others who are in the train, since he is aware that their destruction will be necessarily included along with that of the Emperor."[4] In this case we have two intentions, and, so far as I can see, two acts, provided that the nihilist succeeded in carrying out his intentions, namely (1) the blowing up of the train, and (2) the killing of the emperor; the former of these acts does not even necessarily involve the latter. But I fail to see that there is any intention at all to kill other

[1] Austin, *Lectures on Jurisprudence*, i. 427, 432 *sq.*

[2] Butler, 'Dissertation II. Of the Nature of Virtue,' in *Analogy of Religion, &c.* p. 336.

[3] Mackenzie, *op. cit.* p. 60. The example is borrowed from Stuart Mill, *Utilitarianism*, p. 27 note.

[4] Mackenzie, *op. cit.* p. 61. *Cf.* Sidgwick, *Methods of Ethics*, p. 202, n. 1.

persons. Professor Sidgwick maintains that it would be thought absurd to say that, in such a case, the nihilist "did not intend" to kill them;[1] but the reason for this is simply the vagueness of language, and a confusion between a psychical fact and the moral estimate of that fact. It might be absurd to bring forward the nihilist's non-intention as an extenuation of his crime; but it would hardly be correct to say that he intended the death of other passengers, besides that of the emperor, when he only intended the destruction of the train, though this intention involved an extreme disregard of the various consequences which were likely to follow. He knowingly exposed the passengers to great danger; but if we speak of an intention on his part to expose them to such a danger, we regard this exposure as an act by itself.

A moral judgment may refer to a mere intention, independently of its being realised or not. Moreover, the moral judgments which we pass on acts do not really relate to the event, but to the intention. In this point moralists of all schools seem to agree.[2] Even Stuart Mill, who drew so sharp a distinction between the morality of the act and the moral worth of the agent, admits that "the morality of the action depends entirely upon the intention."[3] The event is of moral importance only in so far as it indicates a decision which is final. From the moral point of view there may be a considerable difference between a resolution to do a certain thing in a distant future and a resolution to do it immediately. However determined a person may be to commit a crime, or to perform a good deed, the idea of the immediacy of the event may, in the last moment, induce him to change his mind. "The road to hell is paved with good intentions." External events are generally the direct causes of our moral emotions; indeed, without the *doing* of harm and the *doing* of good, the moral consciousness would never

[1] Sidgwick, *op. cit.* p. 202, n. 1. On the subject of "indirect intention," *cf.* also Bentham, *op. cit.* pp. 84, 86.

[2] Sidgwick, *op. cit.* p. 201.

[3] Stuart Mill, *Utilitarianism*, p. 27 note. *Cf.* James Mill, *Fragment on Mackintosh*, p. 376.

have come into existence. Hence the ineradicable tendency to pass moral judgments upon acts, even though they really relate to the final intentions involved in acts. It would be both inconvenient and useless to deviate, in this respect, from the established application of terms. And no misunderstanding can arise from such application if it be borne in mind that by an "act," as the subject of a moral judgment, is invariably understood the event *plus* the intention which produced it, and that the very same moral judgment as is passed on acts would also, on due reflection, be recognised as valid with reference to final decisions in cases where accidental circumstances prevented the accomplishment of the act.

It is in their capacity of volitions that intentions are subjects of moral judgments. What is perfectly independent of the will is no proper object of moral blame or moral praise. On the other hand, any volition may have a moral value. But, so far as I can see, there are volitions which are not intentions. A person is morally accountable also for his deliberate wishes, and the reason for this is that a deliberate wish is a volition. I am aware that, by calling deliberate wishes "volitions," I offend against the terminology generally adopted by psychologists. However, a deliberate wish is not only from a moral point of view—as being a proper subject of moral valuation—but psychologically as well, so closely akin to a decision, that there must be a common term comprising both. In the realm of conations, deliberate wishes and decisions form together a province by themselves. In contradistinction to mere conative impulses, they are expressions of a person's character, of his will. A deliberate wish may just as well as a decision represent his "true self." It has been argued that a person may will one thing and yet wish the opposite thing. Locke observes:—"A man whom I cannot deny, may oblige me to use persuasions to another, which, at the same time I am speaking, I may wish may not prevail upon him. In this case it is plain the will and desire run counter. I will the action that

tends one way, whilst my desire tends another, and that the direct contrary way." [1] Yet in this case I either do not intend to persuade the man, but only to discharge my office by speaking to him words which are apt to have a persuasive effect on him; or, if I do intend to persuade him, I do not in the same moment feel any deliberate wish to the contrary, although I may feel such a wish before or afterwards. We cannot simultaneously have an intention to do a thing and a deliberate wish not to do it.

If it is admitted that moral judgments are passed on acts simply in virtue of their volitional character, it seems impossible to deny that such judgments may be passed on the motives of acts as well. By "motive" I understand a conation which "moves" the will, in other words, the conative cause of a volition.[2] The motive itself may be, or may not be, a volition. If it is, it obviously falls within the sphere of moral valuation. The motive of an act may even be an intention, but an intention belonging to another act. When Brutus helped to kill Cæsar in order to save his country, his intention to save his country was the cause, and therefore the motive, of his intention to kill Cæsar. The fact that an intention frequently acts as a motive has led some writers to the conclusion that the motive of an act is a part of the intention. But if the intention of an act is part of the act itself, and a motive is the cause of an intention, the motive of an intention cannot be a part of that intention, since a part cannot be the cause of the whole of which it forms a part.

But even motives which, being neither deliberate wishes

[1] Locke, *Essay concerning Human Understanding*, ii. 21. 30 (*Philosophical Works*, p. 219).

[2] "The term 'motive,'" says Professor Stout (*Groundwork of Psychology*, p. 233 *sq.*), "is ambiguous. It may refer to the various conations which come into play in the process of deliberation and tend to influence its result. Or it may refer to the conations which we mentally assign as the ground or reason of our decision when it has been fully formed." Motive, in the former sense of the term, is not implied in what I here understand by motive. On the other hand, it should be observed that there are motives not only for decisions, but for deliberate wishes—another circumstance which shows the affinity between these two classes of mental facts.

nor intentions, consist of non-volitional conations, and, therefore, are no proper subjects of moral valuation, may nevertheless indirectly exercise much influence on moral judgments. Suppose that a person without permission gratifies his hunger with food which is not his own. The motive of his act is a non-volitional conation, an appetite, and has consequently no moral value. Yet it must be taken into account by him who judges upon the act. Other things being equal, the person in question is less guilty in proportion as his hunger is more intense. The moral judgment is modified by the pressure which the non-volitional motive exercises upon the agent's will. The same is the case when the motive of an act is the conative element involved in an emotion. If a person commits a certain crime under the influence of anger, he is not so blamable as if he commits the same crime in cold blood. Thus, also, it is more meritorious to be kind to an enemy from a feeling of duty, than to be kind to a friend from a feeling of love. No man deserves blame or praise for the pressure of a non-volitional conation upon his will, unless, indeed, such a pressure is due to choice, or unless it might have been avoided with due foresight. But a person may deserve blame or praise for not resisting that impulse, or for allowing it to influence his will for evil or good.

It is true that moral judgments are commonly passed on acts without much regard being paid to their motives ;[1] but the reason for this is only the superficiality of ordinary moral estimates. Moral indignation and moral approval are, in the first place, aroused by conspicuous facts, and, whilst the intention of an act is expressed in the act itself, its motive is not. But a conscientious judge cannot, like the multitude, be content with judging of the surface only. Stuart Mill, in his famous statement that "the motive has nothing to do with the morality of the action, though much with the worth of the agent,"[2] has drawn a distinc-

[1] *Cf.* James Mill, *Fragment on Mackintosh*, p. 376 ; Sidgwick, *op. cit.* p. 364.

[2] Stuart Mill, *Utilitarianism*, p. 26.

tion between acts and agents which is foreign to the moral consciousness. It cannot be admitted that "he who saves a fellow creature from drowning does what is morally right, whether his motive be duty, or the hope of being paid for his trouble." He ought, of course, to save the other person from drowning, but at the same time he ought to save him from a better motive than a wish for money. It may be that "he who betrays his friend that trusts him is guilty of a crime, even if his object be to serve another friend to whom he is under greater obligations";[1] but surely his guilt would be greater if he betrayed his friend, say, in order to gain some personal advantage thereby. Intentions and motives are subjects of moral valuation not separately, but as a unity; and the reason for this is that moral judgments are really passed upon men as acting or willing, not upon acts or volitions in the abstract. It is true that our detestation of an act is not always proportionate to our moral condemnation of the agent; people do terrible things in ignorance. But our detestation of an act is, properly speaking, a moral emotion only in so far as it is directed against him who committed the act, in his capacity of a moral agent. We are struck with horror when we hear of a wolf eating a child, but we do not morally condemn the wolf.

A volition may have reference not only to the doing of a thing, but to the abstaining from doing a thing. It may form part not only of an act, but of a forbearance. A forbearance is morally equivalent to an act, and the volition involved in it is equivalent to an intention. "Sitting still, or holding one's peace," says Locke, "when walking or speaking are proposed, though mere forbearances, requiring as much the determination of the will, and being as often weighty in their consequences as the contrary actions, may, on that consideration, well enough pass for actions too."[2] Yet it is hardly correct to call them acts. Bentham's division of acts into acts of com-

[1] *Ibid.* p. 26

[2] Locke, *op. cit.* ii. 21, 28 (*Philosophical Works*, p. 218).

mission and acts of omission or forbearance [1] is not to be recommended. A not-doing I do not call an act, and the purpose of not doing I do not call an intention.[2] But the fact remains that a forbearance involves a distinct volition, which, as such, may be the subject of moral judgment no less than the intention involved in an act.

Willing not to do a thing must be distinguished from not willing to do a thing; forbearances must be distinguished from omissions. An omission—in the restricted sense of the word—is characterised by the absence of volition. It is, as Austin puts it, "the not doing a given act, without adverting (at the time) to the act which is not done." [3] Now moral judgments refer not only to willing, but to not-willing as well, not only to acts and forbearances, but to omissions. It is curious that this important point has been so little noticed by writers on ethics, although it constitutes a distinct and extremely frequent element in our moral judgments. It has been argued that what is condemned in an omission is really a volition, not the absence of a volition; that an omission is bad, not because the person did not do something, but because he did something else, "or was in such a condition that he could not will, and is condemned for the acts which brought him into that condition." [4] In the latter case, of course, the man cannot be condemned for his omission, since he cannot be blamed for not doing what

[1] Bentham, *op. cit.* p. 72.

[2] *Cf.* Clark, *Analysis of Criminal Liability*, p. 42.

[3] Austin, *op. cit.* i. 438.

[4] Alexander, *Moral Order and Progress*, p. 34 *sq.* So, also, Professor Sidgwick maintains (*op. cit.* p. 60) that "the proper immediate objects of moral approval or disapproval would seem to be always the results of a man's volitions so far as they were intended—*i.e.*, represented in thought as certain or probable consequences of such volitions," and that, in cases of carelessness, moral blame, strictly speaking, attaches to the agent, only "in so far as his carelessness is the result of some wilful neglect of duty." A similar view is taken by the moral philosophy of Roman Catholicism. (Göpfert, *Moraltheologie*, i. 113). Binding, again, assumes (*Die Normen*, ii. 105 *sqq.*) that a person may have a volition without having an idea of what he wills, and that carelessness implies a volition of this kind. Otherwise, he says, the will could not be held responsible for the result. But, as we shall see immediately, the absence of a volition may very well be attributed to a defect of the will, and the will thus be regarded as the cause of an unintended event. To speak of a volition or will to do a thing of which the person who wills it has no idea seems absurd.

he "could not will"; but to say that an omission is condemned only on account of the performance of some act is undoubtedly a psychological error. If a person forgets to discharge a certain duty incumbent on him, say, to pay a debt, he is censured, not for anything he did, but for what he omitted to do. He is blamed for not doing a thing which he ought to have done, because he did not think of it; he is blamed for his forgetfulness. In other words, his guilt lies in his negligence.

Closely related to negligence is heedlessness, the difference between them being seemingly greater than it really is. Whilst the negligent man omits an act which he ought to have done, because he does not think of it, the heedless man does an act from which he ought to have forborne, because he does not consider its probable or possible consequences.[1] In the latter case there is acting, in the former case there is absence of acting. But in both cases the moral judgment refers to want of attention, in other words, to not-willing. The fault of the negligent man is that he does not think of the act which he ought to perform, the fault of the heedless man is that he does not think of the probable or possible consequences of the act which he performs. In rashness, again, the party adverts to the mischief which his act may cause, but, from insufficient advertence assumes that it will not ensue; the fault of the rash man is partial want of attention.[2] Negligence, heedlessness, and rashness, are all included under the common term "carelessness."

Our moral judgments of blame, however, are concerned with not-willing only in so far as this not-willing is attributed to a defect of the will, not to the influence of intellectual or other circumstances for which no man can be held responsible. That power in a person which we call his "will" is regarded by us as a cause, not only of

[1] The meaning of the word "negligence," in the common use of language, is very indefinite. It often stands for heedlessness as well, or for carelessness. I use it here in the sense in which it was applied by Austin (*op. cit.* i. 439 *sq.*).

[2] Austin, *op. cit.* i. 440 *sq.* Clark, *op. cit.* p. 101.

such events as are intended, but of such events as we think that the person "could" have prevented by his will. And just as, in the case of volitions, the guilt of the party is affected by the pressure of non-voluntary motives, so in the case of carelessness mental facts falling outside the sphere of the will must be closely considered by the conscientious judge. But nothing is harder than to apply this rule in practice.

Equally difficult is it, in many cases, to decide whether a person's behaviour is due to want of advertence, or is combined with a knowledge of what his behaviour implies, or of the consequences which may result from it—to decide whether it is due to carelessness, or to something worse than carelessness. For him who refrains from performing an obligatory act, though adverting to it, "negligent" is certainly too mild an epithet, and he who knows that mischief will probably result from his deed is certainly worse than heedless. Yet even in such cases the immediate object of blame may be the absence of a volition —not a want of attention, but a not-willing to do, or a not-willing to refrain from doing, an act in spite of advertence to what the act implies or to its consequences. I may abstain from performing an obligatory act though I think of it, and yet, at the same time, make no resolution not to perform it. So, too, if a man is ruining his family by his drunkenness, he may be aware that he is doing so, and yet he may do it without any volition to that effect. In these cases the moral blame refers neither to negligence or heedlessness, nor to any definite volition, but to disregard of one's duty or of the interests of one's family. At the same time, the transition from conscious omissions into forbearances, and the transition from not-willing to refrain from doing into willing to do, are easy and natural; hence the distinction between willing and not-willing may be of little or no significance from an ethical point of view. For this reason such consequences of an act as are foreseen as certain or probable have commonly been included under the term "inten-

tion,"[1] often as a special branch of intention—"oblique," or "indirect," or "virtual" intention;[2] but, as was already noticed, this terminology is hardly appropriate. I shall call such consequences of an act as are foreseen by the agent, and such incidents as are known by him to be involved in his act, "the known concomitants" of the act. When the nihilist blows up the train containing an emperor and others, with a view to killing the emperor, the extreme danger to which he exposes the others is a known concomitant of his act. So, also, in most crimes, the breach of law, as distinct from the act intended, is a known concomitant of the act, inasmuch as the criminal, though aware that his act is illegal, does not perform it for the purpose of violating the law. As Bacon said, "no man doth a wrong for the wrong's sake, but thereby to purchase himself profit, or pleasure, or honour, or the like."[3]

Absence of volitions, like volitions themselves, give rise not only to moral blame, but to moral praise. We may, for instance, applaud a person for abstaining from doing a thing, beneficial to himself but harmful to others, which, in similar circumstances, would have proved too great a temptation to any ordinary man; and it does not necessarily lessen his merit if the opposite alternative did not even occur to his mind, and his abstinence, therefore, could not possibly be ascribed to a volition. Very frequently moral praise refers to known concomitants of acts rather than to the acts themselves. The merit of saving another person's life at the risk of losing one's own, really lies in the fact that the knowledge of the danger did not prevent the saver from performing his act; and the merit of the charitable man really depends on the loss which he inflicts upon himself by giving his property to the needy. In these and analogous cases of self-sacrifice for a good end, the merit, strictly speaking, consists in not-willing to

[1] *Cf.* Sidgwick, *op. cit.* p. 202.

[2] Bentham, *op. cit.* p. 84. Austin, *op. cit.* i. 480. Clark, *op. cit.* pp. 97, 100.

[3] Bacon, 'Essay IV. Of Revenge' in *Essays*, p. 45. *Cf.* Grotius, *De jure belli et pacis*, ii. 20. 29. 1: "Vi quisquam gratis malus est."

avoid a known concomitant of a beneficial act. But there are instances, though much less frequent, in which moral praise is bestowed on a person for not-willing to avoid a known concomitant which is itself beneficial. Thus it may on certain conditions be magnanimous of a person not to refrain from doing a thing, though he knows that his deed will benefit somebody who has injured him, and towards whom the average man in similar circumstances would display resentment.

All these various elements into which the subjects of moral judgments may be resolved, are included in the term "conduct." By a man's conduct in a certain case is understood a volition, or the absence of a volition in him —which is often, but not always or necessarily, expressed in an act, forbearance, or omission—viewed with reference to all such circumstances as may influence its moral character. In order to form an accurate idea of these circumstances, it is necessary to consider not only the case itself, but the man's character, if by character is understood a person's will regarded as a continuous entity.[1] The subject of a moral judgment is, strictly speaking, a person's will conceived as the cause either of volitions or of the absence of volitions; and, since a man's will or character is a continuity, it is necessary that any judgment passed upon him in a particular case, should take notice of his will as a whole, his character. We impute a person's acts to *him* only in so far as we regard them as a result or manifestation of his character, as directly or indirectly due to his will. Hume observes:—"Actions are, by their very nature, temporary and perishing; and where they proceed not from some *cause* in the character and disposition of the person who performed them, they can neither redound to his honour, if good; nor infamy, if evil. . . . The person is not answerable for them; and as they proceeded

[1] *Cf.* Alexander, *op. cit.* p. 49: "Character is simply that of which individual pieces of conduct are the manifestation." To the word "character" has also been given a broader meaning. According to John Grote (*Treatise on the Moral Ideals*, p. 442), a person's character "is his habitual way of thinking, feeling, and acting."

from nothing in him, that is durable and constant, and leave nothing of that nature behind them, it is impossible he can, upon their account, become the object of punishment or vengeance."[1] There is thus an intimate connection between character and conduct as subjects of moral valuation. When judging of a man's conduct in a special instance, we judge of his character, and when judging of his character, we judge of his conduct in general.

It will perhaps be remarked that moral judgments are passed not only on conduct and character, but on emotions and opinions; for instance, that resentment in many cases is deemed wrong, and love of an enemy is deemed praiseworthy, and that no punishment has been thought too severe for heretics and unbelievers. But even in such instances the object of blame or praise is really the will. The person who feels resentment is censured because his will has not given a check to that emotion, or because the hostile attitude of mind has led up to a definite volition. Very frequently the irascible impulse in resentment or the friendly impulse in kindly emotion develops into a volition to inflict an injury or to bestow a benefit on its object; and the words resentment and love themselves are often used to denote, not mere emotions, but states of mind characterised by genuine volitions. An emotion, or the absence of an emotion, may also, when viewed as a symptom, give rise to, and be the apparent subject of, a moral judgment. We are apt to blame a person whose feelings are not affected by the news of a misfortune which has befallen his friend, because we regard this as a sign of an uncharitable character. We may be mistaken, of course. The same person might have been the first to try to prevent the misfortune if it had been in his power; but we judge from average cases.

As for opinions and beliefs, it may be said that they involve responsibility in so far as they are supposed to

[1] Hume, *Enquiry concerning Human Understanding*, viii. 2 (*Philosophical Works*, iv. 80). *Cf. Idem, Treatise of Human Nature*, iii. 2 (*ibid.* ii. 191). See also Schopenhauer, *Die beiden Grundprobleme der Ethik* (*Sämmtliche Werke*, vol. vii.), pp. 123, 124, 281.

depend on the will. Generally it is not so much the opinion itself but rather the expression, or the outward consequence, of it that calls forth moral indignation; and in any case the blame, strictly speaking, refers either to such acts, or to the cause of the opinion within the will. That a certain belief, or "unbelief," is never as such a proper object of censure is recognised both by Catholic and Protestant theology. Thomas Aquinas points out that the *sin* of unbelief consists in "contrary opposition to the faith, whereby one stands out against the hearing of the faith, or even despises faith," and that, though such unbelief itself is in the intellect, the cause of it is in the will. And he adds that in those who have heard nothing of the faith, unbelief has not the character of a sin, "but rather of a penalty, inasmuch as such ignorance of divine things is a consequence of the sin of our first parent."[1] Dr. Wardlaw likewise observes:—"The Bible condemns no man for not knowing what he never heard of, or for not believing what he could not know. . . . Ignorance is criminal only when it arises from wilful inattention, or from aversion of heart to truth. Unbelief involves guilt, when it is the effect and manifestation of the same aversion—of a want of will to that which is right and good."[2] To shut one's eyes to truth may be a heinous wrong, but nobody is blamable for seeing nothing with his eyes shut.

After these preliminary remarks, which refer to the scrutinising and enlightened moral consciousness, we shall proceed to discuss in detail, and from an evolutionary point of view, the various elements of which the subjects of moral judgments consist.

[1] Thomas Aquinas, *Summa Theologica*, ii.-ii. 10. 1 *sq.*

[2] Wardlaw, *Sermons on Man's Accountableness for his Belief, &c.* D. 38.

CHAPTER IX

THE WILL AS THE SUBJECT OF MORAL JUDGMENT AND THE INFLUENCE OF EXTERNAL EVENTS

HOWEVER obvious it may be to the reflecting moral consciousness that the only proper object of moral blame and praise is the will, it would be a hasty conclusion to assume that moral judgments always and necessarily relate to the will. There are numerous facts which tend to show that such judgments are largely influenced by external events involved in, or resulting from, the conduct of men.

Some peoples are said to make no distinction between intentional and accidental injuries. Most statements to this effect refer to revenge or compensation.

Von Martius states that, among the Arawaks, "the blood-revenge is so blind and is practised so extensively, that many times an accidental death leads to the destruction of whole families, both the family of him who killed and of the family of the victim";[1] and, according to Sir E. F. Im Thurn, the smallest injury done by one Guiana Indian to another, even if unintentional, must be atoned by the suffering of a similar injury.[2] Adair, in his work on the North American Indians, says that they pursued the law of retaliation with such a fixed eagerness, that formerly if a little boy shooting birds in the high and thick cornfields unfortunately chanced slightly to wound another with his childish arrow, "the young vindictive fox was excited by custom to watch his ways with the utmost earnestness, till the wound was returned in as equal a manner

[1] von Martius, *Beiträge zur Ethnographie Amerika's*, i. 693 *sq.*

[2] Im Thurn, *Among the Indians of Guiana*, p. 214.

as could be expected."[1] Among the Ondonga in South Africa,[2] the Nissan Islanders in the Bismarck Archipelago,[3] and certain Marshall Islanders,[4] the custom of blood-revenge makes no distinction between wilful and accidental homicide. Among the Kasias "destruction of human life, whether by accident or design, in open war or secret, is always the cause of feud among the relations of the parties."[5] It seems that the blood-revenge of the early Greeks was equally indiscriminate.[6] As for the blood-feuds of the ancient Teutons, Wilda maintains that, even in prehistoric times, it was hardly conformable to good custom to kill the involuntary manslayer;[7] but there is every reason to believe that custom made no protest against it. According to the myth of Balder, accident was no excuse for shedding blood. Loke gives to Hödur the mistletoe twig, and asks him to do like the rest of the gods, and show Balder honour, by shooting at him with the twig. Hödur throws the mistletoe at Balder, and kills him, not knowing its power. According to our notions, blind Hödur is perfectly innocent of his brother's death; yet the avenger, Vali, by the usual Germanic vow, neither washes nor combs his hair till he has killed Hödur. It is also instructive to note that the narrator of this story finds himself called upon to explain, and, in a manner, to excuse the Asas for not punishing Hödur at once, the place where they were assembled being a sacred place.[8] We find survivals of a similar view in laws of a comparatively recent date. The earliest of the Norman customals declares quite plainly that the man who kills his lord by misadventure must die.[9] And, according to a passage in 'Leges Henrici I.,' in case A by mischance falls from a tree upon B and kills him, then, if B's kinsman must needs have vengeance, he may climb a tree and fall upon A.[10] This provision has been justly represented as a curious instance of a growing appreciation of moral differences, which has not dared to abolish, but has tried to circumvent the ancient rule.[11]

[1] Adair, *History of the American Indians*, p. 150.

[2] Rautanen, in Steinmetz, *Rechtsverhältnisse*, p. 341.

[3] Sorge, *ibid.* p. 418.

[4] Kohler, in *Zeitschr. f. vergl. Rechtswiss.* xiv. 443. See also *Idem*, *Shakespeare vor dem Forum der Jurisprudenz*, p. 188.

[5] Fisher, in *Jour. Asiatic Soc. Bengal*, ix. 835.

[6] Rohde, *Psyche*, pp. 237, 238, 242.

[7] Wilda, *Strafrecht der Germanen*, p. 174.

[8] *Snorri Sturluson*, 'Gylfaginning,' 50, in *Edda*, p. 59. *Cf.* Brunner, *Forschungen zur Geschichte des deutschen und französischen Rechtes*, p. 489.

[9] Pollock and Maitland, *History of English Law before the Time of Edward I.* ii. 482.

[10] *Leges Henrici I.* xc. 7.

[11] Pollock and Maitland, *op. cit.* ii. 471.

Among the Kandhs "similar compensation is made in all cases both of excusable homicide and of manslaughter." [1] And the same is said to be the case among various other savages or barbarians.[2]

However, this want of discrimination between intentional and accidental injuries is not restricted to cases of revenge or compensation. Early punishment is sometimes equally indiscriminate.

Among the Káfirs of the Hindu-Kush, "murder, justifiable homicide, and killing by inadvertence in a quarrel, are all classed as one crime, and punished in the same way. Extenuating circumstances are never considered. The single question asked is, Did the man kill the other? The penalty is an extremely heavy blood-ransom to the family of the slain man, or perpetual exile combined with spoliation of the criminal's property." [3] Parkyns tells us the following story from Abyssinia:—A boy who had climbed a tree, happened to fall down right on the head of his little comrade standing below. The comrade died immediately, and the unlucky climber was in consequence sentenced to be killed in the same way as he had killed the other boy, that is, the dead boy's brother should climb the tree in his turn, and tumble down on the other's head till he killed him.[4] The Cameroon tribes do not recognise the circumstance of accidental death:—"He who kills another accidentally must die. Then, they say, the friends of each are equal mourners." [5] Among the negroes of Accra, according to Monrad, accidental homicide is punished as severely as intentional.[6]

Yet it would obviously be a mistake to suppose that, at early stages of civilisation, people generally look only at the harm done, and not in the least at the will of him who did it. Even in the system of private redress we often

[1] Macpherson, *Memorials of Service in India*, p. 82.

[2] Crawfurd, *History of the Indian Archipelago*, iii. 123. Ellis, *Ewe-speaking Peoples of the Slave Coast*, p. 223. Munzinger, *Ostafrikanische Studien*, p. 502 (Barea and Kunáma).

[3] Scott Robertson, *Káfirs of the Hindu-Kush*, p. 440.

[4] Parkyns, *Life in Abyssinia*, ii. 236 *sqq.*

[5] Richardson, 'Observations among the Cameroon Tribes of West Central Africa,' in *Memoirs of the International Congress of Anthropology*, Chicago, p. 203. See also Leuschner, in Steinmetz, *Rechtsverhältnisse*, p. 24 (Bakwiri); *ibid.* p. 51 (Banaka and Bapuku).

[6] Monrad, *Guinea-Kysten og dens Indbyggere*, p. 88.

find a distinction made between intentional or foreseen injuries on the one hand, and unintentional and unforeseen injuries on the other. In many instances, whilst blood-revenge is taken for voluntary homicide, compensation is accepted for accidental infliction of death.[1] And sometimes the chief or the State interferes on behalf of the involuntary manslayer, protecting him from the persecutions of the dead man's family.

Among the African Wapokomo intention makes a difference in the revenge.[2] Among the Papuans of the Tami Islands blood-revenge is common in the case of murder, but is not exacted in the case of accidental homicide; the involuntary manslayer has only to pay a compensation and to leave the community for a certain length of time.[3] Among the Namaqua Hottentots custom demands that compensation should be accepted for unintentional killing.[4] We meet with the same principle among the Albanians[5] and the Slavs,[6] in the past history of other European peoples,[7] in ancient Yucatan,[8] and in the religious law of Muhammedanism.[9] Among the Kabyles of Algeria, "si les mœurs n'autorisent jamais la famille victime d'un homicide volontaire à amnistier un crime, elles lui permettent presque toujours de pardonner la mort qui ne résulte que d'une maladresse ou d'un accident." They have a special ceremony by which the family of the deceased grant pardon to the involuntary manslayer, but the pardon must be given unanimously. The manslayer then becomes a member of the *kharuba*, or *gens*, of the deceased.[10] Among the Omahas, "when one man killed another accidentally, he was rescued by the interposition of the chiefs, and subsequently was punished as if he were a murderer, but only for a year or two."[11] The

[1] *Cf.* Kohler, *Shakespeare vor dem Forum der Jurisprudenz*, p. 188, n. 1.

[2] Kraft, in Steinmetz, *Rechtsverhältnisse*, p. 292.

[3] Bamler, quoted by Kohler, in *Zeitschr. f. vergl. Rechtswiss.* xiv. 380.

[4] Fritsch, *Die Eingeborenen Süd-Afrika's*, p. 363.

[5] Gopčević, *Oberalbanien und seine Liga*, p. 327.

[6] Miklosich, 'Blutrache bei den Slaven,' in *Denkschriften der kaiserl. Akademie der Wissensch. Philos.-histor. Classe*, Vienna, xxxvi. 131.

[7] Leist, *Græco-italische Rechtsgeschichte*, p. 324. *Ancient Laws of Ireland*, iii. p. cxxiv. For the ancient Teutons, see *infra*, p. 226.

[8] de Landa, *Relacion de las cosas de Yucatan*, p. 134.

[9] *Koran*, iv. 94. *Cf.* Sachau, *Muhammedanisches Recht nach Schafiitischer Lehre*, p. 761 *sq.*

[10] Hanoteau and Letourneux, *La Kabylie*, iii. 68 *sq.*

[11] Dorsey 'Omaha Sociology,' in *Ann. Rep. Bur. Ethn.* iii. 370.

ancient law of the Hebrews, which recognised the right and duty of private revenge in cases of intentional homicide, laid down special rules for homicide by misfortune. He who killed another unawares and unwittingly might flee to a city of refuge, where he was protected against the avenger of blood as long as he remained there.[1] In ancient Rome the involuntary manslayer seems to have been exposed to the blood-feud until a law attributed to Numa ordained that he should atone for the deed by providing a ram to be sacrificed in his place.[2]

Among some peoples who accept compensation even for wilful murder, the blood-price is lower if life is taken unintentionally.[3]

According to Bowdich, "a person accidentally killing another in Ahanta, pays 5 oz. of gold to the family, and defrays the burial customs. In the case of murder, it is 20 oz. of gold and a slave; or, he and his family become the slaves of the family of the deceased."[4] Ancient Irish law imposed an Eric fine for accidental or unintentional homicide, to be paid to the relatives of the dead man, whilst a double fine was due for homicide where anger was shown, *i.e.*, where probably there was what we should call "malice."[5]

In the punishments inflicted by many savages, a similar distinction is made between intentional and accidental harm, although, at the same time, some degree of guilt is frequently imputed to persons who, in our opinion, are perfectly innocent.

Speaking of the West Australian aborigines, Sir G. Grey observes:—"If a native is slain by another wilfully, they kill the murderer, or any of his friends they can lay hands on. If a native kills another accidentally, he is punished according to the circumstances of the case." And the punishment may be severe enough. "For instance, if, in inflicting spear wounds as a punishment for some offence, one of the agents should spear the culprit through the thigh, and accidentally so injure the

[1] *Deuteronomy*, iv. 42. *Numbers*, xxxv. 11 *sqq.* *Joshua*, xx. 3 *sqq.*

[2] Servius, *In Virgilii Bucolica*, iv. 43. *Cf.* von Jhering, *Das Schuldmoment im römischen Privatrecht*, p. 11.

[3] Beverley, in Steinmetz, *Rechtsverhältnisse*, p. 215 (Wagogo). Dareste, *Nouvelles études d'histoire du droit*, p. 237 (Swanetians of the Caucasus).

[4] Bowdich, *Mission from Cape Castle to Ashantee*, p. 258, n. ‡.

[5] Cherry, *Growth of Criminal Law in Ancient Communities*, p. 22.

femoral artery that he dies, the man who did so would have to submit to be speared through both thighs himself."[1] In New Guinea, according to Dr. Chalmers, murder is punished capitally, whereas a death caused by accident is expiated by a fine.[2] Among the Mpongwe, "except in the case of a chief or a very rich man, little or no difference is made between wilful murder, justifiable homicide, and accidental manslaughter."[3] Kafir law seems to demand no compensation for what is clearly proved to have been a strictly accidental injury to property, but the case is different in regard to accidental injuries to persons, if the injury be of a serious nature. Thus "it seems to make little or no distinction between wilful murder and any other kind of homicide; unless it be, perhaps, that in purely accidental homicide the full amount of the fine may not be so rigidly insisted upon."[4] Among the A-lūr, in the case of accidental injuries, a compensation is paid to the injured party and a fine to the chief. Whilst the strict punishment for murder is death, the culprit is allowed to redeem himself if it cannot be proved that he committed the deed wilfully.[5] The Masai regard accidental homicide, or injury, as "the will of N'gai," "the Unknown," and "the elders arrange what compensation shall be paid to the injured person (if a male) or to the nearest relative. If a woman is killed by accident, all the killer's property becomes the property of the nearest relative."[6] The Eastern Central Africans, according to the Rev. D. Macdonald, "know the difference between an injury of accident and one of intention."[7] And so do the natives of Nossi-Bé and Mayotte, near Madagascar.[8]

Nay, there are instances of uncivilised peoples who entirely excuse, or do not punish, a person for an injury which he has inflicted by mere accident, even though they may compel him to pay damages for involuntary destruction of property.

We are told that the Pennsylvania Indians "judge with calmness on all occasions, and decide with precision, or endeav-

[1] Grey, *Journals of Expeditions of Discovery in North-West and Western Australia*, ii. 238 *sq.*

[2] Chalmers, *Pioneering in New Guinea*, p. 179.

[3] Burton, *Two Trips to Gorilla Land*, i. 105.

[4] Maclean, *Compendium of Kafir Laws and Customs*, pp. 113, 67, 60.

[5] Stuhlmann, *Mit Emin Pascha ins Herz von Afrika*, p. 524.

[6] Hinde, *The Last of the Masai*, p. 108.

[7] Macdonald, *Africana*, i. 11.

[8] Walter, in Steinmetz, *Rechtsverhältnisse*, p. 393.

our to do so, between an accident and a wilful act; the first, they say, they are all liable to commit, and therefore it ought not to be noticed, or punished; the second being a wilful or premeditated act, committed with a bad design, ought on the contrary to receive due punishment."[1] Among some of the Marshall Islanders unintentional wrongs are punished only if the injured party be a person of note, for instance, a chief, or a member of a chief's family.[2] Among the Papuans of the Tami Islands, "accidental injuries are not punished. Generally the culprit confesses his deed, and makes an apology. If he has caused the destruction of some valuable, he has to repair the loss."[3] Among the Wadshagga there is no punishment for an accidental hurt; but if anybody's property has been damaged thereby, a compensation amounting to one half of the damage may be required.[4] The Hottentots do not nowadays punish accidents, even in the case of homicide.[5] Among the Washambala a person is held responsible only for such injuries as he has inflicted intentionally or caused by carelessness.[6] In some parts of West Africa, if a man, woman, or child, not knowing what he or she does, damages the property of another person, "native justice requires, and contains in itself, that if it can be proved the act was committed in ignorance that was not a culpable ignorance, the doer cannot be punished according to the law."[7]

These instances of occasional discrimination in savage justice are particularly interesting in the face of the fact that, even among peoples who have attained a higher degree of culture, innocent persons are often punished by law for bringing about events without any fault of theirs.

It is a principle of the Chinese law that "all persons who kill or wound others purely by accident, shall be permitted to redeem themselves from the punishment of killing or wounding in an affray, by the payment in each case of a fine to the family of the person deceased or wounded."[8] But there are exceptions to this rule. Any

[1] Buchanan, *North American Indians*, p. 160 *sq.*

[2] Kohler, in *Zeitschr. f. vergl. Rechtswiss.* xiv. 448.

[3] Bamler, quoted by Kohler, *ibid.* xiv. 381.

[4] Merker, quoted by Kohler, *ibid.* xv. 64.

[5] Kohler, *ibid.* xv. 353.

[6] Lang, in Steinmetz, *Rechtsverhältnisse*, p. 261.

[7] Miss Kingsley, in her Introduction to Dennett's *Notes on the Folklore of the Fjort*, p. xi.

[8] *Ta Tsing Leu Lee*, sec. ccxcii. p. 314.

person who kills his father, mother, paternal grandfather or grandmother, and any wife who kills her husband's father, mother, paternal grandfather or grandmother, "purely by accident, shall still be punished with 100 blows and perpetual banishment to the distance of 3,000 *lee*. In the case of wounding purely by accident, the persons convicted thereof shall be punished with 100 blows and three years' banishment: in these cases, moreover, the parties shall not be permitted to redeem themselves from punishment by the payment of a fine, as usual in the ordinary cases of accident." [1] Again, slaves who accidentally kill their masters, "shall suffer death, by being strangled at the usual period." [2] It is also a characteristic provision of the Chinese law that an act of grace is necessary for relieving all those from punishment who have offended accidentally and inadvertently.[3]

It is said in the Laws of Hammurabi:—"If a man has struck a man in a quarrel, and has caused him a wound, that man shall swear 'I did not strike him knowing' and shall answer for the doctor. If he has died of his blows, he shall swear, and if he be of gentle birth he shall pay half a mina of silver. If he be the son of a poor man, he shall pay one-third of a mina of silver." [4]

It has been observed that the purpose of the Hebrew law of sanctuary was not merely to protect the involuntary manslayer from blood-revenge, but at the same time to punish him and compel him to expiate the blood he has shed.[5] If he left the city of refuge before the death of the high-priest, the avenger of blood might kill him without incurring blood-guiltiness;[6] and he was not permitted to purchase an earlier return to his possession with a money ransom.[7]

According to the Laws of Manu, "he who damages the

[1] *Ibid.* sec. cccxix. p. 347. *Cf. ibid.* sec. ccxcii. p. 314.
[2] *Ibid.* sec. cccxiv. p. 338.
[3] *Ibid.* sec. xvi. p. 18.
[4] *Laws of Hammurabi*, 206 *sqq.*
[5] Goitein, *Das Vergeltungsprincip im biblischen und talmudischen Strafrecht*, p. 25 *sq.* Keil, *Manual of Biblical Archæology*, ii. 371.
[6] *Numbers*, xxxv. 26 *sqq.*
[7] *Ibid.* xxxv. 32.

goods of another, be it intentionally or unintentionally, shall give satisfaction to the owner and pay to the king a fine equal to the damage";[1] and various rites of expiation are prescribed for a person who kills a Brâhmana by accident,[2] whereas the intentional slaying of a Brâhmana is inexpiable.[3]

Demosthenes praises the Athenian law for making the penalty of unintentional homicide less than that of intentional. The punishment for murder was death, from which, however, before the sentence was passed, the murderer was at liberty to escape by withdrawing from his country and remaining in perpetual exile. But he who was convicted of involuntary homicide had to leave the country only for some shorter time, until he had appeased the relatives of the deceased.[4] As will be seen subsequently, the real object of this law was not so much to punish the involuntary manslayer, as to save him from being persecuted by the dead man's ghost, and to rid the community of a pollution. However, the Athenian law does not represent the ideas of early times. As Dr. Farnell observes, the constitution and the legend about the foundation of the court at the Palladium, which was established to try cases of unintentional blood-shedding, shows that the ancient practice was susceptible of improvement.[5] Nor does the Roman law, which, in its developed shape, with such a remarkable consistency carried out the Cornelian principle, "in maleficiis voluntas spectatur non exitus,"[6] seem to have been equally discriminate in early times.[7] In the Law of the Twelve Tables there are still some faint traces left of the notion that expiation was required of a person who accidentally shed human blood.[8]

[1] *Laws of Manu*, viii. 288.

[2] *Ibid.* xi. 73 *sqq.*

[3] *Ibid.* xi. 90. *Gautama*, xxi. 7. According to some authorities, however, the wilful slaying of a Brâhmana was expiable by a penance of greater severity (Bühler's note, in his translation of the 'Laws of Manu,' *Sacred Books of the East*, xxv. 449).

[4] Demosthenes, *Contra Aristocratem*, 71 *sqq.* p. 643 *sq.*

[5] Aristotle, *De republica Atheniensium*, 57. Farnell, *Cults of the Greek States*, i. 304.

[6] *Digesta*, xlviii. 8. 14.

[7] von Jhering, *Das Schuldmoment im römischen Privatrecht*, p. 16. Mommsen, *Römisches Strafrecht*, p. 85.

[8] Mommsen, *op. cit.* p. 85.

The principle of ancient Teutonic law was, "Qui inscienter peccat, scienter emendet"—a maxim laid down by the compiler of the so-called 'Laws of Henry I.,'[1] no doubt translating an old English proverb.[2] In historic times, the law, distinguishing between *vili* and *vadhi*, treats intentional homicide as worse than unintentional. In one case there can, in the other there can not, be a legitimate feud; and whilst wilful manslaughter can be expiated only by *wite*, as well as *wer*, the involuntary manslayer has to pay *wer* to the family of the dead, but no *wite* to the authorities.[3] Yet the *wer* to be paid was not merely compensation for the loss sustained, as Wilda, misled by his enthusiasm for Teutonic law, has erroneously assumed;[4] it was punishment as well.[5] And the character of criminality attached to accidental homicide survived the system of *wer*. When homicide became a capital offence, homicide by misadventure was included in the law. However, the involuntary manslayer was not executed, but recommended to the "mercy" of the prince. This was the case in England in the later Middle Ages,[6] and in France still more recently.[7] And when the English law was altered, and the involuntary offender no longer was in need of mercy, he nevertheless continued to be treated as a criminal. He was punished with forfeiture of his goods. According to the rigour of the law such a forfeiture might have been exacted even in the year 1828, when the law was finally abolished after having fallen into desuetude in the course of the previous century.[8]

If men at the earlier stages of civilisation generally

[1] *Leges Henrici I.* xc. 11.

[2] Pollock and Maitland, *History of the English Law before the Time of Edward I.* i. 54.

[3] Wilda, *op. cit.* p. 545 *sqq.*, 594. Brunner, *Forschungen*, p. 498 *sq.* *Idem*, *Deutsche Rechtsgeschichte*, i. 165. Pollock and Maitland, *op. cit.* ii. 471.

[4] Wilda, *op. cit.* p. 578.

[5] Geyer, *Die Lehre von der Nothwehr*, p. 87 *sq.* Trummer *Vorträge über Tortur, &c.* i. 345. Brunner, *Forschungen*, p. 505 *sq.*

[6] Bracton, *De Legibus et Consuetudinibus Angliæ*, fol. 134, vol. ii. 382 *sq.*; fol. 104 b, vol. ii. 152 *sq.* Brunner, *Forschungen*, p. 494 *sqq.* Biener, *Das englische Geschwornengericht*, i. 120, 392. Pollock and Maitland, *op. cit.* ii. 479.

[7] Beaumanoir, *Les coutumes du Beauvoisis*, 69, vol. ii. 483. Esmein, *Histoire de la procédure criminelle en France*, p. 255.

[8] Stephen, *History of the Criminal Law of England*, iii. 77.

attach undue importance to the outward aspect of conduct, the same is still more the case with their gods.

The Tshi-speaking peoples of the Gold Coast believe that the god Sasabonsum "takes delight in destroying all those who have offended him, even though the offence may have been accidental and unintentional"; whereas, among the same people, it is the custom that even deaths resulting from accidents, not to speak of minor injuries, are compensated for by a sum of money.[1] Miss Kingsley says she is unable, from her own experience, to agree with Mr. Dennett's statement with reference to the Fjort, that ignorance would save the man who had eaten prohibited food. From what she knows, Merolla's story is correct: the man, though he eat in ignorance, dies or suffers severely. "It is true," she adds, "that one of the doctrines of African human law is that the person who offends in ignorance, that is not a culpable ignorance, cannot be punished; but this merciful dictum I have never found in spirit law. Therein if you offend, you suffer; unless you can appease the enraged spirit, neither ignorance nor intoxication is a feasible plea in extenuation."[2] The Omahas believe that to eat of the totem, even in ignorance, would cause sickness, not only to the eater, but also to his wife and children.[3]

Speaking of the sacred animals of the ancient Egyptians, Herodotus says, "Should any one kill one of these beasts, if wilfully, death is the punishment; if by accident, he pays such fine as the priests choose to impose. But whoever kills an ibis or a hawk, whether wilfully or by accident, must necessarily be put to death."[4] According to the Chinese penal code, "whoever destroys or damages, whether intentionally or inadvertently, the altars, mounds, or terraces consecrated to the sacred and imperial rites, shall suffer 100 blows, and be perpetually banished to dis-

[1] Ellis, *Tshi-speaking Peoples of the Gold Coast*, pp. 35, 301.

[2] Miss Kingsley, in her Introduction to Dennett's *Folklore of the Fjort*, p. xxviii.

[3] Frazer, *Totemism*, p. 16.

[4] Herodotus, ii. 65. *Cf.* Pomponius Mela, 9.

tance of 2000 *lee*." [1] In these cases the punishment inflicted by human hands is obviously a reflection of the supposed anger of superhuman beings.

The Shintoist prays for forgiveness of errors which he has committed unknowingly.[2] According to the Vedic hymns, whoever with or without intention offends against the eternal ordinances of Varuna, the All-knowing and Sinless, arouses his anger, and is bound with the bonds of the god—with calamity, sickness, and death.[3] Forgiveness is besought of Varuna for sins that have been committed in unconsciousness;[4] even sleep occasions sin.[5] The singer Vasishtha is filled with pious grief, because daily against his will and without knowledge he offends the god and in ignorance violates his decree.[6] "All sages," say the Laws of Manu, "prescribe a penance for a sin unintentionally committed"; such a sin "is expiated by the recitation of Vedic texts, but that which men in their folly commit intentionally, by various special penances."[7] Among the present Hindus, "even in cases of accidental drinking of spirits through ignorance on the part of any of the three twice-born classes, nothing short of a repetition of the initial sacramentary rites, effecting a complete regeneration, is held sufficient to purge the sin." [8]

In the Greek literature there are several instances of guilt being attached to the accidental transgression of some sacred law, the transgressor being perfectly unaware of the nature of his deed. Oedipus is the most famous example of this. Actaeon is punished for having seen Diana. Pausanias, the Spartan king, made sacrifice to Zeus Phyxius, to atone for the death of the maiden whom he had slain by misfortune.[9]

The Babylonian psalmist, assuming that one of the

[1] *Ta Tsing Leu Lee*, sec. clviii. p. 172.
[2] Selenka, *Sonnige Welten*, p. 210 *sq.*
[3] *Cf.* Kaegi, *Rigveda*, p. 66 *sq.*; Oldenberg, *Die Religion des Veda*, p. 289.
[4] *Rig-Veda*, v. 85. 8.
[5] *Ibid.* vii. 86. 6; x. 164. 3.
[6] *Ibid.* vii. 88. 6. *Cf.* Kaegi, *op. cit.* p. 68.
[7] *Laws of Manu*, xi. 45 *sq.* *Cf.* *Vasishtha*, 20.
[8] Rájendralála Mitra, *Indo-Aryans*, i. 393.
[9] Farnell, *op. cit.* i. 72.

gods is angry with him because he is suffering pain, exclaims:—"The sin which I committed I know not. The transgression I committed I know not. The affliction which was my food—I know it not. The evil which trampled me down—I know it not. The lord in the wrath of his heart has regarded me; the god in the fierceness of his heart has punished me."[1] In another psalm it is said:—"He knows not his sin against the god, he knows not his transgression against the god and the goddess. Yet the god has smitten, the goddess has departed from him."[2]

So, also, the Hebrew psalmist cries out, "Who can understand his errors? cleanse thou me from secret faults."[3] Unintentional error, as Mr. Montefiore observes, would be as liable to incur divine punishment as the most voluntary crime, if it infringed the tolerably wide province in which the right or sanctity of Yahveh was involved.[4] Whilst a deliberate moral iniquity was punished under the penal law, a sin committed "through ignorance, in the holy things of the Lord," required a sin- or trespass-offering for its expiation.[5] Speaking of the developed sacrificial system of the Jews, Professor Moore remarks, "The general rule in the Mishna is that any transgression the penalty of which, if wilful, would be that the offender be cut off, requires, if committed in ignorance or through inadvertence, a *ḥaṭṭāth* [or sin-offering]; the catalogue of these transgressions ranges from incest and idolatry to eating the (internal) fat of animals and imitating the composition of the sacred incense, but does not include the commonest offences against morals."[6] The Rabbis also maintained that a false oath, even if made unconsciously, involves man in sin, and is punished as such.[7]

[1] Zimmern, *Babylonische Busspsalmen*, p. 63.

[2] Sayce, *Hibbert Lectures on the Religion of the Ancient Babylonians*, p. 505. *Cf.* Müdter-Delitzsch, *Geschichte Babyloniens und Assyriens*, p. 38.

[3] *Psalms*, xix. 12.

[4] Montefiore, *Hibbert Lectures on the Religion of the Ancient Hebrews*, p. 103. *Cf. ibid.* p. 515 *sq.*

[5] *Leviticus*, iv. 22 *sqq.*; v. 15 *sqq.* *Numbers*, xv. 24 *sqq.*

[6] Moore, 'Sacrifice,' in Cheyne and Black, *Encyclopædia Biblica*, iv. 4205.

[7] Montefiore, *op. cit.* p. 558.

We meet with a similar opinion in mediæval Christianity. The principle laid down by St. Augustine,[1] and adopted by Canon Law,[2] that "ream linguam non facit, nisi mens rea," was not always acted upon. Various penitentials condemned to penance a person who, in giving evidence, swore to the best of his belief, in case his statement afterwards proved untrue.[3] In other cases, also, the Church prescribed penances for mere misfortunes. If a person killed another by pure accident, he had to do penance—in ordinary cases, according to most English penitentials, for one year,[4] according to various continental penitentials, for five[5] or seven[6] years; whereas, according to the Penitential of Pseudo-Theodore, he who accidentally killed his father or mother was to atone his deed with a penance of fifteen years,[7] and he who accidentally killed his son with a penance of twelve.[8] The Scotists even expressly declared that the external deed has a moral value of its own, which increases the goodness or badness of the agent's intention; and though this doctrine was opposed by Thomas Aquinas, Bonaventura, Suarez, and other leading theologians, it was nevertheless admitted by them that, according to the will of God, certain external deeds entail a certain accidental reward, the so-called *aureola*.[9] In some cases the secular law, also, punishes misadventure on religious grounds. Thus the Salic law treated with great severity any person who accidentally put fire to a church, although it imposed no penalty on other cases of

[1] St. Augustine, *Sermones*, clxxx. 2 (Migne, *Patrologiæ cursus*, xxxviii. 973).

[2] Gratian, *Decretum*, ii. 22. 2. 3.

[3] *Pœnitentiale Bedæ*, v. 3 (Wasserschleben, *Bussordnungen der abendlandischen Kirche*, p. 226). *Pœnit. Egberti*, vi. 3 (*ibid.* p. 238). *Pœnit. Pseudo-Theodori*, xxiv 5 (*ibid.* p. 593).

[4] *Pœnit. Theodori*, i. 4. 7 (*ibid.* p. 188). *Pœnit Bedæ*, iv. 5 (*ibid.* p. 225). *Pœnit. Egberti*, iv. 11 (*ibid.* p. 235). According to *Pœnit. Pseudo-Theodori*, xxi. 2 (*ibid.* p. 586), the penance was to last for five years.

[5] *Pœnit. Hubertense*, 2 (*ibid.* p. 377). *Pœnit. Merseburgense*, 2 (*ibid.* p. 391). *Pœnit. Bobiense*, 4 (*ibid.* p. 408). *Pœnit. Vindobonense*, 2 (*ibid.* p. 418). *Pœnit. Cummeani*, vi. 2 (*ibid.* p. 478). *Pœnit. XXXV. Capitulorum*, 1 (*ibid.* p. 506). *Pœnit. Vigilanum*, 27 (*ibid.* p. 529).

[6] *Pœnit. Parisiense*, 1 (*ibid.* p. 412). *Pœnit. Floriacense*, 2 (*ibid.* p. 424).

[7] *Pœnit. Pseudo-Theodori*, xxi. 18 (*ibid.* p. 588).

[8] *Pœnit. Pseudo-Theodori* xxi. 19 (*ibid.* 588).

[9] Göpfert, *Moraltheologie*, i. 185.

unintentional incendiary;[1] and even to this day the Russian criminal law prescribes penitence for homicide by misadventure, "in order to quiet the conscience of the culprit."[2] According to the Koran, he who kills a believer by mistake shall expiate his deed, not only by paying blood-money to the family of the dead (unless they remit it), but by setting free a believing slave; and as to him who cannot find the means, "let him fast for two consecutive months—a penance this from God."[3]

How shall we explain all these facts? Do they faithfully represent ideas of moral responsibility? Do they indicate that, at the earlier stages of civilisation, the outward event as such, irrespectively of the will of the agent, is an object of moral blame?

Most of the statements which imply a perfect absence of discrimination between accident and intention, refer to the system of private redress. Under this system a personal injury is regarded as a matter which the injured party or his kin have to settle for themselves. It certainly does not allow them to treat the offender just as they please; as we have seen, it is more or less regulated by custom. But at the same time it makes considerable allowance for the personal feelings of the sufferer, and these feelings are apt to be neither impartial nor sufficiently discriminate. Whether, in a savage community, public opinion prescribes, or merely permits, revenge in cases of accidental injury, is a question which the ordinary observations of travellers leave unanswered. It is important to note that one of the first steps which early custom or law took towards a restriction of the blood-feud was to save the life of the involuntary manslayer. Moreover, in many cases where the system of revenge has been succeeded by punishment, the injured party may still have a voice in the matter. In Abyssinia, for instance, "a life for a life is the sentence passed upon the murderer; but, obtaining

[1] *Lex Salica* (Herold's text), 71. Brunner, *Forschungen*, p. 507, n. 1.

[2] Foinitzki, in *Le droit criminel des états européens*, edited by von Liszt, p. 531.

[3] *Koran*, iv. 94.

the consent of the relatives of the deceased, he is authorised by law to purchase his pardon."[1] According to ancient Swedish law, an injury could not be treated as accidental unless the injured party acknowledged it as such.[2] In England, even in the days of Henry III., the king could not protect the manslayer from the suit of the dead man's kin, although he had granted him pardon on the score of misadventure.[3] Indeed, so recently as 1741, a royal order was made for a hanging in chains "on the petition of the relations of the deceased."[4] And to this day English criminal courts, when dealing with some slight offence, mitigate the punishment "because the prosecutor does not press the case," or even give him leave to settle the matter and withdraw the prosecution.[5]

In the case of accidental homicide, deference may also have to be shown for the supposed feelings of the dead man's ghost, which, angry and bloodless, is craving for revenge and thirsting for blood. To leave its desires ungratified would be both dangerous and unmerciful. That this has something to do with the rigid demand of life for life in the case of homicide by misadventure seems all the more likely as in some instances when the involuntary manslayer is pardoned, other blood is to be shed instead of his. Among the Yao and Wayisa, near Lake Nyassa, it is the custom "by way of propitiation to give up a slave or some relative of the criminal's, to 'go along with the one who was slain,' and this seems to be invariably done when one is killed by accident, in which case the slayer may escape, the deputy taking as it were his place."[6] We may assume that a similar idea underlies the ancient Roman law which provided a ram to be sacrificed in the place of the involuntary manslayer.

But the dead man's ghost not only persecutes his own family if neglected of their duty, it also attacks the man-

[1] Harris, *Highlands of Æthiopia*, ii. 94.

[2] von Amira, *Nordgermanisches Obligationenrecht*, i. 382.

[3] *Three Early Assize Rolls for the County of Northumberland, sec. XIII.* p. 98.

[4] Amos, *Ruins of Time*, p. 23.

[5] Kenny, *Outlines of Criminal Law*, p. 23.

[6] Macdonald, in *Jour. Anthr. Inst.* xii. 108 *sq.*

slayer and cleaves to him like a miasma. The manslayer is consequently regarded as unclean, and has, both for his own sake and for the sake of the community in which he lives, to undergo some ceremony of purification in order to rid himself of the dangerous and infectious pollution. This notion will be illustrated in a following chapter. In the present connection I merely desire to point out that the pollution is there, whether the shedding of blood was intentional or accidental. And, as will be shown, though this state of uncleanness does not intrinsically involve guilt, it easily becomes a cause of moral disapproval, whilst the ceremony of purification is apt to be looked upon in the light of punishment. We shall also find that the notion of a persecuting ghost may be replaced by the notion of an avenging god, it being a fact of common occurrence that the doings or functions of one mysterious being are transferred to another. We shall, finally, see that the infection of uncleanness is shunned by gods even more than it is shunned by men; and this largely helps to explain the attitude of religion towards unintentional and unforeseen shedding of human blood.

There are other, more general reasons for the want of discrimination often displayed by religion in regard to the accidental transgression of a religious law. When a thing is *taboo*, in the strict sense of the word, it is supposed to be charged with mysterious energy which will injure or destroy the person who eats or touches the forbidden thing, whether he does so wilfully or by mistake. As Professor Jevons correctly observes, "the action of taboo is always mechanical; contact with the tabooed object communicates the taboo infection as certainly as contact with water communicates moisture. . . . The intentions of the taboo-breaker have no effect upon the action of the taboo; he may touch in ignorance, or for the benefit of the person he touches, but he is tabooed as surely as if his motive were irreverent or his action hostile."[1] So, also, according to primitive notions, the effect of a curse or an

[1] Jevons, *Introduction to the History of Religion*, p. 91.

oath is purely mechanical; hence a person who swears falsely in ignorance exposes himself to no less danger than a person who perjures himself knowingly. As regards religious offences in the strictest sense of the term—that is, offences against some god which are supposed to arouse his resentment—it should be remembered that, just as a man who is hurt is unable to judge on the matter as coolly as does the community at large, so a god whose ordinances are transgressed is thought to be less discriminating in his anger than a disinterested human judge, and, consequently, more apt to be influence ' by the external event. And where nearly every calamity is regarded as a divine punishment, a person who is suffering without knowing what sin he has committed, naturally infers that a god is punishing him for some secret fault.

Thus it may be that, in the point which we are discussing, as in various other respects, the religious beliefs of a people do not faithfully represent their general notions of moral responsibility. It is profoundly wrong to assume, from the legend of Oedipus and other similar cases, that the ancient Greeks, in general, held a person "equally responsible for an accident which occurs to him, and for an act of which the agent is aware." Even the transgression of a sacred law, when committed in ignorance, seems to have excited pitiful horror rather than moral indignation. Oedipus had killed his father in self-defence, and married his mother, perfectly ignorant of his relation to them. The gods punished the Thebans with pestilence for harbouring such a wretch on their soil. But when "time that sees all, found him out in his unwitting sin," it was not blame, but terror and deep compassion for the unhappy man that, according to the tragedian,[1] spoke from the lips of the people. Moreover, in the latter tragedy Oedipus persistently vindicates his innocence :—"Whatever I have done was done unwittingly"—"Before the law I have no guilt." And, addressing himself to Creon, who has accused him of parricide and incest, he

[1] Sophocles, *Œdipus Tyrannus.*

exclaims:—"O shameless soul, where, thinkest thou, falls this thy taunt,—on my age, or on thine own? Bloodshed —incest—misery—all this thy lips have launched against me,—all this that I have borne, woe is me! by no choice of mine: for such was the pleasure of the gods, wroth, haply, with the race from of old. . . Tell me, now,—if, by voice of oracle, some divine doom was coming on my sire, that he should die by a son's hand, how couldst thou justly reproach me therewith, who was then unborn,—whom no sire had yet begotten, no mother's womb conceived? And if, when born to woe—as I was born—I met my sire in strife, and slew him, all ignorant what I was doing, and to whom,—how couldst thou justly blame the unknowing deed?"[1] Never was a more pathetic appeal made to the court of Justice from the indiscriminate verdict of angry gods.

Whilst the grossest want of discrimination may thus be explained from revengeful feelings and superstitious beliefs, there still remain a multitude of cases which must be regarded as genuine expressions of moral indignation. As to these, it should, first, be remembered that even the reflecting moral consciousness may hold a person blamable for the unintentional and unforeseen infliction of an injury, namely, in cases where it assumes want of proper foresight. Now, as we know, it is often difficult enough to discern whether, or to what extent, an unintended injury is due to carelessness on the part of the agent; sometimes even it is no easy thing to tell whether an injury was intended or not. It is not to be expected, then, that distinctions of so subtle a nature should be properly made by the uncultured mind, and least of all is it to be expected that such distinctions should be embodied in early custom and law, which are based on average cases and allow of no minute individualisation. It has been observed that the roughness of Teutonic justice may be partly explained from the difficulty in getting any proof of intention or of its absence, from the lack of any proper distinctions between

[1] *Idem*, *Œdipus Coloneus*, 960 *sqq.* (Jebb's translation, p. 155).

misadventure and carelessness, and from the fact that the so-called misadventures of early times covered many a blameworthy act.[1] And all this holds good not merely of the ancient Teutons. It may further be said that the more defective the power of discrimination, the greater is the tendency to presume guilt. In Morocco a man who runs away after killing another is presumed to have committed the deed intentionally, however innocent he really may be. Among the Teutons the presumption was always against the manslayer; he had to proclaim what he had done, and to prove that the deed was not intended[2]—unless, indeed, the misadventure belonged to a certain type of injuries which by their very nature entailed no guilt. For instance, if a man carried a spear level on his shoulder and another ran upon the point, he was free from blame; whereas, if harm ensued by pure accident from a distinct act, the agent was liable.[3] As von Amira remarks, the Swedish notion of *vadhaværk* was not a merely negative conception, but implied that there was danger connected with the act.[4]

Where the distinction between guilt and innocence is difficult to draw, it may be wise policy to presume guilt. According to Sir R. Burton, the Mpongwe jurists say that little or no difference is generally made between wilful murder and accidental manslaughter in order that people should be more careful;[5] and a similar idea may lie at the bottom of the Dahoman law which punishes capitally any person whose house takes fire, even if it happens accidentally.[6] But the presumption of guilt is not only, nor in the first place, owing to considerations of social utility, combined with a reckless indifference to undeserved suffer-

[1] Pollock and Maitland, *op. cit.* i. 55; ii. 475, 483. von Amira, *Nordgermanisches Obligationenrecht*, i. 377 *sq.*

[2] Wilda, *op. cit.* p. 594 *sqq.* Trummer, *op. cit.* i. 345. Brunner, *Forschungen*, p. 500 *sq.* Pollock and Maitland, *op. cit.* ii. 471.

[3] Wilda, *op. cit.* p. 584. Trummer, *op. cit.* i. 427. Brunner, *Forschungen*, p. 499 *sq.* von Amira, 'Recht,' in Paul's *Grundriss der germanischen Philologie*, ii. pt. ii. 172. Pollock and Maitland, *op. cit.* i. 53 *sq.*

[4] von Amira, *Nordgermanisches Obligationenrecht*, i. 377.

[5] Burton, *Two Trips to Gorilla Land*, i. 105.

[6] Ellis, *Ewe-speaking Peoples of the Slave Coast*, p. 224.

ing. The unreflecting mind is shocked by the harm done, and cares little for the rest. It does not press the question whether the harm was caused by the agent's will or not. It does not make any serious attempt to separate the external event from the will, and it is inclined to assume that there is a coincidence between the two. This is not altogether bad psychology since, as a rule, men will what they do. "Le fait juge l'homme," says an old French proverb; and in morals, also, "the tree is known by the fruit." However, there are cases of injuries in which not even uncivilised men can fail to discover, at once, the absence of any evil intention. This certainly does not mean that the injurer escapes all censure. Every feeling of pain, sympathetic pain included, which is caused by a living being, has a certain tendency to give rise to an aggressive impulse towards its cause; hence savages, even though they distinguish between intentional and unintentional harm, are inclined to impute some degree of guilt to any person who involuntarily commits a forbidden deed, though he be in reality quite innocent. But the reason for this is only want of due reflection. If it is clearly understood that a certain event is the result of merely external circumstances, that it was neither intended by the agent nor could have been foreseen by him, in other words, that it in no way was caused by his will—then there could be no moral indignation at all. It would be simply absurd to suppose that an outward event as such, assumed to be absolutely unconnected with any defect of will, could ever give rise to moral blame. Such an event could not even call forth a feeling of revenge. Sudden anger itself cools down when it appears that the cause of the inflicted pain was a mere accident. Even a dog, as has been observed, distinguishes between being stumbled over and being kicked.

That the indiscriminate attitude of early custom and law towards accidental injuries does not imply any difference in principle between the enlightened and unenlightened moral consciousness as regards the subject of moral valuation,

becomes perfectly obvious when we consider what a great influence the outward event exercises upon moral estimates even among ourselves. "The world judges by the event, and not by the design," says Adam Smith. "Everybody agrees to the general maxim, that as the event does not depend on the agent, it ought to have no influence upon our sentiments, with regard to the merit or propriety of his conduct. But when we come to particulars, we find that our sentiments are scarce in any one instance exactly conformable to what this equitable maxim would direct."[1] Even in the criminal laws of civilised nations chance still plays a prominent part. According to the present law of England, though a person is not criminally liable for the involuntary and unforeseen consequences of acts which are themselves permissible, the case is different if he commits an act which is wrong and criminal,[2] or, as it seems, even if he commits an act which is wrong without being forbidden by law.[3] Thus death caused unintentionally is regarded as murder, if it takes place within a year and a day[4] as the result of an unlawful act which amounts to a felony.[5] For instance, a person kills another accidentally by shooting at a domestic fowl with intent to steal it, and he will probably be convicted of murder.[6] Again, a near-sighted man drives at a rapid rate, sitting at the bottom of his cart, and thereby causes the death of a foot-passenger; he is guilty of manslaughter.[7] A man recklessly and wantonly throws a lighted match into a haystack, careless whether it take fire or not, and so burns down the stack; his crime is arson. But if he did not intend to throw the lighted match on the haystack, he would probably not be guilty of any offence at all, "unless death was caused, in which case he would be guilty of manslaughter."[8] Even if the unintended death is to some

[1] Adam Smith, *Theory of Moral Sentiments*, p. 152.

[2] According to Harris (*Principles of the Criminal Law*, p. 156), the act should be a *malum in se*, not merely a *malum quia prohibitum*.

[3] Kenny, *op. cit.* p. 41.

[4] Stephen, *History of the Criminal Law of England*, iii. 8.

[5] *Ibid.* iii. 22.

[6] *Ibid.* iii. 83.

[7] Harris, *op. cit.* p. 157.

[8] Stephen, *op. cit.* ii. 113.

extent owing to the negligence of the injured party himself, it may be laid to the charge of the injurer. This at all events was the law in Hale's time. "If a man," he says, "receives a wound, which is not in itself mortal, but either for want of helpful applications, or neglect thereof, it turns to a gangrene, or a fever, and that gangrene or fever be the immediate cause of his death, yet, this is murder or manslaughter in him that gave the stroke or wound."[1] So far as I know, the severity of the English law on unintentional homicide—which, in fact, is a survival of ancient Teutonic law[2]—is without a parallel in the European legislation of the present day. Both the French[3] and the German[4] laws are much less severe; and so is the Ottoman Penal Code,[5] and Muhammedan law in general.[6] Yet the unintended deadly consequence of a criminal act always affects the punishment more or less.

I presume that nobody after due deliberation would maintain that the moral guilt of the offender is enhanced by the death of him whom he involuntarily happened to kill. Sir James Stephen, nevertheless, makes an attempt to defend, from a moral point of view, the severe English law on the subject, which he thinks "is much to be preferred to the law of France." He asks, "Is there anything to choose morally between the man who violently stabs another in the chest with the definite intention of killing him, and a man who stabs another in the chest with no definite intention at all as to the victim's life or death, but with a feeling of indifference whether he lives or dies?"[7] Perhaps not. But I venture to maintain that there is a considerable moral difference between the man who shoots at another with the definite intention of killing him, and the man who, firing at another's chickens, with the intention of stealing them, accidentally kills the owner whom

[1] Hale, *History of the Pleas of the Crown*, i. 428.

[2] *Lex Wisigothorum*, vi. 5. 6: "Si dum quis calce, vel pugno, aut quacumque percussione injuriam conatur inferre, homicidii extiterit occasio, pro homicidio puniatur."

[3] *Code Pénal*, art. 309.

[4] *Strafgesetzbuch*, art. 226.

[5] *Ottoman Penal Code*, art. 177. *Cf. ibid.* art. 174.

[6] Sachau, *op. cit.* p. 761 *sq.*

[7] Stephen, *op. cit.* iii. 91 *sq.*

he does not see. It will perhaps be argued that the law has a utilitarian purpose, its object being to make people more careful. But if this were the case one would expect that the law should punish with equal severity acts which involve the same degree of danger, and which result in similar injuries. To fire at a sparrow may be as dangerous to people's lives as to fire at another person's chicken, and, in the latter case, the danger is hardly increased by the intention to steal the chicken. I take the truth to be this. The degree of punishment corresponds to the degree of indignation aroused by the deed. Public imagination is shocked by the actual event. The agent, being guilty either of criminal intention, or of gross disregard of other people's interests, or of criminal heedlessness, is a proper object of punishment. Owing to that want of discrimination which characterises the popular mind, his guilt is exaggerated on account of the grave consequences of his act; and the result is that he is punished not only for the fault of his will, but for his bad luck as well. Sir James Stephen seems to admit this, when saying that the shock which the offence gives to the public feeling requires that the offender should himself suffer "a full equivalent for what he has inflicted," from which "he ought to be excused only on grounds capable of being understood by the commonest and most vulgar minds."[1] Though thoroughly dissenting from the opinion that criminal law should try to gratify the feelings of "the commonest and most vulgar minds," I think that, as a matter of fact, it is not much above their standard of justice, being in the main an expression of public sentiments.

In the cases which we have hitherto considered the external event which a person brings about involuntarily, either makes him liable to punishment though he really is free from guilt, or increases his punishment beyond the limits of his guilt. But the influence of chance also shows

[1] *Ib'd.* iii. 91.

itself in the opposite way. A person who is guilty of carelessness generally escapes all punishment if no injurious result follows, and an unsuccessful attempt to commit a criminal act, if punished at all, is, as a rule, punished much less severely than the accomplished act.

The Hottentots nowadays punish attempt, but only leniently.[1] The Wadshagga punish it less severely than the accomplished act.[2] Among some of the Marshall Islanders it is not punished at all.[3] The same holds good of the Ossetes [4] and Swanetians [5] of the Caucasus, as also of ancient Russian law.[6] The Teutons, as a general rule, had no punishment for him who tried to do harm, but failed; and if they did punish an unsuccessful attempt, the penalty was out of proportion lenient.[7] This feature of ancient Teutonic law has had a lasting effect upon European legislation, largely through the influence it exercised upon the Italian jurists of the Middle Ages,[8] whose theories laid the foundation of modern laws and doctrines on attempt. In conformity with the Roman law, they held attempts to commit crimes to be punishable, and in atrocious cases they even admitted that the attempt might be subject to the same punishment as the accomplished crime. But their general theory was that it should be punished less severely, and that the penalty should be lenient in proportion as the actual deed was remote from the act intended.[9] These views were generally adopted by the later legislation. Among present European lawbooks, the French Code Pénal [10] is almost the only one that punishes an attempt

[1] Kohler, in *Zeitschr. f. vergl. Rechtswiss.* xv. 353.

[2] Merker, quoted by Kohler, *ibid.* xv. 63.

[3] Kohler, *ibid.* xiv. 448.

[4] Kovalewsky, *Coutume contemporaine*, p. 296 *sq.*

[5] Dareste, *Nouvelles études d'histoire du droit*, p. 237.

[6] Kovalewsky, *op. cit.* pp. 291, 299.

[7] Wilda, *op. cit.* p. 598 *sqq.* Zachariä, *Die Lehre vom Versuche der Verbrechen*, i. 164 *sqq.*; ii. 130 *sq.* Brunner, *Deutsche Rechtsgeschichte*, ii. 558 *sqq.* Pollock and Maitland, ii. 475, 509.

[8] Seeger, *Versuch der Verbrechen in der Wissenschaft des Mittelalters*, p. 8.

[9] Zacharia, *op. cit.* i. 169; ii. 141. von Feuerbach-Mittermaier, *Lehrbuch des Peinlichen Rechts*, p. 74.

[10] *Code Pénal*, art. 2: "Toute tentative de crime qui aura été manifestée par un commencement d'exécution, si elle n'a été suspendue ou si elle n'a manqué son effet que par des circonstances indépendantes de la volonté de son auteur, est considérée comme le crime même."

with the same severity as the finished crime.[1] And the French law on the subject is of modern origin ; before the year IV. the present rule was applied only to the *conatus proximus* in a few specified cases of a very heinous character.[2]

Besides the provision of the Code Pénal concerning attempt, there are a few other exceptions, of an earlier date, to the general rule. The Romans seemed to have followed the principle "dolus pro facto accipitur,"[3] at least if the crime attempted was a serious one.[4] A somewhat similar line was adopted by ancient Irish law. The general impression produced by the rules in the commentary to the Book of Aicill is, that the attempt to commit an injurious act was treated as equivalent to its commission, unless the result was very insignificant. Thus, if an attempt was made to slay, or to inflict an injury which would endure for life, and blood was shed, the fine was the same as if the attempt had succeeded ; whereas, if the injury did not amount to the shedding of blood, the fine was reduced one-half.[5] And if a man went to kill one person and killed another by mistake, a fine for the intention, in addition to the fine due to the friends of the murdered man, was due to him whose death was intended, even though no injury was actually done to him.[6] In England, at the end of the Middle Ages, the will was taken for the deed in cases of obvious attempts to murder ; but this rule appears to have been considered too severe—even in an age when death was the common punishment for felony—and to have fallen into disuse several centuries ago.[7]

[1] Chauveau and Hélie, *Théorie du Code Pénal*, i. 347 *sq.*

[2] *Ibid.* i. 337 *sq.*

[3] *Digesta*, xlviii. 8. 7.

[4] Seeger, *Versuch der Verbrechen nach römischem Recht*, pp. 1, 2, 49. *Idem*, *Versuch der Verbrechen in der Wissenschaft des Mittelalters*, p. 9. Mommsen, *Römisches Strafrecht*, p. 97 *sq.* Apuleius, *Florida*, iv. 20 :—"In maleficiis etiam cogitata scelera non perfecta adhuc vindicantur, cruenta mente, pura manu. Ergo sicut ad poenam sufficit meditari punienda."

[5] *Ancient Laws of Ireland*, iii. pp. cviii. *sq.* 139.

[6] Cherry, *Growth of Criminal Law in Ancient Communities*, p. 32.

[7] Stephen, *op. cit.* ii. 222 *sq.* Thomas Smith, *Common-wealth of England*, p. 194 *sq.*

The question, which attempts should be punished, and even the elementary question, what constitutes an attempt, have been answered differently by different jurists and legislators.[1] In England all attempts whatever to commit indictable offences, whether felonies or misdemeanours, are punishable by law.[2] The French [3] and German [4] codes, on the other hand, do not punish, except in a few particular cases, attempts to commit *délits* or *Verbrechen*, that is, what the English jurists would describe as misdemeanours.

Again, should a person be punished for attempting to commit a crime in a manner in which success is physically impossible, as if he attempts to steal from a pocket which is empty, or puts into a cup pounded sugar which he believes to be arsenic? This question has given rise to a whole literature. Seneca's statement that "he who mixes a sleeping draught, believing it to be poison, is a poisoner," [5] seems to have had the support of Roman law.[6] In England, some time ago, the man who attempted to pick an empty pocket, was not held liable for an attempt to steal;[7] but this case has been overruled, and it appears now to be the law that an indictment would lie for such an attempt.[8] According to the French [9] and Italian [10] codes, it would not be punished, according to some German law-books, it would;[11] whilst the Strafgesetzbuch contains no special provisions for attempts of a similar character.

Finally there are different rules as to the stage at which an attempt begins to be criminal, or as to the distinction between attempts and acts of preparation. The Romans, it is supposed, drew no such distinction.[12] The French law regards as permissible acts of preparation many

[1] See Cohn, *Zur Lehre vom versuchten und unvollendeten Verbrechen*, i. 6 *sqq.*

[2] Stephen, *op. cit.* ii. 224.

[3] *Code Pénal*, art. 3.

[4] *Strafgesetzbuch*, art. 43.

[5] Seneca, *De beneficiis*, v. 13. *Cf. Idem*, *Ad Serenum*, 7.

[6] Seeger, *Versuch nach römischem Recht*, p. 50.

[7] Stephen, *op. cit.* ii. 225.

[8] Harris, *Principles of the Criminal Law*, p. 209 n. *c*.

[9] Stephen, *op. cit.* ii. 225.

[10] Alimena, in *Le droit criminel des états européens*, ed. by von Liszt, p. 123.

[11] von Feuerbach-Mittermaier, *op. cit.* p. 76. Cohn, *op. cit.* i. 14.

[12] Seeger, *Versuch nach römischem Recht*, p. 49.

things which in England would be punished as attempts.[1] In England lighting a match with intent to set fire to a haystack has been held to amount to a criminal attempt to burn it, although the defendant blew out the match on seeing that he was watched. But it was said in the same case that, if he had gone no further than to buy a box of matches for the purpose, he would not have been liable, the act being too remote from the offence to be criminal.[2] "Liability will not begin until the offender has done some act which not only manifests his *mens rea* but also goes some way towards carrying it out."[3]

If we go a step further, we come to designs unaccompanied by any attempt whatever to realise them. The laws of all countries agree as to the principle that an outward event is requisite for the infliction of punishment. "Cogitationis pœnam nemo patitur."[4]

This fact again illustrates the influence which external deeds exercise upon the moral feelings of men. In the average man moral emotions are hardly ever called into existence by calm and penetrating reflection. There are certain phenomena which for some reason or other are apt to arouse in him such emotions, but he does not seek for them. They must force themselves upon his mind, and the more vigorously they do so, the stronger are the emotions they excite. Nothing makes a greater impression on him than facts which are perceptible by the senses. He will admit that an intention, or even a mere wish, to do something wrong is wrong by itself, but an outward event is generally needed for shaking him up. This, I think, is the original reason why persons have not been punished for intentions unaccompanied by external deeds. No doubt, the principle that "the thought of man shall not be tried," is strongly supported by the fact that, as a mediæval writer puts it, "the devil himself knoweth not the thought of man."[5] But considering how ready people

[1] Chauveau and Hélie, *op. cit.* i. 357 *sqq.* Stephen, *op. cit.* ii. 226.
[2] Holmes, *Common Law*, p. 67 *sq.*
[3] Kenny, *op. cit.* p. 79.
[4] *Digesta*, xlviii. 19. 18.
[5] Quoted by Pollock and Maitland, *op. cit.* ii. 474.

have been to presume guilt in cases of unintentional injuries, it seems very incredible that they originally refrained from punishing bare intentions merely on account of insufficient evidence. Indeed, as an exception to the rule, in a few cases when the crime designed is regarded with extreme horror, the very intention may give such a shock to public imagination as to call for punishment.

According to Chinese law, "any person convicted of a design to kill his or her father or mother, grandfather or grandmother, whether by the father's or mother's side; and any woman convicted of a design to kill her husband, husband's father or mother, grandfather or grandmother, shall, whether a blow is, or is not struck in consequence, suffer death by being beheaded."[1] This exceptional law obviously owes its origin to the extreme reverence in which parents and ancestors are held by the Chinese, and to the wife's subjection to her husband. In mediæval laws referring to heresy we have another instance of punishment being inflicted for a mere state of mind without any corresponding act. According to Julius Clarus, this exception to the rule is due to the fact that the crime of heresy itself consists in "sola mentis cogitatione."[2] But the real reason why the law in this case troubled itself about men's thoughts, and even allowed them to be put on their trial for their tacit opinions on bare suspicion, is the detestation in which heresy was held and the extreme attention it attracted. By all this, of course, I do not mean to deny that a judicious and enlightened legislator may find other grounds for taking no notice of mere intentions than their inability to arouse public indignation. I only speak of matters of fact.

Again, as regards acts of preparation and many cases of unsuccessful attempts, it may be said that the agent perhaps would have altered his mind before he came to the point, or that the failure of his attempt was possibly due

[1] *Ta Tsing Leu Lee*, sec. cclxxxiv. p. 305.

[2] Julius Clarus, *Practica Criminalis* qu. 91 (*Opera omnia*, ii. 625).

to a change of intention in the last moment.[1] But there are innumerable cases in which the attempt, with no less certainty than the accomplished crime, displays a criminal intention which is final. And it is particularly instructive to note that, among the very peoples who treat unintentional injuries with the greatest severity, unsuccessful attempts are treated with the greatest leniency. This is well illustrated by a comparison between Teutonic and Roman law; in either case the former chiefly looks at the event, the latter chiefly at the intention of the agent. If there is no punishment for a bare attempt to commit a crime, that is because such an attempt makes no impression on the public. If an attempt is punished more heavily according as it is more advanced, that is because it calls forth greater indignation in proportion as it comes near to the crime intended. And if even the *conatus proximus* is punished with less severity than the accomplished crime, that is because the indignation it evokes is less. This explanation is corroborated by concessions made by theorisers who have in vain endeavoured to find more rational grounds for existing laws on attempt. They have ultimately found it necessary to resort to phrases such as "the natural sense of justice," or to appeal to the feelings of the multitude.[2]

[1] As a rule, the man who voluntarily desists from the attempt to commit a crime would not be punished at all (see Seeger, *Versuch nach romischem Recht*, p. 50; Charles V.'s *Peinliche Gerichts Ordnung*, art. 178; the French *Code Pénal*, art. 2; the Italian *Codice Penale*, art. 61; Finger, *Compendium des österreichischen Rechtes—Strafrecht*, i. 181; and, for various German laws, Zachariä, *op. cit.* ii. 311 *sq.*, and Cohn, *op. cit.* i. 12 *sq.*), or he would be punished more leniently than if there had been no such desistance (Zachariä, ii. 239 *sqq.* Cohn, i. 12 *sq.*). On this subject see also Herzog, *Rücktritt vom Versuch und Thätige Reue, passim.*

[2] Lelièvre, *De conatu delinquendi*, p. 361 (quoted by Zachariä, *op. cit.* ii. 66, n. 2): "Ceterum libenter fateor, me potius sentire aliquam necessitatem paululum levius in perfectum crimen ac in maleficium consummatum animadvertendi, quam reddere posse claram necessitatis rationem." Abegg, *Die verschiedenen Strafrechtstheorieen*, p. 65: "Für uns folgt aber jene nothwendige Beobachtung der concreten Unterschiede, in dem Gebiete der Erscheinung, nach der aus dem Gerechtigkeitsprincipe abgeleiteten Regel, dass Jeder für *seine That*, und was er *verdient* habe, leiden solle." Zachariä, *op. cit.* ii. 51:—"So macht sich in dem naturlichen Gerechtigkeits-Gefühl des Einzelnen und des ganzen Volkes auch von selbst die Unterscheidung zwischen der Strafe des vollendeten und der des blos versuchten Verbrechens geltend. . . . Es kann freilich seyn, dass der grösste Theil der Menschen für ein solches natürliches Gefuhl keine Gründe anzugeben vermag; allein das Strafrecht,

M. Rossi observes, "Nous pensons que le sens commun et la conscience publique ont constamment tenu le même langage. 'Le délit n'a pas été consommé, donc la punition doit être moindre.' Cette idée de proportion matérielle, ce sentiment de justice, grossière j'en conviens, est naturel à l'homme." [1] This is the view taken by the unreflecting moral consciousness. To him whose feelings are tempered by thought, "a man," as Seneca says, "is no less a brigand, because his sword becomes entangled in his victim's clothes, and misses its mark." [2]

In the same way as moral indignation, is moral approval influenced by external events. Though we would not praise a person for some deed of his which we clearly recognise to reflect no merit on his will, the benefits which result from a good act easily induce us to exaggerate the goodness of the agent. On the other hand, it is success alone that confers upon a man the full reward which he deserves; good intentions without corresponding deeds meet with little applause even when the failure is due to mere misfortune. "In our real feeling or sentiment," Hume observes, "we cannot help paying a greater regard to one whose station, joined to virtue, renders him really useful to society, than to one who exerts the social virtues only in good intentions and benevolent affections."

It is thus only from want of due reflection that moral judgments are influenced by outward deeds. Owing to its very nature, the moral consciousness, when sufficiently influenced by thought, regards the will as the only proper object of moral disapproval or moral praise. That moral qualities are internal, is not an invention of any particular moralist or any particular religion; it has been recognised by thoughtful men in many different countries and different

welches ja gerade auf die grosse Menge zu wirken hat, kann dessenungeachtet solche unwillkürlich im Volke sich geltend machende Ansichten nicht unberücksichtigt lassen." *Cf.* also Finger, *op. cit.* i. 177.

[1] Rossi, *Traité de droit pénal*, ii. 318.

[2] Seneca, *Ad Serenum*, 7.

ages. "He that is pure in heart is the truest priest," said Buddha.[1] In the Taouist work, 'Kan ying peen,' it is written:—"If you form in your heart a good intention, although you may not have done any good, the good spirits follow you. If you form in your heart a bad intention, although you may not have done any harm, the evil spirits follow you."[2] According to the Thâi-Shang, mere wishes are sufficient to constitute badness.[3] One of the Pahlavi texts puts the following words into the mouth of the Spirit of Wisdom:—"To be grateful in the world, and to wish happiness for every one; this is greater and better than every good work."[4] God, says the Koran, "will not catch you up for a casual word in your oaths, but He will catch you up for what your hearts have earned."[5] According to the Rabbis, the thought of sin is worse than sin, and an unchaste thought is a "wicked thing."[6] It was an ancient Mexican maxim that "he who looks too curiously on a woman commits adultery with his eyes"[7]—a striking parallel to the passage in St. Matthew v. 28. "Voluntas remuneratur, non opus," says the Canonist. "Licet gladio non occidat, voluntate tamen interficit." "Non ideo minus delinquit, cui sola deest facultas."[8]

[1] Hopkins, *Religions of India*, p. 319.

[2] Douglas, *Confucianism and Taouism*, p. 270.

[3] *Thâi-Shang*, 4.

[4] *Dînâ-î-Maînôgî Khirad*, lxiii. 3 *sqq.* *Cf.* *ibid.* i. 10, where it is said that the good work which a man does unwittingly is little of a good work, though the sin which a man commits unwittingly amounts to a sin in its origin.

[5] *Koran*, ii. 225. *Cf.* Ameer Ali, *Ethics of Islâm*, p. 26.

[6] Schechter, in Montefiore, *op. cit.* p. 558. *Cf.* Deutsch, *Literary Remains*, p. 52.

[7] Sahagun, *Historia general de las cosas de Nueva España*, vi. 22, vol. ii. 147: "Dice el refran que el *que curiosamente mira á la muger adultéra* con la vista."

[8] Gratian, *Decretum*, ii. 33. 3. 25, 30, 29.

CHAPTER X

AGENTS UNDER INTELLECTUAL DISABILITY

We hold an agent responsible not only for his intention, but for any known concomitant of his act, as also for any such unknown concomitant of it as we attribute to want of due attention. But for anything which he could not be aware of he is not responsible. Hence certain classes of agents—animals, children, idiots, madmen—are totally or partially exempted from moral blame and legal punishment.

Though animals are undoubtedly capable of acting, we do not regard them as proper objects of moral indignation. The reason for this is not merely the very limited scope of their volitions and their inability to foresee consequences of their acts, since these considerations could only restrict their responsibility within correspondingly narrow limits. Their total irresponsibility rests on the presumption that they are incapable of recognising any act of theirs as right or wrong. If the concomitant of an act is imputable to the agent only in so far as he could know it, it is obvious that no act is wrong which the agent could not know to be wrong.

It is a familiar fact that, by discipline, we may teach domesticated animals to live up to a certain standard of behaviour, but this by no means implies that we awake in them moral feelings. When some writers credit dogs and apes with a conscience,[1] we must remember that an

[1] Romanes, *Mental Evolution in Animals*, p. 352. Perty, *Seelenleben der Thiere*, p. 67. Brehm, *From North Pole to Equator*, p. 298.

observer's inference is not the same as an observed fact.[1] It seems that the so-called conscience in animals is nothing more than an association in the animal's mind between the performance of a given act and the occurrence of certain consequences, together with a fear of those consequences.[2]

The following is one of the most striking instances of what Professor Romanes regards as "conscience" in animals; it refers to a terrier which had never, even in its puppyhood, been known to steal, but on the contrary used to make an excellent guard to protect property from other animals, servants, and so forth, even though these were his best friends. "Nevertheless," says Professor Romanes, "on one occasion he was very hungry, and in the room where I was reading and he was sitting, there was, within easy reach, a savoury mutton chop. I was greatly surprised to see him stealthily remove this chop and take it under a sofa. However, I pretended not to observe what had occurred, and waited to see what would happen next. For fully a quarter of an hour this terrier remained under the sofa without making a sound, but doubtless enduring an agony of contending feelings. Eventually, however, conscience came off victorious, for emerging from his place of concealment and carrying in his mouth the stolen chop, he came across the room and laid the tempting morsel at my feet. The moment he dropped the stolen property he bolted again under the sofa, and from this retreat no coaxing could charm him for several hours afterwards. Moreover, when during that time he was spoken to or patted, he always turned away his head in a ludicrously conscience-stricken manner. Altogether I do not think it would be possible to imagine a more satisfactory exhibition of conscience by an animal than this; for . . . the particular animal in question was never beaten in its life." The author then adds in a note that "mere dread of punishment cannot even be suspected to have been the motive principle of action."[3] It may be so, if by punishment be understood the infliction of physical pain. But it can hardly be doubted that the terrier suspected his master to be displeased with his behaviour, and the dread of displeasure or reproof may certainly have been the sole reason for his bringing back the stolen food. Among

[1] *Cf.* Lloyd Morgan, *Animal Life and Intelligence*, p. 399.
[2] *Cf. ibid.* p. 405.
[3] Romanes, 'Conscience in Animals,' in *Quarterly Journal of Science*, xiii. 156 *sq.*

"high-life" dogs, as Professor Romanes himself observes, "wounded sensibilities and loss of esteem are capable of producing much keener suffering than is mere physical pain."[1] But fear of the anticipated consequences of an act, even when mixed with shame, is not the same as the moral feeling of remorse. There is no indication that the terrier felt that his act was wrong, in the strict sense of the word.

However, though most of us, on due reflection, would deny that animals are proper objects of moral censure, there is a general tendency to deal with them as if they were. The dog or the horse that obstinately refuses to submit to its master's will arouses a feeling of resentment which almost claims to be righteous; and the shock given to public feeling by some atrocious deed committed by a beast calls for retribution. As Adam Smith observes, "the dog that bites, the ox that gores, are both of them punished. If they have been the causes of the death of any person, neither the public, nor the relations of the slain, can be satisfied, unless they are put to death in their turn: nor is this merely for the security of the living, but, in some measure, to revenge the injury of the dead."[2]

If thus our own resentment towards an animal which has caused some injury, when not duly tempered by reason, often comes near actual indignation, it is not surprising to find that, at the lower stages of human civilisation, animals are deliberately treated as responsible agents. The American Indian who eats the vermin which molest him defends his action by arguing that, as the animal has first bitten him, he is only retaliating the injury on the injurer.[3] The custom of blood-revenge is often extended to the animal world. The Kukis, says Mr. Macrae, "are of a most vindictive disposition; blood must always be shed for blood; if a tiger kills

[1] *Idem, Animal Intelligence*, p. 439.
[2] Adam Smith, *Theory of Moral Sentiments*, p. 137.
[3] Harmon, *Journal of Voyages and Travels in the Interior of North America*, p. 327. Southey, *History of Brazil*, i. 223. *Cf.* Bastian, *Der Mensch in der Geschichte*, iii. 25.

any of them, near a *Parah* [or village], the whole tribe is up in arms, and goes in pursuit of the animal; when if he is killed, the family of the deceased gives a feast of his flesh, in revenge of his having killed their relation. And should the tribe fail to destroy the tiger, in this first general pursuit of him, the family of the deceased must still continue the chase; for until they have killed either this, or some other tiger, and have given a feast of his flesh, they are in disgrace in the *Parah*, and not associated with by the rest of the inhabitants. In like manner, if a tiger destroys one of a hunting party, or of a party of warriors, on an hostile excursion, neither the one nor the other (whatever their success may have been) can return to the *Parah*, without being disgraced, unless they kill the tiger."[1] Of the Sea Dyaks we are told that they will not willingly take part in capturing an alligator, unless the alligator has first destroyed one of themselves; "for why, say they, should they commit an act of aggression, when he and his kindred can so easily repay them? But should the alligator take a human life, revenge becomes a sacred duty of the living relatives, who will trap the man-eater in the spirit of an officer of justice pursuing a criminal. . . . The man-eating alligator is supposed to be pursued by a righteous Nemesis; and whenever one is caught, they have a profound conviction that it must be the guilty one, or his accomplice, for no innocent leviathan could be permitted by the fates to be caught by man."[2] So, also, the Malagasy will never kill a crocodile, except in retaliation for one of their friends or neighbours who has been destroyed by a crocodile. "They believe that the wanton destruction of one of these reptiles will be followed by the loss of human life, in accordance with the principle of *lex talionis*. The inhabitants living in the neighbourhood of the lake Itàsy, to the west of the central province, are accustomed to make a yearly pro-

[1] Macrae, 'Account of the Kookies,' in *Asiatick Researches*, vii. 189.

[2] Perham, 'Sea Dyak Religion,' in *Journal of the Straits Branch of the Royal Asiatic Society*, No. 10, p. 221 *sq.* *Cf.* Frazer, *Golden Bough*, ii. 390.

clamation to the crocodiles, warning them that they shall revenge the death of some of their friends by killing as many *voày* in return, and warning the well-disposed crocodiles to keep out of the way, as they have no quarrel with them, but only with their evil-minded relatives who have taken human life."[1]

Animals are not only exposed to the blood-feud, but are often exposed to regular punishment. This is the case among the Mambettu in Central Africa. Casati mentions the following instance:—"A goat was chased and persecuted by a dog, and in the fight for self-defence the latter received a thrust from the goat's horn. The poor dog, which was the valuable property of a powerful man, died shortly after. This serious matter was much discussed and commented upon, and finally referred to the king for judgment. The poor goat was sentenced to be slaughtered before its victim's corpse, its flesh was served to the Mambettu [that is, people of the superior race], and that of the dog to the Mege [that is, people of the conquered race]."[2] Among the Maori, according to Polack, the crime of impiety is not confined to man only, but even a pig straying over a sacred place incurs the punishment of death.[3] In Muhammedan East Africa, some time ago, a dog was publicly scourged for having entered a mosque.[4] The Bogos kill a bull or cow which causes the death of a man.[5] According to the native code of Malacca, if a buffalo or a head of cattle "be tied in the forest, in a place where people are not in the habit of passing, and there gore anybody to death, it shall be put to death"; but the owner of the animal shall not be held liable.[6] According to Hebrew law, "if an ox gore a man or a woman, that they die: then the ox shall be surely stoned, and his flesh shall not be eaten"; and, in the case of sexual intercourse

[1] Sibree, *The Great African Island*, p. 269.

[2] Casati, *Ten Years in Equatoria*, i. 176.

[3] Polack, *Manners and Customs of the New Zealanders*, i. 240.

[4] von Amira, *Thierstrafen und Thierprocesse*, p. 30.

[5] Munzinger, *Die Sitten und das Recht der Bogos*, p. 83.

[6] Newbold, *British Settlements in the Straits of Malacca*, ii. 257.

between a man, or woman, and a beast, not only the human offender, but the beast, is to be put to death.[1] It is prescribed in the Vendîdâd that, if a mad dog which bites without barking, smite a sheep or wound a man, "the dog shall pay for the wound of the wounded as for wilful murder."[2] Plato had undoubtedly borrowed from Attic custom or law the idea which underlies the following regulation in his 'Laws':—"If a beast of burden or other animal cause the death of any one, except in the case of anything of that kind happening to a competitor in the public contests, the kinsman of the deceased shall prosecute the slayer for murder, and the wardens of the country, such, and so many as the kinsman appoint, shall try the cause, and let the beast when condemned be slain by them, and let them cast it beyond the borders."[3] In various European countries animals have been judicially sentenced to death, and publicly executed, in retribution for injuries inflicted by them. Advocates were assigned to defend the accused animals, and the whole proceedings, trial, sentence, and execution, were conducted with all the strictest formalities of justice.[4] These proceedings seem to have been particularly common from the end of the thirteenth till the seventeenth century; the last case in France occurred as late as 1845.[5] Not only domestic animals, but even wild ones, were thus put on trial.[6] "In 1565 the Arlesians asked for the expulsion of the grasshoppers. The case came before the Tribunal de l'Officialité, and Maître Marin was assigned to the insects as counsel. He defended his clients with much zeal. Since the accused had been created, he argued that they were justified in eating what was necessary to them. The opposite counsel cited the serpent in the Garden of Eden, and sundry other animals

[1] *Exodus*, xxi. 28 *sq.* *Leviticus*, xx. 15 *sq.*

[2] *Vendîdâd*, xiii. 31. *Cf. ibid.* xiii. 32 *sqq.*; *Yasts*, xxiv. 44.

[3] Plato, *Leges*, ix. 873.

[4] Chambers, *Book of Days*, i. 127. Pertile, 'Gli animali in giudizio,' in *Atti del R. Instituto Veneto*, ser. vi. vol. iv. 139.

[5] von Amira, *Thierstrafen*, pp. 2, 15, 16, 28 *sq.* In England such proceedings seem to have hardly occurred at all (*ibid.* p. 15), but, as we shall see, an animal which caused the death of a man was forfeited as deodand.

[6] See Chambers, *op. cit.* i. 127 *sq.*

mentioned in Scripture, as having incurred severe penalties. The grasshoppers got the worst of it, and were ordered to quit the territory, with a threat of anathematisation from the altar, to be repeated till the last of them had obeyed the sentence of the honourable court."[1] From an earlier period we have records of maledictions and excommunications of vermin and obnoxious insects. In 1120, a bishop of Laon is reported to have excommunicated the caterpillars which were ravaging his diocese, with the same formula as that employed the previous year by the Council of Rheims in cursing the priests who persisted in marrying in spite of the canons.[2] Such maledictions and excommunications, however, were probably regarded rather as magical means of expulsion than as punishments.[3] Not long ago, when swarms of locusts ravaged the gardens of Tangier, the Shereef of Wazzan expelled the injurious animals by spitting into the mouth of one of them.

It has been suggested that the mediæval practice of punishing animals after human fashion was derived from the Mosaic law.[4] But this hypothesis does not account for the comparatively late appearance of the practice, nor for the fact that, in some cases, other punishments short of death were inflicted upon offending beasts.[5] It seems much more probable that the procedure in question developed out of an ancient European custom, to which it stood in the relationship of punishment to revenge.[6] According to the customs or laws of various so-called Aryan peoples—Greeks,[7] Romans,[8] Teutons,[9] Celts,[10] Slavs,[11]—an

[1] Martinengo-Cesaresco, *Essays in the Study of Folk-Songs*, p. 183 *sq.*

[2] Desmaze, *Les pénalités anciennes*, p. 31 *sq.*

[3] This is the opinion of von Amira, who, however — as it seems to me, without sufficient evidence — suggests that the maledictions did not refer to ordinary animals, but to human souls or devils in disguise (*Thierstrafen*, p. 16 *sqq.*).

[4] *Ibid.* pp. 4, 47 *sqq.*

[5] Pertile, *loc. cit.* p. 148.

[6] *Cf.* Brunner, *Forschungen zur Geschichte des deutschen und französischen Rechtes*, p. 517 *sqq.*

[7] Plutarch, *Vita Solonis*, 24. Xenophon, *Historiæ Græcæ*, ii. 4. 41.

[8] *Institutiones*, iv. 9. *Digesta*, ix. 1.

[9] *Lex Salica* (cod. i.), 36. *Lex Ripuariorum*, 46. Grimm, *Deutsche Rechtsalterthumer*, p. 664 *sqq.* Brunner, *Forschungen*, p. 513 *sqq.*

[10] *Ancient Laws of Ireland*, i. 161; iv. 177, 179, 181. *Welsh Laws*, iv. i. 17 (*Ancient Laws and Institutes of Wales*, p. 391).

[11] Macieiowski, *Slavische Rechtsgeschichte*, iv. 333.

animal which did some serious damage, especially if it caused the death of a man, was to be given up to the injured party, or his family, obviously in order that it might be retaliated upon.[1] According to the Welsh Laws, "that is the only case in which the murderer is to be given up for his deed."[2] The fact that afterwards, in the later Middle Ages, this form of reprisal was in certain instances transformed into regular punishment, only implies that the principle according to which punishment succeeded vengeance in the case of human crimes was, by way of analogy, extended to injuries committed by animals.

There has been considerable diversity of opinion concerning the purpose of inflicting punishments upon animals. Some writers suggest that it was possibly done with a view to deterring other animals from committing similar injuries.[3] According to others, the animal was executed in order that the hateful act should be forgotten; Gratian, referring to St. Augustine,[4] says, "Non propter culpam, sed propter memoriam facti pecus occiditur, ad quod mulier accesserit."[5] A theory which has gained much adherence explains the punishment as a symbolic act, performed for the purpose of inspiring horror of the crime into the minds of men.[6] M. Thonissen maintains that, at Athens, "on frappait l'animal auteur d'un homicide, afin que le peuple, en voyant périr un être privé de raison, conçut une grande horreur pour l'effusion du sang humain."[7] It has also been supposed that the animal was punished with intention to intimidate those

[1] See *Lex Wisigothorum*, viii. 4. 20; *Schwabenspiegel*, Landrechtbuch, 204; Dirksen, *Civilistische Abhandlungen*, i. 104; von Jhering, *Geist des römischen Rechts*, i. 123; Hepp, *Die Zurechnung auf dem Gebiete des Civilrechts*, p. 103; Grimm, *Deutsche Rechtsalterthümer*, p. 664; Brunner, *Deutsche Rechtsgeschichte*, ii. 556; *Idem*, *Forschungen*, p. 513.

[2] *Welsh Laws*, iv. 1. 17 (*Ancient Laws and Institutes of Wales*, p. 391).

[3] Leibniz, *Essais de Theodicée*, p. 182 *sq.* Lessona, quoted by d'Addosio, *Bestie delinquenti*, p. 145.

[4] St. Augustine, *Quæstiones in Leviticum*, 74 (*ad Lev.* xx. 16): "Nam pecora inde credendum est jussa interfici, quia tali flagitio contaminata, indignam refricant facti memoriam" (Migne, *Patrologiæ cursus*, xxxiv. 709).

[5] Gratian, *Decretum*, ii. 15. 1. 4. *Cf. Mishna*, fol. 54, quoted by Rabbinowicz, *Législation criminelle du Talmud*, p. 116.

[6] Ayrault, *Des procès faicts au cadaver, aux cendres, à la mémoire, aux bestes brutes*, fol. 24. Ortolan, *Éléments du droit pénal*, p. 188. Tissot, *Le droit pénal*, i. 19 *sq.*

[7] Thonissen, *Le droit pénal de la république Athénienne*, p. 414.

who were responsible for its acts,[1] or that it was killed because it was dangerous.[2] But the true solution of the problem seems simple enough. The animal had to suffer on account of the indignation it aroused. It was regarded as responsible for its deed.[3] In early records the punishment is frequently spoken of as an act of "justice";[4] and the protests of Beaumanoir and others against this opinion[5] only show that it was held in good earnest, if not by all, at least by many. From certain details we can also see how closely the responsibility ascribed to animals resembled the responsibility of men. In some of the texts of the Salic law the animal is spoken of as "auctor criminis."[6] In an ancient Irish law-tract it is said that, when a bee has blinded a person's eye, the whole hive "shall pay the fine," and "the many become accountable for the crime of one, although they all have not attacked."[7] Youth was a ground for acquittal, as appears from a case which occurred at Lavegny in 1457, when a sow and her six young ones were tried on a charge of their having murdered and partly eaten a child: whilst the sow, being found guilty, was condemned to death, the young pigs were acquitted on account of their youth and the bad example of their mother.[8] In Burgundy, a distinction was made between a mischievous dog that entered a room through an open door and one that committed a burglary; the latter was a *larron*, and was to be punished as such.[9] The repetition of a crime aggravated the punishment;[10]

[1] Du Boys, quoted by d'Addosio, *op. cit.* p. 139.

[2] Lessona, quoted *ibid.* p. 145.

[3] *Cf.* Post, '*Die Grundlagen des Rechts*, p. 359; Friedrichs, 'Mensch und Person,' in *Das Ausland*, 1891, pp. 300, 315; and, especially, d'Addosio, *op. cit.* p. 146 *sqq.*: "Nel medioevo si punì l'animale perchè lo si ritenne in certo modo *conscio* delle sue azioni, in certo modo *libero*, in certo modo *responsabile*."

[4] von Amira, *op. cit.* p. 9.

[5] Beaumanoir, *Les coutumes du Beauvoisis*, lxix. 6, vol. ii. 485 *sq.* Chambers, *op. cit.* i. 127. Lichtenberg, *Vermischte Schriften*, iv. 481.

[6] *Lex Salica*, edited by Hessels, coll. 209–212, 215.

[7] *Ancient Laws of Ireland*, iv. 179.

[8] Chambers, *op. cit.* i. 128.

[9] *Ancien Coutumier de Bourgogne*, 23 (*Revue historique de droit français et étranger*, iii. 549): "Il deust hauoir faire iustice del larron."

[10] Pertile, *loc. cit.* p. 148: "La *Carta de Logu* d'Eleonora giudicessa d'Arborea (1395) prescrive: che venendo trovato un asino in danno sui fondi altrui, per la prima volta gli si tagli un orecchio; la seconda, l'altro; e la terza, si co[illegible]schi la bestia consegnandola alla corte principesca." *Cf. Vendîdâd*, xiii. 32 *sqq.*

and the animal "principal" was punished more severely than the "accessories."[1]

Considering the feelings to which even the cultured mind is susceptible with reference to a mischievous beast, it is not difficult to understand the attitude of the ignorant. The savage, not only momentarily, while in a rage, but permanently and in cold blood, obliterates the boundaries between man and beast. He regards all animals as practically on a footing of equality with man. He believes that they are endowed with feelings and intelligence like men, that they are united into families and tribes like men, that they have various languages like human tribes, that they possess souls which survive the death of the bodies just as is the case with human souls. He tells of animals that have been the ancestors of men, of men that have become animals, of marriages that take place between men and beasts. He also believes that he who slays an animal will be exposed to the vengeance either of its disembodied spirit, or of all the other animals of the same species which, quite after human fashion, are bound to resent the injury done to one of their number.[2] Is it not natural, then, that the savage should give like for like? If it is the duty of animals to take vengeance upon men, is it not equally the duty of men to take vengeance upon animals?

Nor are these beliefs restricted to savages. Muhammedans maintain, not only that animals will share with men the general resurrection, but that they will be judged according to their works. Their tradition says that God "will raise up animals at the last day to receive

[1] d'Addosio, *op. cit.* p. 16.

[2] Tylor, *Primitive Culture*, i. 467 *sqq.* Frazer, *Golden Bough*, ii. 389 *sqq.* Liebrecht, *Zur Volkskunde*, p. 17. Achelis, *Moderne Volkerkunde*, p. 373 *sqq.* *Idem*, 'Animal Worship,' in *Open Court*, xi. 705 *sq.* Waitz, *Anthropologie der Naturvölker*, ii. 180 (Negroes). von den Steinen, *Unter den Naturvölkern Zentral-Brasiliens*, p. 351. Im Thurn, *Among the Indians of Guiana*, p. 350 *sqq.* Dorman, *Origin of Primitive Superstitions*, pp. 223, 253. Lumholtz, *Unknown Mexico*, i. 331 (Tarahumares). Mooney, 'Myths of the Cherokee,' in *Ann. Rep. Bur. Ethn.* xix. pp. 250, 261 *sq.* Nelson, 'Eskimo about Bering Strait,' *ibid.* xviii. 423. Hose and McDougall, 'Relations between Men and Animals in Sarawak,' in *Jour. Anthr. Inst.* xxxi. 173 *sqq.*, especially p. 205 *sq.*

reward and to show His perfection and His justice. Then the hornless goat will be revenged on the horned one." [1] We can hardly wonder that the Zoroastrian law inflicted punishments on dogs which hurt men or animals, when we read in the Vendîdâd that a dog has the characters of eight sorts of people.[2] The fable and the *Märchen* for a long time related in good earnest their stories of animals that behaved exactly like men.[3] Even to this day, in certain districts of Europe, as soon as a peasant is dead, it is customary for his heir to announce the change of ownership to every beast in the stall, and to the bees also ;[4] and in some parts of Poland, when the corpse of the rustic proprietor is being carried out, all his cattle are let loose, that they may take leave of their old master.[5] In the Middle Ages animals were sometimes accepted as witnesses ; a man who was accused of having committed a murder in his house appeared before the tribunal with his cat, his dog, and his cock, swore in their presence that he was innocent, and was acquitted.[6] It was not only the common people that ascribed intelligence to beasts. According to Porphyry, all the philosophers who have endeavoured to discover the truth concerning animals have acknowledged that they to a certain extent participate of reason ;[7] and the same idea is expressed by Christian writers of a much later date. In the sixteenth century, Benoît wrote that animals often speak.[8] In the middle of the following century, Hieronymus Rorarius published a book entitled 'Quod animalia bruta ratione utantur melius homine.' And about the same time Johann Crell, in his 'Ethica Christiana,' expressed the opinion that animals at all events possess faculties analogous to reason and free-will, that they have something similar to virtues and vices, that they

[1] *Koran*, vi. 38. Sell, *Faith of Islâm*, p. 223.
[2] *Vendîdâd*, xiii. 44 *sqq.*
[3] See Grimm, *Reinhart Fuchs*, p. i. *sqq.*
[4] Ralston, *Songs of the Russian People*, p. 315. Wuttke, *Der deutsche Volksaberglaube der Gegenwart*, p. 428.
[5] Ralston, *op. cit.* p. 318.
[6] Michelet, *Origines du droit français*, pp. 76, 279 *sq.* Chambers, *op. cit.* i. 129.
[7] Porphyry, *De abstinentia ab esu animalium*, iii. 6.
[8] Benoît, quoted by d'Addosio, *op. cit.* p. 214.

deserve something like rewards and punishments, and are consequently punished by God and man.[1] This, as it seems to me, is the correct explanation of the mediæval practice of punishing animals, even though, in some cases, as M. Ménabréa observes, the obnoxious animal was regarded as an embodiment of some evil spirit and was punished as such.[2] The beast or insect was retaliated upon for the simple reason that it was regarded as a rational being.

At the earlier stages of civilisation even inanimate things are treated as if they were responsible agents. The Kukis take revenge not only on a murderous tiger, but on a murderous tree. "If a man should happen to be killed, by an accidental fall from a tree, all his relations assemble, and cut it down; and however large it may be, they reduce it to chips, which they scatter in the winds, for having, as they say, been the cause of the death of their brother."[3] Among the aborigines of Western Victoria, "when the spear or weapon of an enemy has killed a friend, it is always burnt by the relatives of the deceased; but those captured in battle are kept, and used by the conquerors."[4] The North American Redskins, when struck with an arrow in battle, "will tear it from the wound, break and bite it with their teeth, and dash it on the ground."[5] The British Guiana Indian, when hurt either by falling on a rock, or by the rock falling on him, "attributes the blame, by a line of argument still not uncommon in more civilised life, to the rock."[6] The gods of the Vedic age cursed the trees which had injured them.[7] Xerxes com-

[1] Crell, *Ethica Christiana*, ii. 1, p. 65 *sq.* :—"Hinc aliquid etiam virtuti et vitio simile, seu recte et prave factum: quorum illud est, cum bruta naturæ suæ ductum sequuntur, hoc cum a naturali via exorbitant. Unde tandem etiam aliquid præmio aut pœnæ, et huic quidem maxime simile. Unde bestias etiam a Deo punitas, aut pœnas certas lege illis constitutas, cernimus."

[2] Ménabréa, *De l'origine de la forme et de l'esprit des jugements rendus au moyen-age contre les animaux*, p. 35.

[3] Macrae, in *Asiatick Researches*, vii. 189 *sq.*

[4] Dawson, *Australian Aborigines*, p. 53.

[5] Robertson, *History of America*, i. 351 *sq.*

[6] Im Thurn, *op. cit.* p. 354.

[7] Oldenberg, *Religion des Veda*, p. 518.

manded that the Hellespont should be stricken with three hundred lashes,[1] and Cyrus "wreaked his vengeance" on the river Gyndes by dispersing it through three hundred and sixty channels.[2] Pausanias relates that when Theagenes had died, one of his enemies went up to his statue every night, and whipped the brass. At last, however, "the statue checked his insolence by falling on him; but the sons of the deceased prosecuted the statue for murder. The Thasians sank the statue in the sea, herein following the view taken by Draco, who, in the laws touching homicide which he drew up for the Athenians, enacted that even lifeless things should be banished if they fell on anybody and killed him."[3] As Dr. Frazer remarks, the punishment of inanimate objects for having accidentally been the cause of death was probably much older than Draco.[4] At Athens there was a special tribunal for the purpose.[5] Demosthenes states that, if a stone or a piece of wood or iron or any such thing fell and struck a man, and the person who threw the thing was not known, but the people knew, and were in possession of, the object which killed the man, that object was brought to trial at the court of the Prytaneum.[6] Plato lays down the following rule in his 'Laws':—"If any lifeless thing deprive a man of life, except in the case of a thunderbolt or other fatal dart sent from the gods,—whether a man is killed by lifeless objects falling upon him, or by his falling upon them, the nearest of kin shall appoint the nearest neighbour to be a judge, and thereby acquit himself and the whole family of guilt. And he shall cast forth the guilty thing beyond the border."[7] Teutonic law, which still recognised the principle of private revenge, treated the inanimate murderer with less ceremony.[8] According to the Laws of Alfred, when men were at work together in

[1] Herodotus, vii. 35.
[2] *Ibid.* i. 190.
[3] Pausanias, vi. 11. 6. *Cf. ibid.* v. 27. 10.
[4] Frazer, *Pausanias*, ii. 371.
[5] Aristotle, *De republica Atheniensium*, 57. Pausanias, i. 28. 10.
[6] Demosthenes, *Contra Aristocratem*, 76, p. 645.
[7] Plato, *Leges*, ix. 873 *sq.*
[8] See Trummer, *Vorträge über Tortur, &c.* i. 376 *sq.* Brunner, *Forschungen*, p. 521 *sqq.*

a forest, and by misadventure one let a tree fall on another, which killed him, the tree belonged to the dead man's kinsfolk if they took it away within thirty days.[1] Later on, in England, a thing by which death was caused was "forfeited to God, that is to the King, God's Lieutenant on earth, to be distributed in works of charity for the appeasing of God's wrath."[2] This law remained in force till 1846.[3]

In some of these cases superstitious dread may have been a motive for destroying or banishing the instrument of death. There are facts which prove that such an object is looked upon as a source of danger. According to the Ripuarian law, people are forbidden to make use of a thing which has been "auctor interfectionis";[4] and in Norway, in quite modern times, sickles, axes, and other objects with which men have been killed, have been seen lying about abandoned and unused.[5] Again, among the aborigines of West Australia, if a person has been killed by a thrust of the native wooden spear, *ghici*, his countrymen think that his soul remains in the point of the weapon which caused his death, and they burn it after his burial, so that the soul may depart.[6] But it is also obvious that an inanimate thing which is the cause of a hurt is apt to evoke a genuine feeling of resentment. We kick the chair over which we stumble, we curse the stone which hurts us; Dr Nansen says that, when he was crossing Greenland, it would have caused him "quite real satisfaction" to destroy a sledge which was heavy to draw."[7] When we thus behave as if the offending object were capable of feeling our resentment, we for a moment vaguely believe that it is alive.[8] But our anger very soon passes

[1] *Laws of Alfred*, ii. 15.
[2] Coke, *Third Part of the Institutes of the Laws of England*, p. 57.
[3] Stephen, *History of the Criminal Law of England*, iii. 78. Pollock and Maitland, *History of English Law before the Time of Edward I.* ii. 473.
[4] *Lex Ripuariorum*, lxx. 1.
[5] Liebrecht, *Zur Volkskunde*, p. 313.
[6] Salvado, *Mémoires historiques sur l'Australie*, p. 260 *sq.*
[7] Nansen, *Eskimo Life*, p. 213 *sq.*
[8] *Cf.* Dugald Stewart, *Philosophy of the Active and Moral Powers of Man*, i. 125; Hall, 'Study of Anger,' in *American Journal of Psychology*, x. 566 *sq.*

away when we realise the true nature of its object. The case is different with men at earlier stages of civilisation. They do not suppose that things which hurt them are senseless; on the contrary, they personify such things, not only hastily and momentarily, but deliberately and permanently; hence their resentment lasts. The Guiana Indian, says Sir E. F. Im Thurn, "attributes any calamity which may happen to him to the intention of the immediate instrument of its infliction, and he not unnaturally sees in the action of this instrument evidence of its possession of a spirit."[1] Trees, especially, are very commonly supposed to possess souls similar to those of men, and are treated accordingly.[2] Pausanias writes that "lifeless things are said to have inflicted of their own accord a righteous punishment on men"; and as the best and most famous instance of this he mentions the sword of Cambyses.[3] In England the inanimate murderer was to be given up to the kinsmen of the slain surely not as a compensation for the loss they had suffered, but as an object upon which their vengeance was to be wreaked.[4] It was called *la bane*, that is, "the slayer"; Bracton also calls it the "malefactor."[5] It did not matter that its owner was recognised as innocent; the punishment was not intended for him.[6] But in some well-defined cases the "slayer" was free from guilt. A ship or other vessel from which a person was drowned by misfortune was not forfeited as deodand in case the accident happened in salt water—as Coke indicates, on account of the great dangers to which the vessel is exposed "upon the raging waves in respect of the wind and tempest."[7] Moreover, if a boy under fourteen fell from a cart, or from a horse, it was

[1] Im Thurn, *op. cit.* p. 354.
[2] See Frazer, *Golden Bough*, i. 169 *sqq.*
[3] Pausanias, i. 28. 11.
[4] Pollock and Maitland, ii. 474.
[5] Bracton, *De Legibus et Consuetudinibus Angliæ*, fol. 116, vol. ii. 236 *sq.*
[6] Holmes, *Common Law*, p. 25.
[7] Bracton, *op. cit.* fol. 122, vol. ii. 286 *sq.* Coke, *op. cit.* p. 58. Sir James Stephen supposes (*op. cit.* iii. 78) that "deodands were not in use at sea, because the local customs of England did not extend to the high seas." But Coke expressly says (p. 58) that there can be no deodand of the ship even "in *aqua salsa*, being any arm of the sea, though it be in the body of the County."

no deodand, "because he was not of discretion to look to himself," and so the cart, or horse, could not be regarded as blamable. But if a cart ran over a boy, or a tree fell upon him, or a bull gored him, it was deodand, because, apparently, it went out of its way to kill him.[1] The fact of motion was one of considerable importance in the case of animals and inanimate things, as it was in the case of men. Thus Bracton would distinguish between the horse which throws a man and the horse off which a man tumbles, between the tree that falls and the tree against which a man is thrown; and, as a general rule, a thing was not a deodand unless it could be said "movere ad mortem."[2] If anybody was drowned by falling from a ship under sail, not only the ship itself but the things moving in it were deemed the cause of his death; whereas the merchandise lying at the bottom of the vessel was not presumed to be guilty, and consequently was not forfeited.[3] But if any particular merchandise fell upon a person and caused his death, that merchandise became a deodand, and not the ship.[4] As Mr. Holmes observes, a ship is the most persistent example of motion giving personality to a thing. "She" is still personified not only in common parlance, but in courts of justice. In maritime cases of quite recent date judges of great repute have pronounced the proceeding to be, not against the owner, but "against the vessel for an offence committed by the vessel."[5]

Like the lower animals, human beings in their earliest childhood are incapable of forming notions of right and wrong, hence they are not responsible for any act of theirs. Responsibility commences with the dawn of a moral consciousness, and increases along with the evolution of the intellect. Only by slow degrees the capacity of recognis-

[1] Coke, *op. cit.* p. 57. Hale, *History of the Pleas of the Crown*, i. 422. Stephen, *op. cit.* iii. 78.

[2] Bracton, *op. cit.* fol. 136 b, vol. ii. 400 *sq.* Hale, *op. cit.* i. 420 *sqq.* Pollock and Maitland, *op. cit.* ii. 474, n. 4. Stephen, *op. cit.* iii. 77. Holmes, *op. cit.* p. 25 *sq.*

[3] Britton, i. 2. 14, vol. i. 16.

[4] Hale, *op. cit.* i. 422.

[5] Holmes, *op. cit.* p. 29.

ing act as right or wrong develops in the child. It soon learns that certain acts are forbidden, but to know that an act is forbidden is not the same as to recognise it as wrong. Nor does the knowledge of a moral rule involve the ability to apply that rule in particular cases. Nor can the youthful intellect be expected to possess the same degree of foresight as the intellect of a grown-up man. Hence the total or partial irresponsibility of childhood and early youth.

This irresponsibility is admitted by the laws of civilised nations. In England,[1] Scotland,[2] and the United States,[3] children under seven are absolutely exempt from punishment. In other modern countries criminal responsibility does not commence until the age of nine,[4] ten,[5] twelve,[6] or fourteen.[7] In some it is to be decided in each case whether a child is punishable or not.[8] Thus the French Code Pénal provides that a person under eighteen years of age shall not be punished if it be decided that he has acted without discernment (*sans discernement*), whereas, if he has acted with discernment (*avec discernement*), his punishment is to be mitigated according to a fixed scale.[9] Most laws set down an intermediate period between that of complete irresponsibility and that of complete responsibility. According to English law there is a presumption that children from seven to fourteen are not possessed of the degree of knowledge essential to criminality, though this presumption may be rebutted by proof to the contrary ;[10] and, according to the German Strafgesetzbuch, a person from twelve to eighteen may be acquitted if, when he committed the offence, he did

[1] Stephen, *op. cit.* ii. 97 *sq.*

[2] Erskine-Rankine, *Principles of the Law of Scotland*, p. 546.

[3] Bishop, *Commentaries on the Criminal Law*, § 368, vol. i. 209.

[4] Italian *Codice Penale*, art. 53. Spanish *Código Penal reformado*, art. 8, § 2.

[5] Austrian (Finger, *op. cit.* i. 110), Dutch (van Hamel, in *Législation pénale comparée*, edited by von Liszt, p. 444), Portuguese (Tavares de Medeiros, *ibid.* p. 199), Russian (Foinitzki, *ibid.* p. 529) law.

[6] German *Strafgesetzbuch*, art. 55.

[7] Swedish (Uppström, in *Législation pénale comparée*, p. 483), Finnish (Forsman, *ibid.* p. 565) law.

[8] French, Belgian, Ottoman law (Rivière, *ibid.* p. 7).

[9] *Code Pénal*, art. 66 *sqq.*

[10] Stephen, *op. cit.* ii. 98. Kenny, *Outlines of Criminal Law* p. 50.

not possess the intelligence requisite to know that it was criminal.[1] Other laws, again, regard a certain age *eo ipso* as a ground of extenuation, its upper limit being fixed sometimes at sixteen,[2] sometimes at eighteen,[3] sometimes at twenty,[4] sometimes at twenty-one.[5]

Roman law, as it seems, made out a *præsumptio juris* of general incapacity to commit a crime under puberty, rebuttable by evidence of capacity, at any rate in the age called "next to puberty," the limits of which are not clearly settled.[6] In the Irish Book of Aicill it is said that "the man who incites a fool is he who pays for his crime"; and to this the Commentary adds that a man is a fool till the end of seven years, and a fool of half sense till the end of fourteen[7]—a provision similar to that of Canon Law.[8] According to Muhammedan law, the rule of talion is applicable only to persons of age.[9] In China criminal responsibility is affected not only by youth, but by old age as well. "Offenders whose age is not more than seven nor less than ninety years, shall not suffer punishment in any case, except in that of treason or rebellion." "Any offender whose age is not more than ten nor less than eighty years, . . . shall, when the crime is capital, but not

[1] *Strafgesetzbuch*, art. 56.

[2] Dutch law (van Hamel, *loc. cit.* p. 444).

[3] Spanish (*Código Penal reformado*, art. 9, § 2), Swedish (Uppström, *loc. cit.* p. 484), Finnish (Forsman, *loc. cit.* p. 566) law.

[4] Austrian law (Finger, *op. cit.* i. 112).

[5] Italian (*Codice Penale*, art. 56), Russian (Foinitzki, *loc. cit.* p. 529), Portuguese (Tavares de Medeiros, *loc. cit.* p. 199), Brazilian (*Codigo Penal dos Estados Unidos do Brazil*, art. 42, § 11) law. According to the *Ottoman Penal Code*, art. 40, "a guilty person who has not arrived at the age of puberty may not be punished with the punishment enacted against the offence of which he has been found guilty."

[6] Clark, *Analysis of Criminal Liability*, p. 70. von Jhering, *Das Schuldmoment im römischen Privatrecht*, p. 42 *sqq.* Mommsen *Römisches Strafrecht*, p. 75 *sq.* In the *Institutiones* (i. 22) puberty is fixed at the completion of the fourteenth year for males, and of the twelfth for females. According to the Law of the Twelve Tables, children were punished for theft, though less severely than adults (Gellius, *Noctes Atticæ*, xi. 18. 8. Pliny, *Historia naturalis*, xviii. 3).

[7] *Ancient Laws of Ireland*, iii. 157.

[8] Katz, *Grundriss des kanonischen Strafrechts*, p. 8.

[9] Sachau, *Muhammedanisches Recht*, p. 762. Jaffur Shurreef says (*Qanoon-e-Islam*, p. 36) that, among the Muhammedans of India, previous to the period of puberty all the good and evil deeds of boys and girls are laid to the charge of their parents.

amounting to treason, be recommended to the particular consideration and decision of His Imperial Majesty." And "any offender whose age is not more than fifteen, nor less than seventy years . . . shall be allowed to redeem himself from any punishment less than capital, by the payment of the established fine, except in the case of persons condemned to banishment as accessories to the crimes of treason, rebellion, murder of three or more persons in one family, or homicide by magic or poisoning, upon all of which offenders the laws shall be strictly executed." [1]

According to early custom, children who have committed an injury are sometimes,[2] but not always,[3] subject to the rule of retaliation. Even in Homeric Greece, manslaughter committed in childhood seems to have been visited with banishment for life.[4] In other cases parents are responsible for the deeds of their children.[5] Among the West African Fjort, for instance, children are not themselves liable for their actions, but the injured party can claim compensation from the parents if he likes to do so.[6] Among the Teutons, "like the master for the slave, the father answered for and made claims on behalf of the child. The ceremony of investing him with arms as a *wehrhaft*, or weapon-bearing member of the community, was the usual period for the assumption of rights and liabilities; and this customarily (not always) took place at the age of twelve." [7] According to ancient Swedish law, an injury was treated in the same way as if it had been accidental, in case the offender was under the age of fifteen; [8] according to the Icelandic Grágás, in case he was

[1] *Ta Tsing Leu Lee*, sec. xxii. p. 23 *sq.*

[2] Senfft, in Steinmetz, *Rechtsverhaltnisse*, p. 449 (Marshall Islanders). Miklosich, 'Blutrache bei den Slaven,' in *Denkschriften d. kaiserl. Akademie d. Wissensch. Philos.-hist. Classe*, Vienna, xxxvi. 131 (Turks of Daghestan). See also *supra*, p. 217 *sq.*

[3] Lang, in Steinmetz, *Rechtsverhaltnisse*, p. 257 (Washambala).

[4] *Iliad*, xxiii. 85 *sqq.* *Cf.* Müller. *Dissertations on the Eumenides*, p. 95.

[5] Nicole, in Steinmetz, *Rechtsverhaltnisse*, p. 132 (Diakité-Sarnakolese). Marx, *ibid.* p. 357 (Amahlubi).

[6] Dennett, in *Jour. African Society*, i. 276.

[7] Wigmore, 'Responsibility for Tortious Acts,' in *Harvard Law Review*, vii. 447.

[8] Wilda, *Strafrecht der Germanen*, p. 642 *sq.* Nordstrom, *Bidrag till den svenska samhälls forfattningens historia*, ii. 73. *Cf.* von Amira, *Nordgermanisches Obligationenrecht*, i. 375 *sq.*

under sixteen.[1] However, as we have seen, accidental injuries had to be paid for. Where offences are dealt with according to the principle of compensation, it is impossible to decide how far parents' liability for their children involves a recognition of the moral irresponsibility of the child, or is simply due to the fact that children, having no property, are themselves unable to compensate. That the latter point of view was largely adopted by early custom and law appears from the fact that, when compensation was succeeded by punishment, the period of irresponsibility was reduced. In England the age-limit of twelve years, which prevailed in Anglo-Norman days, was afterwards disregarded in criminal cases.[2] We read in the Northumberland Assize Roll, A.D. 1279, "Reginald . . . aged four, by misadventure slew Robert . . . aged two; the justice granted that he might have his life and members because of his tender age."[3] A little later we hear that a child under the age of seven shall not suffer judgment in a case of homicide.[4] In 1457, an infant of four was held liable in trespass, though the language of the court shows a disposition to exempt the infant.[5] From the eighteenth century instances are recorded of a girl of thirteen who was burnt for killing her mistress, and of a boy of eight who was hanged for arson.[6] In 1748, a boy of ten, being convicted for the murder of a girl of five, was sentenced to death, and all the judges to whom this case was reported agreed that, "in justice to the publick," the law ought to take its course. The execution, however, was respited, and the boy at last had the benefit of His Majesty's pardon.[7] It appears from these facts, and from others of a similar character referring to continental countries,[8] that there has been a tendency to raise the age

[1] *Grágás*, Vigslóði, 32, vol. ii. 63.
[2] Wigmore, *loc. cit.* p. 447.
[3] *Three Early Assize Rolls for the County of Northumberland*, p. 323.
[4] Pollock and Maitland, *op. cit.* ii. 84.
[5] Wigmore, *loc. cit.* p. 447 *sq.* n. 7.
[6] Wilson, *History of Modern English Law*, p. 124.
[7] Foster, *Report of Crown Cases*, p. 70 *sqq.*
[8] Trummer, *op. cit.* i. 428, 432 *sqq* (Germany). Jousse, *Traité de la justice criminelle de France*, ii. 617; Tissot, *Droit pénal*, i. 30 (France).

at which full legal responsibility commences. And we have reason to hope that legislation has not yet said its last word on the subject.

The principle that intellectual incapacity lessens or excludes responsibility also applies to idiots and madmen. Though idiots are able to acquire some knowledge of general moral rules, the application of those rules is frequently beyond their powers;[1] and their capacity of foreseeing the consequences of their acts is necessarily very restricted. The same to some extent holds good of madmen; but, as will be shown in the next chapter, there is another ground for their irresponsibility besides the derangement of the intellect.

All modern laws admit that, at least under certain circumstances, idiocy or madness exempts a person from criminal responsibility. According to Roman law, lunatics were even free from the obligation of paying indemnities for losses inflicted by them;[2] and so mild was their lot at Rome, that it became a practice for citizens to shirk their public duties by feigning madness.[3] Even savages recognise that lunatics and maniacs are not responsible for their deeds. The Abipones maintained that it was "wrong and irrational to use arms against those who are not in possession of their senses."[4] Among the North American Potawatomis many "are said to be 'foolish,' and not sensible of crime."[5] The Iroquois are "persuaded that a person who is not in his right senses is not to be reprehended, or at least not to be punished."[6] Hennepin states that "they had one day in the year which might be called the Festival of Fools; for in fact they pretended to be mad, rushing from hut to hut, so that if they ill-treated any one or carried off anything, they would say next day,

[1] von Krafft-Ebing, *Lehrbuch der gerichtlichen Psychopathologie*, p. 70.

[2] von Vangerow, *Lehrbuch der Pandekten*, iii. 36. von Jhering, *Das Schuldmoment im römischen Privatrecht*, p. 42. Thon, *Rechtsnorm und subjectives Recht*, p. 106, n. 70.

[3] *Digesta*, xxvii. 10. 6.

[4] Dobrizhoffer, *Account of the Abipones*, ii. 234.

[5] Keating, *Expedition to the Source of St. Peter's River*, i. 127.

[6] Charlevoix, *Voyage to North America*, ii. 24 *sq.*

'I was mad; I had not my senses about me.' And the others would accept this explanation and exact no vengeance."[1] The Melanesians "are sorry for lunatics and are kind to them, though their remedies are rough"; at Florida, for instance, a man went out of his mind, chased people, stole things and hid them, but "no one blamed him, because they knew that he was possessed by a *tindalo* ghost."[2] Among the West African Fjort fools and idiots are not responsible personally for their actions.[3] Among the Wadshagga crimes committed by lunatics are judged of more leniently than others.[4] Among the Matabele madmen, being supposed to be possessed of a spirit, "were formerly under the protection of the King."[5] In Eastern Africa the natives say of an idiot or a lunatic, "He has fiends."[6] El Hajj 'Abdssalam Shabeeny states that in Hausaland "a man guilty of a crime, who in the opinion of the judge is possessed by an evil spirit, is not punished."[7]

The idea that derangement of the mind is due to spiritual possession, often makes the idiot or the insane an object of religious reverence.[8] The Macusis regard lunatics as holy.[9] The Brazilian Paravilhana believe that idiots are inspired.[10] According to Schoolcraft, "regard for lunatics, or the demented members of the human race, is a universal trait among the American tribes."[11] So, also, the African Barolong give a kind of worship to deranged persons, who are said to be under the direct influence of a deity.[12] A certain kind of madness was regarded by the ancient Greeks as a divine gift, and consequently as "superior to a sane mind."[13] Lane states that, among the modern

[1] Hennepin, *Description de la Louisiane*, Les Mœurs des Sauvages, p. 71 *sq.*
[2] Codrington, *Melanesians*, p. 218.
[3] Dennett, in *Jour. African Society*, i. 276.
[4] Merker, quoted by Kohler, in *Zeitschr. f. vergl. Rechtswiss.* xv. 64.
[5] Decle, *Three Years in Savage Africa*, p. 154.
[6] Burton, *Lake Regions of Central Africa*, ii. 320.
[7] 'Abdssalam Shabeeny, *Account of Timbuctoo and Housa*, p. 49.
[8] *Cf.* Tylor, *Primitive Culture*, ii. 128.
[9] Andree, *Ethnographische Parallelen, Neue Folge*, p. 3.
[10] von Martius, *Beiträge zur Ethnographie Amerika's*, i. 633.
[11] Schoolcraft, *Indian Tribes of the United States*, iv. 49.
[12] Tylor, *Primitive Culture*, ii. 130.
[13] Plato, *Phædrus*, p. 244.

Egyptians, an idiot or a fool is vulgarly regarded "as a being whose mind is in heaven, while his grosser part mingles among ordinary mortals; consequently he is considered an especial favourite of heaven. Whatever enormities a reputed saint may commit (and there are many who are constantly infringing precepts of their religion), such acts do not affect his fame for sanctity; for they are considered as the results of the abstraction of his mind from worldly things—his soul, or reasoning faculties, being wholly absorbed in devotion—so that his passions are left without control. Lunatics who are dangerous to society are kept in confinement, but those who are harmless are generally regarded as saints."[1] The same holds good of Morocco. Lunatics are not even obliged to observe the Ramadan fast, the most imperative of all religious duties; of a person who, instead of abstaining from all food till sunset, was taking his meal in broad daylight in the open street, I heard the people forgivingly say, "The poor fellow does not know what he is doing, his mind is with God."[2]

On the other hand there are peoples who treat their lunatics in a very different manner. The tribes of Western Victoria put them to death, "as they have a very great dread of mad people."[3] In Kar Nicobar madness is said to be the only cause for a death "penalty" that seems to exist there, the afflicted individual being garrotted with two pieces of bamboo;[4] but this practice seems to be a method of getting rid of a dangerous individual, rather than a penalty in the proper sense of the word. Among the Washambala a lunatic who commits homicide is killed—as our informant observes, "not really on account of his deed, but in order to prevent him from causing further mischief."[5] Among the Turks of Daghestan, we are told, mad people are subject to the rule of blood-revenge.[6]

[1] Lane, *Manners and Customs of the Modern Egyptians*, p. 237.

[2] *Cf.* Gråberg di Hemso, *Specchio geografico, e statistico dell' impero Marocco*, p. 182 *sq.*

[3] Dawson, *op. cit.* p. 61.

[4] Distant, in *Jour. Anthr. Inst.* iii. 6.

[5] Lang, in Steinmetz, *Rechtsverhältnisse*, p. 257.

[6] Miklosich, *loc. cit.* p. 131.

In China lunatics are held responsible for their acts, although the ordinary penalty applicable is commuted, as for instance, in murder to imprisonment with fetters subject to His Majesty's pleasure. But when a lunatic deliberately kills his parents or grandparents, a representation will not serve ; he is to be executed at once on the spot where the murder was committed or on the city execution ground, and the sentence—slicing to pieces—is to be carried out in all its horror though the lunatic be already dead.[1]

According to ancient Welsh law, no vengeance is to be exercised against an idiot,[2] nor is the king to have any fine for the act of such a person.[3] But, "if idiots kill other persons, let *galanas* [that is, blood-money] be paid on their behalf, as for other persons ; because their kindred ought to prevent them doing wrong."[4] The Swedish provincial laws treated an injury committed by a lunatic in the same manner as an injury by misadventure, provided that the relatives of the injurer had publicly announced his madness, or, according to some laws, had kept him tied in bonds which he had broken ; but if they had omitted to do so, the injury was treated as if it had been done wilfully.[5] The Icelandic Grágás even lays down the rule that a madman who has committed homicide shall suffer the same punishment as a sane person guilty of the same crime.[6] In England, in the times of Edward II. and Edward III., proof of madness appears not to have entitled a man to be acquitted, at least in case of murder, but to a special verdict that he committed the offence when mad, and this gave him a right to pardon.[7] Such a right, indeed, implies the admission that lunacy has a claim to forbearance ; but from what we know about the treatment of lunatics during the Middle Ages and much later, we cannot be sure that the insane offender escaped

[1] Alabaster, *Commentaries on Chinese Law*, pp. 93, 96. *Cf.* Douglas, *Society in China*, pp. 72, 122.

[2] *Dimetian Code*, ii. 1. 32 (*Ancient Laws and Institutes of Wales*, p. 200).

[3] *Venedotian Code*, ii. 28. 3 (*ibid.* p. 98).

[4] *Welsh Laws*, iv. 1. 2 (*ibid.* p. 389).

[5] von Amira, *Nordgermanisches Obligationenrecht*, i. 375.

[6] *Grágás*, Vigslóði, 33, vol. ii. 64.

[7] Stephen, *op. cit.* ii. 151.

all punishment. In a case which occurred in 1315, it was presented that a certain lunatic wounded himself with a knife, and finally died of his wounds; his chattels were confiscated.[1] Lord Bacon says in his 'Maxims of the Law,' "If an infant within years of discretion, or a madman, kill another, he shall not be impeached thereof: but if he put out a man's eye, or do him like corporal hurt, he shall be punished in trespass"; in these latter cases, "the law doth rather consider the damage of the party wronged, than the malice of him that was the wrong-doer."[2] In none of the German town-laws before the beginning of the seventeenth century is there any special provision for the offences of lunatics;[3] and, according to the Statutes of Hamburg of 1605, though a madman who kills a person shall not be punished as an ordinary man-slayer, he is yet to be punished.[4] In Germany recognised idiots and madmen were not seldom punished with great severity, and even with death, in the seventeenth and eighteenth centuries.[5] One of the darkest pages in the history of European civilisation may be filled with a description of the sufferings which were inflicted upon those miserable beings up to quite modern times.[6] Many of them were burnt as witches or heretics, or treated as ordinary criminals. For unruly and crazy people, who nowadays would be comfortably located in an asylum, whipping-posts and stocks were made use of. Shakespeare speaks of madmen as deserving "a dark house and a whip";[7] and Swift observes that original people like Diogenes and others, if they had lived in his day, would have been treated like madmen, that is, would have incurred "manifest danger of phlebotomy, and whips, and chains, and dark chambers, and straw."[8] The writings of

[1] Wigmore, *loc. cit.* p. 446.
[2] Bacon, *Maxims of the Law*, reg. 7 (*Works*, vii. 347 *sq.*).
[3] Trummer, *op. cit.* i. 428.
[4] *Ibid.* i. 432.
[5] *Ibid.* i. 438 *sqq.*
[6] See Tuke, *Chapters in the History of the Insane in the British Isles*, p. 43 *sq.*; Maudsley, *Responsibility in Mental Disease*, p. 10 *sq.*; Lecky, *History of European Morals*, ii. 85 *sqq.*
[7] Shakespeare, *As you Like it*, iii. 2.
[8] Swift, *Tale of a Tub*, sec. 9 (*Works*, x. 163).

Esquirol, the parliamentary debates on the asylums of Bedlam and York, and the reports presented under the auspices of La Rochefoucauld to the National Assembly of 1789, contain a picture unique in its sadness—"a picture of prisons in which lunatics, criminal lunatics, and criminals are huddled together indiscriminately without regard to sex or age, of asylums in which the maniac, to whom motion is an imperious necessity, is chained in the same cell with the victim of melancholia whom his ravings soon goad into furious madness, and of hospitals in which the epileptic, the scrofulous, the paralytic and the insane sleep side by side—a picture of cells, dark, foul, and damp, with starving, diseased, and naked inmates, flogged into submission, or teased into fury for the sport of idle spectators."[1]

Whatever share indifference to human suffering may have had in all these atrocities and all this misery, it is likely that thoughtlessness, superstition, and ignorance have had a much larger share. We have noticed that, when a certain deed gives a shock to public feelings, the circumstances in which it has been committed are easily lost sight of. Considering that the Chinese punish persons who have killed their father or mother by pure accident, it is not surprising that they punish madmen who kill a parent wilfully. Even a man like Smollett, the well-known writer, thought it would be neither absurd nor unreasonable for the legislature to divest all lunatics of the privilege of insanity in cases of enormity, and to subject them "to the common penalties of the law."[2] Moreover, as we have seen, madness is often attributed to demoniacal possession,[3] and in other cases it is regarded as a divine punishment.[4] From a pagan

[1] Wood-Renton, 'Moral Mania,' in *Law Quarterly Review*, iii. 340.

[2] Smollett, quoted by Tuke, *op. cit.* p 96.

[3] See also Doughty, *Arabia Deserta*, i. 258 *sq.*; Westermarck, 'Nature of the Arab *Ginn* illustrated by the Present Beliefs of the People of Morocco,' in *Jour. Anthr. Inst.* xxix. 254; Andree, *op. cit.* p. 2 *sq.*; Tuke, *op. cit.* p. 1; Pike, *History of Crime in England*, i. 39; von Krafft-Ebing, *op. cit.* p. 5.

[4] Plato, *Leges*, ix. 854. Esquirol, *Des maladies mentales*, i. 336.

point of view this would make the lunatic an object of pity or dread, rather than of indignation ; as the Roman legislator said, the insane murderer ought not to be punished, because his insanity itself is a sufficient penalty.[1] But in Christian Europe, where up to quite recent times men were ever ready to punish God's enemies, a lunatic, who was supposed to have the devil in him, or whose affliction was regarded as the visitation of God upon heresy or sin,[2] was a hateful individual and was treated accordingly. Finally, we have to take into account that the sensibility of a lunatic was thought to be inferior to that of a sane person ;[3] that the mental characteristics of insanity were little understood ; and that, in consequence, many demented persons were treated as if they were sane because they were thought to be sane, and others, though recognised as lunatics, were treated as responsible because they were thought to be responsible. The history of the English law referring to insanity bears sad testimony to the ignorance of which lunatics have been victims in the hands of lawyers.

From the year 1724 there is a dictum of an English judge to the effect that a man who is to be exempted from punishment " must be a man that is totally deprived of his understanding and memory, and doth not know what he is doing, no more than an infant, than a brute, or a wild beast."[4] From the beginning of the nineteenth century, the power of distinguishing right from wrong in the abstract was regarded as the test of responsibility ;[5] whilst in the existing doctrine, dating from the trial of M'Naughten in 1843, the question of knowledge of right and wrong, instead of being put generally and indefinitely, is put in reference to the particular act at the particular time of committing it.[6] This series of doctrines certainly shows a noteworthy progress

[1] *Digesta*, i. 18. 14 ; xlviii. 9. 9.
[2] Wood-Renton, *loc. cit.* p. 339.
[3] *Ibid.* p. 339.
[4] Howell, *Collection of State Trials*, xvi. 765.
[5] Harris, *Principles of the Criminal Law*, p. 18. Kenny, *op. cit.* p. 53.
[6] Clark and Finnelly, *Reports of Cases decided in the House of Lords*, x. 202.

in discrimination. But at the same time the answers given by the fourteen English judges to the questions put to them by the House of Lords in consequence of M'Naughten's case still display an ignorance which would nowadays be hardly possible. In reply to the question—"If a person under an insane delusion as to existing facts, commits an offence in consequence thereof, is he thereby excused?"—the judges declared that, on the assumption "that he labours under such partial delusion only, and is not in other respects insane, . . . he must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real. For example, if under the influence of his delusion he supposes another man to be in the act of attempting to take away his life, and he kills that man, as he supposes, in self-defence, he would be exempt from punishment. If his delusion was that the deceased had inflicted a serious injury to his character and fortune, and he killed him in revenge for such supposed injury, he would be liable to punishment."[1] The mistake committed in this answer does not lie in the conclusion, but in the premise. "Here," as Professor Maudsley observes, "is an unhesitating assumption that a man, having an insane delusion, has the power to think and act in regard to it reasonably; that, at the time of the offence, he ought to have and to exercise the knowledge and self-control which a sane man would have and exercise, were the facts with respect to which the delusion exists real; that he is, in fact, bound to be reasonable in his unreason, sane in his insanity."[2] Modern science, however, teaches us another lesson. It has shown that a delusion of the kind suggested never stands alone, but is in all cases the result of a disease of the brain which interferes more or less with every function of the mind, and that few insane persons who do violence can be truly said to have a full knowledge of the nature and quality of their acts at the time they are per-

[1] *Ibid.* x. 211.

[2] Maudsley, *op. cit.* p. 97.

forming them.[1] A perhaps still greater defect in the doctrine of the fourteen judges is the absence of all reference to the influence of insane impulses; but with this subject we are not concerned at present. In this connection my object has been merely to show that the irresponsibility of the insane, in so far as it depends on intellectual derangement, has been generally recognised in proportion as their intellectual derangement has been recognised, and that the exceptions to this rule are explicable from beliefs which, though materially affecting the treatment of the insane, have no reference to the principle of responsibility itself.

There are temporary states of mind in which the agent no more knows what he is doing than an idiot or a madman, such as somnambulism, narcosis, fury. For these states, of course, the rule holds good, that nobody is responsible for what he does in ignorance, although he may be responsible for his ignorance. Responsibility in connection with anger and rage will be more appropriately dealt with in another place. I shall here restrict myself to the case of drunkenness.

A person is irresponsible, or only partly responsible, for what he does when drunk, according as he is ignorant of the nature of his act, as also in so far as the intoxicant contributed to the rise of some powerful impulse which determined his will. If he commits an offence in a state of extreme intoxication, he can reasonably be blamed only for what he did when sober. If he made himself drunk for the purpose of committing the offence, then the offence is intended, and he is equally responsible for his act as if he had accomplished it straightway. If he became intoxicated without any fault of his, for instance, if he did not know, and could not know, the intoxicating quality of the liquor which made him drunk, he is free from blame. But in other cases he is guilty of heedlessness, or rashness, or, if he foresaw the danger, of blamable indifference to

[1] Griesinger, *Mental Pathology and Therapeutics*, p. 72 *sq.* Maudsley, *op. cit.* p. 96.

the probable consequences of his act. This is the clear theory of the question. But we cannot expect to find it accurately expressed in practice.

Very generally drunkenness is recognised as a ground of extenuation. We hear from various sources that the North American Indians were exceedingly merciful to intoxicated offenders. According to Charlevoix, the Iroquois "suffer themselves to be ill used by drunken people, without defending themselves, for fear of hurting them. If you endeavour to shew them the folly of this conduct, they say, 'Why should we hurt them? They know not what they do.'" Even "if a savage kills another belonging to his cabin, if he is drunk (and they often counterfeit drunkenness when they intend to commit such actions),[1] all the consequence is, that they pity and weep for the dead. 'It is a misfortune (they say), the murderer knew not what he did.'"[2] James makes a similar statement with reference to the Omahas.[3] In his description of the aborigines of Pennsylvania, Blome observes, "It is rare that they fall out, if sober; and if drunk they forgive it, saying, it was the drink, and not the man that abused them."[4] Benjamin Franklin tells us of some Indians who had misbehaved in a state of intoxication, and in consequence sent three of their old men to apologise; "the orator acknowledged the fault, but laid it upon the rum, and then endeavoured to excuse the rum."[5] The detestable deeds which men did under the influence of *pulcre*, or the native Mexican wine, the Aztecs attributed to the god of wine or to the wine itself, and not in the least to the drunken man. Indeed, if anybody spoke ill of or insulted an intoxicated person, he was liable to be punished for disrespect to the god by which that person was supposed to be possessed.

[1] *Cf.* Hennepin, *op. cit.* p. 71.

[2] Charlevoix, *op. cit.* ii. 23, 25. According to Loskiel (*History of the Mission of the United Brethren among the Indians in North America*, i. 16), the Iroquois, though they laid all the blame on the rum, punished severely murder committed in drunkenness.

[3] James, *Expedition from Pittsburgh to the Rocky Mountains*, i. 265.

[4] Blome, in Buchanan, *North American Indians*, p. 328.

[5] Franklin, *Autobiography*, ch. ix. (*Works*, i. 164).

Hence, says Sahagun, it was believed, not without ground, that the Indians made themselves drunk on purpose to commit with impunity crimes for which they would have been punished if they had committed them sober.[1]

Among the Karens of India "men are not unfrequently killed in drunken broils; but such cases are not allowed by Karen custom to be a cause of action. No price can be demanded for persons who lose their lives in such circumstances. It is argued there was no malice, no intention to kill; and the person who died was perhaps as much to blame as the man who killed him; and people are not well responsible for what they do in a state of intoxication."[2] Among the Kandhs, "for wounds, however serious, given under circumstances of extreme provocation, or in a drunken squabble, slight compensation is awarded."[3] Among some of the Marshall Islanders blood-revenge is generally not taken for an act of homicide which has been committed in drunkenness, compensation being accepted instead.[4] So, also, according to the ancient law of the East Frisians, a man who has killed another when drunk is allowed "to buy off his neck by a sum of money paid to the king and to the relatives of the slain."[5]

Roman law regarded drunkenness as a ground of extenuation;[6] the Jurist Marcian mentions *ebrietas* as an example of *impetus*, thereby intimating that a drunken person, when committing a crime, should not be put on the same footing with an offender acting in cold blood, and calculating his act with clear consciousness.[7] In Canon law drunkenness is said to be a ground which deserves the indulgence of a reasonable judge, because whatever is done in that state is done without consciousness on the part of the actor.[8] Indeed, had not God shown

[1] Sahagun, *Historia general de las cosas de Nueva España*, i. 22, vol. i. 40.

[2] Mason, in *Jour. As. Soc. Bengal*, xxxvii. pt. ii. 146.

[3] Macpherson, *Memorials of Service in India*, p. 82.

[4] Jung, quoted by Kohler, in *Zeitschr. f. vergl. Rechtswiss.* xiv. 446.

[5] *Das Ostfriesische Land-Recht*, iii. 18.

[6] *Digesta*, xlviii. 19. 11. 2; xlix. 16. 6. 7. Mommsen, *Römisches Strafrecht*, p. 1043.

[7] *Digesta*, xlviii. 19. 11. 2.

[8] Gratian, *Decretum*, ii. 15. 1. 7.

indulgence for the offence committed by Lot when drunk?[1] Partly on the authority of Roman law, partly on that of Canon law, the earliest practitioners of the Middle Ages followed the principle that drunkenness is a ground of extenuation; and this doctrine remained strongly rooted in the later jurisprudence, in which a drunken person was likened to one under the influence of sleep, or drunkenness was regarded as equivalent to insanity.[2] It was not until the sixteenth century that a mere general rule, with regard to drunkenness as a ground of extenuation, was felt to be insufficient. Since the time of Clarus, especially, the opinion began to prevail, that the effect of the highest degree of drunkenness was, indeed, to exempt from the punishment of *dolus*, but that the offender was still subject to the punishment of *culpa*, except in two cases, namely, first, when he inebriated himself intentionally, and with a consciousness that he might commit a crime while drunk, in which case the drunkenness was not allowed to be any ground of exculpation at all; and, secondly, when he became intoxicated without any fault on his part, as, for example, in consequence of inebriating substances having been mingled with his wine by his comrades, in which case he was relieved even from the punishment of *culpa*.[3] These views, in the main, gradually determined the German practice, and similar opinions prevailed in the practice of Italy, Spain, Portugal, and the Netherlands.[4] In the annals of Prussian criminal justice of 1824, a case is reported of a man who was punished with only one year's imprisonment for having killed his little child in a state of drunkenness.[5] In other countries a different principle was acted upon. An ordinance of Francis I. declared that drunkenness should not in any case absolve from the ordinary punishment;[6] and this rule was sanctioned and

[1] *Ibid.* ii. 15. 1. 9.

[2] Mittermaier, *Effect of Drunkenness on Criminal Responsibility*, p. 6.

[3] Clarus, *Practica criminalis*, qu. lx. nr. 11 (*Opera omnia*, ii. 462).

[4] Mittermaier, *op. cit.* p. 7. Du Boys, *Histoire du droit criminel de l'Espagne*, p. 290. Italian *Codice Penale*, art. 46 *sqq.* Spanish *Código Penal reformado*, art. 9, §6.

[5] *Zeitschr. f. die Criminal-Rechts-Pflege in den Preussischen Staaten*, edited by Hitzig, iii. 60.

[6] Isambert, Decrusy, and Armet, *Recueil général des anciennes lois françaises*, xii. 527.

applied by the later French jurisprudence.[1] In the Code Pénal, the state of drunkenness is not mentioned as a mitigating circumstance; yet the rigour of the law has been tempered by the doctrine that intoxication produces a temporary insanity and that every kind of insanity is a ground of exculpation.[2] In England,[3] Scotland,[4] and the United States,[5] a state of voluntary drunkenness is no excuse for crime. Speaking of a person who commits homicide when drunk, Hale says that "by the laws of England such a person shall have no privilege by this voluntary contracted madness, but shall have the same judgment as if he were in his right senses."[6] However, in a case where the intention with which the act was done is the essence of the offence, the drunkenness of the accused may be taken into account by the jury when considering the motive or intent with which he acted.[7] According to Chinese law, also, intoxication does not affect the question of responsibility.[8]

The great forbearance with which injuries inflicted in a state of intoxication are treated by various peoples at comparatively low stages of civilisation, is no doubt, to some extent, due to lack of foresight. Failing to anticipate the harmful consequences which may follow from drunkenness, they also fail to recognise the culpability of indulging in it. The American Indians are notorious drunkards, and look upon drunkenness as a "delightful frolick."[9] Among the Kandhs drunkenness is likewise universal, and their "orgies are evidently not regarded as displeasing to their gods."[10] The belief that an intoxicated person is possessed with a demon and acts under its influence, also helps

[1] Mittermaier, *op. cit.* p. 8.
[2] *Ibid.* p. 12 *sq.* Rivière, *loc. cit.* p. 7.
[3] Stephen, *History of the Criminal Law of England*, ii. 165.
[4] Hume, *Commentaries on the Law of Scotland*, i. 38. Erskine-Rankine, *op. cit.* p. 545.
[5] Bishop, *op. cit.* § 400 *sq.* vol. i. 231 *sqq.*
[6] Hale, *op. cit.* i. 32.
[7] Harris, *op. cit.* p. 21. Stephen, *Digest*, art. 32, p. 22.
[8] Giles, *Strange Stories from a Chinese Studio*, ii. 30, n. 2.
[9] Adair, *History of the American Indians*, p. 5. Catlin, *North American Indians*, ii. 251. Colden, in Schoolcraft, *Indian Tribes*, iii. 191. Prescott, *ibid.* iii. 242. James, *op. cit.* i. 265.
[10] Campbell, *Wild Tribes of Khondistan*, p. 165. Macpherson, *op. cit.* p. 81 *sq.*

to excuse him.[1] On the other hand, where the law makes no difference between an offender who is sober and an offender who is drunk, the culpability of the latter is exaggerated in consequence of the stirring effect which the outward event has upon public feelings. So great is the influence of the event that certain laws, most unreasonably, punish a person both for what he does when drunk and for making himself drunk. Thus Aristotle tells us that legislators affixed double penalties to crimes committed in drunkenness.[2] The same was done by Charles V., in an edict of 1531,[3] and by Francis I. in 1536.[4] Hardly more reasonable is it that the very society which shows no mercy whatever to the intoxicated offender, is most indulgent to the act of intoxication itself when not accompanied by injurious consequences. Of course it may be argued that drunkenness is blamable in proportion as the person who indulges in it might expect it to lead to mischievous results. It has also been said that, if drunkenness were allowed to excuse, the gravest crimes might be committed with impunity by those who either counterfeited the state or actually assumed it. Some people even maintain that inebriation brings out a person's true character. In a Chinese story we read, "Many drunkards will tell you that they cannot remember in the morning the extravagances of the previous night, but I tell you this is all nonsense, and that in nine cases out of ten those extravagances are committed wittingly and with malice prepense."[5] However, with all allowance for such considerations, I venture to believe that in this, as in many other cases where an injury results from want of foresight, the extreme severity of certain laws is largely due to the fact that the legislator has been more concerned with the external deed than with its source.

[1] *Cf.* Dorsey, 'Siouan Cults,' in *Ann. Rep. Bur. Ethn.* xi. 424.

[2] Aristotle, *Ethica Nicomachea*, iii. 5. 8.

[3] Damhouder, *Praxis rerum criminalium*, lxxxiv. 20, p. 241.

[4] Isambert, Decrusy, and Armet, *op. cit.* xii. 527.

[5] Giles, *op. cit.* ii. 30.

CHAPTER XI

MOTIVES

No enlightened and conscientious moral judge can regard his judgment as final, unless he know the motive, or motives, of the volition by which his judgment is occasioned. But in ordinary moral estimates little attention is paid to motives. Men desire that certain acts should be performed, and that certain other acts should be abstained from. The conative causes of acts or forbearances are not equally interesting, and they are often hidden. They are considered only in proportion as the moral judgment is influenced by reflection.

Take, for instance, acts which are performed from a sense of duty. It is commonly said that a person ought to obey his conscience. Yet, in point of fact, by doing so he may expose himself to hardly less censure than does the greatest villain. The reason for this is not far to seek. A man's moral conviction is to some extent an expression of his character, hence he may be justly blamed for having a certain moral conviction. And the blame which he may deserve on that account is easily exaggerated, partly because people are apt to be very intolerant concerning opinions of right and wrong which differ from their own, partly owing to the influence which external events exercise upon their minds.

Somewhat greater discrimination is shown in regard to motives consisting of powerful non-volitional conations which in no way represent the agent's character, but to which

he yields reluctantly, or by which he is carried away on the spur of the moment. In many such cases even the law—which regards it as no excuse if a person commits a crime from a feeling of duty[1]—displays more or less indulgence to the perpetrator of a harmful deed.

Thus, in the eye of the law, compulsion is oftentimes a ground of extenuation. Strictly speaking, a volition can never be compelled into existence;[2] to act under compulsion really means to act under the influence of some non-voluntary motive, so powerful that every ordinary human will would yield to it. As Aristotle puts it, pardon is given when "a man has done what he ought not to have done through fear of things beyond the power of human nature to endure, and such that no man could undergo them. And yet, perhaps, there are some things which a man must never allow himself to be compelled to do, but must rather choose death by the most exquisite torments."[3] This principle has been in some degree recognised by legislation. In many cases of felony, if a married woman commits the crime in the presence of her husband, the law of England presumes that she acts under his coercion, and therefore excuses her from punishment, unless the presumption of law is rebutted by evidence;[4] but children and servants are not acquitted if committing crimes by the command of a parent or a master.[5] Besides the presumption made in favour of married women, compulsion by threats of injury to person or property is recognised as an excuse for crime only, as it seems, in cases in which the compulsion is applied by a body of rebels or rioters, and in which the offender takes a subordinate part in the offence.[6] In a time of peace, on the other hand, though a man be violently assaulted, and have no other possible

[1] *Cf.* the case Reg. *v.* Morby, *Law Reports, Cases determined in the Queen's Bench Division*, viii. 571 *sqq.*

[2] Bradley, *Ethical Studies*, p. 40, n. 1.

[3] Aristotle, *Ethica Nicomachea*, iii. 1. 7 *sq.*
Hale, *History of the Pleas of the Crown*, i. 44 *sqq.* 434. Harris, *Principles of the Criminal Law*, p. 25. Stephen, *History of the Criminal Law of England*, ii. 105 *sq.*

[5] Hale, *op. cit.* i. 44. Harris, *op. cit.* p. 26.

[6] Stephen, *op. cit.* ii. 106.

means of escaping death but by killing an innocent person, if he commit the act he will be guilty of murder; "for he ought rather to die himself, than kill an innocent."[1] It has even been laid down as a general principle that "the apprehension of personal danger does not furnish any excuse for assisting in doing any act which is illegal."[2] But the English law relating to *duress per minas*, and to constraint in general, seems to be harsher both than most modern continental laws[3] and than Roman law.[4] Some of the Italian practitioners were even of opinion that a person who committed homicide by the command of his prince or some other powerful man was exempt from all punishment.[5] According to the Talmud, any offence perpetrated under compulsion or in mortal fear is excusable in the eye of the law, excepting only murder and adultery.[6]

Suppose, again, that the motive of breaking the law is what has been called "compulsion by necessity." The old instance of shipwrecked persons in a boat unable to carry them all is a standing illustration of this principle. Sir James Stephen says, that "should such a case arise, it is impossible to suppose that the survivors would be subjected to legal punishment."[7] Yet, in a very similar case, occurring in the year 1884, they were. Three men and a boy escaped in an open boat from the shipwreck of the yacht *Mignonette*. After passing eight days without food, and seeing no prospect of relief, the men killed the boy, who was

[1] Hale, *op. cit.* i. 51. Harris, *op. cit.* p. 24 *sq.*

[2] Denman, C. J., in Reg. *v.* Tyler, reported in Carrington and Payne, *Reports of Cases argued and ruled at Nisi Prius*, viii. 621.

[3] *Code Pénal*, art. 64; Chauveau and Hélie, *Théorie du Code Pénal*, i. 534 *sqq.* Italian *Codice Penale*, art. 49. Spanish *Código Penal reformado*, art. 8, § 9 *sqq.* Finger, *Compendium des österreichischen Rechtes—Das Strafrecht*, i. 119. Foinitzki, in *Législation pénale comparée*, edited by von Liszt, p. 530 (Russian law). *Ottoman Penal Code*, art. 42.

[4] Mommsen, *Römisches Strafrecht*, p. 653. Janka, *Der strafrechtliche Notstand*, p. 48.

[5] Janka, *op. cit.* p. 60. A different view, however, is expressed by Covarruvias (*De matrimoniis*, ii. 3. 4. 6 *sq.* [*Opera omnia*, i. 139]):—"Metus numquam excusat nec a mortali, nec a veniali crimine. Peccatum maximum malum, nec eo quid grauius."

[6] Benny, *Criminal Code of the Jews according to the Talmud Massecheth Synhedrin*, p. 125.

[7] Stephen, *op. cit.* ii. 108. So, also, according to Bacon's *Maxims of the Law*, reg. 5 (*Works*, vii. 344), homicide is in such a case justifiable.

on the verge of death, in order to feed on his body. Four days later they were rescued by a passing ship ; and, on their arrival in England, two of the men were tried for the murder of the boy. The defence raised was that the act was necessary for the purpose of self-preservation. But it was held by the Court for Crown Cases Reserved, that such necessity was no justification of the act of causing death when there was a distinct intention to take away the life of another innocent person. However, the sentence of death was afterwards commuted by the Crown to six months' imprisonment.[1] In the same case it was even said that if the boy had had food in his possession, and the others had taken it from him, they would have been guilty of theft.[2] Bacon's proposition that "if a man steal viands to satisfy his present hunger, this is no felony nor larceny,"[3] is not law at the present day.[4] It was expressly contradicted by Hale, who lays down the following rule :— "If a person, being under necessity for want of victuals, or clothes, shall upon that account clandestinely, and *animo furandi* steal another man's goods, it is felony and a crime by the laws of England punishable with death ; altho the judge, before whom the trial is, in this case (as in other cases of extremity) be by the laws of England intrusted with a power to reprieve the offender before or after judgment, in order to the obtaining the king's mercy."[5] Britton excuses "infants under age, and poor people, who through hunger enter the house of another for victuals under the value of twelve pence."[6] According to the Swedish Westgöta-Lag, a poor man who can find no other means of relieving himself and his family from hunger may thrice with impunity appropriate food belonging to somebody else, but if he does so a fourth time he is punished for theft.[7] The Canonist says, "Necessitas legem non

[1] Reg. *v.* Dudley and Stephens, in *Law Reports, Cases determined in the Queen's Bench Division*, xiv. 273 *sqq.*

[2] *Ibid.* xiv. 276.

[3] Bacon, *Maxims of the Law*, reg. 5 (*Works*, vii. 343).

[4] Reg. *v.* Dudley and Stephens, in *Law Reports, Queen's Bench Division*, xiv. 286.

[5] Hale, *op. cit.* i. 54.

[6] Britton, i. 11, vol. i. 42.

[7] *Westgöta-Lagen II.* Þiufua bolker, 14, p. 164 *sq.*

habet" [1]—"Raptorem vel furem non facit necessitas, sed voluntas." [2] This principle has the sanction of the Gospel. Jesus said to the Pharisees, "Have ye not read what David did, when he was an hungered, and they that were with him; How he entered into the house of God, and did eat the shewbread, which was not lawful for him to eat, neither for them which were with him, but only for the priests?" [3]

According to Muhammedan law, the hand is not to be cut off for stealing any article of food that is quickly perishable, because it may have been taken to supply the immediate demands of hunger.[4] We are told that "no Chinese magistrate would be found to pass sentence upon a man who stole food under stress of hunger." [5] In ancient Peru, according to Herrera, "he that robb'd without need was banish'd to the Mountains Andes, never to return without the Inga's leave, and if worth it paid the value of what he had taken. He that for want stole eatables only was reprov'd, and receiv'd no other punishment, but enjoyn'd to work, and threatened, that if he did so again, he should be chastiz'd by carrying a stone on his back, which was very disgraceful." [6] We even hear of savages who regard "compulsion by necessity" as a ground of extenuation. Among the West African Fjort robbery of plantations, committed in a state of great hunger, is exempt from punishment in case there is no deception or secrecy in the matter; however, payment for damage done is expected.[7] Cook says of the Tahitians:—"Those who steal clothes or arms, are commonly put to death, either by hanging or drowning in the sea; but those who steal provisions are bastinadoed. By this practice they wisely vary the punishment of the same crime, when committed from different motives." [8]

[1] Gratian, *Decretum*, iii. 1. 11.
[2] *Ibid.* iii. 5. 26.
[3] *St. Matthew*, xii. 1 *sqq.*
[4] Lane, *Manners and Customs of the Modern Egyptians*, p. 121.
[5] Giles, *Strange Stories from a Chinese Studio*, ii. 217, n. 5.
[6] Herrera, *General History of the West Indies*, iv. 337.
[7] Dennett, in *Jour. African Society*, i. 276.
[8] Cook, *Journal of a Voyage round the World*, p. 41 *sq.*

A special kind of self-preservation is self-defence. Here the ground of justification is not merely the motive of the agent, but also the wrongness or criminality of the act which he tries to prevent. Hence the right of inflicting injuries as a necessary means of self-preservation has been more generally recognised in the case of self-defence than in other cases of "compulsion by necessity." "Vim vi repellere" was regarded by the ancients as a natural right,[1] as a law "non scripta, sed nata";[2] and the same view was taken by the Canonist.[3] Even in the savage world self-defence and killing in self-defence are not infrequently justified by custom.[4] But in other instances the influence of the external event makes itself felt also in the case of self-defence. Among the Fjort, though a person who kills another in self-defence is exempt from punishment, he is expected to pay damages.[5] Among the Hottentots self-defence is regarded as a mitigating circumstance, but not as an excuse in the full sense of the word.[6] Among other peoples it is not considered at all.[7] Among the ancient Teutons a person who committed homicide in self-defence had to pay *wer*;[8] and in Germany such a person seems to have been subject to punishment still in the later Middle Ages.[9] In England, in the thirteenth century, he was considered to deserve royal pardon, but he also needed it.[10]

[1] *Digesta*, xliii. 16. i. 27: "Vim vi repellere licere Cassius scribit idque ius natura comparatur."

[2] Cicero, *Pro Milone*, 4 (10).

[3] Gratian, *Decretum*, i. 1. 7.

[4] Merker, quoted by Kohler, in *Zeitschr. f. vergl. Rechtswiss.* xv. 64 (Wadshagga). Lang, in Steinmetz, *Rechtsverhältnisse*, p. 257 (Washambala).

[5] Dennett, in *Jour. African Society*, i. 276.

[6] Kohler, in *Zeitschr. f. vergl. Rechtswiss.* xv. 353.

[7] Steinmetz, *Rechtsverhältnisse*, p. 50 (Banaka and Bapuku). Tellier, *ibid.* p. 176 (Kreis Kita). Marx, *ibid.* p. 357 (Amahlubi). Senfft, *ibid.* p. 450 (Marshall Islanders).

[8] Geyer, *Lehre von der Nothwehr*, p. 88 *sqq.* Trummer, *Vorträge über Tortur*, &c. i. 430. Stemann, *Den danske Retshistorie indtil Christian V.'s Lov*, p. 659. *Cf. Leges Henrici I.* lxxx. 7; lxxxvii. 6.

[9] Trummer, *op. cit.* i. 428 *sqq.* von Feuerbach-Mittermaier, *Lehrbuch des Peinlichen Rechts*, p. 64. Brunner observes (*Deutsche Rechtsgeschichte*, ii. 630), "Nicht das Benehmen des Getöteten war die causa des Todschlags, sondern nur die feindselige Absicht des Todschlägers."

[10] Bracton, *De Legibus et Consuetudinibus Angliæ*, fol. 132 b, vol. ii. 366 *sqq.* Pollock and Maitland, *History of English Law before the Time of Edward I.* ii. 574.

In self-defence there should of course be a proportion between the injury which the aggressor intended to inflict and the injury inflicted on him by the person attacked. The most widely-recognised ground on which life is allowed to be taken in self-defence is danger of death. But it is not the exclusive ground. Among the Wakamba "a thief entering a village at night can be killed"; though, if he is, the incident generally gives rise to a blood-feud between his family and the family of the slayer.[1] In Uganda "there is no penalty for killing a thief who enters an enclosure at night";[2] and among various peoples at higher stages of culture we likewise find the provision that a nocturnal thief or house-breaker may be killed with impunity, though a diurnal thief may not.[3] This law, however, seems to have been due not so much to the fact that by night the proprietor had less chance of recovering his property, as to the greater danger to which he was personally exposed.[4] The Roman Law of the Twelve Tables allows the diurnal thief also to be killed, in case he defends himself with a weapon;[5] and, as regards the nocturnal thief, Ulpian expressly says that the owner of the property is justified in killing him only if he cannot spare the life of the thief without peril to himself.[6] The same rule was laid down by Bracton[7] and by Grotius. The latter observes, "No one ought to be slain directly for the sake of mere things, which would be done if I were to kill an unarmed flying thief with a missile, and so recover my goods: but if I am myself in danger of life, then I may repel the danger even with danger to the life of another; nor does this cease to hold, however I have come into that danger, whether by trying to retain my property, or to

[1] Decle, *Three Years in Savage Africa*, p. 488.

[2] Ashe, *Two Kings of Uganda*, p. 294.

[3] *Ta Tsing Leu Lee*, sec. cclxxvii. p. 297 (Chinese). *Exoaus*, xxii. 2 *sq.* *Lex Duodecim Tabularum*, viii. 11 *sq.* Plato, *Leges*, ix. 874. *Lex Baiuwariorum*, ix. (viii.) 5. Du Boys, *Histoire du droit criminel de l'Espagne*, p. 288 (Spanish Partidas).

[4] *Cf.* Gregory IX. *Decretales*, v. 12. 3; *Mishna*, fol. 72, quoted by Rabbinowicz, *Législation criminelle du Talmud*, p. 122.

[5] *Lex Duodecim Tabularum*, viii. 12. Cicero, *Pro Milone*, 3 (9).

[6] *Digesta*, xlviii. 8. 9.

[7] Bracton, *op. cit.* fol. 144 b, vol. ii. 464 *sq.*

recover it, or to capture the thief; for in all these cases I am acting lawfully according to my right." [1]

According to the law of England, a woman is justified in killing one who attempts to ravish her; and so also the husband or father may kill a man who attempts a rape on his wife or daughter, if she do not consent.[2] We meet with similar provisions in many other laws, modern and ancient.[3] St. Augustine says that the law allows the killing of a ravisher of chastity, either before or after the act, in the same manner as it permits a person to kill a highwayman who makes an attempt upon his life.[4] According to the Talmud, it is permissible to kill a would-be criminal, in order to prevent the commission of either murder or adultery—"to save an innocent man's life, or a woman's honour"; but when the crime has already been accomplished, the criminal cannot be thus disposed of.[5]

Among many peoples who in other cases prohibit self-redress, an adulterer and an adulteress may be put to death by the aggrieved husband, especially if they be caught *flagrante delicto*. Such a custom prevails in various uncivilised societies where justice is generally administered by a council of elders or the chief.[6] Among the ancient

[1] Grotius, *De jure belli et pacis*, ii. 1. 12. 1.

[2] Harris, *op. cit.* p. 145.

[3] Erskine-Rankine, *Principles of the Law of Scotland*, p. 558. *Ottoman Penal Code*, art. 186. Nordström, *Bidrag till den svenska samhälls-forfattningens historia*, ii. 349 (ancient Swedish laws). Plato, *Leges*, ix. 874.

[4] St. Augustine, *De libero arbitrio*, i. 5 (Migne, *Patrologiæ cursus*, xxxii. 1227).

[5] Benny, *op. cit.* p. 125. Rabbinowicz, *op. cit.* p. 124.

[6] Dalton, *Descriptive Ethnology of Bengal*, p. 45; Stewart, in *Jour. As. Soc. Bengal*, xxiv. 628 (Kukis). Macpherson, *Memorials of Service in India*, p. 83; Hunter, *Annals of Rural Bengal*, iii. 76 (Kandhs). Anderson, *Mandalay to Momien*, p. 140 (Kakhyens). MacMahon, *Far Cathay and Farther India*, p. 273 (Indo-Burmese border tribes). Crawfurd, *History of the Indian Archipelago*, iii. 130. von Brenner, *Besuch bei den Kannibalen Sumatras*, pp. 211, 213. Modigliani, *Viaggio a Nias*, p. 495. Dorsey, 'Omaha Sociology,' in *Ann. Rep. Bur. Ethn.* iii. 364. Dyveyrier, *Exploration du Sahara*, p. 429 (Touareg). Barrow, *Travels into the Interior of Southern Africa*, i. 207 (Kafirs). Among the Gaika tribe of the Kafirs, however, "a man is fined for murder, if he kills an adulterer or adulteress in the act, although he be the husband of the adulteress" (Maclean, *Compendium of Kafir Laws and Customs*, p. 111). Among the Wakamba, "if a man is caught in adultery at night, the husband has a right to kill him; but if the injured man thus takes the law into his own hands in the daytime, he is dealt with as a murderer" (Decle, *op. cit.* p. 487).

Peruvians "a man killing his wife for adultery was free; but if for any other fault he died for it, unless he were a man in dignity, and then some other penalty was inflicted."[1] According to Chinese penal law, "when a principal or inferior wife is discovered by her husband in the act of adultery, if such husband at the very time that he discovers kills the adulterer, or adulteress, or both, he shall not be punishable."[2] By the law of Nepal, the Parbattia husband retains the privilege of avenging, with his own hand, the violation of his marriage bed, and anyone, save a learned Brahman or a helpless boy, who instead of using his own sword, should appeal to the courts, would be covered with eternal disgrace.[3] In all purely Moslem nations custom "overwhelms with ignominy the husband or son of an adulteress who survives the discovery of her sin; he is taboo'd by society; he becomes a laughing-stock to the vulgar, and a disgrace to his family and friends."[4] According to the 'Lex Julia de adulteriis,' a Roman father had a right to kill both his married daughter and her accomplice if she was taken in adultery either in his house or in her husband's, provided that both of them were killed, and that it was done at once. The husband, on the other hand, had no such right as to his wife in any case, and no such right as to her accomplice unless he was an infamous person or a slave, taken, not in his father-in-law's house, but in his own.[5] However, it seems that in more ancient times the husband was entitled to kill an adulterous wife;[6] and his right of self-redress in the case of adultery was again somewhat extended by Justinian beyond the very narrow limits set down by the Lex Julia.[7] According to an Athenian law, "if one man shall kill another . . . after catching him with his wife, or with his mother, or with a

[1] Herrera, *op. cit.* iv. 338.
[2] *Ta Tsing Leu Lee*, sec. cclxxxv. p. 307.
[3] Hodgson, *Miscellaneous Essays*, ii. 235, 236, 272.
[4] Burton, *Sind Revisited*, ii. 54 *sq.*
[5] *Digesta*, xlviii. 5. 21 *sqq.*
[6] Gellius, *Noctes Atticæ*, x. 23. 5. *Cf.* Mommsen, *Römisches Strafrecht*, p. 625.
[7] *Novellæ*, cxvii. 15.

sister, or with a daughter, or with a concubine whom he keeps to beget free-born children, he shall not go into exile for homicide on such account."[1] Ancient Teutonic law allowed a husband to kill both his unfaithful wife and the adulterer, if he caught them in the act;[2] according to the Laws of Alfred, an adulterer taken *flagrante delicto* by the woman's lawful husband, father, brother, or son, might be killed without risk of blood-feud.[3] In the thirteenth century, however, there are already signs that, in England, the outraged husband who found his wife in the act of adultery might no longer slay the guilty pair or either of them, although he might emasculate the adulterer.[4] The present law treats the killing of an adulterer taken in the act in the same way as homicide committed in a quarrel; by slaying him, the husband is guilty of manslaughter only, though, if the killing were deliberate and took place in revenge after the fact, the crime would be murder. This seems to be the only case in English law in which provocation, other than by actual blows, is considered sufficient to reduce homicide to manslaughter, if the killing be effected by a deadly weapon.[5] There are corresponding provisions in other modern laws.[6] As a rule, flagrant adultery does not justify homicide, but serves as an extenuating circumstance.[7] But according to the French Code Pénal, "dans le cas d'adultère . . . le meurtre commis par l'époux sur son épouse, ainsi que sur le complice, à l'instant où il les surprend en flagrant délit dans la maison conjugale, est excusable."[8] And in Russia, though the law does not exempt from punishment a

[1] Demosthenes, *Contra Aristocratem*, 53, p. 637.

[2] Wilda, *Strafrecht der Germanen*, p. 823. Nordström, *op. cit.* ii. 62 *sq.* Stemann, *op. cit.* p. 325.

[3] *Laws of Alfred*, ii. 42.

[4] Pollock and Maitland, *op. cit.* ii. 484. The same right is granted by a Spanish mediæval law to a father, or a husband, who finds a man having illegitimate sexual intercourse with his daughter, or wife (Du Boys, *Histoire du droit criminel de l'Espagne*, p. 93).

[5] Hale, *op. cit.* i. 486. Harris, *op. cit.* p. 145. Cherry, *Lectures on the Growth of Criminal Law*, p. 82 *sq.*

[6] Italian *Codice Penale*, art. 377. Spanish *Código Penal reformado*, art. 438. *Ottoman Penal Code*, art. 188.

[7] Günther, *Idee der Wiedervergeltung*, iii. 233 *sqq.*

[8] *Code Pénal*, art. 324.

husband who thus avenges himself, the jury show great indulgence to him.[1]

Whilst the law referring to self-defence has gradually become more liberal, the law referring to self-redress in the case of adultery has thus, generally speaking, become more severe. The reason for this is obvious. A husband who slays his unfaithful wife or her accomplice does not defend, but avenges himself; and it is to be expected that a society in which punishment has only just succeeded revenge should still admit, or tolerate, revenge in extreme cases. The privilege granted to the outraged husband is not the sole survival of the old system of self-redress lingering on under the new conditions. According to Kafir custom or law, the relatives of a murdered man become liable only to a very light fine if they kill the murderer.[2] The ancient Teutons, at a time when their laws already prohibited private revenge, did not look upon an avenger of blood in the same light as an ordinary manslayer;[3] and even the Church recognised the distinction.[4] Some of the ancient Swedish laws entirely excused homicide committed in revenge immediately after the crime.[5] According to the Östgöta-Lag, an incendiary taken in flagrancy might be at once burnt in the fire,[6] and ancient Norwegian law permitted the slaying of a thief caught in the act.[7] In the Laws of Ine there is an indication that a thief's fate was at the discretion of his captor,[8] and a law of Æthelstan implies that the natural and proper course as to thieves was to kill them.[9] In the Laws of King Wihtræd it is said, "If any one slay a layman while thieving; let him lie without 'wergeld.'"[10] So also, according to Javanese law, if a thief be caught in the act it is lawful to put him to death.[11] For our present

[1] Foinitzki, *loc. cit.* p. 548.
[2] Maclean, *op. cit.* p. 143. *Cf.*, however, *ibid.* p. 110.
[3] Wilda, *op. cit.* p. 562. Stemann, *op. cit.* p. 582 *sq.*
[4] Wilda, *op. cit.* pp. 180, 565. Labbe-Mansi, *Sacrorum Conciliorum collectio*, xii. 289.
[5] Nordström, *op. cit.* ii. 414 *sq.*
[6] *Ibid.* ii. 416.
[7] Wilda, *op. cit.* p. 889.
[8] *Laws of Ine*, 12. *Cf.* Stephen, *op. cit.* i. 62.
[9] *Laws of Æthelstan*, iv. 4.
[10] *Laws of Wihtræd*, 25.
[11] Crawfurd, *op. cit.* iii. 115.

purpose it is important to note that all such cases imply a recognition of the principle that an act committed on extreme provocation requires special consideration. To declare that an adulterer or adulteress caught in flagrancy, or a manifest thief, may be slain with impunity, is a concession to human passions, which are naturally more easily aroused by the sight of an act than by the mere knowledge of its commission. It was for a similar reason that the Law of the Twelve Tables punished *furtum manifestum* much more heavily than *furtum nec manifestum*;[1] and that the Laws of Alfred imposed death as the penalty for fighting in the King's hall if the offender was taken in the act, whereas he was allowed to pay for himself if he escaped and was subsequently apprehended.[2]

The difference between an injury which a person inflicts deliberately, in cold blood, and one which he inflicts in the heat of the moment, under the disturbance of great excitement caused by a wrong done to himself, has been widely recognised. There are instances reported of savages who distinguish between murder and manslaughter. And the laws of all civilised nations agree in regarding, on certain conditions, passion aroused by provocation as a mitigating circumstance at the commission of a crime.

The Australian Narrinyeri, as we have seen, have a tribunal, called *tendi*, consisting of the elders of the clan, to which all offenders are brought for trial. "In case of the slaying by a person or persons of one clan of the member of another clan in time of peace, the fellow-clansmen of the murdered man will send to the friends of the murderer and invite them to bring him to trial before the united tendies. If, after full inquiry, he is found to have committed the crime, he will be punished according to the degree of guilt. If it were a case of murder, with malice aforethought, he would be handed over to his own clan to be put to death by spearing. If it should be what we call manslaughter, he would receive a good thrashing, or be banished from his clan, or compelled to go to his mother's

[1] *Institutiones*, iv. 1. 5.

[2] *Laws of Alfred*, ii. 7.

relations."[1] In the Pelew Islands, if two natives are quarrelling, and the one says to the other, "Your wife is bad," the insulted party is entitled to chastise the provoker with a stone, and is not held liable even if the latter should die in consequence.[2] The Eastern Central Africans "are aware of the difference between murder and homicide," even though the punishment of the two crimes is often the same.[3] Among the Kandhs only slight compensation is awarded "for wounds, however serious, given under circumstances of extreme provocation."[4] "*Valdeyak*, or manslaughter," says Georgi, "is not capital among the Tungusians, when it has been occasioned by some antecedent quarrel. The slayer is however whipped, and obliged to maintain the family of the deceased: he undergoes no reproaches on account of the affair; but on the contrary is considered as a brave and courageous man for it."[5]

Among the ancient Peruvians, "when one killed another in a quarrel, the first thing enquired into was, who had been the aggressor; if the dead man, then the punishment was slight, at the will of the Inga; but if the surviver had given the provocation, his penalty was death, or at least perpetual banishment to the Andes, there to work in the Inga's fields of corn, which was like sending him to the galeys. A murderer was immediately publickly put to death, tho' he were a man of quality."[6] Among the Mayas of Yucatan and Nicaragua, in case of great provocation or absence of malice, homicide was atoned by the payment of a fine.[7]

From certain passages in the Mosaic law the conclusion has been drawn that the ancient Hebrews did not consider it obligatory to inflict death upon him who had killed his neighbour in a fit of passion.[8] It is said that a man shall be put to death if he "come presumptuously upon his neighbour, to slay him with guile,"[9] or if he "hate his neighbour, and lie in wait for him, and rise up against him, and smite him mortally that he die."[10] On the other hand, he shall be allowed a resort to a city

[1] Taplin, 'Narrinyeri,' in Woods, *Native Tribes of South Australia*, p. 34 *sq.*

[2] Kubary, 'Die Palau-Inseln,' in *Journal des Museum Godeffroy*, iv. 43 *sq.*

[3] Macdonald, *Africana*, i. 172.

[4] Macpherson, *op. cit.* p. 82.

[5] Georgi, *Russia*, iii. 83. *Cf.* also Turner, 'Ethnology of the Ungava District,' in *Ann. Rep. Bur. Ethn.* xi. 186.

[6] Herrera, *op. cit.* iv. 337 *sq.*

[7] Bancroft, *Native Races of the Pacific States*, ii. 658.

[8] Goitein, *Das Vergeltungsprincip im biblischen und talmudischen Strafrecht*, p. 33 *sqq.*

[9] *Exodus*, xxi. 14.

[10] *Deuteronomy*, xix. 11 *sq.*

of refuge if "he lie not in wait,"[1] or if he thrust his neighbour "suddenly without enmity."[2]

Professor Leist suggests that in ancient Greece, at a time when blood-revenge was a sacred duty in the case of premeditated murder, homicide committed without premeditation could be forgiven by the avenger of blood.[3] Plato, in his 'Laws,' draws a distinction between him "who treasures up his anger and avenges himself, not immediately and at the moment, but with insidious design, and after an interval," and him "who does not treasure up his anger, and takes vengeance on the instant, and without malice prepense." The deed of the latter, though not involuntary, "approaches to the involuntary," and should therefore be punished less severely than the crime perpetrated by him who has stored up his anger.[4] Aristotle, also, whilst denying that "acts done from anger or from desire are involuntary,"[5] maintains that "assaults committed in anger are rightly decided not to be of malice aforethought, for they do not originate in the volition of the man who has been angered, but rather in that of the man who so angered him."[6] And he adds that "everyone will admit that he who does a disgraceful act, being at the same time free from desire, or at any rate feeling desire but slightly, is more to be blamed than is he who does such an act under the influence of a strong desire; and that he who, when not in a passion, smites his neighbour, is more to be blamed than is he who does so when in a passion."[7] Cicero likewise points out that "in every species of injustice it is a very material question whether it is committed through some agitation of passion, which commonly is short-lived and temporary, or from deliberate, prepense, malice; for those things which proceed from a short, sudden fit, are of slighter moment than those which are inflicted by forethought and preparation."[8]

Of ancient Russian law M. Kovalewsky observes, "L'existence d'une excitation violente est prise en considération, par notre antique législation, qui déclare le crime accompli sous leur influence non imputable."[9] According to ancient Irish law, "homicide was divisible into the two classes of simple manslaughter and murder, the difference between which lay in the

[1] *Exodus*, xxi. 13.
[2] *Numbers*, xxxv. 22, 25.
[3] Leist, *Græco-italische Rechtsgeschichte*, pp. 325, 352.
[4] Plato, *Leges*, ix. 867.
[5] Aristotle, *Ethica Nicomachea*, iii. 1. 21.
[6] *Ibid.* v. 8. 9.
[7] *Ibid.* vii. 7. 3.
[8] Cicero, *De officiis*, i. 8.
[9] Kovalewsky, *Coutume contemporaine*, p. 291.

existence or absence of malice aforethought, the fine in the latter being double what it was in the former case"; and for a wound which was inflicted inadvertently in lawful anger, the payment was made upon a diminished scale.[1] The ancient Teutons, also, held a wrong committed in sudden anger and on provocation to be less criminal than one committed with premeditation in cold blood;[2] this opinion seems partly to be at the bottom of the distinction which they made between open and secret homicide.[3] According to the law of the East Frisians, a man who kills another without premeditation may buy off his neck with money, not so he who commits a murder with malice aforethought.[4] It is curious that Bracton should take no notice of the different grades of evil intention which may accompany voluntary homicide, and that he should omit altogether the question of provocation;[5] Beaumanoir, the French jurist, who lived in the same age, mentions in his 'Coutumes du Beauvoisis' provocation as an extenuating circumstance,[6] and the same view was taken by the Church.[7] Coke, in his Third Institute—which may be regarded as the second source of the criminal law of England, Bracton being the first—gives an account of malice aforethought, and adds, "Some manslaughters be voluntary, and not of malice forethought, upon some sudden falling out. *Delinquens per iram provocatus puniri debet mitius.*"[8] Hume says that in Scotland "the manslayer on suddenty was to have the benefit of the girth or sanctuary: he might flee to the church or other holy place; from which he might indeed be taken for trial, but to be returned thither, safe in life and limb, if his allegation of *chaude melle* were proved."[9] All modern codes regard provocation under certain circumstances as a mitigating circumstance.[10] According to the criminal law of Montenegro, great provocation may even relieve a homicide of all guilt.[11]

It has been said that a man who acts under the influence of great passion has not, at the time, a full knowledge of the nature and quality of his act, and that

[1] *Ancient Laws of Ireland*, iii. pp. xciii. cx.

[2] Wilda, *op. cit.* p. 560 *sqq.*, 701. Stemann, *op. cit.* p. 574. von Amira, in Paul's *Grundriss der germanischen Philologie*, ii. pt. ii. 174.

[3] Wilda, *op. cit.* p. 569. von Amira, *loc. cit.* p. 173.

[4] *Das Ostfriesische Land-Recht*, iii. 17 *sq.*

[5] *Cf.* Stephen, *op. cit.* iii. 33.

[6] Beaumanoir, *Coutumes du Beauvoisis*, xxx. 101, vol. i. 454 *sq.*

[7] Gregory III. *Judicia congrua pœnitentibus*, 3 (Labbe-Mansi, *op. cit.* xii. 289).

[8] Coke, *Third Institute*, p. 55.

[9] Hume, *Commentaries on the Law of Scotland*, i. 365.

[10] Günther, *op. cit.* iii. 256 *sqq.*

[11] *Ibid.* iii. 255 *sq.*

the clemency of the law is "a condescension to the frailty of the human frame, to the *furor brevis*, which, while the frenzy lasteth, rendereth the man deaf to the voice of reason."[1] But the main cause for passion extenuating his guilt is not the intellectual disability under which he acts, but the fact that he is carried away by an impulse which is too strong for his will to resist. This is implied in the provision of the law, that "provocation does not extenuate the guilt of homicide unless the person provoked is at the time when he does the act deprived of the power of self-control by the provocation which he has received."[2]

That anger has been so generally recognised as an extenuation of guilt is largely due to the fact that the person who provokes it is himself blamable; both morality and law take into consideration the degree of provocation to which the agent was exposed. But, at the same time, the pressure of a non-volitional motive on the will may by itself be a sufficient ground for extenuation. In certain cases of mental disease a morbid impulse or idea may take such a despotic possession of the patient as to drive him to the infliction of an injury. He is mad, and yet he may be free from delusion and exhibit no marked derangement of intelligence. He may be possessed with an idea or impulse to kill somebody which he cannot resist. Or he may yield to a morbid impulse to steal or to set fire to houses or other property, without having any ill-feeling against the owner or any purpose to serve by what he does.[3] The deed to which the patient is driven is frequently one which he abhors, as when a mother kills the child which she loves most.[4] In such cases the agent is of course acquitted by the moral judge, and if he is condemned by the law of his country and its guardians, the reason for this can be nothing but ignorance. We must remember that this form of madness was hardly known even to medical

[1] Foster, *Report of Crown Cases*, p. 315.
[2] Stephen, *Digest*, art. 246, p. 188.
[3] Maudsley, *Responsibility in Mental Disease*, p. 133 *sqq.* von Krafft-Ebing, *Lehrbuch der gerichtlichen Psychopathologie*, p. 308 *sqq.*
[4] Gadelius, *Om tvångstankar*, p. 168 *sq.* Paulhan, *L'activité mentale*, p. 374.

men till the end of the 18th century,[1] when Pinel, to his own surprise, discovered that there were "many madmen who at no period gave evidence of any lesion of the understanding, but who were under the dominion of instinctive and abstract fury, as if the affective faculties had alone sustained injury."[2] And there can be no doubt that the fourteen English judges who formulated the law on the criminal responsibility of the insane, made no reference to this *manie sans délire* simply because they had not sufficient knowledge of the subject with which they had to deal.[3]

That moral judgments are generally passed, in the first instance, with reference to acts immediately intended, and consider motives only in proportion as the judgment is influenced by reflection, holds good, not only of moral blame, but of moral praise. Every religion presents innumerable examples of people who do "good deeds" only in expectation of heavenly reward. This implies the assumption that the Deity judges upon actions without much regard to their motives; for if motives were duly considered, a man could not be held rewardable for an act which he performs solely for his own benefit. We are told that the homage which the Chinese "render the gods and goddesses believed to be concerned in the management of the affairs of this world is exceedingly formal, mechanical, and heartless," and that "there seems to be no special importance attached to purity of heart."[4] According to Caldwell, "the Hindu religionist enjoins the act alone, and affirms that motives have nothing to do with merit."[5] The argument, "Obey the law because it will

[1] Maudsley, *op. cit.* p. 141.

[2] Pinel, *Traité médico-philosophique sur l'aliénation mentale*, p. 156: "Je ne fut pas peu surpris de voir plusieurs aliénés qui n'offroient à aucune époque aucune lésion de l'entendement, et qui étoient dominés par une sorte d'instinct de fureur, comme si les facultés affectives seules avoient été lésées."

[3] Sir James Stephen (*Digest*, art. 28, p. 20 *sq.*) thinks it *possible* that, according to the present law of England, an act is not criminal if the person who does it is, at the time when it is done, prevented by any disease affecting his mind from controlling his own conduct, unless the absence of the power of control has been produced by his own default.

[4] Doolittle, *Social Life of the Chinese*, ii. 397.

[5] Caldwell, *Tinnevelly Shanars*, p. 35.

profit you to do so," constitutes the fundamental motive of Deuteronomy, as appears from phrases like these: "That it may go well with thee," "That thy days may be prolonged." [1] Speaking of the modern Egyptians, Lane observes that "from their own profession it appears that they are as much excited to the giving of alms by the expectation of enjoying corresponding rewards in heaven as by pity for the distresses of their fellow-creatures, or a disinterested wish to do the will of God." [2] Something similar may be said, not only of the "good deeds" of Muhammedans, but of those of many Christians. Did not Paley expressly define virtue as "the doing good to mankind, in obedience to the will of God, and for the sake of everlasting happiness"? [3]

Such views, however, cannot hold their ground against the verdict of the scrutinising moral consciousness. They have been repeatedly contradicted by the great teachers of morality. Confucius required an inward sincerity in all outward practice, and poured scorn on the pharisaism which contented itself with the cleansing of the outside of the cup and platter.[4] He said that, "in the rites of mourning, exceeding grief with deficient rites is better than little demonstration of grief with superabounding rites; and that in those of sacrifice, exceeding reverence with deficient rites is better than an excess of rites with but little reverence." [5] "Sacrifice is not a thing coming to a man from without; it issues from within him, and has its birth in his heart. When the heart is deeply moved, expression is given to it by ceremonies." [6] The virtuous man offers his sacrifices "without seeking for anything to be gained by them." [7] "The Master said, 'See what a man does. Mark his motives.'" [8] The popular Taouist work, called 'The Book of Secret Blessings,' inculcates the necessity

[1] *Cf.* Montefiore, *Hibbert Lectures*, p. 531.
[2] Lane, *Modern Egyptians*, p. 293.
[3] Paley, *Principles of Moral and Political Philosophy*, i. 7 (*Complete Works*, ii. 38).
[4] *Cf.* Legge, *Religions of China*, p. 261 *sq.*; Girard de Rialle, *Mythologie comparée*, p. 214.
[5] *Li Kî*, ii. 1. 2. 27. *Cf. Lun Yu*, iii. 4. 3.
[6] *Li Kî*, xxii. 1.
[7] *Ibid.* xxii. 2.
[8] *Lun Yü*, ii. 10. 1 *sq.*

of purifying the heart as a preparation for all right-doing.[1] The religious legislator of Brahmanism, whilst assuming in accordance with the popular view that the fulfilment of religious duty will be always rewarded to some extent, whatever may be the motive, maintains that the man who fulfils his duties without regard to the rewards which follow the fulfilment, will enjoy the highest happiness in this life and eternal happiness hereafter.[2] According to the Buddhistic Dhammapada, "if a man speaks or acts with an evil thought, pain follows him, as the wheel follows the foot of the ox that draws the carriage. . . . If a man speaks or acts with a pure thought, happiness follows him, like a shadow that never leaves him."[3] In his description of the Buddhists of Mongolia, the Rev. James Gilmour observes:—"Mongol priests recognise the power of motive in estimating actions . . . . The attitude of the mind decides the nature of the act. He that offers a cup of cold water only, in a proper spirit, has presented a gift quite as acceptable as the most magnificent of donations."[4] With reference to the Hebrews, Mr. Montefiore says:—"If it were true that the later Judaism of the law laid exclusive stress in its moral teaching upon the mere outward act and not upon the spirit—upon doing rather than being, as we might nowadays express it—we should scarcely find that constant harping upon the heart as the source and seat of good and evil. What more legal book than Chronicles? Yet it is there that we find the earnest supplication for a heart directed towards God. . . . The eudæmonistic motive is strongest in Deuteronomy; it is weakest with the Rabbis."[5] Few sayings are quoted and applied more frequently in the Rabbinical literature than the adage which closes those tractates of the Mishna which deal with the sacrificial law:—"He that brings few offerings is as he that brings many; let his heart be directed

[1] Douglas, *Confucianism and Taouism*, p. 272.
[2] Wheeler, *History of India*, ii. 478.
[3] *Dhammapada*, 1 *sq.*
[4] Gilmour, *Among the Mongols*, p. 239.
[5] Montefiore, *op. cit.* pp. 483, 533. 1 *Chronicles*, xxii. 19; xxviii. 9; xxix. 18 *sq.* 2 *Chronicles*, xi. 16; xv. 12; xvi. 9.

heavenward."[1] The same faults which Jesus chastises in the hypocritical Rabbis of his day are also chastised in the Talmud. It is said, "Before a man prays let him purify his heart,"[2] and, "Sin committed with a good motive is better than a precept fulfilled from a bad motive."[3] Rabbi Elazar says, "No charity is rewarded but according to the degree of benevolence in it, for it is said, 'Sow (a reward) for yourselves in giving alms as charity, you will reap according to the benevolence.'"[4] Nor is the doctrine which requires disinterested motives for the performance of good deeds foreign to Muhammedan moralists. "Whatever we give," says the author of the Akhlâk-i-Jelâli, "should be given in the fulness of zeal and good-will. . . . We should spend it simply to please God, and not mix the act with any meaner motive, lest thereby it be rendered null and void."[5]

[1] Montefiore, *op. cit.* p. 484.
[2] *Ibid.* p. 174.
[3] Nazir, fol. 23 B, quoted by Hershon, *Treasures of the Talmud*, p. 74.
[4] Succah, fol. 49 B, *ibid.* p. 11.
[5] Quoted by Ameer Ali, *Ethics of Islâm*, p. 38 *sq.*

CHAPTER XII

FORBEARANCES AND CARELESSNESS—CHARACTER

THE observation has often been made that in early moral codes the so-called negative commandments, which tell people what they ought not to do, are much more prominent than the positive commandments, which tell them what they ought to do. The main reason for this is that negative commandments spring from the disapproval of acts, whereas positive commandments spring from the disapproval of forbearances or omissions, and that the indignation of men is much more easily aroused by action than by the absence of it. A person who commits a harmful deed is a more obvious cause of pain than a person who causes harm by doing nothing, and this naturally affects the question of guilt in the eyes of the multitude. A scrutinising judge of course carefully distinguishes between wilfulness and negligence, whereas, to his mind, a forbearance is morally equivalent to an act. The unreflecting judge, on the other hand, is much less concerned with the question of wilfulness than with the distinction between acting and not-acting. Even the criminal laws of civilised nations take little cognisance of forbearances and omissions;[1] and one reason for this is that they evoke little public indignation. Even if it be admitted that the rules of beneficence, so far as details are concerned, must be left in a great measure to

[1] Stephen, *History of the Criminal Law of England*, ii. 113. Hepp, *Zurechnung auf dem Gebiete des Civilrechts*, p. 115 (Roman law).

the jurisdiction of private ethics, the limits of the law on this head, as Bentham remarks, seem "to be capable of being extended a good deal farther than they seem ever to have been extended hitherto." And he appropriately asks, "In cases where the person is in danger, why should it not be made the duty of every man to save another from mischief, when it can be done without prejudicing himself, as well as to abstain from bringing it on him?"[1]

The more scrutinising the moral consciousness, the greater the importance which it attaches to positive commandments. This is well illustrated by a comparison between Old and New Testament morality. As Professor Seeley observes,[2] "the old legal formula began 'thou shalt not,' the new begins with 'thou shalt.' The young man who had kept the whole law—that is, who had refrained from a number of actions—is commanded to do something, to sell his goods and feed the poor. Condemnation was passed under the Mosaic law upon him who had sinned, who had done something forbidden—the soul that sinneth shall die;—Christ's condemnation is pronounced upon those who had not done good—'I was an hungered and ye gave me no meat.' The sinner whom Christ habitually denounces is he who has done nothing." This characteristic is repeatedly manifested in His parables—as in the case of the priest and Levite who passed by on the other side; in the case of Dives, of whom no ill is recorded except that a beggar lay at his

[1] Bentham, *Principles of Morals and Legislation*, p. 322 *sq.* To a certain extent, however, this has been admitted by legislators even in the Middle Ages. Frederick II.'s Sicilian Code imposed a penalty on persons who witnessed conflagrations or shipwrecks without helping the victims, and a fine of four augustales on anyone who, hearing the shrieks of an assaulted woman, did not hurry to her rescue (*Constitutiones Napolitanæ sive Siculæ*, i. 28, 22 [Lindenbrog, *Codex legum antiquarum*, pp. 715, 712]). Bracton says (*De Legibus et Consuetudinibus Angliæ*, fol. 121, vol. ii. 280 *sq.*) that he who could rescue a man from death and did not do it, ought not to be exempt from punishment. It was a principle of the Canon law that he who does not prevent the infliction of an injury upon his neighbour when it lies in his power to do so, is to be regarded as an accomplice in the offence (Geyer, *Lehre von der Nothwehr*, p. 74. Gregory IX. *Decretales*, v. 12. 6. 2: "Qui potuit hominem liberare a morte, et non liberavit, eum occidit").

[2] Seeley, *Ecce Homo*, p. 176.

gate full of sores and yet no man gave unto him ; in the case of the servant who hid in a napkin the talent committed to him. However, to say that the new morality involved the discovery of "a new continent in the moral globe,"[1] is obviously an exaggeration. The customs of all nations contain not only prohibitions, but positive injunctions as well. To be generous to friends, charitable to the needy, hospitable to strangers, are rules which, as will be seen, may be traced back to the lowest stages of savagery known to us. The difference in question is only one of degree. Of the Bangerang tribe in Victoria Mr. Curr observes :—"Aboriginal restraints were, in the majority of cases, though not altogether, of a negative character; an individual might not do this, and might not eat that, and might not say the other. What he should do under any circumstances, or that he should do anything, were matters with which custom interfered less frequently."[2]

Whilst the unreflecting mind has a tendency to overlook or underrate the guilt of a person who, whether wilfully or by negligence, causes harm by doing nothing, it is on the other hand, apt to exaggerate the guilt of a person who, not wilfully but out of heedlessness or rashness, causes harm by a positive act. In reality the latter person is blamable not for what he did, but for what he omitted to do, for want of due attention, for not thinking of the probable consequences of his act or for insufficient advertence to them. But the superficial judge largely measures the agent's guilt by the actual harm done, and in many cases even attributes to carelessness what was due to sheer misfortune.

As Sir F. Pollock and Prof. Maitland rightly observe, it is not true that barbarians will not trace the chain of causation beyond its nearest link—that, for example, they will not impute one man's death to another unless that other has struck a blow which laid a corpse at his feet.[3]

[1] *Ibid.* p. 179.

[2] Curr, *Recollections of Squatting in Victoria*, p. 264 *sq.*

[3] Pollock and Maitland, *History of English Law before the Time of Edward I.* ii. 470.

Among the Wanyoro, should a girl die in childbirth, the seducer is also doomed to die, unless he ransom himself by payment of some cows.[1] Among the Wakamba, if a man is the second time guilty of manslaughter in a state of drunkenness, the elders may either sentence him to death, "or make the seller of drink pay compensation to the family of the victim."[2] According to the native code of Malacca, if vicious buffaloes or cattle "be tied in the highway, where people are in the habit of passing and repassing, and gore or wound any person, the owner shall be fined one tahil and one paha, and pay the expense necessary for the cure of the wounded individual. Should he be gored to death, then the owner shall be fined according to the Diyat, because the owner is criminal in having tied the animal in an improper place."[3] In the Laws of Alfred it is said that, if a man have a spear over his shoulder and anybody stake himself on it, the man with the spear has to pay the *wer*.[4] According to an ancient custom, in vogue in England as late as the thirteenth century, one who was accused of homicide was, before going to the wager of battle, expected to swear that he had done nothing through which the dead man had become "further from life and nearer to death";[5] and damages which the modern English lawyer would without hesitation describe as "too remote" were not too remote for the author of the so-called 'Laws of Henry I.'[6] "At your request I accompany you when you are about your own affairs; my enemies fall upon and kill me; you must pay for my death.[7] You take me to see a wild beast show or that interesting spectacle a madman; beast or madman kills me; you must pay. You hang up your sword; some one else knocks it down so that it cuts me; you must pay."[8] In all these cases you did something that helped to bring

[1] *Emin Pasha in Central Africa*, p. 83.

[2] Decle, *Three Years in Savage Africa*, p. 487.

[3] Newbold, *British Settlements in the Straits of Malacca*, ii. 256 *sq.*

[4] *Laws of Alfred*, 36.

[5] *Leges Henrici I.* xc. 11. Bracton, *op. cit.* fol. 141 b, vol. ii. 440 *sq.*

[6] Pollock and Maitland, *op. cit.* ii. 470 *sq.*

[7] *Leges Henrici I.* lxxxviii. 9.

[8] *Ibid.* xc. 11. Pollock and Maitland, *op. cit.* ii. 471.

about death or wound, and you are consequently held responsible for the mishap.

But though early custom and law may be anxious enough to trace an event to its source, they easily fail to distinguish between external and internal causes, to discover where there is guilt or not, and, in case of carelessness, to determine the magnitude of the offender's guilt. Ancient Teutonic law, as we have seen, distinguished between *vili* and *vadhi*. It punished the involuntary manslayer less heavily than the voluntary one, but it punished him all the same ; and whether the unintended deed was combined with heedlessness or was purely accidental was a question with which the law did not at all concern itself.[1] According to the Laws of Hammurabi, "if the doctor has treated a gentleman for a severe wound with a lancet of bronze, and has caused the gentleman to die, or has opened an abscess of the eye for a gentleman with the bronze lancet and has caused the loss of the gentleman's eye, one shall cut off his hands."[2] In the Mosaic law distinction was made between presence and absence of enmity in the manslayer, but the difference between carelessness and misfortune was not considered,[3] except when the instrument of death was a goring ox.[4] However, in this, as in many other respects, great progress was made by the later legislation of the Jews. The Rabbis took considerable pains to distinguish between purely accidental homicide and homicide due to carelessness ; the former they exempted from all punishment, whereas the latter incurred the punishment of confinement to a city of refuge.[5] They even distinguished between cases in which the death was exclusively due to the carelessness of the agent, and cases in which the deceased contributed to it by some blamable act of his own. A father or a teacher

[1] Wilda, *Strafrecht der Germanen*, p. 578. Geyer, *op. cit.* p. 88. Brunner, *Forschungen zur Geschichte des deutschen und französischen Rechtes*, p. 499.

[2] *Laws of Hammurabi*, 218.

[3] *Numbers*, xxxv. 16 *sqq. Deuteronomy*, xix. 4 *sqq.*

[4] *Exodus*, xxi. 28–32, 35 *sq. Cf. Laws of Hammurabi*, 250 *sqq.*

[5] Rabbinowicz, *Législation criminelle du Talmud*, p. 173 *sqq.*

who in punishing his son or pupil unintentionally caused his death, and a person who by order of the Sanhedrim inflicted corporal punishment on a culprit and in doing so happened by mistake to kill him—such persons were not confined in a city of refuge, but escaped punishment altogether.[1] Whatever else may be said of these provisions, they certainly show remarkable discernment in a point where legislators of a ruder type have been very indiscriminate. In the oldest English records we see no attempt to distinguish cases in which the dead man himself was reprehensible from others in which no fault could be imputed to him, and we find that many horses and boats bore the guilt which should have been ascribed to beer.[2] When a drunken carter was crushed beneath the wheel of his cart, the cart, the cask of wine which was in it, and the oxen that were drawing it, were all deodand.[3] According to the customary law of the Ossetes, if a stolen gun went off in the hands of the thief who was carrying it away, and killed him, the thief's kin had a just feud against the owner of the gun.[4]

Modern laws generally hold a person liable for harm caused by him through want of ordinary care and foresight, and it depends on the nature of the case whether he will have to pay damages or to suffer punishment. Yet, as we have previously noticed, his punishment is determined not only by the degree of carelessness of which he was guilty or the danger to which he exposed his fellow-men, but, largely, by the harm resulting; whereas, if nobody happens to be hurt, little notice is taken of his fault. To such an extent are men's judgments in these matters influenced by external facts, that even nowadays many among ourselves will hold a person answerable for all the damage which directly ensues from an act of his, even though no foresight could have reasonably been expected

[1] *Ibid.* p. 174. Benny, *Criminal Code of the Jews according to the Talmud Massecheth Synhedrin*, p. 115 *sq.*

[2] Pollock and Maitland, *op. cit.* ii. 474, n. 4.

[3] *Three Early Assize Rolls for the County of Northumberland*, p. 96 *sq.*

[4] Kovalewsky, *Coutume contemporaine*, p. 295.

to look out for it.[1] Not long ago there were plausible, if insufficient, grounds adduced for asserting that in English courts a plea that there was neither negligence nor an intent to do harm was no answer to an action which charged the defendant with having hurt the plaintiff's body.[2] And of late years attacks have been made by continental jurists upon the Roman principle that there is no liability where there is no fault[3]—a principle which, more or less modified, has been adopted by modern laws.[4] Although they take pains to point out the difference between punishment and indemnification, the very language they use indicates the quasi-ethical basis on which their theory rests. It is only just, they say, that he who has caused the evil should compensate for it, since the injured party "is still much more innocent than he." And the "sense of justice" is appealed to for compelling a man who faints in the street and in the fall happens to break some fragile articles to indemnify the owner for his loss.[5] Thus, whilst loss from accident is generally allowed to lie where it falls, an exception is made where the instrument of misfortune is a human being. This is a most unreasonable exception, but one not difficult to explain. People are ready to blame a person who commits a harmful deed, whether he deserves blame or not; at the same time they are apt to overlook the indirect and more remote cause of the harm which lies in the sufferer's own conduct. Hence the liability, if not the guilt, is laid on him who is a cause of pain by *doing* something, even though it be by merely spasmodic contractions of his muscles; whereas the other party, who only exposed himself to the risk of being hurt, is regarded as the "more innocent."

Whilst culpability or quasi-culpability is thus imputed to the innocent committer of a harmful deed, little or no

[1] Holmes, *Common Law*, p. 80.

[2] Stanley *v.* Powell, in *Law Reports, Queen's Bench Division*, 1891, i. 86 *sqq.* Pollock and Maitland, *op. cit.* ii. 475 *sq.*

[3] von Jhering, *Schuldmoment im römischen Privatrecht*, *passim*, especially pp. 20 *sqq.*, 40 *sqq.* Hepp, *op. cit.* p. 106.

[4] Forsman, *Bidrag till läran om skadestånd i brottmål*, p. 158 *sq.* Pollock, *Law of Torts*, p. 129 *sqq.*

[5] Thon, *Rechtsnorm und subjectives Recht*, p. 106, n. 71.

censure is passed on him whose want of foresight or want of self-restraint is productive of suffering, if only the effect is sufficiently remote. This is exemplified by the frivolous leniency with which drunkenness, not long ago, was looked upon in many civilised countries, and by the criminal indifference with which law and public opinion still regard the production of offspring that are almost with certainty doomed to misery on account of the vices, poverty, or bodily infirmities of the parents. To interfere here, it is argued, would be to intrude upon the individual's right of freedom, or to meddle with the affairs of Providence. But men are not, generally, allowed to do mischief simply in order to gratify their own appetites, and Providence might equally well be called in to answer for any other kind of human shortcoming. I presume the true explanation to be, that in this, as in many other kindred cases, the cause and effect are so distant from each other that the near-sighted eye does not distinctly perceive the connection between them. Indeed, there is hardly any other point in which the moral consciousness of civilised men still stands in greater need of intellectual training than in its judgments on cases which display want of care or foresight. And there is no safer measure of the moral enlightenment of a man than the scrupulosity with which he considers the possible consequences of acts, and the number of positive commandments which are contained in his catalogue of duties.

That moral indignation and moral approval are from the very beginning felt, not with reference to certain modes of conduct *per se*, but with reference to persons on account of their conduct, is obvious from the intrinsic nature of those emotions. As we noticed before, they derive one of their most essential characteristics from their being directed against sensitive agents. Hence they may as naturally give rise to judgments on human character as to judgments on human conduct. And even when a moral judgment immediately refers to a distinct act, it takes notice of the

agent's will as a whole. The forgiveness which follows sincere repentance, and the distinction made between injuries committed deliberately in cold blood and injuries committed in the heat of passion, indicate that men, in their moral judgments, are apt to consider something more than a momentary volition. The same tendency is at the bottom of the common practice of punishing a second and third offence more severely than the first.

Among the Masai, "if a man is convicted of a particular crime several times, or constitutes himself a public nuisance, he is proclaimed an outlaw, his property is confiscated, and he is beaten away from any settlement or village he goes near. Unless an outlaw can find friends among non-Masai tribes, he dies of starvation."[1] Among the Wakamba "a murder is judged by the elders; if it is a man's first offence of that kind he is punished by a fine. . . . But a man convicted for the second time of murder is killed at once, everyone setting on him the moment judgment is delivered. . . . For rape a first offender is flogged, and has to pay a fine of one cow; for the second offence he is killed."[2] Among the Wyandots of North America, "a woman guilty of adultery, for the first offence is punished by having her hair cropped; for repeated offences her left ear is cut off."[3] The laws of the Incas, also, were more lenient to a first offence than to a second;[4] and in the kingdom of Mechoacan, whilst the first theft was not severely punished, the thief who repeated his crime was thrown down a precipice and his carcass was left to the birds of prey.[5] Among the Aleuts, for the first theft "corporal punishment was inflicted; for the second offence of the kind some fingers of the right hand were cut off; for the third, the left hand and sometimes the lips were amputated; and for the fourth offence the punishment was death." Other crimes, again, "were punished at first by reprimand by the chief before the community, and upon repetition the offender was bound and kept in such a condition for some time."[6] The Kamchadales "burn the hands of people who have been frequently caught in theft, but for the first offence the thief must restore what he hath stolen, and live alone

[1] Hinde, *The Last of the Masai*, p. 108.
[2] Decle, *op. cit.* p. 487.
[3] Powell, 'Wyandot Government,' in *Ann. Rep. Bur. Ethn.* i. 66.
[4] Herrera, *General History of the West Indies*, iv. 338 *sqq.*
[5] *Ibid.* iii. 255.
[6] Veniaminof, quoted by Petroff, 'Report on Alaska,' in *Tenth Census of the United States*, p. 152.

in solitude, without expecting any assistance from others."[1] Among the Ainu, "for breaking into the storehouse or dwelling of another, a very sound beating was administered for the first offence; for the second, sometimes the nose was cut off, sometimes the ears, and in some cases both the nose and ears were forfeited. . . . Persons who had committed such a crime twice were driven bag and baggage out of the home and village to which they belonged."[2] Among the Murray Islanders repetition of an offence such as murder or robbery generally incurred a penalty of death, whereas the first offence was punished only by a fine.[3] According to the Javanese Níti Sástra, if a man violates the law, he may for the first transgression be punished by a pecuniary fine, for the second by a punishment affecting his person, but for the third he may be punished with death.[4] The Penal Code of the Chinese prescribes that, for the first offence, individuals convicted of being concerned in a theft shall be branded in the lower part of the left arm with two words signifying thief, that for the second offence they shall be branded again with the same words in the lower part of the right arm, but that for the third offence they shall suffer death by being strangled, after remaining the usual period in confinement.[5] In Nepal, in the case of theft or petty burglary, for the first offence one hand is cut off, for the second the other hand, whilst the third offence is capital.[6] Herodotus mentions with approval that in ancient Persia not even the king was allowed to put any one to death for a single crime.[7] According to the Vendîdâd, the gravity of a crime does not depend only on the gravity of the deed, but on its frequency as well.[8] In ancient Rome the repetition of a crime aggravated its punishment.[9] According to early English law, the punishment upon a second conviction for nearly every offence was death or mutilation.[10] In modern European legislation, the principle that the criminality of certain crimes is increased by their repetition is generally recognised.

The more a moral judgment is influenced by reflection, the more it scrutinises the character which manifests itself

[1] Krasheninnikoff, *History of Kamschatka*, p. 179.
[2] Batchelor, *Ainu and their Folk-lore*, p. 285.
[3] Hunt, in *Jour. Anthr. Inst.* xxviii. 6.
[4] Raffles, *History of Java*, i. 262.
[5] *Tu Tsing Leu Lee*, sec. cclxix. p. 285.
[6] Hodgson, *Miscellaneous Essays*, ii. 235.
[7] Herodotus, i. 137.
[8] *Vendîdâd*, iv. 17 *sqq.*
[9] Mommsen, *Römisches Strafrecht*, p. 1044.
[10] Stephen, *op. cit.* i. 58.

in that individual piece of conduct by which the judgment is occasioned. But however superficial it be, it always refers to a will conceived of as a continuous entity, to a person regarded as a cause of pleasure or pain. This holds good of savage and civilised men alike. Even tame animals, in response to a hurt or a benefit, behave differently towards different persons according to their previous experience of the agent.

CHAPTER XIII

WHY MORAL JUDGMENTS ARE PASSED ON CONDUCT AND CHARACTER—MORAL VALUATION AND FREE-WILL

We have examined the general nature of the subjects of moral judgments from an evolutionary point of view. We have seen that such judgments are essentially passed on conduct and character, and that allowance is made for the various elements of which conduct and character are composed in proportion as the moral judgment is scrutinising and enlightened. But an important question still calls for an answer, the question, Why is this so? We cannot content ourselves with the bare fact that nothing but the will is morally good or bad. We must try to explain it.

After what has been said above the explanation is not far to seek. Moral judgments are passed on conduct and character, because such judgments spring from moral emotions; because the moral emotions are retributive emotions; because a retributive emotion is a reactive attitude of mind, either kindly or hostile, towards a living being (or something looked upon in the light of a living being), regarded as a cause of pleasure or as a cause of pain; and because a living being is regarded as a true cause of pleasure or pain only in so far as this feeling is assumed to be caused by its will. The correctness of this explanation I consider to be proved by the fact that not only moral emotions, but non-moral retributive emotions as well, are felt with reference to phenomena

exactly similar in nature to those on which moral judgments are passed.

Like moral indignation, the emotion of revenge can be felt only towards a sentient being, or towards something which is believed to be sentient. We may be angry with inanimate things for a moment, but such anger cannot last; it disappears as soon as we reflect that the thing in question is incapable of feeling pain. Even a dog which, in playing with another dog, hurts itself, for instance, by running into a tree, changes its angry attitude immediately it notices the real nature of that which caused it pain.[1]

Equivalent to injuries resulting from inanimate things are injuries resulting accidentally from animate beings. If my arm or my foot gives a push to my neighbour, and he is convinced that the push was neither intended nor foreseen nor due to any carelessness whatever on my part, surely he cannot feel angry with me. Why not? Professor Bain answers this question as follows:—"Aware that absolute inviolability is impossible in this world, and that we are all exposed by turns to accidental injuries from our fellows, we have our minds disciplined to let unintended evil go by without satisfaction of inflicting some counter evil upon the offender."[2] Perhaps another answer would be that an accidental injury in no way affects the "self-feeling" of the sufferer. But neither of these explanations goes to the root of the question. Let us once more remember that even a dog distinguishes between being stumbled over and being kicked; and this can neither be the result of discipline, nor have anything to do with the feeling of self-regarding pride.[3] The reason is that the dog scents an enemy in the person who kicks him, but not in the one who stumbles. My neighbour, more clearly still, makes a distinction between a part of my body and myself as a

[1] Hiram Stanley, *Studies in the Evolutionary Psychology of Feeling*, p. 154 *sq.*

[2] Bain, *Emotions and the Will*, p. 185.

[3] The Koussa Kafirs, according to Lichtenstein (*Travels in Southern Africa*, i. 254), expect a similar discrimination from the elephant; for "if an elephant is killed . . . they seek to exculpate themselves towards the dead animal, by declaring to him solemnly, that the thing happened entirely by accident, not by design."

volitional being, and finds that *I* am no proper object of resentment when the cause of the hurt was merely my arm or my foot. An event is attributed to *me* as its cause only in proportion as it is considered to have been brought about by my will; and *I*, regarded as a volitional and sensitive entity, can be a proper object of resentment only as a cause of pain.

We can hardly feel disposed to resent injuries inflicted upon us by animals, little children, or madmen, when we recognise their inability to judge of the nature of their acts. They are not the real causes of the mischief resulting from their deeds, since they neither intended nor foresaw nor could have foreseen it. "Why," says the Stoic, "do you bear with the delirium of a sick man, or the ravings of a madman, or the impudent blows of a child? Because, of course, they evidently do not know what they are doing. . . . . Would anyone think himself to be in his perfect mind if he were to return kicks to a mule or bites to a dog?"[1] Hartley observes, "As we improve in observation and experience, and in the faculty of analysing the actions of animals, we perceive that brutes and children, and even adults in certain circumstances, have little or no share in the actions referred to them."[2]

Deliberate resentment considers the motives of acts. Suppose that a man tells us an untruth. Our feelings towards him are not the same if he did it in order to save our life as if he did it for his own benefit. Moreover, our anger abates, or ceases altogether, if we find that he who injured us acted under compulsion, or under the influence of a non-volitional impulse, too strong for any ordinary man to resist. Then, the main cause of the injury was not his will, conceived as a continuous entity. It yielded to the will of somebody else, reluctantly, as it were out of necessity, or to a powerful conation which forms no part of his real self. He was merely an instrument in another's hands, or he was "beside himself," "beyond himself," "out of his

[1] Seneca, *De ira*, iii. 26 *sq.*

[2] Hartley, *Observations on Man*, i. 493.

mind." When we are angry, says Montaigne, "it is passion that speaks, and not we."[1] The religious psychology of the ancient Greeks ascribed acts committed upon sudden excitement of mind to the *Ate* which bewilders the mind and betrays the man into deeds which, in his sober senses, he is heartily sorry for. Hence the Ate has in its train the *Litae*—the humble prayers of repentance, which must make good, before gods and men, whatever has been done amiss.[2] The Vedic singer apologises, "It is not our own will, Varuna, that leads us astray, but some seduction—wine, anger, dice, and our folly."[3] In the Andaman Islands violent outbreaks of ill-temper or resentment are looked upon as the result of a temporary "possession," and the victim is, for the time being, considered unaccountable for his actions.[4] Madness, as we have seen, is frequently attributed to demoniacal possession. In ancient Ireland, again, it was believed to be often brought on by malignant magical agency, usually the work of some druid, hence in the Glosses to the Senchus Mór a madman is repeatedly described as one "upon whom the magic wisp has been thrown."[5] What a person does in madness is not an act committed by *him*.

> "Was 't Hamlet wrong'd Laertes? Never Hamlet:
> If Hamlet from himself be ta'en away,
> And when he's not himself does wrong Laertes,
> Then Hamlet does it not, Hamlet denies it.
> Who does it, then? His madness: if 't be so,
> Hamlet is of the faction that is wrong'd;
> His madness is poor Hamlet's enemy."[6]

We resent not only acts and volitions, but also omissions, though generally less severely; and when a hurt is attributed to want of foresight, our resentment is, *ceteris paribus*, proportionate to the degree of carelessness

[1] Montaigne, *Essais*, ii. 31 (*Œuvres*, p. 396).
[2] *Iliad*, ix. 505 *sqq*. Müller, *Dissertations on the Eumenides*, p. 108.
[3] *Rig-Veda*, vii. 86. 6.
[4] Man, in *Jour. Anthrop. Inst.* xii. 111.
[5] Joyce, *Social History of Ancient Ireland*, i. 224.
[6] Shakespeare, *Hamlet*, v. 2.

which we lay to the offender's charge. A person appears to us as the cause of an injury which we think he could have prevented by his will. But a hurt resulting from carelessness is not to the same extent as an intentional injury caused by the will. And the less foresight could have been expected in a given case, the smaller share has the will in the production of the event.

Our resentment is increased by a repetition of the injury, and reaches its height when we find that our adversary nourishes habitual ill-will towards us. On the other hand, as we have noticed in a previous chapter,[1] the injured party is not deaf to the prayer for forgiveness which springs from genuine repentance. Like moral indignation, non-moral resentment takes into consideration the character of the injurer.

Passing to the emotion of gratitude, we find a similar resemblance between the phenomena which give rise to this emotion and those which call forth moral approval. We may feel some kind of retributive affection for inanimate objects which have given us pleasure; "a man grows fond of a snuff-box, of a pen-knife, of a staff which he has long made use of, and conceives something like a real love and affection for them." [2] But gratitude, involving a desire to please the benefactor, can reasonably be felt towards such objects only as are themselves capable of feeling pleasure. Moreover, on due deliberation we do not feel grateful to a person who benefits us by pure accident. Since gratitude is directed towards the assumed cause of pleasure, and since a person is regarded as a cause only in his capacity of a volitional being, gratitude presupposes that the pleasure shall be due to his will. For the same reason motives are also taken into consideration by the benefited party. As Hutcheson observes, "bounty from a donor apprehended as morally evil, or extorted by force, or conferr'd with some view of self-interest, will not procure real good-will; nay, it may raise indignation." [3]

[1] *Supra*, ch. iii.

[2] Adam Smith, *Theory of Moral Sentiments*, p. 136.

[3] Hutcheson, *Inquiry concerning Moral Good and Evil*, p. 157.

Like moral approval, gratitude may be called forth not only by acts and volitions, but by absence of volitions, in so far as this absence is traceable to a good disposition of will. And, like the moral judge, the grateful man is, in his retributive feeling, influenced by the notion he forms of the benefactor's character.

The cognitions by which non-moral resentment and gratitude are determined are thus, as regards their general nature, precisely similar to those which determine moral indignation and approval. Whether moral or non-moral, a retributive emotion is essentially directed towards a sensitive and volitional entity, or self, conceived of as the cause of pleasure or the cause of pain. This solves a problem which necessarily baffles solution in the hands of those who fail to recognise the emotional origin of moral judgments, and which, when considered at all, has, I think, never been fully understood by those who have essayed it. It has been argued, for instance, that moral praise and blame are not applied to inanimate things and those who commit involuntary deeds, because they are administered only "where they are capable of producing some effect";[1] that moral judgment is concerned with the question of compulsion, because "only when a man acts morally of his own free will is society sure of him";[2] that we do not regard a lunatic as responsible, because we know that "his mind is so diseased that it is impossible by moral reprobation alone to change his character so that it may be subsequently relied upon."[3] The bestowal of moral praise or blame on such or such an object is thus attributed to utilitarian calculation;[4] whereas in reality it is determined by the nature of the moral emotion which lies at the bottom of the judgment. And, as Stuart Mill observes (though he never seems to have realised the full import of his objection), whilst we may administer praise and blame with the express design of influencing conduct, "no anticipation of salutary effects

[1] James Mill, *Fragment on Mackintosh*, p. 370.
[2] Ziegler, *Social Ethics*, p. 56 *sq.*
[3] Clifford, *Lectures and Essays*, p. 296.
[4] See also James Mill, *op. cit.* pp. 261, 262, 375.

from our feeling will ever avail to give us the feeling itself."[1]

The nature of the moral emotions also gives us the key to another important problem—a problem which has called forth endless controversies—namely, the co-existence of moral responsibility with the general law of cause and effect. It has been argued that responsibility, and moral judgments generally, are inconsistent with the notion that the human will is determined by causes; that "either free-will is a fact, or moral judgment a delusion." The argument has been well summed up by Sir Leslie Stephen as follows:—"Moral responsibility, it is said, implies freedom. A man is only responsible for that which he causes. Now the *causa causæ* is also the *causa causati*. If I am caused as well as cause, the cause of me is the cause of my conduct; I am only a passive link in the chain which transmits the force. Thus, as each individual is the product of something external to himself, his responsibility is really shifted to that something. The universe or the first cause is alone responsible, and since it is responsible to itself alone, responsibility becomes a mere illusion."[2] We are told that, if determinism were true, human beings would be no more proper subjects of moral valuation than are inanimate things; that the application of moral praise and blame would be "in itself as absurd as to applaud the sunrise or be angry at the rain";[3] that the only admiration which the virtuous man might deserve would be the kind of admiration "which we justly accord to a well-made machine."[4] Nor are these inferences from the doctrine of determinism only weapons forged by its opponents; they are shared by many of its own adherents. Richard Owen and his followers maintained that, since a man's character is made *for* him, not *by* him, there is no justice in punishing

[1] Stuart Mill, in a note to James Mill's *Analysis of the Phenomena of the Human Mind*, ii. 323.

[2] Leslie Stephen, *Science of Ethics*, p. 285.

[3] Martineau, *Types of Ethical Theory*, ii. 41 *sq.*

[4] Balfour, *Foundations of Belief*, p. 25.

him for what he cannot help.[1] To Stuart Mill responsibility simply means liability to punishment, inflicted for a utilitarian purpose.[2] So also Prof. Sidgwick—whose attitude towards the free-will theory is that of a sceptic—argues that the common retributive view of punishment, and the ordinary notions of "merit," "demerit," and "responsibility," involve the assumption that the will is free, and that these terms, if used at all, have to be used in new significations. "If the wrong act," he says, "and the bad qualities of character manifested in it, are conceived as the necessary effects of causes antecedent or external to the existence of the agent, the moral responsibility—in the ordinary sense—for the mischief caused by them can no longer rest on him. At the same time, the Determinist can give to the terms 'ill-desert' and 'responsibility' a signification which is not only clear and definite, but, from an utilitarian point of view, the only suitable meaning. In this view, if I affirm that A is responsible for a harmful act, I mean that it is right to punish him for it; primarily, in order that the fear of punishment may prevent him and others from committing similar acts in future."[3]

If these conclusions are correct it is obvious that, whether the infliction of punishment be justifiable or not, the *feeling* of moral indignation or moral approval is, from the deterministic point of view, absurd. And yet, as a matter of fact, these emotions are felt by determinists and libertarians alike. Apparently, they are not in the least affected by the notion that the human will is subject to the general law of cause and effect. Emotions are always determined by specific cognitions, and last only as long as the influence of those cognitions lasts. It makes me sorry to hear that some evil has befallen a friend; but my sorrow disappears at once when I find that the rumour was false. I get angry with a person who hurts me; but my anger subsides as soon as I recognise that the hurt was purely accidental. My indignation is aroused by an

[1] Stuart Mill, *Examination of Sir William Hamilton's Philosophy*, p. 506.

[2] *Ibid.* p. 506 *sqq.*

[3] Sidgwick, *Methods of Ethics*, p. 71 *sq.*

atrocious crime ; but it ceases entirely when I hear that the agent was mad. On the other hand, however convinced I am that a person's conduct and character are in every detail a product of causes, that does not prevent me from feeling towards him retributive emotions—either anger or gratitude, or moral resentment or approval. Hence I conclude that a retributive emotion is not essentially determined by the cognition of free-will. I hold that Spinoza is mistaken in his assumption that men feel more love or hatred towards one another than towards anything else, because they think themselves to be free.[1] And I attribute the conception that moral valuation is inconsistent with determinism either to a failure to recognise the emotional origin of moral judgments or to insufficient insight into the true nature of the moral emotions. At the same time it seems easy to explain the fallacy which lies at the bottom of that conception.

We have seen that the object of moral approval and disapproval is the will, and that a person's responsibility is lessened in proportion as his will is exposed to the pressure of non-volitional conations. Full responsibility thus presupposes freedom from such pressure, and, particularly, freedom from external compulsion. Hence the inference that it also presupposes freedom from causation, and that complete determination involves complete irresponsibility. Compulsion is confounded with causation ; and this confusion is due to the fact that the cause which determines the will is actually looked upon in the light of a constraining power outside the will.

The popular mind has a strong belief in the law of cause and effect. When reflecting on the matter, it admits that everything which happens in this world has a cause ; and if the natural cause is hidden, it readily calls in a supernatural cause to account for the event. Now, in the case of human volitions the chain of causation is often particularly obscure ; as Spinoza said, whilst men are conscious of their volitions and desires, they "never even

[1] Spinoza, *Ethica*, iii. 49, Note.

dream, in their ignorance, of the causes which have disposed them so to wish and desire."[1] Hence, when in a philosophic mood, they are liable to attribute their acts to the influence of an external power ruling over human affairs, a god or an all-powerful fate. No doubt, Providence and Fate[2] may effect their purposes without the will of man as their tool; what happens "by chance," being frequently no less wonderful than any decree of a human will, may likewise be traced to a supernatural cause. But, on the other hand, the fact that the deeds of men are generally preceded by volitions, is so obvious that it could not escape even the simplest mind—indeed, so strongly are primitive men impressed by this fact that they are apt to attribute every event to a will. Acknowledging, then, the connection between volition and deed, the fatalist regards the former only as an instrument in the hands of a force outside the agent, which compels his will to execute its plans. Sometimes it reaches its goal in a way quite unforeseen by the agent himself. Muhammed said, "When God hath ordered a creature to die in any particular place, He causeth his wants to direct him to that place";[3] and it is a popular saying throughout Islam that "whenas Destiny descends she blindeth human sight."[4] Sometimes the external power causes its victim to will its decree, by exciting in him some irresistible passion, as when Zeus urged Clytemnestra to the slaughter of Agamemnon; or the volitions of a person are themselves regarded as decreed by that power. In Wärend, in Sweden, when somebody has killed another, as also when the manslayer himself suffers the penalty of death, the women say, full of compassion, "Well, this was his destiny, to be sure," or "Poor fellow, it was a pitiful fate."[5] In one of the Pahlavi texts the following words are put into the mouth of the Spirit of

[1] *Ibid.* pt. i. Appendix.

[2] In a Pahlavi text fate is defined as "that which is ordained from the beginning," and divine providence as that which the sacred beings "also grant otherwise" (*Dînâ-î Maînôg-î Khirad*, xxiv. 6 *sq.*).

[3] Lane, *Arabian Society in the Middle Ages*, p. 6.

[4] Burton, in his translation of the *Arabian Nights*, i. 62, n. 2.

[5] Hyltén-Cavallius, *Wärend och Wirdarne*, i. 206.

Wisdom:—"Even with the might and powerfulness of wisdom and knowledge, even then it is not possible to contend with destiny. Because, when predestination as to virtue, or as to the reverse, comes forth, the wise becomes wanting in duty, and the astute in evil becomes intelligent; the faint-hearted becomes braver, and the braver becomes faint-hearted; the diligent becomes lazy, and the lazy acts diligently. Just as is predestined as to the matter, the cause enters into it, and thrusts out everything else." [1]

Nor is it only the popular mind that, when human volitions are concerned, interprets causation as compulsion. Even such philosophers as Hamilton [2] and Mansel [3] seemed quite unable to distinguish between determinism and fatalism. Professor Laurie likewise observes:—"Determinism is the term adopted of late years to veil fatalism and confound issues . . . . Freedom or fate, these are the sole alternatives." [4] Surely, it is those who identify determinism with fatalism that "confound issues." And a similar confusion lurks behind the main argument which has been adduced in support of free-will. It is said that "I ought" implies "I can," and that men are not accountable for what they cannot avoid. This is perfectly true if by "cannot" is meant compulsion, and by "can" freedom from compulsion. But it is certainly not true if "I can" is intended to mean that "I" am a first cause, not determined by anything else.

When a person's will is believed to be constrained by a power outside him, he can obviously not be held responsible for what he does under the influence of such constraint. We are responsible only for that which is due to our will. A licentious man who has grown up in a corrupt society is less blamable than an equally licentious man who has always lived under conditions favourable to virtue; and if we hear of a criminal that he was kidnapped as a child by a band of pickpockets and trained to their profession, we

[1] *Dînâ-ê Maînôg-ê Khirad*, xxiii. 3 *sqq.*

[2] Hamilton, *Lectures on Metaphysics*, ii. 410 *sqq.*

[3] Mansel, *Prolegomena Logica*, p. 329 *sqq.*

[4] Laurie, *Ethica*, pp. 307, 319.

no doubt look upon him with some indulgence. In these cases, however, it may be said that, though the person's conduct is largely due to the influence of external circumstances upon his will, this influence was not irresistible, that he might have saved himself with an effort of will, and that consequently he is not wholly irresponsible. But in the case of a restraining destiny no escape is possible; the compulsion is complete. Hence the logical outcome of radical fatalism is a denial of all moral imputability, and a repudiation of all moral judgment.[1]

Not so with determinism. Whilst fatalism presupposes the existence of a person who is constrained by an outward power, determinism regards the person himself as in every respect a product of causes. It does not assume any part of his will to have existed previous to his formation by these causes; his will is not constrained by them, it is made by them. When we say of a person that he is influenced by external circumstances or subdued by fate, we regard *him* as existing independently of that which influences or subdues him, we attribute to him an innate character which is acted upon from the outside. He would have been different if he had grown up under different conditions of life, or if fate had left him alone. But it would be absolutely meaningless to say that he would be different if the causes to which he owes his existence had been different; for instance, if he were the offspring of different parents. This shows that we distinguish between the original self of a person and the self which is partly innate and partly the product of external circumstances. His innate character belongs to his original

[1] Of the inhabitants of North-Eastern Africa, Munzinger observes (*Ostafrikanische Studien*, p. 66):—"Seien sie Christen, Heiden, oder Mohammedaner, schreiben sie Leben und Tod, Gluck und Unglück, Tugend und Verbrechen der unmittelbaren Hand Gottes zu. Mit dieser blinder Nothwendigkeit entschuldigt sich der Missethäter, trostet sich der Unglückliche." *Cf.* also Doughty, *Arabia Deserta*, i. 155, on the Bedouins. However, men are not philosophers in the ordinary practice of life, hence the fatalist is generally as ready as anybody else to judge on his neighbour's conduct. According to various ancient writers, the power of destiny is limited so as not to exclude personal responsibility (see Schmidt, *Ethik der alten Griechen*, i. 59 *sq.*).

self; and, strictly speaking, it is on the innate character only that the scrutinising moral judge, so far as possible, passes his judgment, carefully considering the degree of pressure to which it has been exposed both from the non-voluntary part of the individual himself and from the outside world.[1] According to the fatalist, the innate character is *compelled*; hence personal responsibility is out of the question. According to the determinist the innate character is *caused;* but this has nothing whatever to do with the question of responsibility. The moral emotions are no more concerned with the origin of the innate character than the æsthetic emotions are concerned with the origin of the beautiful object. In their capacity of retributive emotions, the moral emotions are essentially directed towards sensitive and volitional entities conceived, not as uncaused themselves, but only as causes of pleasure or pain.

[1] That the prope. subject of moral judgment is the innate character was emphasised by Schopenhauer in his prize-essays on *Die Freiheit des Willens* (*Sämmtliche Werke*, vii. 83 *sqq.*) and *Die Grundlage der Moral* (*ibid.* vii. 273 *sqq.*). The innate character, he says, that real core of the whole man, contains the germ of all his virtues and vices. And though Schopenhauer be mistaken in his statement that a person's character always remains the same, it seems to me indisputable that the succeeding changes to which it may be subject are imputable to *him* only in so far as they are caused by his innate character.

CHAPTER XIV

PRELIMINARY REMARKS—HOMICIDE IN GENERAL

We have discussed the general nature of those phenomena which have a tendency to evoke moral blame or moral praise. We have seen that moral judgments are passed on conduct and character, and we have seen why this is the case. It now remains for us to examine the particular modes of conduct which are subject to moral valuation, and to consider how these modes of conduct are judged of by different peoples and in different ages.

If carried out in every detail such an investigation could never come to an end. Among other things, it would have to take into account all customs existing among the various races of men, since every custom constitutes a moral rule. And the impossibility of any such undertaking becomes apparent when we consider the extent to which the conduct of man, and especially of savage man, is hampered by custom. Among the Wanika, for instance, "if a man dares to improve the style of his hut, to make a larger doorway than is customary; if he should wear a finer or different style of dress to that of his fellows, he is instantly fined."[1] If, during the performance of a ceremony, the ancestors of an Australian native were in the habit of painting a white line across the forehead, their descendant must do the same.[2] Dr. Nansen's statement with reference to the Greenlanders,

[1] New, *Life, Wanderings, and Labours in Eastern Africa*, p. 110.

[2] Spencer and Gillen, *Native Tribes of Central Australia*, p. 11.

that their communities had originally customs and fixed rules for every possible circumstance,[1] is essentially true of many, if not all, of the lower races.

It is necessary, then, that we should restrict ourselves to the more important modes of conduct with which the moral consciousness of mankind is concerned. These modes of conduct may be conveniently divided into six groups. The first group includes such acts, forbearances, and omissions as directly concern the interests of other men, their life or bodily integrity, their freedom, honour, property, and so forth. The second includes such acts, forbearances, and omissions as chiefly concern a man's own welfare, such as suicide, temperance, asceticism. The third group, which partly coincides with, but partly differs from, both the first and the second, refers to the sexual relations of men. The fourth includes their conduct towards the lower animals; the fifth, their conduct towards dead persons; the sixth, their conduct towards beings, real or imaginary, that they regard as supernatural. We shall examine each of these groups separately, in the above order. And, not being content with a mere description of facts, we shall try to discover the principle which lies at the bottom of the moral judgment in each particular case.

It is commonly maintained that the most sacred duty which we owe our fellow-creatures is to respect their lives. I venture to believe that this holds good not only among civilised nations, but among the lower races as well; and that, if a savage recognises that he has any moral obligations at all to his neighbours, he considers the taking of their lives to be a greater wrong than any other kind of injury inflicted upon them.

Among various uncivilised peoples, however, human life is said to be held very cheap.

The Australian Dieyerie, we are told, would for a mere trifle kill their dearest friend.[2] In Fiji there is an "utter disregard of

[1] Nansen, *Eskimo Life*, p. 104.

[2] Gason, 'Manners and Customs of the Dieyerie Tribe,' in Woods, *Native Tribes of South Australia*, p. 258.

the value of human life."[1] A Masai will murder his friend or neighbour in a fight over a herd of captured cattle, and "live not a whit the less merrily afterwards."[2] Among the Bachapins, a Bechuana tribe, murder "excites little sensation, excepting in the family of the person who has been murdered; and brings, it is said, no disgrace upon him who has committed it; nor uneasiness, excepting the fear of their revenge."[3] The Oráons of Bengal "are ready to take life on very slight provocation," and Colonel Dalton doubts whether they see any moral guilt in it.[4] Some of the Himalayan mountaineers are reported to put men to death merely for the satisfaction of seeing the blood flow and of marking the last struggles of the victim.[5] Among the Pathans, on the north-western frontier of the Punjab, "there is hardly a man whose hands are unstained," and each person "counts up his murders."[6]

On the other hand, there are uncivilised peoples among whom homicide or murder is said to be hardly known.

Among the Omahas, "before liquor was introduced there were no murders, even when men quarrelled."[7] Captain Lyon could learn of no instances of manslaughter having ever occurred among the Eskimo of Igloolik.[8] In Tutuila, of the Samoa group, according to Brenchley, there had been but one case of assassination in the course of twenty years.[9] The Veddahs of Ceylon know of manslaughter only as a punish-

[1] Williams and Calvert, *Fiji and the Fijians*, p. 115.

[2] Johnston, *Kilima-njaro Expedition*, p. 419.

[3] Burchell, *Travels in the Interior of Southern Africa*, ii. 554.

[4] Dalton, *Descriptive Ethnology of Bengal*, p. 256.

[5] Fraser, *Journal of a Tour through the Himālā Mountains*, p. 267.

[6] Temple, quoted by Spencer, *Principles of Ethics*, i. 343. For other instances of the indifference of savages to human life, see Egede, *Description of Greenland*, p. 123; Cranz, *History of Greenland*, i. 177; Holm, 'Ethnologisk Skizze af Angmagsalikerne,' in *Meddelelser om Grönland*, x. 87, 179 *sq.*; Coxe, *Russian Discoveries between Asia and America*, p. 257 (Aleuts of Unalaska); Krasheninnikoff, *History of Kamschatka*, p. 204; Steller, *Beschreibung von dem Lande Kamtschatka*, p. 294; Boyle, *Adventures among the Dyaks of Borneo*, p. 116 (Malays); Powell, *Wanderings in a Wild Country*, p. 262 (aborigines of New Britain); Scaramucci and Giglioli, 'Notizie sui Danakil,' in *Archivio per antropologia e la etnologia*, xiv. 26; Wilson and Felkin, *Uganda*, ii. 310 (Gowane); Schweinfurth, *Heart of Africa*, i. 286 (Bongo); Arnot, *Garenganze*, p. 71 (Barotse); Tuckey, *Expedition to Explore the River Zaire*, p. 383 (Congo natives); Ward, *Five Years with the Congo Cannibals*, p. 105 (Bolobo).

[7] Dorsey, 'Omaha Sociology,' in *Ann. Rep. Bur. Ethn.* iii. 369.

[8] Lyon, *Private Journal*, p. 350.

[9] Brenchley, *Jottings during the Cruise of H.M.S. "Curaçoa" among the South Sea Islands*, p. 58.

ment.[1] The Bedouin of the Euphrates, says Mr. Blunt, "is essentially humane, and never takes life needlessly. If he has killed a man in war he rather conceals the fact than proclaims it aloud, while murder or even homicide is almost unknown among the tribes."[2] Among the Bakwiri, in Cameroon, Zöller never heard of any person having killed a member of his own community.[3] Murders, says Caillié, "are rare among the Bambaras, and never committed by the Mandingoes."[4] Among the Wanika "wilful cold-blooded murders are almost unknown."[5] Among the Basutos perfect safety is enjoyed "on roads where the traveller might have been robbed a hundred times over without the least hope of aid, and in houses where the doors and windows have neither bolts nor bars," and cases of murder are very rare.[6]

In other instances homicide is expressly said to be regarded as wrong.

The Greenlanders described by Dr. Nansen hold it atrocious to kill a fellow-creature, except in some particular cases.[7] The Dacotahs say that it is a great crime to take their fellow's life, unless in revenge, "because all have a right to live."[8] In Tierra del Fuego homicide rarely occurs, as Mr. Bridges remarks, because of an inveterate custom according to which human life is held sacred: "le meurtrier est mis au ban de ses compatriotes; isolé de tous, il est fatalement condamné à périr de faim ou à tomber un jour sous les coups d'un groupe de justiciers improvisés."[9] The Andaman Islanders condemn murder as *yūbda*, or sin.[10] The natives of Botany Bay, New

[1] Sarasin, *Ergebnisse naturwissenschaftlicher Forschungen auf Ceylon*, iii. 539. *Cf.* Tennent, *Ceylon*, ii. 444. Hartshorne, in *Indian Antiquary*, viii. 320.

[2] Blunt, *Bedouin Tribes of the Euphrates*, ii. 203. *Cf. ibid.* ii. 207.

[3] Zöller, *Kamerun*, i. 188.

[4] Caillié, *Travels through Central Africa*, i. 353.

[5] New, *op. cit.* p. 98.

[6] Casalis, *Basutos*, p. 301. For other instances, see Hall, *Arctic Researches*, p. 571 (Eskimo); Dobrizhoffer, *Account of the Abipones*, ii. 148; Turner, *Samoa*, p. 178; Ellis, *Tour through Hawaii*, p. 429; Brooke, *Ten Years in Saráwak*, i. 61 (Sea Dyaks); Low, *Sarawak*, p. 133; Marsden, *History of Sumatra* p. 471 (Poggi Islanders); Steller, *De Sangi-Archipel*, p. 26; Riedel, *De sluik- en kroesharige rassen tusschen Selebes en Papua*, p. 41 (Ambon and Uliase Islanders); von Siebold, *Aino auf der Insel Yesso*, pp. 11, 35; Munzinger, *Ostafrikanische Studien*, p. 532 (Barea and Kunáma); Holub, *Seven Years in South Africa*, ii. 319 (Marutse); Maclean, *Compendium of Kafir Laws and Customs*, pp. 61, 143 *sq.*; Shooter, *Kafirs of Natal*, p. 137.

[7] Nansen, *Eskimo Life*, p. 162

[8] Prescott, in Schoolcraft, *Indian Tribes of the United States*, ii. 195.

[9] Hyades and Deniker, *Mission scientifique du Cap Horn*, vii. 374, 243.

[10] Man, in *Jour. Anthr. Inst.* xii. 112.

South Wales, though a trivial offence in their ideas justifies the murder of a man, "highly reprobate the crime when committed without what they esteem a just cause."[1] According to Mr. Curr's experience, the Australian Black undoubtedly feels that murder is wrong, and its committal brings remorse; even after the perpetration of infanticide or massacres, though both are practised without disguise, those engaged in them are subject to remorse and low spirits for some time.[2]

It is of particular importance in this connection to note that, in early civilisation, blood-revenge is regarded not as a private matter only, but as a duty, and that, where this custom does not prevail, the community punishes the murderer, frequently with death. We may without hesitation accept Professor Tylor's statement that "no known tribe, however low and ferocious, has ever admitted that men may kill one another indiscriminately."[3] In every society—even where human life is, generally speaking, held in low estimation—custom prohibits homicide within a certain circle of men. But the radius of the circle varies greatly.

Savages carefully distinguish between an act of homicide committed within their own community and one where the victim is a stranger. Whilst the former is under ordinary circumstances disapproved of, the latter is in most cases allowed, and often regarded as praiseworthy. It is a very common notion in savage ethics that the chief virtue of a man is to be successful in war and to slay many enemies.

Among the Káfirs of the Hindu-Kush "killing strangers might or might not be considered inexpedient, but it would

[1] Barrington, *History of New South Wales*, p. 19. *Cf.* Lumholtz, *Among Cannibals*, p. 126 (natives of Northern Queensland).

[2] Curr, *The Australian Race*, i. 100, 43 *sq.* For other instances, see Keating, *Expedition to the Source of St. Peter's River*, i. 127 (Potawatomis); Harmon, *Journal of Voyages in the Interior of North America*, p. 348 (Indians on the east side of the Rocky Mountains); Hall, *Arctic Researches*, p. 572 (Eskimo); Mariner, *Natives of the Tonga Islands*, ii. 162; Macdonald, *Oceania*, p. 208 (Efatese); Yate, *Account of New Zealand*, p. 145; Arbousset and Daumas, *Exploratory Tour to the North-East of the Colony of the Cape of Good Hope*, p. 322 (Bechuanas); Fritsch, *Die Eingeborenen Süd-Afrika's*, p. 322 (Hottentots).

[3] Tylor, 'Primitive Society,' in *Contemporary Review*, xxi. 714.

hardly be considered a crime"; killing fellow-tribesmen, on the other hand, is looked upon in a very different light.[1] The Koriaks do not regard murder as a great crime, unless it occur within their own tribe.[2] The early Aleuts considered the killing of a companion a crime worthy of death, "but to kill an enemy was quite another thing."[3] To an Aht Indian the murder of a man is no more than the killing of a dog, provided that the victim is not a member of his own tribe.[4] According to Humboldt, the natives of Guiana "detest all who are not of their family, or their tribe; and hunt the Indians of a neighbouring tribe, who live at war with their own, as we hunt game."[5] In the opinion of the Fuegians, "a stranger and an enemy are almost synonymous terms," hence they dare not go where they have no friends, and where they are unknown, as they would most likely be destroyed.[6] The Australian Black nurtures an intense hatred of every male at least of his own race who is a stranger to him, and would never neglect to assassinate such a person at the earliest moment that he could do so without risk to himself.[7] In Melanesia, also, a stranger as such was generally throughout the islands an enemy to be killed.[8]

In Savage Island the slaying of a member of another tribe—that is, a potential enemy—"was a virtue rather than a crime."[9] To a young Samoan it was the realisation of his highest ambition to be publicly thanked by the chiefs for killing a foe in mortal combat.[10] According to Fijian beliefs, men who have not slain any enemy are, in the other world, compelled to beat dirt with their clubs—the most degrading punishment the native mind can conceive—because they used their club to so little purpose;[11] and in Futuna it was deemed no less necessary to have poured out blood on the field of battle in order to hold a part in the happy future life.[12] In the Western islands of Torres Straits "it was a meritorious deed to kill foreigners either in fair fight

[1] Scott Robertson, *Kâfirs of the Hindu-Kush*, p. 194.

[2] Krasheninnikoff, *op. cit.* p. 232.

[3] Veniaminof, quoted by Petroff, 'Report on Alaska,' in *Tenth Census of the United States*, p. 155.

[4] Sproat, *Scenes and Studies of Savage Life*, p. 152.

[5] von Humboldt, *Personal Narrative of Travels*, v. 422.

[6] Stirling, in *South American Missionary Magazine*, iv. 11. Bridges, in *A Voice for South America*, xiii. 210.

[7] Curr, *The Australian Race*, i. 64, 85 *sq.* Mathew, in *Jour. & Proceed. Roy. Soc. N. S. Wales*, xxiii. 398.

[8] Codrington, *Melanesians*, p. 345.

[9] Thomson, *Savage Island*, p. 104. See also *ibid.* p. 94.

[10] Pritchard, *Polynesian Reminiscences*, p. 57.

[11] Seemann, *Viti*, p. 401. *Cf.* Williams and Calvert, *op. cit.* p. 97 *sq.*; Erskine, *Islands of the Western Pacific*, p. 248.

[12] Smith, in *Jour. Polynesian Society*, i. 39.

or by treachery, and honour and glory were attached to the bringing home of the skulls of the inhabitants of other islands slain in battle."[1] In the Solomon Islands,[2] New Guinea,[3] and various parts of the Malay Archipelago, he who has collected the greatest number of human heads is honoured by his tribe as the bravest man; and some peoples do not allow a man to marry until he has cut off at least one human head.[4] Among many of the North American Indians, again, he who can boast of the greatest number of scalps is the person most highly esteemed.[5] Among the Seri Indians the highest virtue "is the shedding of alien blood; and their normal impulse on meeting an alien is to kill, unless deterred by fear."[6] Among the Chukchi "it is held criminal to thieve or murder in the family or race to which a person belongs; but these crimes committed elsewhere are not only permitted, but held honourable and glorious."[7] So, too, the Gallas consider it honourable to kill an alien, though criminal to kill a countryman.[8]

At the same time there are, among the lower races, various instances in which the rule, "Thou shalt not kill," applies even to foreigners. Hospitality, as will be seen in a subsequent chapter, is a stringent duty in the savage world. Custom requires that the host should entertain and protect a stranger who comes as his guest, and by killing him the host would perpetrate an outrage hardly possible. Moreover, even in the case of intertribal relations, we must not conclude that what is allowed in war is also allowed in times of peace. The prohibition of homicide may extend beyond the tribal border, to

[1] Haddon, in *Reports of the Cambridge Anthropological Expedition to Torres Straits*, v. 277.

[2] Romilly, *Western Pacific*, p. 73. Penny, *Ten Years in Melanesia*, p. 46. Codrington, *op. cit.* p. 345.

[3] Romilly, *Western Pacific*, p. 76.

[4] Bock, *Head-Hunters of Borneo*, pp. 216, 221, &c. (Dyaks). Bickmore, *Travels in the East Indian Archipelago*, p. 205 (Alfura of Ceram). Dalton, *op. cit.* p. 40 (Nagas of Upper Assam).

[5] The well-known practice of scalping, though very common, was not universal among the North American Indians (see Gibbs, 'Tribes of Western Washington and Northwestern Oregon,' in *Contributions to N. American Ethnology*, i. 192; Powers, *Tribes of California*, p. 321).

[6] McGee, 'Seri Indians,' in *Ann. Rep. Bur. Ethnol.* xvii. 132.

[7] Georgi, *Russia*, iii. 183.

[8] Macdonald, *Africana*, i. 229. For other instances, see Harmon, *op. cit.* p. 301 (Tacullies); Burton, *City of the Saints*, p. 139 (Dacotahs); Macpherson, *Memorials of Service in India*, p. 94 (Kandhs); MacMahon, *Far Cathay*, p. 262 (Indo-Burmese border tribes); Macdonald, *Africana*, i. 194 *sq.* (Eastern Central Africans); Johnston, *Kilima-njaro Expedition*, p. 419 (Masai).

members of different tribes who for some reason or other are on friendly terms with each other.[1] We must not suppose that a tribe of savages generally either lives in a state of complete isolation, or is always at odds with its neighbours. In Australia, for instance, one tribe of natives, as a rule, entertains amicable relations with one, two, or more other tribes.[2] Among the Central Australian natives, say Messrs. Spencer and Gillen, "there is no such thing as one tribe being in a constant state of enmity with another"; on the contrary, where two tribes come into contact with one another on the border land of their respective territories, friendly feelings are maintained between the members of the two.[3] Some uncivilised peoples are even said to have no wars. The Veddahs of Ceylon never make war upon each other.[4] According to the reports of the oldest inhabitants of Umnak and Unalaska, the people there had never been engaged in war either among themselves or with their neighbours, except once with the natives of Alaska.[5] To the Greenlanders described by Dr. Nansen war is "incomprehensible and repulsive, a thing for which their language has no word."[6]

That savages to some extent recognise the existence of intertribal rights in times of peace is obvious from certain customs connected with their wars. Some South Sea Islanders and North American Indians consider it necessary for a party which is about to attack another to give notice beforehand of their intention, in order that their opponents may be prepared to meet them.[7] The cessation of hostilities is often accompanied by the conclusion of a special treaty and by ceremonies calculated to make it binding.[8] The Tahitians, for instance, wove a wreath of

[1] See, *e.g.*, Scott Robertson, *op. cit.* p. 194 (Káfirs of the Hindu-Kush).

[2] Curr, *The Australian Race*, i. 62 *sq.*

[3] Spencer and Gillen, *Native Tribes of Central Australia*, p. 32.

[4] Sarasin, *op. cit.* iii. 488.

[5] Coxe, *op. cit.* p. 244.

[6] Nansen, *Eskimo Life*, p. 162.

[7] Hale, *U.S. Exploring Expedition. Vol. VI. Ethnography and Philology*, p. 72 (Micronesians). Gibbs, *loc. cit.* p. 190 (Indians of Western Washington and North-Western Oregon).

[8] See Farrer, *Military Manners and Customs*, p. 162 *sq.*

green boughs furnished by each side, exchanged two young dogs, and, having also made a band of cloth together, offered the wreath and the band to the gods with imprecations on the side which should first violate so solemn a treaty of peace.[1] Nor does savage custom always allow indiscriminate slaughter even in warfare. The inviolability of heralds is not infrequently recognised.[2] Among the aborigines of New South Wales the tribal messenger known to be a herald by the red net which he wears round his forehead, passes in safety between and through hostile tribes;[3] and among the North American Omahas "the bearer of a peace pipe was generally respected by the enemy, just as the bearer of a flag of truce is regarded by the laws of war among the so-called civilised nations."[4] And many uncivilised races have made it a rule in war to spare the weak and helpless.

The Samoans considered it cowardly to kill a woman;[5] and even in Fiji the "enlightened party" objected to the killing of women, urging that it is "just as cowardly to kill a woman as a baby."[6] The Abipones, in their wars, "generally spared the unwarlike, and carried away innocent boys and girls unhurt."[7] An old Spanish writer tells us of the Guanches of Gran Canaria that, "in their wars, they held it as base and mean to molest or injure the women and children of the enemy, considering them as weak and helpless, therefore improper objects of their resentment";[8] and similar views prevail among the Berbers (Shluḥ) of Southern Morocco, as also among the Algerian Kabyles[9] and the Touareg.[10] Though the Masai and Wa-kikuyu "are eternally at war to the knife with each other, there is a compact between them not to molest the womenfolk of either party."[11] "The Masai," says Mr. Hinde, "never interfere with women in their raids, and the women cheer

[1] Ellis, *Polynesian Researches*, i. 318.
[2] See Farrer, *Military Manners and Customs*, p. 161.
[3] Fraser, *Aborigines of New South Wales*, p. 41.
[4] Dorsey, 'Omaha Sociology,' in *Ann. Rep. Bur. Ethn.* iii. 368.
[5] Turner, *Nineteen Years in Polynesia*, p. 304.
[6] Seemann, *Viti*, p. 180.
[7] Dobrizhoffer, *op. cit.* ii. 141.
[8] Abreu de Galindo, *History of the Discovery and Conquest of the Canary Islands*, p. 66.
[9] Hanoteau and Letourneux, *La Kabylie*, ii. 76.
[10] Hourst, *Sur le Niger et au pays des Touaregs*, p. 223 *sq.*
[11] Thomson, *Through Masai Land*, p. 177.

loudly and encourage their relatives during the fight."[1] Among the Latukas, though women are employed as spies and thus become exceedingly dangerous in war, there is nevertheless a general understanding that no woman shall be killed.[2] The Basutos maintain that respect should be paid during war to women, children, and travellers, as also that those who surrender should be spared and open to ransom; and, though these rules are not invariably respected, the public voice always disapproves of their violation.[3]

Sometimes custom even requires that the life of the captive shall be spared.

It is against Masai tradition to kill prisoners of war.[4] Among the Kabyles "il faut que l'exaspération des partis soit extrême pour qu'un blessé ou un prisonnier soit mis à mort."[5] The Touareg do not kill their prisoners after a fight.[6] Among the Bedouins of the Euphrates "the person of the enemy is sacred when disarmed or dismounted; and prisoners are neither enslaved nor held to other ransom than their mares."[7] "Captives," says Mr. Dorsey, "were not slain by the Omahas and Ponkas. When peace was declared the captives were sent home, if they wished to go. If not they could remain where they were, and were treated as if they were members of the tribe."[8] Among the Wyandots prisoners of war were frequently adopted into the tribe. "The warrior taking the prisoner has the first right to adopt him. If no one claims the prisoner for this purpose, he is caused to run the gauntlet as a test of his courage. If at his trial he behaves manfully claimants are not wanting, but if he behaves disgracefully he is put to death."[9]

Thus we notice even among uncivilised races very obvious traces of what is called "international law,"[10] if not as a rule, at least as an exception. On the other hand, the

[1] Hinde, *The Last of the Masai*, p. 6, n.*

[2] Baker, *Albert N'yanza*, i. 355.

[3] Casalis, *op. cit.* p. 223 *sq.* For regard paid to women, old people, and children in war, see also Richardson, *Arctic Searching Expedition*, i. 367 (Western Eskimo); Catlin, *North American Indians*, ii. 240; Azara, *Voyages*, ii. 145 (Payaguas).

[4] Hinde, *op. cit.* p. 64.

[5] Hanoteau and Letourneux, *op. cit.* ii. 75.

[6] Hourst, *op. cit.* p. 207.

[7] Blunt, *op. cit.* ii. 239.

[8] Dorsey, 'Omaha Sociology,' in *Ann. Rep. Bur. Ethn.* iii. 332.

[9] Powell, *ibid.* i. 68.

[10] See also Wheeler, *The Tribe, and Intertribal Relations in Australia*, *passim*.

readiness with which war is engaged in, not only in self-defence or out of revenge, but for the sake of gain, indicates how little regard is paid to human life outside the tribe. The Kandhs, for instance, maintain "that a state of war may be lawfully presumed against all tribes and nations with whom no express agreement to the contrary exists."[1] And if a few savage peoples live in perpetual peace, it seems that the chief reason for this is not a higher standard of morality, but the absence of all inducements to war.

When we from the lower races pass to peoples more advanced in culture, we find that the social unit has grown larger, that the nation has taken the place of the tribe, and that the circle within which homicide is prohibited as a crime of the first order has been extended accordingly. But the old distinction between injuries committed against compatriots and harm done to foreigners remains. Even when the subject is not touched upon in the laws referring to homicide we may, from the general attitude of the people towards members of other nations, infer that public opinion is not very scrupulous as to the taking of their lives. How the Chinese looked upon the "red-haired barbarians," the "foreign devils," is well known from recent history. In former days, Japan's attitude towards her neighbours and the whole world was that of an enemy and not of a friend.[2] The Vedic hymns are full of imprecations of misfortune upon men of another race.[3] That among the ancient Teutons the lot of a stranger was not an enviable one is testified even by language; the German word *elender* has acquired its present meaning from the connotation of the older word which meant an "outlandish" man.[4] The stranger as such—unless he belonged to a friendly, neighbouring tribe—had originally no legal rights at all; for his protection he was dependent on individual

[1] Hunter, *Annals of Rural Bengal*, iii. 75.

[2] Griffis, *Religions of Japan*, p. 129.

[3] Roth, 'On the Morality of the Veda,' in *Jour. American Oriental Society*, iii. 338.

[4] *Cf.* Grimm, *Deutsche Rechtsalterthümer*, p. 396; Gummere, *Germanic Origins*, p. 288.

hospitality, and hospitality was restricted by custom to three days only.[1] According to the Swedish Westgöta-Lag, he who killed a foreigner had to pay no compensation to the dead man's relatives, nor was he outlawed, nor exiled.[2] The Laws of King Ine let us understand in what light a stranger was looked upon:—"If a far-coming man, or a stranger, journey through a wood out of the highway, and neither shout nor blow his horn, he is to be held for a thief, either to be slain or redeemed."[3] However, as commerce increased and the stranger was more often seen in Teutonic lands, royal protection was extended to him; and a consequence of this was that thenceforth he who killed the stranger had to pay a *wergeld*, part, or the whole, of which went to the king.[4] In Greece, in early times, the "contemptible stranger"[5] had no legal rights, and was protected only in case he was the guest of a citizen;[6] and even later on, at Athens, whilst the intentional killing of a citizen was punished with death and confiscation of the murderer's property, the intentional killing of a non-citizen was punished only with exile.[7] The Latin word *hostis* was originally used to denote a foreigner;[8] and the saying of Plautus, that a man is a wolf to a man whom he does not know,[9] was probably an echo of an old Roman proverb. Mommsen suggests that in ancient days the Romans did not punish the killing of a foreigner, unless he belonged to an allied nation; but already in the prehistoric period a change was introduced, the foreigner being placed under the protection of the State.[10]

How little regard is felt for the lives of strangers also appears from the readiness with which war is waged on

[1] Grimm, *op. cit.* p. 397 *sqq.* Brunner, *Deutsche Rechtgeschichte*, i. 273.

[2] *Westgota-Lagen I.* Af mandrapi, v. 4, p. 13.

[3] *Laws of Ine*, 20. *Cf. Laws of Wihtræd*, 28.

[4] Brunner, *op. cit.* i. 273 *sq.* Gummere, *op. cit.* p. 288. Pollock and Maitland, *History of English Law before the Time of Edward I.* i. 52.

[5] *Iliad*, ix. 648.

[6] Hermann-Blümner, *Lehrbuch der griechischen Privatalterthümer*, p. 492. Schmidt, *Ethik der alten Griechen*, ii. 325.

[7] Meier and Schömann, *Der attische Process*, p. 379.

[8] Cicero, *De officiis*, i. 12.

[9] Plautus, *Asinaria*, ii. 4. 88.

[10] Mommsen, *Römisches Strafrecht*, p. 622 *sq.*

foreign nations, combined with the estimation in which the successful warrior is held by his countrymen. The ancient Mexicans were never at a loss for an excuse to pick a quarrel with their neighbours, so as to be able to procure victims for sacrifices to their gods.[1] "No profession was held in more esteem amongst them than the profession of arms. The deity of war was the most revered by them, and regarded as the chief protector of the nation."[2] The Mayas not only wanted to increase their dominions by encroachments upon their neighbours' territory, but undertook raids with no other object than that of obtaining captives for sacrifice.[3] Speaking of the wars of the ancient Egyptians, M. Amélineau observes, "Nous n'avons pas un seul mot dans la littérature égyptienne, même dans les œuvres égypto-chrétiennes, qui nous fasse entendre le plus léger cri de réprobation pour la guerre et ses horreurs."[4] Among the Hebrews the most cruel wars of extermination were expressly sanctioned by their religion. That an idolatrous people had no right to live was taken as a matter of course; but wars were also unscrupulously waged from worldly motives, and in their moral code there is no attempt to distinguish between just and unjust war.[5] Among the Mohammedans it is likewise the unbeliever, not the foreigner as such, that is regarded as the most proper object of slaughter. Although there is no precept in the Koran which, taken with the context, justifies unprovoked war,[6] the saying that "Paradise is under the shadow of swords"[7] is popularly applied to all warfare against infidels. Among the Celts[8] and Teutons a man's highest aspiration was to acquire military glory. The Scandinavians considered it a disgrace for a man to die

[1] Bancroft, *Native Races of the Pacific States*, ii. 420. Clavigero, *History of Mexico*, i. 371.

[2] Clavigero, *op. cit.* i. 363.

[3] Bancroft, *op. cit.* ii. 740, 745.

[4] Amélineau, *L'évolution des idées morales dans l'Égypte ancienne*, p. 344.

[5] *Cf.* Seldeñ, *De Synedriis et Prefecturis Juridicis veterum Ebræorum*, iii. 12, p. 1179 *sqq.*; Lament, *Études sur l'histoire de l'humanité*, i. 384 *sq.*

[6] This was later on admitted by Lane (*Modern Egyptians*, p. 574), who had previously maintained that the duty of waging holy war is strongly urged in the Koran.

[7] Pool, *Studies in Mohammedanism*, p. 246.

[8] Logan, *The Scottish Gael*, i. 101. de Valroger, *Les Celtes*, p. 186.

without having seen human blood flow;[1] even the slaying of a tribesman they often regarded lightly when it had been done openly and bravely. In Greece, in ancient times at least, war was the normal relation between different states, and peace an exception, for which a special treaty was required;[2] while to conquer and enslave barbarians was regarded as a right given to the Greeks by Nature. The whole statecraft of the early Republic of Rome was no doubt based upon similar principles;[3] and in later days, also, the war policy of the Romans was certainly not conducted with that conscientiousness which was insisted upon by some of their writers.

However, the foreigner is not entirely, or under all circumstances, devoid of rights. Among the nations of archaic civilisation, as among the lower races, hospitality is a duty, and the life of a guest is as sacred as the life of any of the permanent members of the household. In various cases the commencement of international hostilities is preceded by special ceremonies, intended to justify acts which are not considered proper in times of peace. In ancient Mexico it was usual to send a formal challenge or declaration of war to the enemy, as it was held discreditable to attack a people unprepared for defence;[4] and, according to the fecial law of the Romans, no war was just unless it was undertaken to reclaim property, or unless it was solemnly denounced and proclaimed beforehand.[5] In some cases warfare is condemned, or a distinction is made between just and unjust war with reference to the purpose for which the war is waged. The Chinese philosophers were great advocates of peace.[6] According to Lao-Tsze, a superior man uses weapons "only on the compulsion of necessity";[7] there is no calamity greater

[1] *Njála*, ch. 40, vol. i. 167. Maurer, *Bekehrung des Norwegischen Stammes*, ii. 172.

[2] Schmidt, *Ethik der alten Griechen*, ii. 280. Laurent, *op. cit.* i. 46. Plato, *Leges*, i. 625. Livy, xxxi. 29: "Cum alienigenis, cum barbaris aeternum omnibus Graecis bellum est."

[3] *Cf.* Lecky, *History of European Morals*, ii. 257.

[4] Clavigero, *op. cit.* i. 370. Bancroft, *op. cit.* ii. 420, 421, 423.

[5] Cicero, *De officiis*, i. 11.

[6] *Cf.* Lanessan, *Morale des philosophes chinois*, pp. 54, 107.

[7] *Tão Teh King*, xxxi. 2.

than lightly engaging in war,[1] and "he who has killed multitudes of men should weep for them with the bitterest grief."[2] In the Indian poem, Mahabharata, needless warfare is condemned; it is said that the success which is obtained by negotiations is the best, and that the success which is secured by battle is the worst.[3] Among the Hebrews the sect of the Essenes went so far in their reprobation of war that they would not manufacture any martial instruments whatever.[4] Roman historians, even in the case of wars with barbarians, often discuss the sufficiency or insufficiency of the motives "with a conscientious severity a modern historian could hardly surpass."[5] According to Cicero, a war, to be just, ought to be necessary, the sole object of war being to enable us to live undisturbed in peace. There are two modes of settling controversies, he says, one by discussion, the other by a resort to force. The first is proper to man, the second is proper to brutes, and ought never to be adopted except where the first is unavailable.[6] Seneca regards war as a "glorious crime," comparable to murder:—"What is forbidden in private life is commanded by public ordinance. Actions which, committed by stealth, would meet with capital punishment, we praise because committed by soldiers. Men, by nature the mildest species of the animal race, are not ashamed to find delight in mutual slaughter, to wage wars, and to transmit them to be waged by their children, when even dumb animals and wild beasts live at peace with one another."[7] History attests that the Romans, in their intercourse with other nations, did not act upon Cicero's and Seneca's lofty theories of international morality; as Plutarch observes, the two names "peace" and "war" are mostly used only as coins, to procure, not what is just, but what is expedient.[8] Yet there seems to have been a general

[1] *Ibid.* lxix. 2.
[2] *Ibid.* xxxi. 3.
[3] *Mahabharata*, Bhisma Parva, iii. 81 (pt. xii. *sq.* p. 6).
[4] Philo, *Quod liber sit quisquis virtuti studet*, p. 877.
[5] Lecky, *History of European Morals*, ii. 258.
[6] Cicero, *De officiis*, i. 11.
[7] Seneca, *Epistulæ*, 95.
[8] Plutarch, *Vita Pyrrhi*, xii. 3, p. 389.

feeling in Rome that the waging of a war required some justification. In declaring it, the Roman heralds called all the gods to witness that the people against whom it was declared had been unjust and neglectful of its obligations.[1]

Even in war the killing of an enemy is, under certain circumstances, prohibited either by custom or by enlightened moral opinion. Among the ancient Nahuas, who never accepted a ransom for a prisoner of war, the person of an ambassador was at all events held sacred.[2] In the 'Book of Rewards and Punishments,' which embodies popular Taouism, it is said, "Do not massacre the enemies who yield themselves, nor kill those who offer their submission."[3] The Hebrews, whilst being commanded to "save alive nothing that breatheth" of the cities which the Lord had given them for an inheritance, were to deal differently with cities which were very far off from them: to kill only the men, and to take to themselves the women and the little ones.[4] The Laws of Manu lay down very humane rules for a king who fights with his foes in battle:—"Let him not strike with weapons concealed in wood, nor with such as are barbed, poisoned, or the points of which are blazing with fire. Let him not strike one who in flight has climbed on an eminence, nor a eunuch, nor one who joins the palms of his hands in supplication, nor one who flees with flying hair, nor one who sits down, nor one who says 'I am thine'; nor one who sleeps, nor one who has lost his coat of mail, nor one who is naked, nor one who is disarmed, nor one who looks on without taking part in the fight, nor one who is fighting with another foe; nor one whose weapons are broken, nor one afflicted with sorrow, nor one who has been grievously wounded, nor one who is in fear, nor one who has turned to flight; but in all these cases let him remember the duty of honourable warriors."[5] The Mahabharata contains expressions of

[1] Livy, i. 32.
[2] Bancroft, *op. cit.* ii. 426, 412.
[3] Douglas, *Confucianism and Taouism*, p. 261.
[4] *Deuteronomy*, xx. 13 *sqq.*
[5] *Laws of Manu*, vii. 90 *sqq.*

similar chivalrous sentiments in regard to enemies. A car-warrior should fight only with a car-warrior, a horse-man with a horse-man, a foot-soldier with a foot-soldier. "Always being led by consideration of fitness, willingness, bravery, and strength, one should strike another after having challenged him. None should strike another who is confiding or who is panic-striken. One fighting with another, one seeking refuge, one retreating, one whose weapon is broken, and one who is not clad in armour should never be struck. Charioteers, animals, men engaged in carrying weapons, those who play on drums and those who blow conchs should never be smitten."[1] Among the Greeks, in the Homeric age, it was evidently regarded as a matter of course that, on the fall of a city, all the men were slain, and the women and children carried off as slaves;[2] but in historic times such a treatment of a vanquished foe grew rarer, and seems, under ordinary circumstances, to have been disapproved of.[3] The rulers of this land, says the messenger in the 'Heraclidæ,' do not approve of slaying enemies who have been taken alive in battle.[4] In Rome the customs of war underwent a similar change. In ancient days the normal fate of a captive was death, in later times he was generally reduced to slavery; but many thousands of captives were condemned to the gladiatorial shows, and the vanquished general was commonly slain in the Mamertine prison.[5] On the other hand, nations or armies that voluntarily submitted to Rome were habitually treated with great leniency. Cicero says:—"When we obtain the victory we must preserve those enemies who behaved without cruelty or inhumanity during the war; for example, our forefathers received, even as members of their state, the Tuscans, the Aequi, the Volscians, the Sabines, and the Hernici, but utterly destroyed Carthage and Numantia. . . . And, while we

[1] *Mahabharata*, Bhisma Parva, i. 27 *sqq.* (pt. xii. *sq.* p. 2).
[2] *Iliad*, ix. 593 *sq.*
[3] Schmidt, *Ethik der alten Griechen*, ii. 281 *sqq.*
[4] Euripides, *Heraclidæ*, 966.
[5] Laurent, *op. cit.* iii. 20 *sq.* Lecky, *History of European Morals*, ii. 257.

are bound to exercise consideration toward those whom we have conquered by force, so those should be received into our protection who throw themselves upon the honour of our general, and lay down their arms, even though the battering rams should have struck their walls."[1]

[1] Cicero, *De officiis*, i. 11.

CHAPTER XV

HOMICIDE IN GENERAL (*continuea*)

CHRISTIANITY introduced into Europe a higher regard for human life than was felt anywhere in pagan society. The early Christians condemned homicide of any kind as a heinous sin. And in this, as in all other questions of moral concern, the distinction of nationality or race was utterly ignored by them.

The sanctity which they attached to the life of every human being led to a total condemnation of warfare, sharply contrasting with the prevailing sentiment in the Roman Empire. In accordance with the general spirit of their religion, as also with special passages in the Bible,[1] they considered war unlawful under all circumstances. Justin Martyr quotes the prophecy of Isaiah, that "nation shall not lift up sword against nation, neither shall they learn war any more,"[2] and proceeds to say that the instruction in the word of God which was given by the twelve Apostles "had so good effect that we, who heretofore were continually devouring each other, will not now so much as lift up our hand against our enemies."[3] Lactantius asserts that "to engage in war cannot be lawful for the righteous man, whose warfare is that of righteousness itself."[4] Tertullian asks, "Can it be lawful to

[1] *St. Matthew*, v. 9, 39, 44. *Romans*, xii. 17. *Ephesians*, vi. 12.

[2] *Isaiah*, ii. 4.

[3] Justin Martyr, *Apologia I. pro Christianis*, 39 (Migne, *Patrologiæ cursus*, Ser. Graeca, vi. 387 *sq.*).

[4] Lactantius, *Divinæ institutiones*, vi. ('De vero cultu') 20 (Migne, *op. cit.* vi. 708).

handle the sword, when the Lord Himself has declared that he who uses the sword shall perish by it?"[1] And in another passage he states that "the Lord by his disarming of Peter disarmed every soldier from that time forward."[2] Origen calls the Christians the children of peace, who, for the sake of Jesus, never take up the sword against any nation; who fight for their monarch by praying for him, but who take no part in his wars, even though he urge them.[3] It is true that, even in early times, Christian soldiers were not unknown; Tertullian alludes to Christians who were engaged in military pursuits together with their heathen countrymen.[4] But the number of Christians enrolled in the army seems not to have been very considerable before the era of Constantine,[5] and, though they were not cut off from the Church, their profession was looked upon as hardly compatible with their religion. St. Basil says that soldiers, after their term of military service has expired, are to be excluded from the sacrament of the communion for three whole years.[6] And according to one of the canons of the Council of Nice, those Christians who, having abandoned the profession of arms, afterwards returned to it, "as dogs to their vomit," were for some years to occupy in the Church the place of penitents.[7]

A divine law which prohibited all resistance to enemies could certainly not be accepted by the State, especially at a time when the Empire was seriously threatened by foreign invaders. Christianity could therefore never become a State-religion unless it gave up its attitude towards war. And it gave it up. Already in 314 a Council condemned soldiers who, from religious motives,

[1] Tertullian, *De corona*, 11 (Migne, *op. cit.* ii. 92).
[2] Tertullian, *De idolatria*, 19 (Migne, *op. cit.* i. 691).
[3] Origen, *Contra Celsum*, v. 33; viii. 73 (Migne, *op. cit.* Ser. Graeca, xi. 1231 *sq.*, 1627 *sq.*).
[4] Tertullian, *Apologeticus*, 42 (Migne, *op. cit.* i. 491).
[5] Le Blant, *Inscriptions chrétiennes de la Gaule*, i. 84 *sqq.*
[6] St. Basil, *Epistola CLXXXVIII., ad Amphilochium*, can. 13 (Migne, *op. cit.* Ser. Graeca, xxxii. 681 *sq.*).
[7] *Concilium Nicænum*, A.D. 325, can. 12 (Labbe-Mansi, *Sacrorum Conciliorum collectio*, ii. 674).

deserted their colours.[1] The Fathers of the fourth and fifth centuries did not altogether disapprove of war. Chrysostom and Ambrose, though seeing the difficulty of reconciling it with the theory of Christian life which they found in the New Testament, perceived that the use of the sword was necessary to preserve the State.[2] St. Augustine went much farther. He tried to prove that the practice of war was quite compatible with the teachings of Christ. The soldiers mentioned in the New Testament, who were seeking for a knowledge of salvation, were not directed by our Lord to throw aside their arms and renounce their profession, but were advised by him to be content with their wages.[3] St. Peter baptised Cornelius, the centurion, in the name of Christ, without exhorting him to give up the military life,[4] and St. Paul himself took care to have a strong guard of soldiers for his defence.[5] And was not the history of David, the "man after God's own heart," an evidence of those being wrong who say that "no one who wages war can please God"?[6] When Christ declared that "all they that take the sword shall perish with the sword,"[7] He referred to such persons only as arm themselves to shed the blood of others without either command or permission of any superior or lawful authority.[8] A great deal depends on the causes for which men undertake war, and on the authority they have for doing so. Those wars are just which are waged with a view to obtaining redress for wrongs, or to chastising the undue arrogance of another State. The monarch has the power of making war when he thinks it advisable, and, even if he be a sacrilegious

[1] *Concilium Arelatense I.*, A.D. 314, can. 3 (Labbe-Mansi, *op. cit.* ii. 471). *Cf.* Le Blant, *op. cit.* i. p. lxxxii.

[2] Gibb, 'Christian Church and War,' in *British Quarterly Review*, lxxiii. 83.

[3] St. Augustine, *Epist. CXXXVIII.*, *ad Marcellinum*, 15 (Migne, *op. cit.* xxxiii. 531 *sq.*).

[4] St. Augustine, *Epist. CLXXXIX.*, *ad Bonifacium*, 4 (Migne, *op. cit.* xxxiii. 855).

[5] St. Augustine *Epistola XLVII.*, *ad Publicolam*, 5 (Migne, *op. cit.* xxxiii. 187).

[6] St. Augustine, *Epist. CLXXXIX.*, *ad Bonifacium*, 4 (Migne, *op. cit.* xxxiii. 855).

[7] *St. Matthew*, xxvi. 52.

[8] St. Augustine, *Contra Faustum Manichæum*, xxii. 70 (Migne, *op. cit.* xlii. 444).

king, a Christian may fight under him, provided that what is enjoined upon the soldier personally is not contrary to the precept of God.[1] In short, though peace is our final good, though in the City of God there is peace in eternity,[2] war may sometimes be a necessity in this sinful world.

By the writings of St. Augustine the theoretical attitude of the Church towards war was definitely settled, and later theologians only reproduced or further elaborated his views. Yet it was not with a perfectly safe conscience that Christianity thus sanctioned the practice of war. There was a feeling that a soldier scarcely could make a good Christian. In the middle of the fifth century, Leo the Pope declared it to be contrary to the rules of the Church that persons after the action of penance—that is, persons then considered to be pre-eminently bound to obey the law of Christ—should revert to the profession of arms.[3] Various Councils forbade the clergy to engage in warfare,[4] and certain canons excluded from ordination all who had served in an army after baptism.[5] Penance was prescribed for those who had shed blood on the battle-field.[6] Thus

[1] St. Augustine, *Contra Faustum Manichæum*, xxii. 75 (Migne, *op. cit.* xlii. 448).

[2] St. Augustine, *De civitate Dei*, xix. 11.

[3] Leo Magnus, *Epistola XC., ad Rusticum*, inquis. 12 (Migne, *op. cit.* liv. 1206 *sq.*).

[4] One of the Apostolic Canons requires that any bishop, priest, or deacon who devotes himself to military service shall be degraded from his ecclesiastical rank (*Canones ecclesiastici qui dicuntur Apostolorum*, 83 [74] [Bunsen, *Analecta Ante-Nicæna*, ii. 31]). The Councils of Toulouse, in 633 (ch. 45, in Labbe-Mansi, *op. cit.* x. 630), and of Meaux, in 845 (can. 37, *ibid.* xiv. 827), condemned to a similar punishment those of the clergy who ventured to take up arms. Gratian says (*Decretum*, ii. 23. 8. 4) that the Church refuses to pray for the soul of a priest who died on the battle-field. Notwithstanding the canons of Councils and the decrees of popes, ecclesiastics frequently participated in battles (Nicolaus I. *Epistolæ et Decreta*, 83 [Migne, *op. cit.* cxix. 922]. Robertson, *History of the Reign of Charles V.* i. 330, 385. Ward, *Foundation and History of the Law of Nations*, i. 365 *sq.* Buckle, *History of Civilisation in England*, i. 204; ii. 464. Bethune-Baker, *Influence of Christianity on War*, p. 52. Dümmler, *Geschichte des Ostfränkischen Reichs*, ii. 637).

[5] Grotius, *De jure belli et pacis*, i. 2. 10. 10. Bingham, *Antiquities of the Christian Church*, iv. 4. 1 (*Works*, ii. 55).

[6] *Pœnitentiale Bigotianum*, iv. i. 4 (Wasserschleben, *Bussordnungen der abendländischen Kirche*, p. 453). *Pœnit. Vigilanum*, 27 (*ibid.* p. 529). *Pœnit. Pseudo-Theodori*, xxi. 15 (*ibid.* p. 587 *sq.*). *Cf. Mort de Garin le Loherain*, p. 213: "Ainz se repent et se claime cheti; Ses pechiés plore au soir et au matin, De ce qu'il a tans homes mors et pris."

the ecclesiastical canons made in William the Conqueror's reign by the Norman prelates, and confirmed by the Pope, directed that he who was aware that he had killed a man in a battle should do penance for one year, and that he who had killed several should do a year's penance for each.[1] Occasionally the Church seemed to wake up to the evils of war in a more effective way; there are several notorious instances of wars being forbidden by popes. But in such cases the prohibition was only too often due to the fact that some particular war was disadvantageous to the interests of the Church. And whilst doing comparatively little to discourage wars which did not interfere with her own interests, the Church did all the more to excite war against those who were objects of her hatred.

It has been suggested that the transition from the peaceful tenets of the primitive Church to the essentially military Christianity of the crusades, was chiefly due to the terrors and the example of Islam. "The spirit of Muhammedanism," says Mr. Lecky, "slowly passed into Christianity, and transformed it into its image." Until then, "war was rather condoned than consecrated, and, whatever might be the case with a few isolated prelates, the Church did nothing to increase or encourage it."[2] But this view is hardly consistent with facts. Christianity had entered on the war-path already before it came into contact with Muhammedanism. Wars against Arian peoples had been represented as holy wars, for which the combatants would be rewarded by Heaven.[3] The war which Chlodwig made upon the Visigoths was not only undertaken with the approval of the clergy, but it was, as Mr. Greenwood remarks, "properly their war, and Chlodwig undertook it in the capacity of a religious champion in all things but the disinterestedness which ought to distinguish that character." Remigius of Reims assisted him by his countenance and advice, and the

[1] Wilkins, *Concilia Magnæ Britanniæ et Hiberniæ*, i. 366.

[2] Lecky, *History of European Morals*, ii. 251 *sq.*

[3] Gibb, *loc. cit.* p. 86.

Catholic priesthood set every engine of their craft in motion to second and encourage him.[1] In the Church itself there were germs out of which a military spirit would naturally develop itself. The famous dictum, "Nulla salus extra ecclesiam," was promulgated as early as the days of Cyprian. The general view of mediæval orthodoxy was, that those beyond the pale of the Church, heathen and heretics alike, were unalterably doomed to hell, whereas those who would acknowledge her authority, confess their sins, receive the sacrament of baptism, partake of the eucharist and obey the priest, would be infallibly saved. If war was allowed by God, could there be a more proper object for it than the salvation of souls otherwise lost? And for those who refuse to accept the gift of grace offered to them, could there be a juster punishment than death? Moreover, had not the Israelites fought great battles "for the laws and the sanctuary"?[2] Had not the Lord Himself commissioned them to attack, subdue, and destroy his enemies? Had He not commanded them to root out the natives of Canaan, who, because of their abominations, had fallen under God's judgment, and to kill man and beast in the Israelitish cities which had given themselves to idolatry, and to burn all the spoil, with the city itself, as a whole offering to Yahveh?[3] There was no need, then, for the Christians to go to the Muhammedans in order to learn the art of religious war. The Old Testament, the revelation of God, gave better lessons in it than the Koran, and was constantly cited in justification of any cruelty committed in the name of religion.[4]

It was thus in perfect consistency with the general teachings of the Church that she regarded an exploit achieved against the infidels as a merit which might obliterate the guilt of the most atrocious crimes. Such a

[1] Greenwood, *First Book of the History of the Germans*, p. 518.

[2] 1 *Maccabees*, xiii. 3. Thomas Aquinas (*Summa theologica*, ii -ii. 188. 3) quotes this passage in support of the doctrine, that fighting may be directed to the preservation of divine worship.

[3] *Deuteronomy*, xiii. 15 *sq.*

[4] *Cf.* Constant, *De la religion*, ii. 229 *sq.*

deed was the instrument of pardon to Henry II. for the murder of Becket,[1] and was supposed to be the means of cure to St. Louis in a dangerous illness. Fighting against infidels took rank with fastings, penitential discipline, visits to shrines, and almsgivings, as meriting the divine mercy.[2] He who fell in the battle could be confident that his soul was admitted directly into the joys of Paradise.[3] And this held good not only of wars against Muhammedans. The massacres of Jews and heretics seemed no less meritorious than the slaughter of the more remote enemies of the Gospel. Nay, even a slight shade of difference from the liturgy of Rome became at last a legitimate cause of war.

It is true that these views were not shared by all. At the Council of Lyons, in 1274, the opinion was pronounced, and of course eagerly attacked, that it was contrary to the examples of Christ and the Apostles to uphold religion with the sword and to shed the blood of unbelievers.[4] In the following century, Bonet maintained that, according to Scriptures, a Saracen or any other disbeliever could not be compelled by force to accept the Christian faith.[5] Franciscus a Victoria declared that "diversity of religion is not a cause of just war";[6] and a similar opinion was expressed by Soto,[7] Covarruvias a Leyva,[8] and Suarez.[9] According to Balthazar Ayala, the most illustrious Spanish lawyer of the sixteenth century, it does not belong to the Church to punish infidels who

[1] Lyttelton, *History of the Life of King Henry the Second*, iii. 96.

[2] *Cf.* Milman, *History of Latin Christianity*, iv. 209.

[3] *Cf.* Laurent, *Études sur l'histoire de l'humanité*, vii. 257.

[4] Bethune-Baker, *op. cit.* p. 73.

[5] Bonet, *L'arbre des batailles*, iv. 2, p. 86: "Selon la sainte Escripture nous ne pouvons et si ne devons contredire ne efforcer ung mescreant à recepvoir ne le saint bapteme ne la sainte foy ainsi les devons laisser en leur franche volonté que Dieu leur a donnée."

[6] Franciscus a Victoria, *Relectiones Theologicæ*, vi. 10, p. 231: "Causa iusti belli non est diuersitas religionis." Yet infidels may be constrained to allow the Gospel to be preached (*ibid.* v. 3. 12, p. 214 *sq.*).

[7] Soto, *De iustitia et iure*, v. 3 5. fol. 154.

[8] Covarruvias a Leyva, *Regulæ, Peccatum*, ii. 10. 2 (*Opera omnia*, i. 496): "Infidelitas non priuat infideles dominio, quod habent iure humano, vel habuerunt ante legem Euangelicam in prouinciis et regnis, quae obtinent."

[9] Suarez, cited by Nys, *Droit de la guerre et les précurseurs de Grotius*, p. 98.

have never received the Christian faith, whereas those who, having once received it, afterwards endeavour to prevent the propagation of the Gospel, may, like other heretics, be justly persecuted with the sword.[1] But the majority of jurisconsults, as well as of canonists, were in favour of the orthodox view that unbelief is a legitimate reason for going to war.[2] And this principle was, professedly, acted upon to an extent which made the history of Christianity for many centuries a perpetual crusade, and transformed the Christian Church into a military power even more formidable than Rome under Cæsar and Augustus. Very often religious zeal was a mere pretext for wars which in reality were caused by avarice or desire for power. The aim of the Church was to be the master of the earth rather than the servant of heaven. She preached crusades not only against infidels and heretics, but against any disobedient prince who opposed her boundless pretensions. And she encouraged war when rich spoils were to be expected from the victor, as a thankoffering to God for the victory He had granted, or as an atonement for the excesses which had been committed.

Out of this union between war and Christianity there was born that curious bastard, Chivalry. The secular germ of it existed already in the German forests. According to Tacitus, the young German who aspired to be a warrior was brought into the midst of the assembly of the chiefs, where his father, or some other relative, solemnly equipped him for his future vocation with shield and javelin.[3] Assuming arms was thus made a social distinction, which subsequently derived its name

[1] Ayala, *De iure et officiis bellicis et disciplina militari*, i. 2. 29 *sq.*

[2] Nys, *op. cit.* p. 89. *Idem*, in his Introduction to Bonet's *L'arbre des batailles*, p. xxiv. According to Conradus Brunus (*De legationibus*, iii. 8, p. 115), for instance, any war waged by Christians against the enemies of the Christian faith is just, as being undertaken for the defence of religion and the glory of God in order to recover the possession of dominions unjustly held by infidels.

[3] Tactitus, *Germania*, 13. According to Honoré de Sainte Marie (*Dissertations historiques et critiques sur la Chevalerie*, p. 30 *sqq.*), Chivalry is of Roman, according to some other writers, of Arabic origin. M. Gautier (*La Chevalerie*, pp. 14, 16) repudiates these theories, and regards Chivalry as "un usage germain idéalisé par l'Église." See also Rambaud, *Histoire de la civilisation française*, i. 178 *sq.*

from one of its most essential characteristics, the riding a war-horse. But Chivalry became something quite different from what the word indicates. The Church knew how to lay hold of knighthood for her own purposes. The investiture, which was originally of a purely civil nature, became, even before the time of the crusades, as it were, a sacrament.[1] The priest delivered the sword into the hand of the person who was to be made a knight, with the following words, "Serve Christi, sis miles in nomine Patris, Filii, et Spiritus Sancti, Amen."[2] The sword was said to be made in semblance of the cross so as to signify "how our Lord God vanquished in the cross the death of human lying";[3] and the word "Jesus" was sometimes engraven on its hilt.[4] God Himself had chosen the knight to defeat with arms the miscreants who wished to destroy his Holy Church, in the same way as He had chosen the clergy to maintain the Catholic faith with Scripture and reasons.[5] The knight was to the body politic what the arms are to the human body: the Church was the head, Chivalry the arms, the citizens, merchants, and labourers the inferior members; and the arms were placed in the middle to render them equally capable of defending the inferior members and the head.[6] "The greatest amity that should be in this world," says the author of the 'Ordre of Chyualry,' "ought to be between the knights and clerks."[7] The several gradations of knighthood were regarded as parallel to those of the Church.[8] And after the conquest of the Holy Land the union between the profession of arms and the religion of Christ became still more intimate by the institution of the two military orders of monks, the Knights Templars and Knights of St. John of Jerusalem.

[1] Scott, 'Essay on Chivalry,' in *Miscellaneous Prose Works*, vi. 16. Mills, *History of Chivalry*, i. 10 *sq.* For a description of the various religious ceremonies accompanying the investiture, see *The Book of the Ordre of Chyualry or Knyghthode*, fol. 27 b *sqq.* *Cf.* also Favyn, *Theater of Honour and Knight-Hood*, i. 52.

[2] Favyn, *op. cit.* i. 52.

[3] *Ordre of Chyualry*, fol. 31 a *sq.*

[4] Mills, *op. cit.* i. 71.

[5] *Ordre of Chyualry*, fol. 11 b.

[6] *Le Jouuencel*, fol. 94 *sqq.*

[7] *Ordre of Chyualry*, fol. 12 a.

[8] Scott, *loc. cit.* p. 15.

The duties which a knight took on himself by oath were very extensive, but not very well defined. He should defend the holy Catholic faith, he should defend justice, he should defend women, widows, and orphans, and all those of either sex that were powerless, ill at ease, and groaning under oppression and injustice.[1] In the name of religion and justice he could thus practically wage war almost at will. Though much real oppression was undoubtedly avenged by these soldiers of the Church, the knight seems as a rule to have cared little for the cause or necessity of his doing battle. "La guerre est ma patrie, Mon harnois ma maison: Et en toute saison Combatre c'est ma vie," was a saying much in use in the sixteenth century.[2] The general impression which Froissart gives us in his history is, that the age in which he lived was completely given over to fighting, and cared about nothing else whatever.[3] The French knights never spoke of war but as a feast, a game, a pastime. "Let them play their game," they said of the cross-bow men, who were showering down arrows on them; and "to play a great game," *jouer gros jeu*, was their description of a battle.[4] Previous to the institution of Chivalry there certainly existed much fighting in Christian countries, but knighthood rendered war "a fashionable accomplishment."[5] And so all-absorbing became the passion for it that, as real injuries were not likely to occur every day, artificial grievances were created, and tilts and tournaments were invented in order to keep in action the sons of war when they had no other employments for their courage. Even in these images of war—which were by no means so harmless as they have sometimes been represented to be[6]—the intimate connection

[1] *Ordre of Chyualry*, foll. 11 b, 17 a. Sainte-Palaye, *Mémoires sur l'ancienne Chevalerie*, i. 75, 129.

[2] De la Noüe, *Discours politiques et militaires*, p. 215.

[3] See Sir James Stephen's essay on 'Froissart's Chronicles,' in his *Horæ Sabbaticæ*, i. 22 *sqq.*

[4] Sainte-Palaye, *op. cit.* ii. 61.

[5] Millingen, *History of Duelling*, i. 70.

[6] Sainte-Palaye, *op. cit.* i. 179; ii. 75. Du Cange, 'Dissertations sur l'histoire de S. Louys,' in Petitot, *Collection des Mémoires relatifs à l'histoire de France*, iii. 122 *sq.* Honoré de Sainte Marie, *op. cit.* p. 186.

between Chivalry and religion displays itself in various ways. Before the tournament began, the coats of arms, helmets, and other objects were carried into a monastery, and after the victory was gained the arms and the horses which had been used in the fight were offered up at the church.[1] The proclamations at the tournaments were generally in the name of God and the Virgin Mary. Before battle the knights confessed, and heard mass; and, when they entered the lists, they held a sort of image with which they made the sign of the cross.[2] Moreover, "as the feasts of the tournaments were accompanied by these acts of devotion, so the feasts of the Church were sometimes adorned with the images of the tournaments."[3] It is true that the Church now and then made attempts to stop these performances.[4] But then she did so avowedly because they prevented many knights from joining the holy wars, or because they swallowed up treasures which might otherwise with advantage have been poured into the Holy Land.[5]

Closely connected with the feudal system was the practice of private war. Though tribunals had been instituted, and even long after the kings' c:u ts had become well-organised and powerful institutions, a nobleman had a right to wage war upon another nobleman from whom he had suffered some gross injury.[6] On such occasions not only the relatives, but the vassals, of the injured man were bound to help him in his quarrel, and the same obligation existed in the case of the aggressor.[7] Only greater crimes were regarded as legitimate causes of private war,[8] but this rule was not at all strictly observed.[9] As

[1] Sainte-Palaye, *op. cit.* i. 151.
[2] *Ibid.* ii. 57.
[3] *Ibid.* ii. 57 *sq.*
[4] Du Cange, *loc. cit.* p. 124 *sqq.* Honoré de Sainte Marie, *op. cit.* p. 186. Sainte-Palaye, *op. cit.* ii. 75.
[5] Du Cange, *loc. cit.* p. 125 *sq.*
[6] The right of private war generally supposed nobility of birth and equality of rank in both the contending parties (Beaumanoir, *Coutumes du Beauvoisis*, lix. 5 *sq.* vol. ii. 355 *sqq.*; Robertson, *History of the Reign of Charles V.* i. 329). But it was also granted to the French *communes*, and to the free towns in Germany, Italy, and Spain (Du Boys, *Histoire du droit criminel des peuples modernes*, ii. 348).
[7] Du Cange, *loc. cit.* pp. 450, 458.
[8] *Ibid.* p. 445 *sq.* Arnold, *Deutsche Urzeit*, p. 341. von Wächter, *Beiträge zur deutschen Geschichte*, p. 46.
[9] We read of a nobleman who declared war against the city of Frankfort,

a matter of fact, the barons fled to arms upon every quarrel; he who could raise a small force at once made war upon him who had anything to lose. The nations of Europe were subdivided into innumerable subordinate states, which were almost independent, and declared war and made treaties with all the vigour and all the ceremonies of powerful monarchs. Contemporary historians describe the excesses committed in prosecution of these intestine quarrels in such terms as excite astonishment and horror; and great parts of Europe were in consequence reduced to the condition of a desert, which it ceased to be worth while to cultivate.[1]

The Church made some feeble attempts to put an end to this state of things. Thus, about the year 990, ordinances were directed against the practice of private war by several bishops in the south of France, who agreed to exclude him who violated their ordinances from all Christian privileges during his life, and to deny him Christian burial after his death.[2] A little later, men engaged in warfare were exhorted, by sacred relics and by the bodies of saints, to lay down their arms and to swear that they would never again disturb the public peace by their private hostilities.[3] But it is hardly likely that such directions had much effect as long as the bishops and abbots themselves were allowed to wage private war by means of their vidames, and exercised this right scarcely less frequently than the barons.[4] Nor does it seem that

because a lady residing there had promised to dance with his cousin, but danced with another; and the city was obliged to satisfy the wounded honour of the gentleman (von Wächter, *op. cit.* p. 57).

[1] Robertson, *op. cit.* i. 332.

[2] 'Charta de Treuga et Pace per Aniciensem Praesulem Widonem in Congregatione quamplurium Episcoporum, Principium, et Nobilium hujus Terrae sancita,' in Dumont, *Corps universel diplomatique du droit des gens*, i. 41.

[3] Raoul Glaber, *Historiæ sui temporis*, iv. 5 (Bouquet, *Rerum Gallicarum et Francicarum Scriptores*, x. 49). Robertson, *op. cit.* i. 335.

[4] Brussel, *Nouvel examen de l'usage général des fiefs en France*, i. 144. How much the prelates were infected by the general spirit of the age, appears from a characteristic story of an archbishop of Cologne who gave to one of his vassals a castle situated on a sterile rock. When the vassal objected that he could not subsist on such a soil, the archbishop answered, "Why do you complain? Four roads unite under the walls of your castle" (Du Boys, *Histoire du droit criminel de l'Espagne*, p. 504).

the Church brought about any considerable change for the better by establishing the Truce of God, involving obligatory respite from hostilities during the great festivals of the Church, as also from the evening of Wednesday in each week to the morning of Monday in the week ensuing.[1] We are assured by good authorities that the Truce was generally disregarded, though the violator was threatened with the penalty of excommunication.[2] Most barons could probably say with Bertram de Born:—"La paix ne me convient pas; la guerre seule me plaît. Je n'ai égard ni aux lundis, ni aux mardis. Les semaines, les mois, les années, tout m'est égal. En tout temps, je veux perdre quiconque me nuit."[3] The ordinance enjoining the *treuga Dei* was transgressed even by the popes.[4] It was too unpractical a direction to be obeyed, and was soon given up even in theory by the authorities of the Church. Thomas Aquinas says that, as physicians may lawfully apply remedies to men on feast-days, so just wars may be lawfully prosecuted on such days for the defence of the commonwealth of the faithful, if necessity so requires; "for it would be tempting God for a man to want to keep his hands from war under stress of such necessity."[5] And in support of this opinion he quotes the First Book of the Maccabees, where it is said, "Whosoever shall come to make battle with us on the sabbath day, we will fight against him."[6]

It seems that the main cause of the abolition of private war was not any measure taken by the Church, but the increase of the authority of emperors or kings. In France the right of waging private war was moderated by Louis IX., checked by Philip IV., suppressed by

[1] Raoul Glaber, *op. cit.* v. 1 (*loc. cit.* p. 59). Du Cange, *Glossarium ad scriptores mediæ et infimæ Latinitatis*, vi. 1267 *sq.* Henault, *Nouvel abrégé chronologique de l'histoire de France*, p. 106.

[2] Du Cange, *Glossarium*, vi. 1272. Nys, *Droit de la guerre et les précurseurs de Grotius*, p. 114.

[3] Villemain, *Cours de littérature française, Littérature du Moyen Age*, i. 122 *sq.*

[4] Belli, *De re militari*, quoted by Nys, *op. cit.* p. 115.

[5] Thomas Aquinas, *op. cit.* ii.-ii. 40. 4.

[6] *Maccabees*, ii. 41.

Charles VI.[1] In England, after the Norman Conquest, private wars seem to have occurred more rarely than on the Continent, probably owing to the strength of the royal authority, which made the execution of justice more vigorous and the jurisdiction of the King's court more extensive than was the case in most other countries.[2] In Scotland the practice of private war received its final blow only late in the eighteenth century, when the clans were reduced to order after the rebellion of 1745.[3] Whilst, then, it is impossible to ascribe to the Church any considerable part in the movement which ultimately led to the entire abolition of private war, we have, on the other hand, to take into account the encouragement which the Church gave to the warlike spirit of the time by the establishment of Chivalry[4] and by sanctioning war as a divine institution. War came to be looked upon as a judgment of God and the victory as a sign of his special favour. Before a battle, the service of mass was usually performed by both armies in the presence of each other, and no warrior would fight without secrētly breathing a prayer.[5] Pope Adrian IV. says that a war commenced under the auspices of religion cannot but be fortunate;[6] and it was commonly believed that God took no less interest in the battle than did the fighting warriors. Bonet, who wrote in the fourteenth century, puts to himself the question, why there are so many wars in the world, and gives the answer, "que toutes sont pour le pechié du siecle dont nostre seigneur Dieu pour le pugnir permet les guerres, car ainsi le maintient l'escripture."[7]

Similar opinions have retained their place in the orthodox creeds both of the Catholic and Protestant

[1] Robertson, *op. cit.* i. 55, 56, 338 *sqq.* Hallam, *View of the State of Europe during the Middle Ages*, i. 207. Brussel, *op. cit.* i. 142.

[2] *Ibid.* i. 343 *sq.* Prof. Freeman (*Comparative Politics*, p. 328 *sq.*) mentions as the last instance of private war in England one from the time of Edward IV.

[3] Lawrence, *Essays on some Disputed Questions in Modern International Law*, p. 254 *sq.*

[4] I do not understand how M. Gautier can say (*op. cit.* p. 6) that Chivalry was the most beautiful of those means by which the Church endeavoured to check war.

[5] Mills, *History of Chivalry*, i. 147.

[6] Laurent, *op. cit.* vii. 245.

[7] Bonet, *op. cit.* iv. 54, p. 150.

Churches up to the present day. The attitude adopted by the great Christian congregations towards war has been, and is still, to a considerable degree, that of sympathetic approval. The Catechism of the Council of Trent brings home that there are on record instances of slaughter executed by the special command of God Himself, as when the sons of Levi, who put to death so many thousands in one day, after the slaughter were thus addressed by Moses, "Ye have consecrated your hands this day to the Lord."[1] Even quite modern Catholic writers refer to the canonists who held that a State might lawfully make war upon a heretic people which was spreading heresy, and upon a pagan people which prevented the preaching of the Gospel.[2] Again, when the Protestant Churches became State-Churches, their ministers, considering themselves as in the service of the State, were ready to champion whatever war the Government pleased to undertake. As Mr. Gibb observes, the Protestant minister was as ready with his Thanksgiving Sermon for the victories of a profligate war, as the Catholic priest was with his *Te Deum;* "indeed, the latter was probably the more independent of the two, because of his allegiance to Rome."[3] The new Confessions of Faith explicitly claimed for the State the right of waging war, and the Anabaptists were condemned because they considered war unlawful for a Christian.[4] Even the necessity of a just cause as a reason for taking part in warfare, which was reasserted at the time of the Reformation, was subsequently allowed to drop out of sight. Mr. Farrer calls attention to the fact that in the 37th article of the English Church, which is to the effect that a Christian at the command of the magistrate may wear weapons and serve in wars, the word *justa* in the Latin form preceding the word *bella* has been omitted altogether.[5]

[1] *Catechism of the Council of Trent*, iii. 6. 5.

[2] Adds and Arnold, *Catholic Dictionary*, p. 944.

[3] Gibb, *loc. cit.* p. 90.

[4] *Augsburg Confession*, i. 16. *Second Helvetic Confession*, xxx. 4.

[5] Farrer, *Military Manners and Customs*, p. 208.

Nor did the old opinion that war is a providential institution and a judgment of God die with the Middle Ages. Lord Bacon looks upon wars as "the highest trials of right; when princes and states that acknowledge no superior upon earth shall put themselves upon the justice of God, for the deciding of their controversies by such success as it shall please Him to give on either side."[1] Réal de Curban says that a war is seldom successful unless it be just, hence the victor may presume that God is on his side.[2] According to Jeremy Taylor, "kings are in the place of God, who strikes whole nations, and towns, and villages; and war is the rod of God in the hands of princes."[3] And it is not only looked upon as an instrument of divine justice, but it is also said, generally, "to work out the noble purposes of God."[4] Its tendency, as a theological writer assures us, is "to rectify and exalt the popular conception of God," there being nothing among men "like the smell of gunpowder for making a nation perceive the fragrance of divinity in truth."[5] By war the different countries "have been opened up to the advance of true religion."[6] "No people ever did, or ever could, feel the power of Christian principle growing up like an inspiration through the national manhood, until the worth of it had been thundered on the battle-field."[7] War is, "when God sends it, a means of grace and of national renovation"; it is "a solemn duty in which usually only the best Christians and most trustworthy men should be commissioned to hold the sword."[8] According to M. Proudhon, it is the most sublime phenomenon of our moral life,[9] a divine revelation more authoritative than the Gospel itself.[10] The warlike people is the religious people;[11] war is the sign of

[1] Bacon, *Letters and Life*, i. (*Works*, viii.), 146.
[2] Réal de Curban, *La science du gouvernement*, v. 394 *sq.*
[3] Taylor, *Whole Works*, xii. 164.
[4] 'The Sword and Christianity,' in *Boston Review devoted to Theology and Literature*, iii. 261.
[5] *Ibid.* iii. 259, 257.
[6] Holland, *Time of War*, p. 14.
[7] *Boston Review*, iii. 257.
[8] 'Christianity and War,' in *Christian Review*, xxvi. 604.
[9] Proudhon, *La guerre et la paix*, ii. 420.
[10] *Ibid.* i. 62; ii. 435.
[11] *Ibid.* i. 45.

human grandeur, peace a thing for beavers and sheep. "Philanthrope, vous parlez d'abolir la guerre ; prenez garde de dégrader le genre humain." [1]

In order to prove the consistency of war with Christianity appeals are still, as in former days, made to the Bible; to the divinely-sanctioned example of the ancient Israelites, to the fact that Jesus never prohibited those around Him from bearing arms, to the instances of the centurions mentioned in the Gospel, to St. Paul's predilection for taking his spiritual metaphors from the profession of the soldier, and so on.[2] According to Canon Mozley, the Christian recognition of the right of war was contained in Christianity's original recognition of nations.[3] "By a fortunate necessity," a universal empire is impossible.[4] Each nation is a centre by itself, and when questions of right and justice arise between these independent centres, they cannot be decided except by mutual agreement or force. The aim of the nation going to war is exactly the same as that of the individual in entering a court, and the Church, which has no authority to decide which is the right side, cannot but stand neutral and contemplate war forensically, as a mode of settling national questions, which is justified by the want of any other mode.[5] A natural justice, Canon Mozley adds, is inherent not only in wars of self-defence; there is an instinctive reaching in nations and masses of people after alteration and readjustment, which has justice in it, and which arises from real needs. The arrangement does not suit as it stands, there is want of adaptation, there is confinement and pressure; there are people kept away from each other that are made to be together, and parts separated that were made to join. All this uneasiness in States naturally leads to war. Moreover, there are wars of progress which, so far as they are really necessary for the due advantage of mankind and

[1] *Ibid.* i. 43.

[2] See *e.g.*, Browne, *Exposition of the Thirty-Nine Articles*, p. 827 *sq.*; *Christian Review*, xxvi. 603 *sq.*; *Eclectic Magazine*, xiii. 372.

[3] Mozley, 'On War,' in *Sermons preached before the University of Oxford*, p. 119.

[4] *Ibid.* p. 112.

[5] *Ibid.* p. 100 *sqq.*

growth of society, are approved of by Christianity, though they do not strictly belong to the head of wars undertaken in self-defence.[1] A doctrine which thus, in the name of religion, allows the waging of wars for rectifying the political distribution of nationalities and races, and forwarding the so-called progress of the world, naturally lends itself to the justification of almost any war entered upon by a Christian State.[2] As a matter of fact, it would be impossible to find a single instance of a war waged by a Protestant country, from any motive, to which the bulk of its clergy have not given their sanction and support. The opposition against war has generally come from other quarters.

There have been, and still are, Christian sects which, on religious grounds, condemn war of any kind. In the fourteenth century the Lollards taught that homicide in war is expressly contrary to the New Testament; they were persecuted partly on that account.[3] Of the same opinion were the Anabaptists of the sixteenth century; and they could claim on their side the words of men like Colet and Erasmus. From the pulpit of St. Paul's Colet thundered that "an unjust peace is better than the justest war," and that, "when men out of hatred and ambition fight with and destroy one another, they fight under the banner, not of Christ, but of the Devil."[4] According to Erasmus "nothing is more impious, more calamitous, more widely pernicious, more inveterate, more base, or in sum more unworthy of a man, not to say of a Christian," than war. It is worse than brutal; to man no wild beast is more destructive than his fellow-man. When brutes fight, they fight with weapons which nature has given them, whereas we arm ourselves for mutual slaughter with weapons which nature never thought of. Neither do beasts break out

[1] *Ibid.* 104 *sq.*

[2] On the principle of progress, Canon Mozley himself justifies (*ibid.* p. 110 *sq.*) not only the wars undertaken against two Eastern empires which have shut themselves up and excluded themselves from the society of mankind, but "two of the three great European wars of the last dozen years." This was said in 1871.

[3] Perry, *History of the English Church*, First Period, pp. 455, 467.

[4] Green, *History of the English People*, ii. 93.

in hostile rage for trifling causes, but either when hunger drives them to madness, or when they find themselves attacked, or when they are alarmed for the safety of their young. But we, on frivolous pretences, what tragedies do we act on the theatre of war! Under colour of some obsolete and disputable claim to territory; in a childish passion for a mistress; for causes even more ridiculous than these, we kindle the flame of war. Transactions truly hellish, are called holy wars. Bishops and grave divines, decrepit as they are in person, fight from the pulpit the battles of the princes, promising remission of sins to all who will take part in the war of the prince, and exclaiming to the latter that God will fight for him, if he only keeps his mind favourable to the cause of religion. And yet, how could it ever enter into our hearts, that a Christian should imbrue his hands in the blood of a Christian! What is war but murder and theft committed by great numbers on great numbers! Does not the Gospel declare, in decisive words, that we must not revile again those who revile us, that we should do good to those who use us ill, that we should give up the whole of our possessions to those who take a part, that we should pray for those who design to take away our lives? The world has so many learned bishops, so many grey-headed grandees, so many councils and senates, why is not recourse had to their authority, and the childish quarrels of princes settled by their wise and decisive arbitration? "The man who engages in war by choice, that man, whoever he is, is a wicked man; he sins against nature, against God, against man, and is guilty of the most aggravated and complicated impiety."[1] These were the main arguments of reason, humanity, and religion, which Erasmus adduced against war. They could not leave the reformers entirely unaffected. Sir Thomas More charged Luther himself and his disciples with carrying the doctrines of peace to the extreme limits

[1] Erasmus, *Adagia*, iv. 1, col. 893 *sqq.*

of non-resistance.[1] But, as we have noticed, these peaceful tendencies only formed a passing phase in the history of Reformation, and were left to the care of sectarians.

Among these the Quakers are the most important. By virtue of various passages in the Old and the New Testament,[2] they contend that all warfare, whatever be its peculiar features, circumstances, or pretexts, is wholly at variance with the Christian religion. It is always the duty of Christians to obey their Master's high and holy law—to suffer wrong, to return good for evil, to love their enemies. War is also inconsistent with the Christian principle that human life is sacred, and that death is followed by infinite consequences. Since man is destined for eternity, the future welfare of a single individual is of greater importance than the merely temporal prosperity of a whole nation. When cutting short the days of their neighbour and transmitting him, prepared or unprepared, to the awful realities of an everlasting state, Christians take upon themselves a most unwarrantable responsibility, unless such an action is expressly sanctioned by their divine Master, as was the case among the Israelites. In the New Testament there is no such sanction, hence it must be concluded that, under the Christian dispensation, it is utterly unlawful for one man to kill another, under whatever circumstances of expediency or provocation the deed may be committed. And a Christian who fights by the command of his prince, and in behalf of his country, not only commits sin in his own person, but aids and abets the national transgression.[3]

It must be added that views similar to these are also found independently of any particular form of sectarianism. According to Dr. Wayland, all wars, defensive as well as offensive, are contrary to the revealed will of God, aggression from a foreign nation calling not for retaliation and

[1] Farrer, *Military Manners and Customs*, p. 185.

[2] *Isaiah*, ch. ii. *sqq.* *Micah*, iv. 1 *sqq.* *St. Matthew*, v. 38 *sqq.*; xxvi. 52. *St. Luke*, vi. 27 *sqq.* *St. John*, xviii. 36. *Romans*, xii. 19 *sqq.* 1 *Peter*, iii. 9.

[3] Gurney, *Views & Practices of the Society of Friends*, p. 375 *sqq.*

injury, but rather for special kindness and good-will.[1] Theodore Parker, the Congregational minister, looks upon war as a sin, a corrupter of public morals, a practical denial of Christianity, a violation of God's eternal love.[2] W. Stokes, the Baptist, observes that Christianity cannot sanction war, whether offensive or defensive, because war is an "immeasurable evil, by hurling unnumbered myriads of our fellow-men to a premature judgment and endless despair."[3] Moreover, those who compare the state of opinion during the last years with that of former periods, cannot fail to observe a marked progress of a sentiment antagonistic to war in the various sections of the Christian Church.[4] Yet, speaking generally, the orthodox are still of the same opinion as Sir James Turner, who declared that "those who condemn the profession or art of soldiery, smell rank of Anabaptism and Quakery";[5] and war is in our days, as it was in those of Erasmus,[6] so much sanctioned by authority and custom, that it is deemed impious to bear testimony against it. The duties which compulsory military service imposes upon the male population of most Christian countries presuppose that a Christian should have no scruples about taking part in any war waged by the State, and are recognised as binding by the clergy of those countries. With reference to the Church of England, Dr. Thomas Arnold asks, "Did it become a Christian Church to make no other official declaration of its sentiments concerning war, than by saying that Christian men might lawfully engage in it?"[7]

The protest against war which exercised perhaps the widest influence on public opinion came from a school of moralists whose tendencies were not only anti-orthodox, but distinctly hostile to the most essential dogmas of Christian theology. Bayle, in his Dictionary, calls Erasmus' essay

[1] Wayland, *Elements of Moral Science*, pp. 375, 379.
[2] Parker, *Sermon of War*, p. 23.
[3] Stokes, *All War inconsistent with the Christian Religion*, p. 41.
[4] *Cf.* Gibb, *loc. cit.* p. 81.
[5] Turner, *Pallas Armata*, p. 369.
[6] Erasmus, *op. cit.* iv. 1. 1, col. 894.
[7] Arnold, *On the Church*, p. 136.

against war one of the most beautiful dissertations ever written.[1] He observes that the more we consider the inevitable consequences of war, the more we feel disposed to detest those who are the causes of it.[2] Its usual fruits may, indeed, "make those tremble who undertake or advise it, to prevent evils which, perhaps, may never happen and which, at the worst, would often be much less than those which necessarily follow a rupture."[3] To Voltaire war is an "infernal enterprise," the strangest feature of which is that "every chief of the ruffians has his colours consecrated, and solemnly prays to God before he goes to destroy his neighbour."[4] He asks what the Church has done to suppress this crime. Bourdaloue preached against impurity, but what sermon did he ever direct against the murder, rapine, brigandage, and universal rage, which desolate the world? "Miserable physicians of souls, you declaim for five quarters of an hour against the mere pricks of a pin, and say no word on the curse which tears us into a thousand pieces."[5] Voltaire admits that under certain circumstances war is an inevitable curse, but rebukes Montesquieu for saying that natural defence sometimes involves the necessity of attack, when a nation perceives that a longer peace would place another nation in a position to destroy it.[6] Such a war, he observes, is as illegitimate as possible:—"It is to go and kill your neighbour for fear that your neighbour, who does not attack you, should be in a condition to attack you; that is to say, you must run the risk of ruining your country, in the hope of ruining without reason some other country; this is, to be sure, neither fair nor useful."[7] The chief causes which induce men to massacre in all loyalty thousands of their brothers and to expose their own people to the most terrible misery, are the ambitions and

[1] Bayle, *Dictionnaire historique et critique*, vi. 239, art. Erasme.
[2] *Ibid.* ii. 463, art. Artaxata.
[3] *Ibid.* i. 472, art. Alting (Henri).
[4] Voltaire, *Dictionnaire philosophique*, art. Guerre (*Œuvres complètes*, xl. 562).
[5] *Ibid.* p. 564.
[6] Montesquieu, *De l'esprit des lois*, x. 2 (*Œuvres complètes*, p. 256).
[7] Voltaire, *loc. cit.* p. 565.

jealousies of princes and their ministers.[1] Similar views are expressed in the great Encyclopédie:—"La guerre est le plus terrible des fléaux qui détruisent l'espèce humaine: elle n'épargne pas même les vainqueurs; la plus heureuse est funeste. . . . Ce ne sont plus aujourd'hui les peuples qui déclarent la guerre, c'est la cupidité des rois qui leur fait prendre les armes; c'est l'indigence qui les met aux mains de leurs sujets."[2]

However vehemently Voltaire and the Encyclopedists condemned war, they did not dream of a time when all wars would cease. Other writers were more optimistic. Already in 1713 Abbé Saint-Pierre—whose abbotship involved only a nominal connection with the Church—had published a project of perpetual peace, which was based on the idea of a general confederation of European nations.[3] This project was much laughed at; Voltaire himself calls its author "un homme moitié philosophe, moitié fou." But once called into being, the idea of a perpetual peace and of a European confederation did not die. It was successively conceived by Rousseau,[4] Bentham,[5] and Kant.[6] But on the other hand it met with a formidable enemy in the awakening spirit of nationalism.

The Napoleonic oppression called forth resistance. Philosophers and poets sounded the war trumpet. The dream of a universal monarchy was looked upon as absurd and hateful, and the individuality of a nation as the only possible security for its virtue.[7] War was no longer attributed to the pretended interests of princes or to the caprices of their advisers. It was praised as a vehicle of the highest right,[8] as a source of national renovation.[9]

[1] *Ibid.* pp. 466, 564. For Voltaire's condemnation of war, see Morley, *Voltaire*, p. 311 *sqq.* I have availed myself of Lord Morley's translation of some of the passages quoted.

[2] *Encyclopédie méthodique*, Art militaire, ii. 618 *sq.*

[3] Saint-Pierre, *Projet de Traité pour rendre la paix perpétuelle entre les souverains Chrétiens.*

[4] Rousseau, *Extrait du Projet de paix perpétuelle, de M. l'Abbé de Saint-Pierre* (*Œuvres complètes*, i. 606 *sqq.*).

[5] Bentham, *A Plan for an universal and perpetual Peace* (*Works*, ii. 546 *sqq.*).

[6] Kant, *Zum ewigen Frieden.*

[7] Fichte, *Reden an die deutsche Nation. Cf. Idem, Ueber den Begriff des wahrhaften Krieges.*

[8] Arndt, quoted by Jahns, *Krieg, Frieden und Kultur*, p. 302.

[9] Anselm von Feuerbach, *Unterdrückung und Wiederbefreiung Europens.*

By war, says Hegel, "finite pursuits are rendered unstable, and the ethical health of peoples is preserved. Just as the movement of the ocean prevents the corruption which would be the result of perpetual calm, so by war people escape the corruption which would be occasioned by a continuous or eternal peace."[1] Similar views have been expressed by later writers. War is glorified as a stimulus to the elevated virtues of courage, disinterestedness, and patriotism.[2] It has done more great things in the world than the love of man, says Nietzsche.[3] It is the mother of art and of all civil virtues, says Mr. Ruskin.[4] Others defend war, not as a positive good, but as a necessary means of deciding the most serious international controversies, denying that arbitration can be a substitute for all kinds of war. Questions which are intimately connected with national passions and national aspirations, and questions which are vital to a nation's safety, will never, they say, be left to arbitration. Each State must be the guardian of its own security, and cannot allow its independence to be calmly discussed and adjudicated upon by an external tribunal.[5] Moreover, arbitration would prove effective only where the contradictory pretensions could be juridically formulated, and these instances are by far the less numerous and the less important.[6] And would it not, in many cases, be impossible to find impartial arbiters? Would not arbitration often be influenced by a calculation of the forces which every power interested could bring into the field, and would not war be resorted to where arbitration failed to reconcile conflicting interests, or where a decision was opposed to a high-spirited people's sense of justice? These and similar arguments are constantly adduced against the idea of a perpetual peace. But at the same time the opponents of war are becoming more nume-

[1] Hegel, *Grundlinien der Philosophie des Rechts*, § 324, p. 317 (English translation, p. 331).

[2] See, *e.g.*, Mabille, *La Guerre*, p. 139.

[3] Nietzsche, *Also sprach Zarathustra*, i. 63.

[4] Ruskin, *Crown of Wild Olive*, Lecture on War (*Works*, vi. 99, 105).

[5] Lawrence, *op. cit.* p. 275 *sq.* Sidgwick, 'Morality of Strife,' in *International Journal of Ethics*, i. 13.

[6] Geffken, quoted by Jähns, *op. cit.* p. 352, n. 2.

rous and more confident every day. Already after the fall of Napoleon, when there was a universal longing for peace in the civilised world, the first Peace Societies were formed;[1] and the idea of Saint-Pierre, from being the dream of a philosopher, has become the object of a popular movement which is rapidly increasing in importance. There is every reason to believe that, when the present high tide of nationalism has subsided, and the subject of war and peace is no longer looked upon from an exclusively national point of view, the objections which are now raised against arbitration will at last appear almost as futile as any arguments in favour of private war or blood-revenge. There is an inveterate tendency in the human mind to assume that existing conditions will remain unchanged. But the history of civilisation shows how unfounded any such assumption is with reference to those conditions which determine social relationships and the extent of moral rights and duties.

It is said that, though Christianity has not abolished war, it has nevertheless, even in war, asserted the principle that human life is sacred by prohibiting all needless destruction. The Canon, 'De treuga et pace,' laid down the rule that non-resisting persons should be spared;[2] and Franciscus a Victoria maintained not only that between Christian enemies those who made no resistance could not lawfully be slain,[3] but that even in war against the Turks it was wrong to kill children and women.[4] However, this doctrine of mercy was far in advance of the habits and general opinion of the time.[5] If the simple peasant was often spared, that was largely from motives of prudence,[6] or because the valiant knight considered him unworthy of the lance.[7] As late as the seventeenth century, Grotius was certainly not supported by the spirit of the age when he argued that, "if justice

[1] Jähns, *op. cit.* p. 307 *sq.*
[2] Gregory IX. *Decretales*, i. 34. 2.
[3] Franciscus a Victoria, *op. cit.* vi. 13, 35, 48; pp. 232, 241, 246 *sq.*
[4] *Ibid.* vi. 36, p. 241.
[5] *Cf.* Hall, *Treatise on International Law*, p. 395, n. 1.
[6] d'Argentré, *L'histoire de Bretagne*, p. 391.
[7] Mills, *op. cit.* p. 132.

do not require, at least mercy does, that we should not, except for weighty causes tending to the safety of many, undertake anything which may involve innocent persons in destruction";[1] or when he recommended enemies willing to surrender on fair conditions, or unconditionally, to be spared.[2] Afterwards, however, opinion changed rapidly. Pufendorf, in echoing the doctrine of Grotius,[3] spoke to a world which was already convinced; and in the eighteenth century Bynkershoek stands alone in giving to a belligerent unlimited rights of violence.[4] In reference to the assumption that this change of opinion is due to the influence of the Christian religion, it is instructive to note that Grotius, in support of his doctrine, appealed chiefly to pagan authorities, and that even savage peoples, without the aid of Christianity, have arrived at the rule which in war forbids the destruction of helpless persons and captives.

The prevailing attitude towards war indicates the survival, in modern civilisation, of the old feeling that the life of a foreigner is not equally sacred with the life of a countryman. In times of peace this feeling is usually suppressed; it appears in no existing law on homicide, nor does it, generally, find expression in public opinion. It dares to disclose itself only in the form of national aggressiveness, under the flag of patriotism, or, perhaps, in the treatment of the aborigines of some distant country. The behaviour of European colonists towards coloured races only too often reminds us of the manner in which savages treat members of a foreign tribe. It was said that the frontier peasants at the Cape found nothing morally wrong in the razzias which they undertook against the Bushmans, without any provocation whatsoever, though they would consider it a heinous sin to do the same to their Christian fellow-men.[5] In Aus-

[1] Grotius, *op. cit.* iii. 11. 8.
[2] *Ibid.* iii. 11. 14 *sqq.*
[3] Pufendorf, *De jure naturæ et gentium*, viii. 6. 8, p. 885.
[4] van Bynkershoek, *Questiones juris publici*, i. 1, p. 3: "Omnis enim vis in bello justa est." Hall, *Treatise on International Law*, p. 395, n. 1.
[5] Waitz, *Introduction to Anthropology*, p. 314.

tralia there are instances reported of young colonists employing the Sunday in shooting blacks for the sake of sport. "The life of a native," says Mr. Lumholtz, "has but little value, particularly in the northern part of Australia, and once or twice colonists offered to shoot blacks for me so that I might get their skulls. On the borders of civilisation men would think as little of shooting a black man as a dog. The law imposes death by hanging as the penalty for murdering a black man, but people live so far apart in these uncivilised regions that a white man may in fact do what he pleases with the blacks. . . . In the courts the blacks are defenceless, for their testimony is not accepted. The jury is not likely to declare a white man guilty of murdering a black man. On the other hand if a white man happens to be killed by the blacks, a cry is heard throughout the whole colony."[1]

[1] Lumholtz, *Among Cannibals*, p. 346 *sqq*. See also Mathew, in *Jour. & Proceed. Roy. Soc. N. S. Wales*, xxiii. 390; Breton, *Excursions in New South Wales*, p. 200 *sq*.; Stokes, *Discoveries in Australia*, ii. 459 *sqq*.

CHAPTER XVI

HOMICIDE IN GENERAL (*concluded*)

In the last two chapters we have only been concerned with the statement of facts; we shall now make an attempt to explain those facts. What is the source of the moral commandment, "Thou shalt not kill"? And what is the cause of its original narrowness and of its subsequent extension?

Mr. Spencer suggests that the taking of life was regarded as a wrong done to the family of the dead man or to the society of which he was a member, before it came to be conceived of as a wrong done to the murdered man himself.[1] But considering the mutual sympathy which prevails in small savage communities, it seems extremely probable that sympathetic resentment felt on account of the injury suffered by the victim has from the beginning been a potent cause of the condemnation of homicide. Savages, no less than civilised mankind, practically regard a man's life as his highest good. Whatever opinions may be held about the existence after death, whatever blessings may be supposed to await the disembodied soul, nobody likes to be hurried into that existence by another's will. According to early beliefs, the soul of a murdered man is furious with the person who slew him, and finds no rest until his death has been avenged.[2] His friends and comrades pity his fate and

[1] Spencer. *Principles of Ethics*, ii. [2] See *infra*, on Blood-revenge.

feel resentment on his behalf; whereas, in a state of culture where sympathy is restricted to a narrow group of people, no such resentment will be felt if the victim is a member of another group. On the contrary, when he is regarded as an actual or potential enemy, or when the slaying of him is taken for a test of courage, the man-slayer will be applauded by his own people, and his deed will be styled good or meritorious. In some cases superstition, also, is an encouragement to extra-tribal homicide. The Kukis believe that, in paradise, all the enemies whom a man has killed will be in attendance on him as slaves.[1] A similar belief partly lies at the bottom of the custom of head-hunting;[2] whilst, according to other notions, the soul of the man whose head is procured is transformed into a guardian spirit.[3] A Kayan chief said of the custom in question, "It brings us blessings, plentiful harvests, and keeps off sickness and pains; those who were once our enemies, hereby become our guardians, our friends, our benefactors."[4] Now, progress in civilisation is generally marked by an expansion of the altruistic sentiment; and this largely explains why the prohibition of homicide has come to embrace more and more comprehensive circles of men, and finally, in the most advanced cases, the whole human race.

But whilst homicide is censured as a wrong done to the person slain, it is at the same time viewed as an injury inflicted upon the survivors. It deprived his friends of his company, his family and community of a useful member. In Arabia, when a man was killed, his tribesmen, instead of mentioning his name, used to say, "Our blood has been spilt."[5] According to Lafitau, the loss of a single person seemed to the North American Indians a subject of great regret, because it weakened the family.[6]

[1] Dalton, *Descriptive Ethnology of Bengal*, p. 46.
[2] Ling Roth, *Natives of Sarawak*, ii. 141. Haddon, *Head-Hunters*, p. 394.
[3] Wilken, *Het animisme bij de volken van den Indischen Archipel*, p. 124.
[4] Furness, *Home-Life of Borneo Head-Hunters*, p. 59.
[5] Robertson Smith, *Marriage and Kinship in Early Arabia*, p. 26.
[6] Lafitau, *Mœurs des sauvages ameriquains*, ii. 163.

Among the Basutos, again, murder is condemned "as a violation of the sacred rights of a father, who is deprived of the services of his son, or of a widow and orphans, who are left without support." [1] Especially when a person is considered more or less the property of another, the taking of his life is largely looked upon as an offence against the owner. Mr. Warner states of the Kafirs, "All homicide must . . . be atoned for; the principle assumed being, that the persons of individuals are the property of the Chief, and that having been deprived of the life of a subject, he must be compensated for it." [2] We meet with a somewhat similar notion in the history of English legislation. In his book on the Commonwealth of England, Thomas Smith observes, "Attempting to impoison a man, or laying a waite to kill a man, though hee wound him dangerously, yet if death follow not, it is no fellony by the law of England, for the Prince hath lost no man, and life ought to be giuen we say for life only." [3] In the Middle Ages homicide was conceived as a breach of the "King's peace"; and both before and afterwards it has been stigmatised as a disturbance of public tranquillity and an outrage on public safety. In the Anglo-Saxon *wer* and *wite* we find a clear distinction between the private and public aspects of homicide.[4]

A manslayer not only causes a loss to the group which he deprives of a member, but he also may give trouble to his own people, who, in consequence, disapprove of his act. Among the Yahgans of Tierra del Fuego, says Mr. Bridges, "many things conspire to make the shedding of blood a fearful thing. A murderer imperils all his friends and connections more or less, and consequently estranges them from himself. This state of things is the greatest safeguard to human life we can conceive." [5] Among the Káfirs of the Hindu-Kush, "the mere killing of an

[1] Casalis, *Basutos*, p. 224 *sq.*
[2] Warner, in Maclean, *Compendium of Kafir Laws*, p. 60 *sq.*
[3] Thomas Smith, *Common-wealth of England*, p. 194 *sq.*
[4] *Cf.* Pollock and Maitland, *History of English Law before the Time of Edward I.* i. 48.
[5] Bridges, in *South American Missionary Magazine*, xiii. 153.

individual is looked upon as a small affair, provided that he does not belong to the tribe, or to another near tribe with which it is at peace, for in the latter case it might result in war."[1]

We have still to notice the common idea that a man-slayer is unclean. The ghost of the victim persecutes him, or actually cleaves to him like a miasma; and he must undergo rites of purification to get rid of the infection. Until this is done, he is among many peoples regarded as a source of danger, and is consequently cut off from free intercourse with his fellows.

Among the Ponka Indians Mr. Dorsey found the belief that a murderer is surrounded by the ghosts, who keep up a constant whistling; that he can never satisfy his hunger, though he eat much food; and that he must not be allowed to roam at large lest high winds arise.[2] Of the warriors among certain North American Indians Adair wrote that, "as they reckon they are become impure by shedding human blood," they hasten to observe a fast of three days.[3] Among the Natchez, according to Charlevoix, "those who for the first time have made a prisoner or taken off a scalp, must, for a month, abstain from seeing their wives, and from eating flesh. They imagine, that if they should fail in this, the souls of those whom they have killed or burnt, would effect their death, or that the first wound they should receive would be mortal; or at least, that they should never gain any advantage over their enemies."[4] The Kafirs and Bechuanas practise various ceremonies of purification after their fights.[5] The Basutos say, "Human blood is heavy, it prevents him who has shed it from running away."[6] They consider it necessary that, on return from battle, "the warriors should rid themselves, as soon as possible, of the blood they have shed, or the shades of their victims would pursue them incessantly and disturb their slumbers"; hence they go in full armour to the nearest stream, and, as a rule, at the moment they enter the water a diviner, placed

[1] Scott Robertson, *Káfirs of the Hindu-Kush*, p. 194.

[2] Dorsey, 'Siouan Cults,' in *Ann. Rep. Bur. Ethn.* xi. 420.

[3] Adair, *History of the American Indians*, p. 388.

[4] Charlevoix, *Voyage to North America*, ii. 203.

[5] Arbousset and Daumas, *Exploratory Tour to the Colony of the Cape of Good Hope*, p. 394 *sqq.* Alberti, *De Kaffers aan de Zuidkust van Afrika*, p. 104.

[6] Casalis, *op. cit.* p. 309.

higher up, throws some purifying substances into the current.[1] Among the Bantu Kavirondo, "when a man has killed an enemy in warfare he shaves his head on his return home, and his friends rub 'medicine' (generally the dung of goats) over his body to prevent the spirit of the deceased from worrying the man by whom he has been slain."[2] Among the Ja-luo, a warrior who has slain an enemy not only shaves his hair, but, after entering the village, prepares a big feast to propitiate the man he has killed so that his ghost may not give trouble.[3] Among the Wagogo of German East Africa, the father of a young warrior who has shed blood gives to his son a goat "to clean his sword."[4] After the slaughter of the Midianites, those Israelites who had killed any one, or touched the slain, had to remain outside the camp for seven days, purifying themselves and everything in their possession either by water, or fire, or both.[5] So, also, if a person had been slain in the land of Israel, and the perpetrator of the deed could not be detected, the elders of the city which was next unto the slain had to undergo a ceremony of purification in order to rid the city of "the guilt of innocent blood."[6] According to the Laws of Manu, a person who has unintentionally killed a Brâhmana shall make a hut in the forest and dwell in it during twelve years;[7] in order to remove the guilt he shall throw himself thrice headlong into a blazing fire,[8] or walk against the stream along the whole course of the river Sarasvatî,[9] or shave off all his hair.[10] The ancient Greeks believed that one who had suffered a violent end, when newly dead, was angry with the author of his death.[11] The blood-guilty individual, as though infected with a miasma, shunned all contact and conversation with other people, and avoided entering their dwellings.[12] Even the involuntary man-slayer had to leave the country for some time; according to Plato's 'Laws,' he "must go out of the way of his victim for the entire period of a year, and not let himself be found in any spot which was familiar to him throughout the country."[13]

[1] *Ibid.* p. 258.
[2] Johnston, *Uganda Protectorate*, ii. 743 *sq.*
[3] *Ibid.* ii. 794.
[4] Cole, 'Notes on the Wagogo of German East Africa,' in *Jour. Anthr. Inst.* xxxii. 321.
[5] *Numbers*, xxxi. 19 *sqq.*
[6] *Deuteronomy*, xxi. 1 *sqq.*
[7] *Laws of Manu*, xi. 73.
[8] *Ibid.* xi. 74.
[9] *Ibid.* xi. 78.
[10] *Ibid.* xi. 79.
[11] Plato, *Leges*, ix. 865.
[12] Müller, *Dissertations on the Eumenides of Æschylus*, p. 103. Aeschylus says (*Eumenides*, 448 *sqq.*) it is the custom that a murderer should not speak anything until he has been sprinkled with the spurted blood of a slain sucking-pig. *Cf.* Apollonius Rhodius, *Argonautica*, iv. 700 *sqq.*; Aristotle, *De republica Atheniensium*, 57.
[13] Plato, *Leges*, ix. 865.

Nor must he return to his land until sacrifice had been offered and ceremonies of purification performed.[1]

The state of uncleanness incurred by the shedding of human blood does not intrinsically involve moral guilt. As appears from many of the instances just referred to, it results not only from the murder of a tribesman, but from so meritorious a deed as the slaying of a foe. In Nukahiva, for instance, a man who has killed the highest person, or one of the highest, among the enemy, is tabooed for ten days, during which he is not allowed to hold intercourse with his wife nor to meddle with fire; but, at the same time, he is treated with distinction, and presents of pigs are brought to him.[2] On the other hand, there can be no doubt that in various cases the polluting effect attributed to manslaughter has exercised some influence upon the moral judgment of the act. Whenever the commission of an act of homicide has any tendency at all to call forth moral blame, the disapproval of the deed will easily be enhanced by the spiritual danger attending on it, as also by the inconvenient restrictions laid on the tabooed manslayer and the ceremonies of purification to which he is subject. The deprivations which he has to undergo come to be looked upon in the light of a punishment, and the rights of cleansing as a means of removing guilt. The taboo rules which, among the Omahas, a murderer whose life was spared had to observe for a period varying from two to four years are spoken of by Mr. Dorsey as his "punishment," and this seems also partly to have been the native point of view. The murderer sometimes wandered at night, crying, and lamenting his offence, until, at the end of the designated period, the kindred of his victim heard his crying, and said:—"It is enough. Begone, and walk among the crowd.

[1] Demosthenes, *Contra Aristocratem*, 71 *sqq.*, p. 643 *sq.* Müller, *Dissertations*, p. 106 *sq.* Frazer, *Golden Bough*, i. 341. On the uncleanness of manslayers see also Tylor, *Primitive Culture*, ii. 433 *sq.*; Frazer, *op. cit.* i. 331 *sqq.*

[2] von Langsdorf, *Voyages and Travels*, i. 133.

Put on moccasins and wear a good robe."[1] Moreover, the notion of a persecuting ghost may be replaced by the notion of an avenging god. Confusions are common in the world of mystery; doings or functions attributed to one being are afterwards transferred to another—this is a rule of which many important examples will be given in following chapters. The Jbâla of Northern Morocco do not nowadays believe in ghosts, yet they regard a person who has shed human blood to be in some degree unclean for the rest of his life. Poison oozes out from underneath his nails; hence anybody who drinks the water in which he has washed his hands will fall dangerously ill. The meat of an animal which he has killed is difficult to digest, and so is any food eaten in his company. If he comes to a place where people are digging a well, the water will at once run away. He is said to be *mejnûn*, haunted by *jnûn* (*jinn*), a race of beings entirely distinct from men, living or dead. The Greenlanders believed that an abortion or a child born under concealment was transformed into an evil spirit called *angiaq*, for the purpose of avenging the crime.[2] In Eastern Central Africa, "after killing a slave, the master is afraid of *Chilope*. This means that he will become emaciated, lose his eyesight, and ultimately die a miserable death. He therefore goes to his chief and gives him a certain fee (in cloth, or slaves, or such legal tenders), and says, 'Get me a charm (*luasi*), because I have slain a man.' When he has used this charm, which may be either drunk or administered in a bath, the danger passes away."[3] Among the Omahas the ghost of the murdered man was not lost sight of; the murderer "was obliged to pitch his tent about a quarter of a mile from the rest of the tribe when they were going on the hunt lest the ghost of his victim should raise a high wind, which might cause damage." But at the same time his deed was considered offensive to

[1] Dorsey, 'Omaha Sociology,' in *Ann. Rep. Bur. Ethn.* iii. 369.

[2] Rink, *Tales and Traditions of the Eskimo*, pp. 45, 439 *sq.*

[3] Macdonald, *Africana*, i. 168.

Wakanda; no one wished to eat with him, for they said, "If we eat with whom Wakanda hates, for his crime, Wakanda will hate us."[1] In the Chinese books there are numerous instances of persons haunted by the souls of their victims on their death-bed, and in most of these cases the ghosts state expressly that they are avenging themselves with the special authorisation of Heaven.[2] The Greek belief in the Erinys of a murdered man no doubt originated in the earlier notion of a persecuting ghost, whose anger or curses in later times were personified as an independent spirit.[3] And the transformation went further still: the Erinyes were represented as the ministers of Zeus, who by punishing the murderer carried out his divine will. Zeus was considered the originator of the rites of purification; when visited with madness by the Erinyes, Ixion appealed to Zeus Hikesios, and at the altar of Zeus Meilichios Theseus underwent purification for the shedding of kindred blood.[4] Originally, as it seems, only the murder of a kinsman was an offence against Zeus and under the ban of the Erinyes, but later on their sphere of action was expanded, and all bloodshed, if the victim had any rights at all within the city, became a sin which needed purification.[5] Uncleanness was thus transformed into spiritual impurity. When the pollution with which a manslayer is tainted is regarded as merely the work of a ghost or of some spirit-substitute who, like the Moorish *jnûn*, has nothing to do with the administration of justice, it may be devoid of all moral significance in spite of the dread it inspires; but the case is different when it comes to be conceived of as a divine punishment, or as a sin-pollution in the eyes of the supreme god. Such a transformation of ideas could hardly take place

[1] Dorsey, 'Omaha Sociology,' in *Ann. Rep. Bur. Ethn.* iii. 369.

[2] de Groot, *Religious System of China*, (vol. iv. book) ii. 441.

[3] See Müller, *Dissertations*, p. 155 *sqq.*; Rohde, *Psyche*, p. 247; *Idem*, 'Paralipomena,' in *Rheinisches Museum für Philologie*, 1895, p. 6 *sqq.*

[4] Farnell, *Cults of the Greek States*, i. 66 *sqq.* Rohde, *Psyche*, p. 249. *Idem*, in *Rheinisches Museum*, 1895, p. 18. Stengel, *Die griechischen Kultusaltertümer*, p. 140.

[5] Farnell, *op. cit.* i. 68, 71. Rohde, *Psyche*, p. 247.

unless the act, considered polluting, were by itself apt to evoke moral disapproval. But it is obvious that the gravity of the offence is increased by the religious aspect it assumes.

In yet another way the defiling effect attributed to the taking of human life has had an influence on religious and moral ideas. Such defilement is shunned not only by men, but, in a still higher degree, by gods. The shedding of human blood is commonly prohibited in sacred places. "In almost every Indian nation," says Adair, "there are several peaceable towns, which are called 'old-beloved,' 'ancient, holy, or white towns'; they seem to have been formerly 'towns of refuge,' for it is not in the memory of their oldest people, that ever human blood was shed in them; although they often force persons from thence, and put them to death elsewhere."[1] The Aricaras of the Missouri, according to Bradbury, have in the centre of the largest village a sacred lodge called the "medicine lodge," which, "in one particular corresponds with the sanctuary of the Jews, as no blood is on any account whatsoever to be spilled within it, not even that of an enemy."[2] At Athens the prosecution for homicide began with debarring the criminal from all sanctuaries and assemblies consecrated by religious observances.[3] According to Greek ideas, purification was an essential preliminary to an acceptable sacrifice.[4] Hector said, "I shrink from offering a libation of gleaming wine to Zeus with hands unwashed; nor can it be in any way wise that one should pray to the son of Kronos, god of the storm-cloud, all defiled with blood

[1] Adair, *History of the American Indians*, p. 159.

[2] Bradbury, *Travels in the Interior of America*, p. 165 *sq.* Our informer adds, "Nor is any one, having taken refuge there, to be forced from it"; but with facts of this kind we are not concerned at present. They belong to the right of sanctuary, in the strict sense of the term, and, as will be seen, this right is based on a different principle, which prevents even the polluted manslayer, tainted with newly shed blood, from being dragged out of the sanctuary to which he has fled in the capacity of a suppliant.

[3] Aristotle, *De republica Atheniensium*, 57. Müller, *Dissertations*, p. 103.

[4] Donaldson, 'Expiatory and Substitutionary Sacrifices of the Greeks,' in *Transactions Roy. Soc. Edinburgh*, xxvii. 433. Farnell, *op. cit.* i. 72.

and filth."[1] In many parts of Morocco, a man who has slain another person is never afterwards allowed to kill the sacrificial sheep at the "Great Feast."[2] When David had in his heart to build a temple, God said to him, "Thou shalt not build a house for my name, because thou hast been a man of war, and has shed blood."[3] A decree of the penitential discipline of the Christian Church, which was enforced even against emperors and generals, forbade anyone whose hands had been imbrued in blood to approach the altar without a preparatory period of penance.[4]

Whilst, from fear of contaminating anything holy, casual restrictions have thus been imposed on all kinds of manslayers, whether murderers or those who have killed an enemy in righteous warfare, more stringent rules have been laid down for persons permanently connected with the religious cult. Adair states that the "holy men" of the North American Indians, like the Jewish priests, were by their function absolutely forbidden to shed human blood, "notwithstanding their propensity thereto, even for small injuries."[5] Herodotus says of the Persian Magi that they "kill animals of all kinds with their own hands, excepting dogs and men."[6] The Druids of Gaul never went to war,[7] probably in order to keep themselves free from blood-pollution;[8] it is true, they sacrificed human victims to their gods, but those they burnt.[9] To the same class of facts belong those decrees of the Christian Church which forbade clergymen taking part in a battle. Moreover, if a Christian priest passed a sentence of death

[1] *Iliad*, vi. 266 *sqq*. *Cf*. Vergil, *Æneis*, ii. 717 *sqq*.

[2] I found this custom prevalent both among Arab and Berber tribes in different parts of the country; see my article, "The Popular Ritual of the Great Feast in Morocco," in *Folk-Lore*, xxii. 144.

[3] 1 *Chronicles*, xxviii. 2 *sq*.

[4] Lecky, *History of European Morals*, ii. 39.

[5] Adair, *op. cit.* p. 152.

[6] Herodotus, i. 40. The Shluh of Southern Morocco and some other Berber tribes, in the central parts of the same country, consider that not only homicide, but the killing of a dog for ever after prevents a person from performing sacrifice at the "Great Feast"; see *Folk-Lore*, xxii. 144.

[7] Cæsar, *De bello gallico*, vi. 14.

[8] d'Arbois de Jubainville, *Civilisation des Celtes*, p. 254.

[9] Cæsar, *De bello gallico*, vi. 16.

he was punished with degradation and imprisonment for life;[1] nor was he allowed to write or dictate anything with a view to bringing about such a sentence.[2] He must not perform a surgical operation by help of fire or iron.[3] And if he killed a robber in order to save his life, he had to do penance till his death.[4] The hands which had to distribute the blood of the Lamb of God were not to be polluted with the blood of those for whose salvation it was shed.[5]

It cannot be doubted that this horror of blood-pollution had a share in that regard for human life which from the beginning, and especially in early times, was a characteristic of Christianity. But in other respects also, Christian feelings and beliefs had an inherent tendency to evoke such a sentiment. The cosmopolitan spirit of the Christian religion could not allow, in theory at least, that the life of a man was less sacred because he was a foreigner. The extraordinary importance it attached to this earthly life as a preparation for a life to come naturally increased the guilt of any one who, by cutting it short, not only killed the body, but probably to all eternity injured the soul.[6] In a still higher degree than most other crimes, homicide was regarded as an offence against God, because man had been made in His image.[7] Gratian says that even the slayer of a Jew or a heathen has to undergo a severe penance, "quia imaginem Dei et spem futuræ conversionis exterminat."[8]

[1] Gratian, *Decretum*, ii. 23. 8. 30.

[2] *Concilium Lateranense IV.*, A.D. 1215, ch. 18 (Labbe-Mansi, *Sacrorum Conciliorum collectio*, xxii. 1007).

[3] *Concilium Lateranense IV.*, A.D. 1215, ch. 18 (Labbe-Mansi, *op. cit.* xxii. 1007).

[4] Thomassin, *Dictionnaire de discipline ecclésiastique*, ii. 1074.

[5] *Ibid.* ii. 1069.

[6] *Concilium Lugdunense I.*, A.D. 1245, Additio, de Homicidio (Labbe-Mansi, *op. cit.* xxiii. 670).

[7] von Eicken, *Geschichte und System der Mittelalterlichen Weltanschauung*, p. 568.

[8] Gratian, *Decretum*, i. 50. 40.

CHAPTER XVII

THE KILLING OF PARENTS, SICK PERSONS, CHILDREN FETICIDE

We have found that among mankind at large there is a moral rule which forbids people to kill members of their own society. We shall now see that the stringency of this rule is subject to variations, depending on the special relationship in which persons stand to one another or on their social *status*, and that there are cases to which it does not apply at all.

Owing to the regard which children are expected to feel for their parents, parricide is considered the most aggravated form of murder. Nowhere have parents been more venerated by their children than among the nations of archaic culture, and nowhere has parricide been regarded with greater horror. In China it is punished with the most ignominious of all capital punishments, the so-called "cutting into small pieces"; and in some instances, when the crime has occurred in a district, in addition to all punishments inflicted on persons, the wall of the city where the deed was committed is pulled down in parts, or modified in shape, a round corner is substituted for a square one, or a gate removed to a new situation, or even closed up altogether.[1] In Corea the parricide is burned to death.[2]

[1] Doolittle, *Social Life of the Chinese*, i. 338 *sq.* Smith, *Chinese Characteristics*, p. 229.

[2] Griffis, *Corea*, p. 236.

Among the ancient Egyptians, we are told, he was sentenced to be lacerated with sharpened reeds, and after being thrown on thorns he was burned.[1] In Exodus we read of the "smiting" of parents, but parricide is not expressly mentioned, perhaps because the Hebrew legislator, like Solon at Athens,[2] did not think it possible that any one could be guilty of so unnatural a barbarity.[3] Herodotus states that the same notion was held by the ancient Persians, who said that no one ever yet killed his own father or mother, and that all cases of so-called parricide if carefully examined, would be found to have been committed by supposititious children or those born in adultery, it being beyond the bounds of probability that a true father should be murdered by his own son.[4] Plato says in his 'Laws':—"If a man could be slain more than once, most justly would he who in a fit of passion has slain father or mother undergo many deaths. How can he whom, alone of all men, even in defence of his life, and when about to suffer death at the hands of his parents, no law will allow to kill his father or his mother who are the authors of his being, and whom the legislator will command to endure any extremity rather than do this—how can he, I say, lawfully receive any other punishment?"[5] At Athens parricides were the only persons accused of murder who were not allowed the chance of escaping before sentence was passed, but were instantly arrested.[6] According to Roman Law, a committer of *parricidium* was not subjected to any of the regular modes of capital punishment, but for "the most execrable of crimes" was provided "the most strange of punishments." The criminal was sewn up in a leathern sack with a cur, a cock, a viper, and an ape, and, when cooped up in this fearful prison, was hurled into the sea, or into

[1] Diodorus Siculus, *Bibliotheca historica*, i. 77. 8.

[2] Diogenes Laërtius, *Solon*, 10. Cicero, *Pro S. Roscio Amerino*, 25. Orosius, *Historiæ*, v. 16.

[3] *Exodus*, xxi. 15. *Cf.* Keil, *Manual of Biblical Archæology*, ii. 376.

[4] Herodotus, i. 137.

[5] Plato, *Leges*, ix. 869. *Cf. ibid.* ix. 873.

[6] Müller, *Dissertations on the Eumenides of Æschylus*, p. 91. *Cf.* Euripides, *Orestes*, 442 *sqq.*

some neighbouring river.[1] But by the term *parricidium* was not understood the murder of a parent only. According to the 'Lex Pompeia de parricidiis,' it included the murder of any of the following persons: an ascendant or descendant in any degree,[2] a brother or sister, an uncle or aunt, a cousin, a husband or wife, a bridegroom or bride, a father- or mother-in-law, a son- or daughter-in-law, a step-parent or step-child, a patron; and Mommsen suggests that in earlier times it had a still wider significance, being applied to intentional homicide in general.[3] But whilst the punishment just referred to was in other cases of *parricidium* replaced by banishment, it was, during the Empire at least, actually inflicted upon him who murdered an ascendant.[4]

Whilst Christianity generally increased the sanctity of human life, it could add nothing to the horror with which parricide was regarded by the ancients. The Church punished it more severely than ordinary murder,[5] and so did, at least in Latin countries, the secular authorities.[6] In France, even to this day, a person convicted of parricide is "conduit sur le lieu de l'exécution en chemise, nu-pieds, et la tête couverte d'un voile noir";[7] and whilst *meurtre* is excusable if provoked by grave personal violence or by an attempt to break into a dwelling-house by day, parricide is never excusable under any circumstances.[8]

[1] *Institutiones*, iv. 18. 6.

[2] Unless the descendant was in the *potestas* of him who committed the deed.

[3] Mommsen, *Römisches Strafrecht*, pp. 644, 645, 612 *sq.*

[4] *Ibid.* p. 645 *sq.*

[5] Gregory III., *Judicia congrua pœnitentibus*, ch. 3 (Labbe-Mansi, *Conciliorum collectio*, xii. 289). *Pœnitentiale Bigotianum*, iv. 1 (Wasserschleben, *Bussordnungen der abendländischen Kirche*, p. 453). *Pœnitent. Pseudo-Theodori*, xxi. 18 (*ibid.* p. 588).

[6] Chauveau and Hélie, *Théorie du Code Pénal*, iii. 394 (France). Salvioli, *Manuale di storia del diritto italiano*, p. 570. In Scotland, also, parricide formerly had a place in the list of aggravated murders (Hume, *Commentaries on the Law of Scotland*, i. 459 *sq.*; for a sentence passed in 1688, see Pitcairn, *Criminal Trials in Scotland*, iii. 198); though nowadays it is penalised in the same way as other forms of murder (Erskine, *Principles of the Law of Scotland*, p. 559). There never was any special punishment for parricide in English law (Blackstone, *Commentaries on the Laws of England*, iv. 202. Stephen, *History of the Criminal Law of England*, iii. 95).

[7] *Code Pénal*, art. 13.

[8] *Ibid.* art. 321 *sqq.*

As regards the feelings with which ordinary parricide is looked upon by uncivilised peoples, direct information is almost entirely wanting. It is rarely mentioned at all, no doubt because it is very unusual.[1] Among the Kafirs of Natal, though murder is generally punished by a fine, death is inflicted on him who kills a parent.[2] Among the Ossetes a parricide draws upon himself a fearful punishment: he is shut up in his house with all his possessions, surrounded by the populace and burned alive.[3] To judge from the respect which, among the majority of uncivilised peoples, children are considered to owe to their parents, it seems very probable that the murder of a father or a mother is generally condemned by them as a particularly detestable form of homicide. But to this rule there is an important exception. According to a custom prevalent among various savages or barbarians, a parent who is worn out with age or disease is abandoned or killed.

Hearne states that, among the Northern Indians, one half at least of the aged persons of both sexes, when no longer capable of walking, are left alone to starve and perish of want.[4] Among the Californian Gallinomero, when the father can no longer feebly creep to the forest to gather his back-load of fuel or a basket of acorns, and is only a burden to his sons, "the poor old wretch is not infrequently thrown down on his back and securely held while a stick is placed across his throat, and two of them seat themselves on the ends of it until he ceases to breathe."[5] The custom of killing or abandoning old parents has been noticed among several other North

[1] Among the Omahas there have been a few cases of parricide caused by drunkenness (Dorsey, 'Omaha Sociology,' in *Ann. Rep. Bur. Ethn.* iii. 369). A Chukchi killed his father for charging him with cowardice and awkwardness (Sarytschew, 'Voyage of Discovery,' in *Collection of Modern and Contemporary Voyages*, vi 51). In Lánda "it is no uncommon thing for a son to murder his father in order to step into his shoes" (*Emin Pasha in Central Africa*, p. 230). See also Wilson and Felkin, *Uganda*, i. 224.

[2] Shooter, *Kafirs of Natal*, p. 103.

[3] von Haxthausen, *Transcaucasia*, p. 415.

[4] Hearne, *Journey to the Northern Ocean*, p. 346.

[5] Powers, *Tribes of California*, p. 178.

American tribes,[1] the natives of Brazil,[2] various South Sea Islanders,[3] a few Australian tribes,[4] and some peoples in Africa[5] and Asia.[6] According to ancient writers, it occurred formerly among many Asiatic[7] and European nations, including the Vedic people[8] and peoples of Teutonic extraction.[9] As late as the fifth or sixth century it was the custom among the Heruli for relatives to kindle a funeral pile for their old folks, although a stranger was employed to give the death wound.[10] And there is an old English tradition of "the Holy Mawle, which they fancy hung behind the church door, which when the father was seaventie, the sonne might fetch to knock his father in the head, as effete and of no more use."[11]

However cruel this custom may appear to be, something is certainly to be said in its favour. It is particularly common among nomadic hunting tribes, owing to the hardships of life and the inability of decrepit persons to keep up in the march. Mr. Morgan observes that, whilst

[1] Nansen, *First Crossing of Greenland*, ii. 331 (natives on the east coast of Greenland). Seemann, *Voyage of "Herald,"* ii. 66 (Eastern Eskimo). Catlin, *North American Indians*, i. 217. Lafitau, *Mœurs des sauvages ameriquains*, i. 488 *sqq.* Domenech, *Seven Years' Residence in the Great Deserts of North America*, ii. 325 (north-western tribes). Lewis and Clarke, *Travels to the Source of the Missouri River*, p. 442 (Dacotahs, Assiniboins, the hunting tribes on the Missouri).

[2] von Martius, *Beiträge zur Ethnographie Amerika's*, i. 126, 127, 393. von Eschwege, *Brasilien*, i. 231 *sq.* (Uerequenás). Among the Fuegians the practice in question seems to occur only accidentally (Bridges, in *A Voice for South America*, xiii. 206).

[3] Codrington, *Melanesians*, p. 347. Romilly, *Western Pacific*, p. 70 (Solomon Islanders). Brainne, *Nouvelle-Calédonie*, p. 255. Turner, *Samoa*, p. 335 *sq.* (Efatese). Seemann, *Viti*, p. 192 *sq.* Williams and Calvert, *Fiji*, pp. 116, 157 *sq.* Angas, *Polynesia*, p. 342 (natives of Kunaie).

[4] Eyre, *Central Australia*, ii. 382. Dawson, *Australian Aborigines*, p. 62 (tribes in Western Victoria).

[5] Arnot, *Garenganze*, p. 78 n. Andersson, *Lake Ngami*, p. 197 *sq.* (Damaras). Kolben, *Present State of the Cape of Good Hope*, i. 322, 334; Hahn, *The Supreme Being of the Khoi-Khoi*, p. 86 (Hottentots). Lepsius, *Letters from Egypt*, p. 202 *sq.* (Negro tribes to the south of Kordofan). Post, *Afrikanische Jurisprudenz*, i. 298 *sqq.* Sartori, 'Die Sitte der Alten- und Krankentötung,' in *Globus*, lxvii. 108.

[6] Hooper, *Ten Months among the Tents of the Tuski*, p. 188 *sq.*; Dall, *Alaska*, p. 383 *sqq.* (Chukchi). Rockhill, *Land of the Lamas*, p. 81 (Kokonor Tibetans).

[7] Herodotus, i. 216 (Massagetae). Strabo, xi. 8. 6 (Massagetae); xi. 11. 3 (Bactrians); xi. 11. 8 (Caspians).

[8] Zimmer, *Altindisches Leben*, p. 328.

[9] Grimm, *Deutsche Rechtsalterthumer*, p. 486 *sqq.*

[10] Procopius, *De bello gothico*, ii. 14. *Cf.* Grimm, *Kleinere Schriften*, ii. 241.

[11] Thoms, *Anecdotes and Traditions*, p. 84.

"among the roving tribes of the wilderness the old and helpless were frequently abandoned and, in some cases, hurried out of existence as an act of greater kindness than desertion," this practice was unknown among the Iroquois, who "resided in permanent villages, which afforded a refuge for the aged."[1] With reference to certain tribes of Western Victoria, Mr. Dawson remarks that the old people are a burden to the tribe, and, should any sudden attack be made by an enemy, the most liable to be captured, in which case they would probably be tortured and put to a lingering death.[2] Moreover, in times when the food-supply is insufficient to support all the members of a community, it is more reasonable that the old and useless should have to perish than the young and vigorous. Hahn was told that, among the Hottentots, aged parents were sometimes abandoned by very poor people who had not food enough to support them.[3] And among peoples who have reached a certain degree of wealth and comfort, the practice of killing the old folks, though no longer justified by necessity, may still go on, partly through survival of a custom inherited from harder times, partly from the humane intent of putting an end to lingering misery.[4] What appears to most of us as an atrocious practice may really be an act of kindness, and is commonly approved of, or even insisted upon, by the old people themselves. Speaking of the ancient Hottentot custom of famishing superannuated parents in order to cause their death, Kolben remarks:—"If you represent to the Hottentots, as I have done very often, the inhumanity of this custom, they are astonished at the representation, as proceeding, in their opinion, from an inhumanity of your own. The custom, in their way of thinking, is supported by very pious and very filial considerations. 'Is it not a cruelty,' they ask you, 'to suffer either man or woman to languish any consider-

[1] Morgan, *League of the Iroquois*, p. 171.
[2] Dawson, *op. cit.* p. 62.
[3] Hahn, *op. cit.* p. 86.
[4] Tylor, 'Primitive Society,' in *Contemporary Review*, xxi. 705. *Idem*, *Anthropology*, p. 410 *sq.*

able time under a heavy, motionless old age? Can you see a parent or a relative shaking and freezing under a cold, dreary, heavy, useless old age, and not think, in pity to them, of putting an end to their misery by putting, which is the only means, an end to their days?'"[1] When Mr. Hooper, hearing of an old Chukchi woman who was stabbed by her son, made some remarks on the frightful nature of the act, his native companions answered him:—"Why should not the old woman die? Aged and feeble, weary of life, and a burden to herself and others, she no longer desired to cumber the earth, and claimed of him who owned nearest relationship the friendly stroke which should let out her scanty remnant of existence."[2] Catlin tells us that, among the North American tribes who roamed about the prairies, the infirm old people themselves uniformly insisted upon being left behind, saying, "that they are old and of no further use—that they left their fathers in the same manner—that they wish to die, and their children must not mourn for them."[3] In Melanesia, says Dr. Codrington, when sick and aged people were buried alive, it is certain that "there was generally a kindness intended"; they used themselves to beg their friends to put them out of their misery, and it was even considered a disgrace to the family of an aged chief if he was not buried alive.[4] In Fiji, also, it was regarded as a sign of filial affection to put an aged parent to death. In his description of the Fijians Dr. Seemann observes, "In a country where food is abundant, clothing scarcely required, and property as a general rule in the possession of the whole family rather than that of its head, children need not wait for 'dead men's shoes' in order to become well off, and we may, therefore, quite believe them when declaring that it is with aching heart and at the repeated entreaties of their parents that they are induced to commit

[1] Kolben, *op. cit.* i. 322.

[2] Hooper, *op. cit.* p. 188 *sq.* *Cf.* Sarytschew, *loc. cit.* vi. 50; Dall, *op. cit.* p. 385; von Wrangell, *Expedition to the Polar Sea*, p. 122.

[3] Catlin, *North American Indians*, i. 217.

[4] Codrington, *op. cit.* p. 347. Turner, *Samoa*, p. 335 *sq.* (Efatese).

what we justly consider a crime."[1] The ceremony is not without a touch of tragic grandeur:—"The son will kiss and weep over his aged father as he prepares him for the grave, and will exchange loving farewells with him as he heaps the earth lightly over him."[2] One reason why the old Fijian so eagerly desired to escape extreme infirmity was perhaps "the contempt which attaches to physical weakness among a nation of warriors, and the wrongs and insults which await those who are no longer able to protect themselves"; but another, and as it seems more potent, motive was the belief that persons enter upon the delights of the future life with the same faculties, mental and physical, as they possess at the hour of death, and that the spiritual life thus commences where the corporeal existence terminates. "With these views," says Dr. Hale, "it is natural that they should desire to pass through this change before their mental and bodily powers are so enfeebled by age as to deprive them of their capacity for enjoyment."[3] Finally, we have to observe that in many cases the old people are not only killed, but eaten, by the nearest relatives, and that the motive, or at least, the sole motive, for this procedure is not hunger or desire for human flesh.[4] It is described as "an act of kindness" or as a "pious ceremony," as a method of preventing the body from being eaten up by worms or injured by enemies.[5] Considering that many cannibals have an aversion to the bodies of men who have died a natural death, it is not unreasonable to suppose that, in some instances, the old person is killed for the purpose of being eaten, and that this is done with a view to benefiting him.[6] But, on the other hand, the "pious ceremony," like so many other funeral customs which are supposed to comfort the dead, may be the survival of a practice which was originally intended to promote the selfish interests of the living.

[1] Seemann, *Viti*, p. 193.

[2] Fison and Howitt, *Kamilaroi and Kurnai*, p. 175.

[3] Hale, *op. cit.* p. 65. Williams and Calvert, *op. cit.* p. 156. See also Erskine, *Islands of the Western Pacific*, p. 248.

[4] For instances, see Steinmetz, *Endokannibalismus*, *passim*.

[5] *Ibid.* pp. 3, 5, 17.

[6] *Cf.* Herodotus' statement regarding the Massagetae, i. 216.

Closely connected with the custom of doing away with decrepit parents is the habit, prevalent among certain peoples, of abandoning or killing persons suffering from some illness.

"The white man," Mr. Ward observes, "can never, as long as he may live in Africa, conquer his repugnance to the callous indifference to suffering that he meets with everywhere in Arab and Negro. The dying are left by the wayside to die. The weak drop on the caravan road, and the caravan passes on."[1] Among the Kafirs instances are not rare in which the dying are carried to the bush and left to perish, and among some of them epileptics are cast over a precipice, or tied to a tree to be devoured by hyenas.[2] The Hottentots abandon patients suffering from small-pox.[3] The southern Tanàla in Madagascar take a person who becomes insensible during an illness, to the spot in the forest where they throw their dead, and should the unfortunate creature so cast away revive and return to the village, they stone him outright to death.[4] In New Caledonia "il est rare qu'un malade rend naturellement le dernier soupir: quand il n'a plus sa connaissance, souvent même avant son agonie, on lui ferme la bouche et les narines pour l'étouffer, ou bien on le tiraille de tous côtés par les jambes et par les bras."[5] In Kandavu, of the Fiji Group, sick persons were often thrown into a cave, where the dead also were deposited.[6] In Efate, if a person in sickness showed signs of delirium, his grave was dug, and he was buried forthwith, to prevent the disease from spreading to other members of the family.[7] The Alfura "kill their sick when they have no hope of their recovery."[8] Dobrizhoffer says of the Patagonians, "Actuated by an irrational kind of pity, they bury the dying before they expire."[9] In cases of cholera or small-pox epidemics, North American Indians have been known to desert their villages, leaving all their sick behind, of whatever age or sex.[10] According to Dr. Nansen, it is not inconsistent with the moral code of the Greenlanders "to hasten the death of those

[1] Ward, *Five Years with the Congo Cannibals*, p. 262.

[2] Shooter, *Kafirs of Natal*, p. 238 *sq.* Kidd, *The Essential Kafir*, p. 247.

[3] Le Vaillant, *Travels into the Interior Parts of Africa*, ii. 112.

[4] Sibree, *The Great African Island*, p. 291.

[5] Brainne, *op. cit.* p. 255.

[6] Williams and Calvert, *op. cit.* p. 159.

[7] Turner, *Samoa*, p. 336.

[8] Pfeiffer, *A Lady's Second Journey round the World*, i. 387.

[9] Dobrizhoffer, *Account of the Abipones*, ii. 262.

[10] Domenech, *op. cit.* ii. 326.

who are sick and in great suffering, or of those in delirium, of which they have a great horror."[1] Lieutenant Holm states that, in Eastern Greenland, when an individual is seriously ill, he consents, if his relatives request it, to end his sufferings by throwing himself into the sea; whereas it is rare that a sick person is put to death, except in cases of disordered intellect.[2] At Igloolik "a sick woman is frequently built or blocked up in a snow-hut, and not a soul goes near to look in and ascertain whether she be alive or dead."[3]

These and similar facts are largely explained by the pitiful condition of the invalid, the hardships of a wandering life, and the superstitious notions of ignorant men. In some cases the practice of killing a dying person seems to be connected with a belief that the death-blow will save his soul.[4] In 1812, a leper was burnt alive at Katwa, near Calcutta, by his mother and sister, who believed that by their doing so he would gain a pure body in the next birth.[5] By carrying the patient away before he dies, the survivors escape the supposed danger of touching a corpse.[6] In the poorer provinces of the kingdom of Kandy, when a sick person was despaired of, the fear of becoming defiled, or of being obliged to change their habitation, frequently induced those about him to take him into a wood, in spite of his cries and groans, and to leave him there, perhaps in the agonies of death.[7] But the most common motive for abandoning or destroying sick people seems to be fear of infection or of demoniacal possession, which is regarded as the cause of various diseases.[8] Among the North American Indians, we are told, "the custom of abandoning the infirm or sick arose

[1] Nansen, *Eskimo Life*, p. 163.

[2] 'East Greenland Eskimo,' in *Science*, vii. 172.

[3] Lyon, *Private Journal*, p. 357. For other instances, see Sartori, in *Globus*, lxvii. nr. 7 *sq.*; von Martius, *op. cit.* i. 126, 127, 393 (Brazilian tribes); Steller, *Beschreibung von dem Lande Kamtschatka*, p. 354; Dawson, *op. cit.* p. 61, quoted *supra*, p. 271.

[4] Sartori, *loc. cit.* p. 127.

[5] Crooke, *Popular Religion and Folk-Lore of Northern India*, ii. 169.

[6] Shooter, *op. cit.* 239 (Kafirs of Natal). Kidd, *The Essential Kafir*, p. 247.

[7] Joinville, 'Religion and Manners of the People of Ceylon,' in *Asiatick Researches*, vii. 437 *sq.*

[8] See Sartori, *loc. cit.* p. 110 *sq.*; Lippert, *Kulturgeschichte der Menschheit*, i. 110; ii. 411.

from a superstitious fear of the evil spirits which were supposed to have taken possession of them." [1] In Tahiti, says Ellis, "every disease was supposed to be the effect of direct supernatural agency, and to be inflicted by the gods for some crime against the tabu, of which the sufferers had been guilty, or in consequence of some offering made by an enemy to procure their destruction. Hence, it is probable, in a great measure, resulted their neglect and cruel treatment of their sick." [2]

Whilst the regard which children owe their parents makes parricide an aggravated form of murder, the paternal power sometimes implies that, under certain circumstances, the father is allowed to kill even his grown-up child. Though the Chinese Penal Code provides a slight punishment for parents who punish disobedient children with death,[3] the crime is practically ignored by the authorities.[4] Among the Hebrews, in early times, a father might punish his incontinent daughter with death.[5] The Roman house-father had *jus vitæ necisque*—the power of life and death—over his children. However, this power did not imply that he could kill them without a just cause;[6] already in pagan times a father who killed his son "latronis magis quam patris jure," was punished as a murderer.[7] As Dean Milman observes, long before Christianity entered into Roman legislation, "the life of a child was as sacred as that of the parent; and Constantine, when he branded the murder of a son with the

[1] Dorman, *Origin of Primitive Superstitions*, p. 392.

[2] Ellis, *Polynesian Researches*, i. 395.

[3] *Ta Tsing Leu Lee*, sec. cccxix. p. 347:—"If a father, mother, paternal grandfather or grandmother, chastises a disobedient child or grandchild in a severe and uncustomary manner, so that he or she dies, the party so offending shall be punished with 100 blows.—When any of the aforesaid relations are guilty of killing such disobedient child or grandchild designedly, the punishment shall be extended to 60 blows and one year's banishment."

[4] Douglas, *Society in China*, p. 78 *sq.*

[5] *Genesis*, xxxviii. 24.

[6] Mittermaier, 'Beyträge zur Lehre vom Verbrechen des Kindesmordes,' in *Neues Archiv des Criminalrechts*, vii. 4. Walter, *Geschichte des Romischen Rechts*, § 537, vol. ii. 147. von Jhering, *Geist des romischen Rechts*, ii. 220. Mommsen, *Romisches Strafrecht*, p. 619.

[7] *Digesta*, xlviii. 9. 5. Orosius, *Historiæ*, v. 16. Mommsen, *Romisches Strafrecht*, p. 618.

name of parricide, hardly advanced upon the dominant feeling.[1] Nor is there any reason to suppose that, among savages, the father possesses an absolute right of life and death over his children. On the contrary, among many of the lower races the existence of such a right is expressly denied.[2]

But whilst a father only in rare cases, and then merely as a measure of justice, is allowed to put to death his grown-up child, he very frequently has the right of destroying a new-born infant. Nay, in many instances infanticide is not only permitted, but enjoined by custom.

Among a great number of uncivilised peoples it is usual to kill an infant if it is a bastard,[3] or if its mother dies,[4] or if it is deformed or diseased,[5] or if there is anything unusual or uncanny about it, or if it for some reason or other is regarded as an unlucky child. In some parts of

[1] Milman, *History of Latin Christianity*, ii. 25.

[2] Lang, in Steinmetz, *Rechtsverhältnisse von eingeborenen Volkern in Afrika und Ozeanien*, p. 224 (Washambala). Desoignies, *ibid.* p. 271 (Msalala). Marx, *ibid* p. 349 (Amahlubi). Kohler, 'Recht der Hottentotten,' in *Zeitschr. f. vergl. Rechtswiss.* xv. 347. Post, *Afrikanische Jurisprudenz*, i. 52 *sq.*

[3] Turner, *Samoa*, p. 304 (Savage Islanders). Elton, in *Jour. Anthr. Inst.* xvii. 93 (some Solomon Islanders). Munzinger, *Ostafrikanische Studien*, p. 145 (Beduan). Dyveyrier, *Exploration du Sahara*, p. 428 (Touareg). Burton, *Sindh*, p. 244 (Belochis). Haberland, 'Der Kindermord als Volkssitte,' in *Globus*, xxxvii. 58. The natives of Australia often kill half-caste children (Roth, *Ethnological Studies among the North-West-Central Queensland Aborigines*, p. 184. Curr, *Recollections of Squatting in Victoria*, p. 252. Haberland, *loc. cit.* p. 58).

[4] Collins, *English Colony in New South Wales*, i. 607 *sq.* (aborigines of Port Jackson). Dale, 'Natives inhabiting the Bondei Country,' in *Jour. Anthr. Inst.* xxv. 182. Comte de Cardi, 'Ju-Ju Laws and Customs in the Niger Delta,' *ibid.* xxix. 58. Nansen, *First Crossing of Greenland*, ii. 330; Holm, 'Ethnologisk Skizze af Angmagsalikerne,' in *Meddelelser om Gronland*, x. 91 (Greenlanders). Haberland, *loc. cit.* p. 28 *sq.* Ploss, *Das Kind*, ii. 252, 254, 258 *sq.* Chamberlain, *Child and Childhood in Folk-Thought*, p. 110 *sqq.*

[5] Dawson, *op. cit.* p. 39 (tribes of Western Victoria). Kicherer, quoted by Moffat, *Missionary Labours and Scenes in Southern Africa*, p. 15 (Bushmans). Shooter, *Kafirs of Natal*, p. 89. Chapman, *Travels in the Interior of South Africa*, ii. 285 (Banamjua). Reade, *Savage Africa*, p. 244 (Equatorial Africans). New, *Life, Wanderings, and Labours in Eastern Africa*, p. 118; Krapf, *Travels*, p. 193 *sq.* (Wanika). Georgi, *Russia*, iii. 134 (Kamchadales). Sarytschew, *loc. cit.* vi. 50; von Wrangell, *op. cit.* p. 122 (Chukchi). Simpson, quoted by Murdoch, 'Point Barrow Expedition,' in *Ann. Rep. Bur. Ethn.* ix. 417 (Eskimo). Powers, *Tribes of California*, p. 382 (Yokuts). Guinnard, *Three Years' Slavery among the Patagonians*, p. 144. Haberland, *loc. cit.* p. 58 *sq.* Ploss, *Das Kind*, ii. 252, 254, 255, 258

Africa, for instance, a child who is born with teeth,[1] or who cuts the upper front teeth before the under,[2] or whose teeth present some other kind of irregularity,[3] is put to death. Among the natives of the Bondei country a child who is born head first is considered an unlucky child, and is strangled in consequence.[4] The Kamchadales used to destroy children who were born in very stormy weather;[5] and in Madagascar infants born in March or April, or in the last week of a month, or on a Wednesday or a Friday, were exposed or drowned or buried alive.[6] Among various savages it is the custom that, if a woman gives birth to twins, one or both of them are destroyed.[7] They are regarded sometimes as an indication of unfaithfulness on the part of the mother—in accordance with the notion that one man cannot be the father of two children at the same time[8]—sometimes as an evil portent or as the result of the wrath of a fetish.[9] Miss Kingsley observes, "There is always the sense of there being something uncanny regarding twins in West Africa, and in those tribes where they are not killed they are regarded

[1] Ploss, *Das Kind*, ii. 257, 259.

[2] Livingstone, *Missionary Travels*, p. 577. Kingsley, *Travels in West Africa*, p. 472. Allen and Thomson, *Expedition to the River Niger*, i. 243 *sq.* Mockler-Ferryman, *British Nigeria*, p. 286 (Ibos).

[3] Baumann, *Usambara*, pp. 131 (Wabondei), 237 (*Wapare*).

[4] Dale, in *Jour. Anthr. Inst.* xxv. 183.

[5] Krasheninnikoff, *History of Kamschatka*, p. 217.

[6] Ploss, *Das Kind*, ii. 257. *Cf.* Little, *Madagascar*, p. 60.

[7] Dawson, *op. cit.* p. 39 (tribes of Western Victoria). Spencer and Gillen, *Native Tribes of Central Australia*, p. 52. *Iidem*, *Northern Tribes of Central Australia*, p. 609. Romilly, *Western Pacific*, p. 70 (Solomon Islanders). Kolben, *op. cit.* i. 144 (Hottentots). Shooter, *op. cit.* p. 88 (Kafirs of Natal). Livingstone, *Missionary Travels*, p. 577. Decle, *Three Years in Savage Africa*, p. 160 (Matabele). Chapman, *op. cit.* ii. 285 (Banamjua). Baumann, *Usambara*, p. 131 (Wabondei). New, *op. cit.* pp. 118 (Wanika, formerly), 458 (Wadshagga). Burton, *Two Trips to Gorilla Land*, i. 84. Kingsley, *Travels in West Africa*, p. 472 *sqq.* Schoen and Crowther, *Journals*, p. 49 (Ibos on the Niger). Comte de Cardi, in *Jour. Anthr. Inst.* xxix. 57 *sq.* (Negroes of the Niger Delta). Nyendael, quoted by Ling Roth, *Great Benin*, p. 35 (people of Arebo). Ploss, *Das Kind*, ii. 267 *sq.* (African peoples), 274 (some South American Indians). Schneider, *Die Naturvolker*, i. 305 *sq.* (some South American Indians). Krasheninnikoff, *op. cit.* p. 217 (Kamchadales).

[8] Waitz, *Anthropologie der Naturvolker*, iii. 394, 480 (South American Indians). Dapper says (*Africa*, p. 473) that no twins are ever found in the country of Benin, because the people considered it a great dishonour to give birth to twins.

[9] Allen and Thomson, *op. cit.* i. 243. Baumann, *Usambara*, p. 131 (Wabondei).

as requiring great care to prevent them from dying on their own account."[1] The Kafirs believe that unless the father places a lump of earth in the mouth of one of the babies he will lose his strength.[2]

In the instances just referred to, the infant is killed either because, after the death of its mother, there is nobody to nurse it, or on account of the fault of its parents, especially the mother, or because it is held desirable that the sickly or defective should die at once, or out of superstitious fear. However, among many of the lower races, infanticide is not restricted to similar more or less exceptional cases, but is practised on a much larger scale. Custom often decides how many children are to be reared in each family, and not infrequently the majority of infants are destroyed.

Infanticide is common among various tribes in North and South America.[3] Dobrizhoffer says that it was a rare exception among the Abipones to find a woman who had brought up two or three sons, whilst some mothers killed all the children they bore, "no one either preventing or avenging these murders."[4] According to Azara, the Guanas buried alive the majority of their female infants, and the Mbayas suffered only one boy or one girl in a family to live;[5] but the correctness of his statements has been questioned.[6] On the other hand there can be no doubt as to the extreme prevalence of infanticide in the islands of the South Seas. In some of the principal groups of Polynesia it was practised publicly and systematically, without compunction, to an extent almost incredible. During the whole period of his residence in the Society Islands, Ellis does

[1] Kingsley, *Travels in West Africa*, p. 473. According to Nyendael, twin-births are, on the contrary, esteemed good omens in most parts of the Benin territory (Ling Roth, *Great Benin*, p. 35).

[2] Kidd, *The Essential Kafir*, p. 202.

[3] Bessels, quoted by Murdoch, 'Point Barrow Expedition,' in *Ann. Rep. Bur. Ethn.* ix. 417 (Eskimo of Smith Sound). Nelson, 'Eskimo about Bering Strait,' *ibid.* xviii. 289. Gibbs, 'Tribes of Western Washington and Northwestern Oregon,' in *Contributions to North American Ethnology*, i. 198. Powers, *op. cit.* pp. 177, 184 (Californian tribes). Yarrow, in *Ann. Rep. Bur. Ethn.* i. 99 (Pimas of Arizona). Hawtrey, in *Jour. Anthr. Inst.* xxxi. 295 (Lengua Indians of the Paraguayan Chaco).

[4] Dobrizhoffer, *op. cit.* ii. 98. For another account of the infanticides of the Abipones, see *infra*, p. 400.

[5] Azara, *Voyages dans l'Amérique méridionale*, ii. 93, 115.

[6] Wied-Neuwied, *Reise nach Brasilien*, ii. 39.

not recollect having met with a single pagan woman who had not imbrued her hands in the blood of her offspring, and he thinks that there, as also in the Sandwich Islands, two-thirds of the children were destroyed by their parents.[1] "No sense of irresolution or horror," he says, "appeared to exist in the bosoms of those parents who deliberately resolved on the deed before the child was born. They often visited the dwellings of the foreigners, and spoke with perfect complacency of their cruel purpose"; and when the missionaries tried to dissuade them from executing their intention, the only answer generally received was that it was the custom of the country.[2] The Line Islanders allowed only four children of a family to get the chance of life; the mother had a right to rear one child, whereas it rested with the husband to decide whether any more should live.[3] In Radack every mother was permitted to bring up three children, but the fourth and every succeeding one she was obliged to bury alive herself, unless she was the wife of a chief.[4] In Vaitupu, of the Ellice Archipelago, also, "infanticide was ordered by law," and only two children were allowed to a family.[5] In New Zealand and the Marquesas infanticide, though not so general, was yet of frequent occurrence and not regarded as a crime.[6] In most of the Melanesian groups it was very common.[7] In the Solomon Islands there still seem to be several places where it is the custom to kill nearly all children soon after they are born, and to buy other children from foreign tribes, good care being taken not to buy them too young.[8] The practice of infanticide occurred at least occasionally in Tasmania,[9] and, as it seems, almost universally in Australia. Mr. Curr supposes that the Australian woman, as a rule, reared only two boys and one girl, the rest of her children being destroyed.[10] "In the laws known to her," says Mr. Brough Smyth, "infanticide is a necessary practice, and one which, if disregarded, would, under certain circumstances, be disapproved

[1] Ellis, *Polynesian Researches*, i. 252. *Idem*, *Tour through Hawaii*, p. 325.

[2] *Idem*, *Polynesian Researches*, i. 250.

[3] Tutuila, 'Line Islanders,' in *Jour. Polynesian Society*, i. 267.

[4] von Kotzebue, *Voyage of Discovery*, iii. 173.

[5] Turner, *Samoa*, p. 284.

[6] Hale, *U.S. Exploring Expedition. Vol. VI. Ethnography and Philology*, p. 15.

[7] Codrington, *Melanesians*, p. 229. Turner, *Samoa*, p. 333 (Efatese). Gill, *Life in the Southern Isles*, p. 213 (islands of Torres Straits). Atkinson, in *Folk-Lore*, xiv. 248 (New Caledonians).

[8] Romilly, *Western Pacific*, p. 68 *sq.* *Cf.* Guppy, *Solomon Islands*, p. 42.

[9] Ling Roth, *Aborigines of Tasmania*, p. 167 *sq.* Bonwick, *Daily Life and Origin of the Tasmanians*, p. 85. Brough Smyth, *Aborigines of Victoria*, ii. 386.

[10] Curr, *The Australian Race*, i. 70.

of; and the disapproval would be marked by punishment."[1] Mr. Taplin was assured that, among the Narrinyeri, more than one-half of the children born fell victims to this custom;[2] and in the Dieyerie tribe hardly an old woman, if questioned, but will admit of having destroyed from two to four of her offspring.[3]

Among the Todas of India, up to the period of Mr. Sullivan's visit to their hills, about the year 1820, only one female child was allowed to live in each family.[4] With reference to the Kandhs, or Khonds, Macpherson observes, "The practice of female infanticide is, I believe, not wholly unknown amongst any portion of the Khond people, while it exists in some of the tribes of the sect of Boora to such an extent, that no female infant is spared, except when a woman's first child is a female, and that villages containing a hundred houses may be seen without a female child."[5]

It is said that among the Guanches of the Canary Islands, in ancient times, all children, except the first-born, were killed.[6] The people of Madagascar frequently practised infanticide; but Ellis says that they were much less addicted to it than the South Sea Islanders, a numerous offspring being generally a source of much satisfaction.[7] According to Kolben, infanticide was common among the Hottentots;[8] whereas Sparrman only states that "the Hottentots are accustomed to inter, in case of the mother's death, children at the breast alive,"[9] and Le Vaillant altogether denies the existence of customary infanticide among them.[10] Among the Swahili, according to Baumann, infanticides are very common and hardly disapproved of.[11] But the peoples of the African continent are not generally addicted to infanticide, except in such special cases as have already come under our notice.

The custom of infanticide, in its extensive form, has been attributed to various motives. Among some peoples mothers are said to kill their new-born infants on account

[1] Brough Smyth, *op. cit.* i. p. xxi. *Cf.* Oberländer, 'Die Eingeborenen der Kolonie Victoria,' in *Globus*, iv. 279.

[2] Taplin, 'Narrinyeri,' in Woods, *Native Tribes of South Australia*, p. 13.

[3] Gason, 'Manners and Customs of the Dieyerie Tribe,' *ibid.* p. 259.

[4] Metz, *Tribes inhabiting the Neilgherry Hills*, p. 16.

[5] Macpherson, *Memorials of Service in India*, p. 132.

[6] Ploss, *Das Kind*, ii. 259 *sq.*

[7] Little, *Madagascar*, p. 60. Ellis, *History of Madagascar*, i. 155, 160.

[8] Kolben, *op. cit.* i. 333.

[9] Sparrman, *Voyage to the Cape of Good Hope*, i. 358 *sq.*

[10] Le Vaillant, *op. cit.* ii. 58 *sqq.*

[11] Baumann, *Usambara*, p. 42.

of the trouble of rearing them,[1] or the consequent loss of beauty.[2] Another cause is the long suckling time, generally lasting, among savages, for two, three, four years, or even more, owing to want of soft food and animal milk.[3] When, as is very commonly the case, the husband must not cohabit with his wife during the whole of this period,[4] he is naturally inclined to form other connections, and this seems in some instances to induce the mother to destroy her child.[5] In another respect, also, the long suckling-time is an inducement to infanticide ; among certain Australian tribes an infant is killed immediately on birth " when the mother is, or thinks she is, unable to rear it owing to there being a young child whom she is still feeding."[6] Among the Pimas of Arizona, again, infanticide is said to be connected with the custom of destroying all the property of the husband when he dies. " The women of the tribe, well aware that they will be poor should their husbands die, and that then they will have to provide for their children by their own exertions, do not care to have many children, and infanticide, both before and after birth, prevails to a great extent. This is not considered a crime."[7] But there can be little doubt that the wholesale infanticide of many of the lower races is in the main due to the hardships of savage life. The helpless infant may be a great burden to the parents both in times of peace and in times of war. It may prevent the mother from following her husband about on his wanderings in search of food, or otherwise encumber her in her work.[8] Mr. Curr states of the Bangerang tribe of Victoria, with whom he was intimate for ten years, that their habit of killing nearly half

[1] Ellis, *Polynesian Researches*, i. 256 (Tahitians). *Idem*, *Tour through Hawaii*, p. 327. Polack, *Manners and Customs of the New Zealanders*, ii. 92. Gason, *loc. cit.* p. 258 (Dieyerie tribe).

[2] Williams, *Missionary Enterprises*, p. 565 (Tahitians).

[3] See Westermarck, *History of Human Marriage*, p. 484.

[4] *Ibid.* p. 483.

[5] Schneider, *Die Naturvölker*, i. 297, 307.

[6] Spencer and Gillen, *Native Tribes of Central Australia*, pp. 51, 264. *Iidem*, *Northern Tribes of Central Australia*, p. 608. Oberländer, *loc. cit.* p. 279.

[7] Yarrow, *loc. cit.* p. 99.

[8] Turner, *Nineteen Years in Polynesia*, p. 394 (people of Vaté, New Hebrides). Polack, *op. cit.* ii. 93 (Maoris).

of the children born resulted "principally from the difficulty, if not the impossibility, of transporting several children of tender age from place to place on their frequent marches."[1] Concerning the Abipones, Charlevoix observes:—"They seldom rear but one child of each sex, murdering the rest as fast as they come into the world, till the eldest are strong enough to walk alone. They think to justify this cruelty by saying that, as they are almost constantly travelling from one place to another, it is impossible for them to take care of more infants than two at a time; one to be carried by the father, and the other by the mother."[2] Among the Lenguas of the Paraguayan Chaco an interval of seven or eight years is always observable between children of the same family, infants born in this interval being immediately killed. The reasons for this practice, says Mr. Hawtrey, are obvious. "The woman has the hard work of carrying food from garden and field, and all the transport to do; the Lenguas are a nomadic race, and their frequent moves often entail journeys of from ten to twenty miles a day. . . . Travelling with natives under these circumstances, one is forced to the conclusion that it would be impossible for a mother to have more than one young child to carry and to care for."[3] Moreover, a little forethought tells the parents that their child before long will become a consumer of provisions perhaps already too scanty for the family. Savages often suffer greatly from want of food, and may have to choose between destroying their offspring or famishing themselves. Hence they often have recourse to infanticide as a means of saving their lives; indeed, among several tribes, in case of famine, children are not only killed, but eaten.[4] Urgent want is frequently represented by our authorities as the main cause of infanticide;[5] and

[1] Curr, *Squatting in Victoria*, p. 252. Oberländer, *loc. cit.* p. 279. *Cf.* Fison and Howitt, *Kamilaroi and Kurnai*, p. 259; Fraser, *Aborigines of New South Wales*, p. 5.

[2] Charlevoix, *History of Paraguay*, i 405.

[3] Hawtrey, in *Jour. Anthr. Inst.* xxxi. 295.

[4] See Steinmetz, *Endokannibalismus*, pp. 8, 13, 14, 17.

[5] Nansen, *First Crossing of Greenland*, ii. 330. Nelson, in *Ann. Rep. Bur. Ethn.* xviii. 289 (Eskimo about

their statements are corroborated by the conspicuous prevalence of this custom among poor tribes and in islands whose inhabitants are confined to a narrow territory with limited resources.

In the chapter dealing with human sacrifice we shall notice that infanticide is in some cases practised as a sacrificial rite. In other cases infants are killed for medicinal purposes, without being sacrificed to any divine being.[1] Thus in the Luritcha tribe, in Central Australia, "it is not an infrequent custom, when a child is in weak health, to kill a younger and healthy one and then to feed the weakling on its flesh, the idea being that this will give to the weak child the strength of the stronger one."[2] A curious motive for female infanticide is also worth mentioning. That the victims of this practice are most commonly, among several peoples almost exclusively, females,[3] is generally due to the greater usefulness of the men both as food-providers and in war. But the Hakka, a Mongolian tribe in China, often put their girls to a cruel death with a view to inducing thereby the soul to appear the next time in the shape of a boy.[4]

Thus various considerations have led men to destroy their own offspring. Under certain circumstances the advantages, real or imaginary, assumed to result from the deed have been sufficiently great to silence the voice of parental love, which, as will be seen, is to be found even in the bosom of a savage father. The resistance offered by this instinct would be so much the less as the child is killed immediately after its birth, at a period of its life

Behring Strait). Brough Smyth, *op. cit.* i. 53; ii. 386 (aboriginal tribes of Australia and Tasmania). von Kotzebue, *op. cit.* iii. 173 (natives of Radack). Tutuila, in *Jour. Polynesian Soc.* i. 263 (Line Islanders). Campbell, *Wild Tribes of Khondistan*, p. 140 (Kandhs of Sooradah). Marshall, *A Phrenologist amongst the Todas*, p. 194. Kolben, *op. cit.* i. 144 (Hottentots). See also Haberland, *loc. cit.* p. 26; Dimitroff, *Die Geringschätzung des menschlichen Lebens und ihre Ursachen bei den Naturvolkern*, p. 162 *sqq.*; Sutherland, *Origin and Growth of the Moral Instinct*, i. 115 *sqq.*

[1] See *infra*, p. 458 *sq.*

[2] Spencer and Gillen, *Native Tribes of Central Australia*, p. 475. *Cf. ibid.* p. 52.

[3] *Cf.* Haberland, *loc. cit.* p. 56 *sqq.*

[4] Hubrig, quoted by Ploss, *Das Kind*, ii. 263.

when the father's affection for it is as yet only dawning Even where, at first, infanticide was an exception, practised by a few members of the tribe, any interference from the side of the community may have been prevented by the notion that a person possesses proprietary rights over his offspring; and, once become habitual, infanticide easily grew into a regular custom. In cases where it was found useful to the tribe, it would be enforced as a public duty; and even where there no longer was any need for it, owing to changed conditions of life, the force of habit might still keep the old custom alive.

Though infanticide is thus regarded as allowable, or even obligatory, among many of the lower races, we must not suppose that they universally look upon it in this light. Mr. McLennan grossly exaggerated its prevalence when he asserted that female infanticide is "common among savages everywhere."[1] Among a great number of them it is said to be unheard of or almost so,[2] and to these belong peoples of so low a type as the Andaman Islanders,[3] the Botocudos,[4] and certain Californian tribes.[5] The Veddahs of Ceylon have never been known to practise it.[6] Among the Yahgans of Tierra del Fuego, Mr. Bridges informs me, it occurred only occasionally, and then it was almost always the deed of the mother, who acted from "jealousy, or hatred of her husband, or because of desertion and wretchedness."[7] Mr. Fison, who has lived for a long time among uncivilised races, thinks it will be found that infanticide is far less common among the lower savages than it is among the more advanced tribes.[8] Considering

[1] McLennan, *Studies in Ancient History*, p. 75.

[2] See Westermarck, *History of Human Marriage*, p. 312 *sq.*; and, besides the authorities there referred to, Dorsey, 'Omaha Sociology,' in *Ann. Rep. Bur. Ethn.* iii. 369; Kirke, *Twenty-five Years in British Guiana*, p. 160; Chalmers, *Pioneering in New Guinea*, p. 163; Hodgson, *Miscellaneous Essays*, i. 123 (Bódo and Dhimáls); Baumann, *Durch Massailand zur Nilquelle*, p. 161 (Masai).

[3] Man, in *Jour. Anthr. Inst.* xii. 329.

[4] Wied-Neuwied, *op. cit.* ii. 39. Keane, in *Jour. Anthr. Inst.* xiii. 206.

[5] Powers, *op. cit.* pp. 192, 271, 382.

[6] Sarasin, *Ergebnisse naturwissenschaftlicher Forschungen auf Ceylon*, iii. 469, 539.

[7] Bridges, in a letter dated Downeast, Tierra del Fuego, August 28th, 1888.

[8] Fison and Howitt, *Kamilaroi and Kurnai*, p. 134 *sqq.* *Cf.* Farrer,

further that the custom of infanticide, being opposed to the instinct of parental love, presupposes a certain amount of reasoning or forethought, it seems probable that, where it occurs, it is not a survival of earliest savagery, but has grown up under specific conditions in later stages of development.[1] It is, for instance, very generally asserted that certain Indians in California never committed infanticide before the arrival of the whites;[2] and Ellis thinks there is every reason to suppose that this custom was practised less extensively by the Polynesians during the early periods of their history than it was afterwards.[3]

Where infanticide is not sanctioned by custom, the occasional commission of it has a tendency to call forth disapproval or excite horror. The Blackfeet are said to believe that women who have been guilty of this crime will never reach the happy mountain after death, but are compelled to hover round the seats of their crimes, with branches of trees tied to their legs.[4] Speaking of another North American tribe, the Potawatomis, Keating observes:—"In a few instances, it is said that children born deformed have been destroyed by their mothers, but these instances are rare, and whenever discovered, uniformly bring them into disrepute, and are not unfrequently punished by some of the near relations. Independently of these cases, which are but rare, a few instances of infanticide, by single women, in order to conceal intrigue, have been heard of; but they are always treated with abhorrence."[5] Among the Omahas "parents had no right to put their children to death."[6] The Aleuts believed that a child-murder would bring misfortune on the whole village.[7] The Brazilian Macusis[8] and Botocudos[9] look upon the deed with horror. At Ulea,

Primitive Manners and Customs, p. 224; Sutherland, *op. cit.* i. 114 *sq.*

[1] *Cf.* Darwin, *Descent of Man*, p. 594.

[2] Powers, *op. cit.* p. 207. *Cf. ibid.* p. 183.

[3] Ellis, *Polynesian Researches*, i. 249.

[4] Richardson, in Franklin, *Journey to the Shores of the Polar Sea*, p. 77.

[5] Keating, *op. cit.* i. 99.

[6] Dorsey, in *Ann. Rep. Bur. Ethn.* iii. 268.

[7] Dall, *op. cit.* p. 399.

[8] Waitz, *op. cit.* iii. 391.

[9] Wied-Neuwied, *op. cit.* ii. 39.

of the Caroline Islands, "the prince would have the unnatural mother punished with death."[1] So, too, Herr Valdau tells us of a Bakundu woman who, accused of infanticide, was condemned to death.[2] In Ashanti a man is punished for the murder of his child.[3] Among the Gaika tribe, of the Kafirs, the killing of a child after birth is punishable as murder, the fine going to the chief.[4] Nay, even peoples among whom infanticide is habitual seem now and then to have a feeling that the act is not quite correct. Mr. Brough Smyth asserts that the Australian Black is himself ashamed of it;[5] and Mr. Curr has no doubt that he feels, in the commencement of his career at least, that infanticide is wrong, as also that its committal brings remorse.[6]

The custom of infanticide in most cases requires that the child should be killed immediately or soon after its birth. Among certain North American Indians "the right of destroying a child lasted only till it was a month old," after which time the feeling of the tribe was against its death.[7] Ellis says of the Society Islanders:—"The horrid act, if not committed at the time the infant entered the world, was not perpetrated at any subsequent period . . . . If the little stranger was, from irresolution, the mingled emotions that struggled for mastery in its mother's bosom, or any other cause, suffered to live ten minutes or half an hour, it was safe; instead of a monster's grasp, it received a mother's caress and a mother's smile, and was afterwards nursed with solicitude and tenderness."[8] Almost the same is said of other South Sea Islanders[9] and of tribes inhabiting the Australian continent.[10] That the custom of infanticide is generally

[1] von Kotzebue, *op. cit.* iii. 211.
[2] Valdau, in *Ymer*, v. 280.
[3] Bowdich, *Mission from Cape Coast Castle to Ashantee*, p. 258.
[4] Maclean, *Compendium of Kafir Laws and Customs*, p. 111.
[5] Brough Smyth, *op. cit.* i. 54.
[6] Curr, *The Australian Race*, i. 100.
[7] Schoolcraft, quoted by Sutherland, *op. cit.* i. 119.
[8] Ellis, *Polynesian Researches*, i. 255.
[9] Waitz-Gerland, *op. cit.* vi. 138, 139, 638. Angas, *Savage Life and Scenes in Australia and New Zealand*, i. 313.
[10] Ploss, *Das Kind*, ii. 255. Spencer and Gillen, *Native Tribes of Central Australia*, p. 51. *Idem*, *Northern Tribes of Central Australia*, p. 608.

restricted to the destruction of new-born babies also appears from various statements as to the parental love of those peoples who are addicted to this practice.[1] In Fiji "such children as are allowed to live are treated with a foolish fondness."[2] Among the Narrinyeri, "only let it be determined that an infant's life shall be saved, and there are no bounds to the fondness and indulgence with which it is treated";[3] and with reference to other Australian tribes we are told that it is brought up with greater care than generally falls to the lot of children belonging to the poorer classes in Europe.[4] Among the Indians of the Pampas and other Indians of that neighbourhood, who abandon deformed or sickly-looking children to the wild dogs and birds of prey, an infant becomes, from the moment it is considered worthy to live, "the object of the whole love of its parents, who, if necessary, will submit themselves to the greatest privations to satisfy its least wants or exactions."[5] In Madagascar, according to Ellis, "nothing can exceed the affection with which the infant is treated by its parents and other members of the family; the indulgence is more frequently carried to excess than otherwise."[6] From these and similar facts, as also from the general absence of statements to the contrary, I conclude that murders of children who have been allowed to survive their earliest infancy are very rare, though not quite unknown,[7] among the lower races.

The custom of infanticide prevails, or has prevailed, not only in the savage world, but among semi-civilised and

[1] See *infra*, p. 529 *sqq.*; also Haberland, *loc. cit.* p. 29, and Sutherland, *op. cit.* i. 115 *sqq.*

[2] Williams and Calvert, *op. cit.* p. 142.

[3] Taplin, in Woods, *Native Tribes of South Australia*, p. 15.

[4] Brough Smyth, *op. cit.* i. 51. Meyer, 'Manners and Customs of the Aborigines of the Encounter Bay Tribe,' in Woods, *Native Tribes of South Australia*, p. 186.

[5] Guinnard, *op. cit.* p. 144.

[6] Ellis, *History of Madagascar*, i. 161.

[7] Among the Sandwich Islanders "the infant, after living a week, a month, or even a year, was still insecure, as some were destroyed when nearly able to walk" (Ellis, *Tour through Hawaii*, p 325). Among the Eskimo about Behring Strait, "girls were often killed when from 4 to 6 years of age" (Nelson, in *Ann. Rep. Bur. Ethn.* xviii. 289).

civilised races. In the poorest districts of China female infants are often destroyed by their parents immediately after their birth, chiefly on account of poverty.[1] Though disapproved of by educated Chinese, the practice is treated with forbearance or indifference by the mass of the people, and is acquiesced in by the mandarins.[2] "When seriously appealed to on the subject," says the Rev. J. Doolittle, "though all deprecate it as contrary to the dictates of reason and the instincts of nature, many are ready boldly to apologise for it, and declare it to be necessary, especially in the families of the excessively poor."[3] However, infanticide is neither directly sanctioned by the government, nor agreeable to the general spirit of the laws and institutions of the Empire;[4] and it is prohibited both by Buddhism and Taouism.[5] According to Dr. de Groot, the belief that the spirits of the dead may, with authorisation of Heaven, take vengeance on the living, has a very salutary effect on female infanticide in China. "The fear that the souls of the murdered little ones may bring misfortune, induces many a father or mother to lay the girls they are unwilling to bring up in the street for adoption into some family, or into a foundling-hospital."[6]

In ancient times the Semites, or at least some of them, not only practised infanticide, but, under certain circumstances, approved of it or regarded it as a duty. According to an ancient Arabic proverb, it was a generous deed to bury a female child;[7] and we read of ʿOṣaim the Fazarite who did not dare to save alive his daughter Laqîṭa, without concealing her from the people, although she was his only child.[8] Considering that among the

[1] Gutzlaff, *Sketch of Chinese History*, i. 59 Wells Williams, *Middle Kingdom*, ii. 240 *sqq.* Douglas, *Society in China*, p. 354 *sqq.* Doolittle, *Social Life of the Chinese*, ii. 206.

[2] Doolittle, *op. cit.* ii. 203, 208 *sq.* Wells Williams, *op. cit.* i. 836; ii. 242. Douglas, *Society in China*, p. 354. Ploss, *Das Kind*, ii. 262.

[3] Doolittle, *op. cit.* ii. 208.

[4] Staunton, in his translation of *Ta Tsing Leu Lee*, p. 347 n.*

[5] *Thâi Shang*, 4. Giles, *Strange Stories from a Chinese Studio*, ii. 377. Douglas, *Confucianism and Taouism*, p. 267. *Indo-Chinese Gleaner*, iii. 164

[6] de Groot, *Religious System of China*, (vol. iv. book) ii. 457 *sqq.*

[7] Freytag, *Arabum Proverbia*, i. 229.

[8] Robertson Smith, *Kinship and Marriage in Early Arabia*, p. 293.

nomads of Arabia, who suffer constantly from hunger during a great part of the year, a daughter is a burden to the poor, we may suppose, with Professor Robertson Smith, that "infanticide was as natural to them as to other savage peoples in the hard struggle for life."[1] It was condemned, however, by the Prophet:—"Slay not your children for fear of poverty: we will provide for them; beware! for to slay them is ever a great sin."[2] In the Mosaic Law, on the other hand, infanticide is never touched upon, and, in all probability, it hardly occurred among the Hebrews in historic times. But we have reason to believe that, at an earlier period, among them as also among other branches of the Semitic race, child-murder was frequently practised as a sacrificial rite.[3]

The murder of female infants, whether by the direct employment of homicidal means, or by exposure to privation and neglect, has for ages been a common practice, or even a genuine custom, among various Hindu castes.[4] Yet they are well aware that it is prohibited by their sacred books; according to the Laws of Manu, the King shall put to death "those who slay women, infants, or Brâhmanas."[5] Even the Rajputs, who—out of family pride and owing to the expenses connected with the marriage ceremony—were particularly addicted to infanticide, considered that a family in which such a deed had been perpetrated was, in consequence, an object of divine displeasure. On the twelfth day, therefore, the family priest was sent for, and, by suitable gratuities, absolution was obtained. In the room where the infant was born and destroyed, he also prepared and ate some food with which the family provided him; this was considered a *hom*, or burnt offering, and, by eating it in that place, the priest was supposed to take the whole *hutteea*, or sin, upon himself, and to cleanse the family from it.[6]

[1] *Ibid.* p. 294.
[2] *Koran*, xvii. 33; also, *ibid.* vi. 141, 152, and lxxxi. 8 *sq.*
[3] See *infra*, on Human Sacrifice.
[4] Wilkins, *Modern Hinduism*, p. 431. Chevers, *Manual of Medical Jurisprudence for India*, p. 750 *sqq.*
[5] *Laws of Manu*, ix. 232.
[6] 'Oude as it was before the Annexation,' in *Church Missionary Intelligencer*, xi. 81 *sq.*

Exposure of new-born children was practised by the people of the Vedic age,[1] as also by other so-called Aryan peoples in ancient times.[2] The Teutonic father had to decide whether the child, whilst still lying on the ground, should be accepted as a member of the family, or whether it should be exposed. If he lifted it up, and some water was poured over it, or a drop of milk or honey passed its lips, it was generally safe. But apart from these restrictions, custom seems to have been in favour of exposure only under certain circumstances, exactly similar to those in which infanticide is practised among many modern savages: if the child was born out of wedlock, or if it was deformed or sickly, or if it was born on an unlucky day, or in case of twins—one of whom was always supposed to be illegitimate—or if the parents were very poor. The exposed infant, however, was not necessarily destined to die, but was, in many cases, adopted by somebody who could afford to rear it.[3]

The exposure of deformed or sickly infants was undoubtedly an ancient custom in Greece; in Sparta, at least, it was enjoined by law. It was also approved of by the most enlightened among the Greek philosophers. Plato condemns all those children who are imperfect in limbs, as also those who are born from depraved citizens, to be buried in some obscure and unknown place; he maintains, moreover, that when both sexes have passed the age assigned for presenting children to the State, no child is to be brought to light, and that any infant which is by accident born alive, shall be done away with.[4] Aristotle not only lays down the law with respect to the exposing or bringing up of children, that "nothing imperfect or maimed shall be brought up," but proposes that

[1] Kaegi, *Rigveda*, p. 16.

[2] Stricker, 'Ethnographische Notizen über den Kindermord und die künstliche Fruchtabtreibung,' in *Archiv für Anthropologie*, v. 451 (Celts and Slavs).

[3] Grimm, *Deutsche Rechtsalterthümer*, p. 455 *sqq.* Wilda, *Strafrecht der Germanen*, pp. 704, 725. Maurer, *Bekehrung des Norwegischen Stammes*, ii. 181. Weinhold, *Altnordisches Leben*, p. 261. Nordström, *Bidrag till den svenska samhälls-författningens historia*, ii. 44. Stemann, *Den danske Retshistorie indtil Christian V.'s Lov*, p. 359.

[4] Plato, *Respublica*, v. 460 *sq.*

the number of children allowed to each marriage shall be regulated by the State, and that, if any woman be pregnant after she has produced the prescribed number, an abortion shall be procured before the fetus has life.[1] These views were in perfect harmony with the general tendency of the Greeks to subordinate the feelings of the individual to the interest of the State. Confined as they were to a very limited territory, they were naturally afraid of being burdened with the maintenance of persons whose lives could be of no use. It is necessary, says Aristotle, to take care that the increase of the people should not exceed a certain number, in order to avoid poverty and its concomitants, sedition and other evils.[2] Yet the exposure of healthy infants, which was frequently practised in Greece, was hardly approved of by public opinion, although tolerated,[3] except at Thebes, where it was a crime punishable with death.[4]

In Rome custom or law enjoined the destruction of deformed infants. According to a law of the Twelve Tables, referred to by Cicero, monstrous abortions were not suffered to live.[5] With reference to a much later period Seneca writes, "We destroy monstrous births, and we also drown our children if they are born weakly or unnaturally formed"; he adds that it is an act of reason thus to separate what is useless from what is sound.[6] But there was no tendency in Rome to encourage infanticide beyond these limits. It has been observed that, whilst the Greek policy was rather to restrain, the Roman policy was always to encourage, population.[7] Being engaged in incessant wars of conquest, Rome was never afraid of being over-populated, but, on the contrary, tried to increase the number of its citizens by according special privileges to the fathers of many children, and exempting poor parents from most

[1] Aristotle, *Politica*, vii. 16, p. 1335.
[2] *Ibid.* ii. 6, p. 1265.
[3] Schmidt, *Ethik der alten Griechen*, ii. 138, 463. Hermann-Blumner, *Lehrbuch der griechischen Privatalterthümer*, p. 77.
[4] Aelian, *Variæ Historiæ*, ii. 7.
[5] Cicero, *De legibus*, iii. 8.
[6] Seneca, *De ira*, i. 15.
[7] Lecky, *History of European Morals*, ii. 27.

of the burden of taxation.[1] The power of life and death which the Roman father possessed over his children undoubtedly involved the legal right of destroying or exposing new-born infants; but it is equally certain that the act was frequently disapproved of.[2] An ancient "law," ascribed to Romulus—which, as Mommsen suggests, could have been merely a priestly direction[3]—enjoined the father to bring up all his sons and at least his eldest daughter, and forbade him to destroy any well-formed child till it had completed its third year, when the affections of the parent might be supposed to be developed.[4] In later times we find the exposure of children condemned by poets, historians, philosophers, jurists. Among nefarious acts committed in sign of grief on the day when Germanicus died, Suetonius mentions the exposure of new-born babes.[5] Epictetus indignantly opposes the saying of Epicurus that men should not rear their children:—"Even a sheep will not desert its young, nor a wolf; and shall a man? 'What! will you have us to be silly creatures, like the sheep?' Yet they desert not their young. 'Or savage, like wolves?' Yet even they desert them not. Come, then, who would obey you if he saw his little child fall on the ground and cry?"[6] Julius Paulus, the jurist, pronounced him who refused nourishment to his child, or exposed it in a public place, to be guilty of murder[7]—a statement which is to be understood, not as a legal prohibition of exposure, but only as the expression of a moral opinion.[8] On the other hand, though the exposure of healthy infants was disapproved of in Pagan Rome, it was not generally regarded as an offence of very great magnitude, especially if the parents were desti-

[1] Montesquieu, *De l'esprit des lois*, xxiii. 20 *sq.* (*Œuvres*, p. 398 *sqq.*). Lecky, *History of European Morals*, ii. 27.

[2] Denis, *Histoire des théories et des idées morales dans l'antiquité*, ii. 110.

[3] Mommsen, *Römisches Strafrecht*, p. 619.

[4] Dionysius of Halicarnassus, *Antiquitates Romanæ*, ii. 15.

[5] Suetonius, *Caligula*, 5.

[6] Epictetus, *Dissertationes*, i. 23.

[7] *Digesta*, xxv. 3. 4.

[8] Noodt, 'Julius Paulus, sive de partus expositione et nece apud veteres,' in *Opera omnia*, i. 465 *sqq.* Walter, *Geschichte des Römischen Rechts*, § 538, vol. ii. 148 *sq.* Spangenberg, 'Verbrechen des Kindermords und der Aussetzung der Kinder,' in *Neues*

tute.[1] During the Empire it was practised on an extensive scale, and in the literature of the time it is spoken of with frigid indifference. Since the life of the victim was frequently saved by some benevolent person or with a view to profit,[2] it was not regarded in the same light as downright infanticide, which, in the case of a healthy infant, seems to have been strictly prohibited by custom.[3]

As is generally the case in the savage world, so among semi-civilised and civilised nations whose customs allow or tolerate infanticide, the child, if not suffered to live, has to be killed in its earliest infancy. Among the Chinese[4] and Rajputs[5] it is destroyed immediately after its birth. In the Scandinavian North the killing or exposure of an infant who had already been sprinkled with water was regarded as murder.[6] At Athens parents were punished for exposing children whom they had once begun to rear.[7]

The practice of exposing new-born infants, so common in the Pagan Empire, was vehemently denounced by the early Fathers of the Church.[8] They tried to convince men that, if the abandoned infant died, the unnatural parent was guilty of nothing less than murder, whilst the sinful purposes for which foundlings were often used formed another argument against exposure.[9] The enormity of the crime of causing an infant's death was enhanced by the notion that children who had died unbaptised were doomed to eternal perdition.[10] According to a decree of the Council of Mentz in 852, the penance imposed on the mother was heavier if she killed an unbaptised than if she killed a

Archiv des Criminalrechts, iii. 10 *sqq.* Mommsen, *Römisches Strafrecht*, p. 620, n. 1.

[1] Quintilian, *Declamationes*, 306. Plutarch, *De amore prolis*, 5.

[2] Lecky, *History of European Morals*, ii. 28. Lallemand, *Histoire des enfants abandonnés et délaissés*, p. 59.

[3] Mommsen, *Römisches Strafrecht*, p. 619.

[4] Gutzlaff, *op. cit.* i. 59.

[5] *Church Missionary Intelligencer*, xi. 81. Chevers, *op. cit.* p. 752.

[6] Grimm, *Deutsche Rechtsalterthumer*, p. 457.

[7] Schoemann, *Griechische Alterthumer*, i. 503.

[8] See Terme and Monfalcon, *Histoire des enfans trouvés*, p. 67 *sqq.*

[9] Justin Martyr, *Apologia I. pro Christianis*, 29, 27 (Migne, *Patrologiæ cursus*, Ser. Graeca, vi. 373 *sq.*, 369 *sqq.*).

[10] *Cf.* Spangenberg, in *Neues Archiv des Criminalrechts*, iii. 20; Lecky, *History of European Morals*, ii. 23.

baptised child.[1] In the year 1556, Henry II. of France made a law which punished as a child-murderer any woman who had concealed her pregnancy and delivery, and whose child was found dead, "privé, tant du saint sacrement de baptesme, que sépulture publique et accoustumée."[2] This statute—to which there is a counterpart in England in the statute 21 Jac. I. c. 27,[3] and in the Scotch law of 1690, c. 21[4]—thus went so far as to constitute a presumptive murder, avowedly under the influence of that Christian dogma to which Mr. Lecky attributes, in the first instance, "the healthy sense of the value and sanctity of infant life which so broadly distinguishes Christian from Pagan societies."[5]

If the Pagans had been comparatively indifferent to the sufferings of the exposed infant, the Christians became all the more cruel to the unfortunate mother, who, perhaps in a fit of despair, had put to death her new-born child. The Christian emperor Valentinian I. made infanticide a capital offence.[6] According to the Coutume de Loudunois, a mother who killed her child was burned.[7] In Germany and Switzerland she was buried alive with a pale thrust through her body;[8] this punishment was prescribed by the criminal code of Charles V., side by side with drowning.[9] Until the end of the eighteenth, or the beginning of the nineteenth, century, infanticide was a capital crime everywhere in Europe, except in Russia.[10] Then, under the influence of that rationalistic movement which compelled men to rectify so many preconceived opinions,[11] it became manifest that an unmarried woman

[1] *Canon Hludowici regis*, 9 (Pertz, *Monum. Germaniæ historica*, iii. 413).
[2] Isambert, Decrusy, and Armet, *Recueil général des anciennes lois françaises*, xiii. 472 *sq.*
[3] Blackstone, *Commentaries on the Laws of England*, iv. 198.
[4] Erskine, *Principles of the Law of Scotland*, p. 560.
[5] Lecky, *History of European Morals*, ii. 23.
[6] *Codex Theodosianus*, ix. 14. 1. *Institutiones*, ix. 16. 7.
[7] Tissot, *Le droit pénal*, ii. 40.
[8] Osenbrüggen, *Das alamannische Strafrecht im deutschen Mittelalter*, p. 229 *sq.* *Idem*, *Studien zur deutschen und schweizerischen Rechtsgeschichte*, p. 358.
[9] Charles V.'s *Peinliche Gerichts Ordnung*, art. 131.
[10] de Feyfer, *Verhandeling over den Kindermoord*, p. 225. von Fabrice, *Die Lehre von der Kindsabtreibung und vom Kindsmord*, p. 251.
[11] Berner, *Lehrbuch des Deutschen Strafrechtes*, p. 497.

who destroyed her illegitimate child was not in the same category as an ordinary murderess.[1] It was pointed out that shame and fear, the excitement of mind, and the difficulty in rearing the poor bastard, could induce the unfortunate mother to commit a crime which she herself abhorred. That no notice had been taken of all this, is explicable from the extreme severity with which female unchastity was looked upon by the Church. At present most European lawbooks do not punish infanticide committed by an unmarried woman even nominally with death.[2] In France the law which regards infanticide as an aggravated form of *meurtre*[3] has become a dead letter;[4] and in England no woman seems for a long time to have been executed for killing her new-born child under the distress of mind and fear of shame caused by child-birth.[5]

Hand in hand with the custom of infanticide goes feticide, which prevails extensively in the savage world.[6] The same considerations as induce savages to kill their new-born infants also induce them to destroy the fetus before it has proceeded into the world from the mother's body. Besides, women procure abortion with a view to avoiding the disagreeable incidents accompanying the state of pregnancy; or, very frequently, in order to conceal illicit intercourse.[7] Considering that the same degree of sympathy cannot be felt with regard to a child not yet born as with regard to an infant, it is not surprising to find that feticide is practised without objection even by

[1] Bentham maintained (*Theory of Legislation*, p. 264 *sq.*) that infanticide ought not to be punished as a principal offence. "The offence," he says, "is what is improperly called the death of an infant, who has ceased to be, before knowing what existence is,—a result of a nature not to give the slightest inquietude to the most timid imagination; and which can cause no regrets but to the very person who, through a sentiment of shame and pity, has refused to prolong a life begun under the auspices of misery."

[2] de Feyfer, *op. cit.* p. 228. For modern legislation on infanticide, see also Spangenberg, in *Neues Archiv des Criminalrechts*, iii. 360 *sqq.*; von Fabrice, *op. cit.* p. 254 *sqq.*

[3] *Code Pénal*, art. 300, 302.

[4] Garraud, *Traité théoretique et pratique du droit pénal français*, iv. 251.

[5] Stephen, *History of the Criminal Law of England*, iii. 86.

[6] Ploss, *Das Weib*, i. 842 *sqq.*

[7] *Ibid.* i. 851 *sq.*

some peoples who never commit infanticide. Thus in Samoa, where the latter practice was perfectly unknown, the destruction of unborn children prevailed to a melancholy extent, and the same was the case in the Mitchell Group.[1] Among the Dacotahs, who only occasionally killed infants, abortion procured by artificial means was not held objectionable.[2] On the other hand there are savages who consider it a crime. Some Indian tribes in North America abhor the practice.[3] The natives of Tenimber and Timor-laut punish it with heavy fines.[4] Regarding the Kafirs, Mr. Warner states that "the procuring of abortion, although universally practised by all classes of females in Kafir society, is nevertheless a crime of considerable magnitude in the eye of the Law; and when brought to the notice of the Chief, a fine of four or five head of cattle is inflicted. The accomplices are equally guilty with the female herself."[5]

Passing to more civilised nations, we notice that, among Hindus and Muhammedans, artificial abortion is extremely common and is hardly reprobated by public opinion, whatever religion or law may have to say on the subject.[6] It is especially resorted to by unmarried women as a means of escaping punishment and shame. "In a country like India," says Dr. Chevers, "where true morality is almost unknown, but where the laws of society exercise the most rigorous and vigilant control imaginable over the conduct of females, and where six-sevenths of the widows, whatever their age or position in life may be, are absolutely debarred from re-marriage, and are compelled to rely upon the uncertain support of their relatives, it is scarcely surprising that great crimes should be frequently practised to conceal the results of immorality, and that the procuring of criminal abortion should, especially, be an act of

[1] Turner, *Samoa*, pp. 79, 280.

[2] Schoolcraft, *Indian Tribes of the United States*, iii. 243. Keating, *op. cit.* i. 394.

[3] Ploss, *Das Weib*, i. 848.

[4] Riedel, *De sluik- en kroesharige rassen tusschen Selebes en Papua*, p. 302.

[5] Warner, in Maclean, *Compendium of Kafir Laws and Customs*, p. 62. *Cf.* Brownlee, *ibid.* p. 111; Holden, *Past and Future of the Kaffir Races*, p. 334.

[6] See *Laws of Manu*, v. 90; *Vishńu Purâńa*, p. 207 *sq.*

almost daily commission, and should have become a trade among certain of the lower midwives."[1] In Persia every illegitimate pregnancy ends with abortion; the act is done almost publicly, and no obstacle is put in its way.[2] In Turkey, both among the rich and poor, even married women very commonly procure abortion after they have given birth to two children, one of which is a boy; and the authorities regard the practice with indifference.[3] In ancient Greece, as we have seen, feticide was under certain circumstances recommended by Plato and Aristotle, in preference to infanticide. In Rome it was prohibited by Septimius Severus and Antoninus, but the prohibition seems to have referred only to those married women who, by procuring abortion, defrauded their husbands of children.[4] During the Pagan Empire, abortion was extensively practised, either from poverty, or licentiousness, or vanity; and, although severely disapproved of by some,[5] "it was probably regarded by the average Romans of the later days of Paganism much as Englishmen in the last century regarded convivial excesses, as certainly wrong, but so venial as scarcely to deserve censure."[6] Seneca thinks Helvia worthy of special praise because she had never destroyed her expected child within her womb, "after the fashion of many other women, whose attractions are to be found in their beauty alone."[7] The Romans drew a broad line between feticide and infanticide. An unborn child was not regarded by them as a human being; it was a *spes animantis*, not an *infans*.[8] It was said to be merely a part of the mother, as the fruit is a part of the tree till it becomes ripe and falls down.[9]

Very different opinions were held by the Christians. A sanctity, previously unheard of, was attached to human life from the very beginning. Feticide was regarded as a

[1] Chevers, *op. cit.* p. 712.
[2] Polak, *Persien*, i. 217.
[3] Ploss, *Das Weib*, i. 846 *sq.*
[4] *Digesta*, xlvii. 11. 4. *Cf.* Rein, *Criminalrecht der Römer*, p. 447.
[5] Paulus, quoted in *Digesta*, xxv. 3, 4.
[6] Lecky, *History of European Morals*, ii. 21 *sq.*
[7] Seneca, *Ad Helviam*, 16.
[8] Spangenberg, 'Verbrechen der Abtreibung der Leibesfrucht,' in *Neues Archiv des Criminalrechts*, ii. 23.
[9] *Ibid.* ii. 22.

form of murder. "Prevention of birth," says Tertullian, "is a precipitation of murder; nor does it matter whether one take away a life when formed, or drive it away while forming. He also is a man who is about to be one. Even every fruit already exists in its seed."[1] St. Augustine, again, makes a distinction between an embryo which has already been formed, and an embryo as yet unformed. From the creation of Adam, he says, it appears that the body is made before the soul. Before the embryo has been endowed with a soul it is an *embryo informatus*, and its artificial abortion is to be punished with a fine only; but the *embryo formatus* is an animate being, and to destroy it is nothing less than murder, a crime punishable with death.[2] This distinction between an animate and inanimate fetus was embodied both in Canon[3] and Justinian law,[4] and passed subsequently into various lawbooks.[5] And a woman who destroyed her animate embryo was punished with death.[6]

The criminality of artificial abortion was increased by the belief that an *embryo formatus*, being a person endowed with an immortal soul, was in need of baptism for its salvation. In his highly esteemed treatise De Fide, written in the sixth century, St. Fulgentius says, "It is to be believed beyond doubt, that not only men who are come to the use of reason, but infants, whether they die in their mother's womb, or after they are born, without baptism,

[1] Tertullian, *Apologeticus*, 9 (Migne *op. cit.* i. 319 *sq.*).

[2] St. Augustine, *Questiones in Exodum*, 80; *Idem*, *Questiones Veteris et Novi Testamenti*, 23 (Migne, *op. cit.* xxxiv.–xxxv. 626, 2229).

[3] Gratian, *Decretum*, ii. 32. 2. 8 *sq.*

[4] As regards the time from which the fetus was considered to be animate a curious distinction was drawn between the male and the female fetus. The former was regarded as *animatus* forty days after its conception, the latter eighty days. This theory, however—which was derived, as it seems, either from an absurd misinterpretation of *Leviticus*, xii. 2–5, or from the views of Aristotle (*De animalibus historiæ*, vii. 3; *cf.* Pliny, *Historia naturalis*, vii. 6)—was not accepted by the glossarist of the Justinian Code, who fixed the animation of the female, as well as of the male, fetus at forty days after its conception; and this view was adopted by later jurists (Spangenberg, in *Neues Archiv des Criminalrechts*, ii. 37 *sqq.*).

[5] von Fabrice, *op. cit.* p. 202 *sq.* Berner, *op. cit.* p. 501. Wilda, *op. cit.* p. 720 *sqq.*

[6] Fleta, i. 23. 12 (England). Charles V.'s *Peinliche Gerichts Ordnung*, art. 133. Spangenberg in *Neues Archiv des Criminalrechts*, ii. 16.

in the name of the Father, Son, and Holy Ghost, are punished with everlasting punishment in eternal fire, because though they have no actual sin of their own, yet they carry along with them the condemnation of original sin from their first conception and birth."[1] And in the Lex Bajuwariorum this doctrine is expressly referred to in a paragraph which prescribes a daily compensation for children killed in the womb on account of the daily suffering of those children in hell.[2] Subsequently, however, St. Fulgentius' dictum was called in question, and no less a person than Thomas Aquinas suggested the possibility of salvation for an infant who died before its birth.[3] Apart from this, the doctrine that the life of an embryo is equally sacred with the life of an infant was so much opposed to popular feelings, that the law concerning feticide had to be altered. Modern legislation, though treating the fetus as a distinct being from the moment of its conception,[4] punishes criminal abortion less severely than infanticide.[5] And the very frequent occurrence of this crime[6] is an evidence of the comparative indifference with which it is practically looked upon by large numbers of people in Christian countries.

[1] St. Fulgentius, *De fide*, 27 (Migne, *op. cit.* lxv. 701).

[2] *Lex Bajuwariorum*, viii. 21 (vii. 20).

[3] Lecky, *History of the Rise and Influence of the Spirit of Rationalism in Europe*, i. 360, n. 2.

[4] Henke, *Lehrbuch der gerichtlichen Medicin*, § 99, p. 75. Berner, *op. cit.* p. 502.

[5] von Fabrice, *op. cit.* p. 199. For modern laws referring to criminal abortion, see *ibid.* p. 206 *sqq.*, and Spangenberg, in *Neues Archiv des Criminalrechts*, ii. 178 *sqq.*

[6] See Ploss, *Das Weib*, i. 848 *sqq.*; Schmidt's *Jahrbucher der in- und auslandischen Gesammten Medicin*, xciii. 97.

CHAPTER XVIII

THE KILLING OF WOMEN AND OF SLAVES—THE CRIMINALITY OF HOMICIDE INFLUENCED BY DISTINCTIONS OF CLASS.

AMONG many of the lower races a husband is said to possess the power of life and death over his wife; but what this actually means is not always obvious. It is quite probable that, in some cases, the husband may put his wife to death whenever he pleases, without having to fear any disagreeable consequences. In other instances he, by doing so, at all events exposes himself to the vengeance of her family. Among the Bangerang tribe of Victoria, for instance, "he might ill-treat her, give her away, do as he liked with her, or kill her, and no one in the tribe interfered; though, had he proceeded to the last extremity, her death would have been avenged by her brothers or kindred."[1] So, also, among the aborigines of North-West-Central Queensland, "a wife has always her 'brothers' to look after her interests," and if a man kills his wife he has to deliver up one of his own sisters for his late wife's friends to put to death.[2] We shall see in a subsequent chapter that many statements in which absolute marital power is ascribed to savage husbands are not to be interpreted too literally. I venture to believe that the husband's so-called power of life and death is generally

[1] Curr, *Recollections of Squatting in Victoria*, p. 248

[2] Roth, *Ethnological Studies among the North-West-Central Queensland Aborigines*, p. 141. *Cf.* Fison and Howitt, *Kamilaroi and Kurnai*, p. 281 (Geawe-gal tribe).

restricted by custom to cases where the wife has committed some offence, and, especially, where she has been guilty of unfaithfulness.

The right of punishing the wife capitally, however, is by no means universally granted to the husband in uncivilised communities. Among the Gaika tribe of the Kafirs, "if he puts her to death, he is punished as a murderer."[1] Among the Bakwiri he has to suffer death himself if he kills his wife; if she is unfaithful to him he is only permitted to beat her.[2] From the information we possess of the lower races it does not seem to be the general rule that husbands punish their adulterous wives with death; but whether they have the right of doing so is a question seldom touched upon by our authorities.[3] We shall see that savage custom often gives to the husband only very limited rights over his wife, and requires that he should treat her with respect.

Among various peoples of a higher type the husband has, under certain circumstances, had the right of punishing his wife capitally; but this seems to be nearly all that is involved in that "power of life and death" which he is said to have possessed over her.[4] However, whilst custom or law forbade him to kill his wife without sufficient cause, such a deed was hardly looked upon with the same horror, or treated with the same severity, as the murder of a husband by his wife, owing to the former's superior position in the family. Among the Langobardi, according to the laws of King Rothar, a husband who killed his wife had to pay the same compensation as anybody else would have had to pay for taking her life, but if a wife killed her husband, she was put to death, and her property forfeited

[1] Brownlee, in Maclean, *Compendium of Kafir Laws and Customs*, p. 117.

[2] Schwarz, quoted by Post, *Afrikanische Jurisprudenz*, i. 401.

[3] See Steinmetz, *Ethnologische Studien zur ersten Entwicklung der Strafe*, ii. 303.

[4] Rein, *Japan*, p. 424. Hommel, *Die semitischen Völker und Sprachen* i. 417 (Babylonians). Leist, *Altarisches Jus Civile*, i. 196, 275 ("Aryan" peoples). Wilda, *Strafrecht der Germanen*, p. 705; Nordström, *Bidrag till den svenska samhalls-forfattningens historia*, ii. 61 *sq.*; Weinhold, *Alt nordisches Leben*, p. 250; Keyser *Efterladte Skrifter*, ii. pt. ii. 28 *sq.* (Teutons).

to the family of the dead.[1] In Russia, in the seventeenth century, whilst a husband who murdered his wife was, according to law, obnoxious to corporal punishment, a wife who murdered her husband was buried alive, with the head above the ground, and left to perish by hunger.[2] According to English law, a woman who killed her husband was guilty of "petit treason," that is, murder in its most odious degree.[3]

Among many peoples the life of a woman is held cheaper than that of a man, independently of the relationship between the slayer and his victim. In Burma, if a woman was accidentally killed, less compensation had to be paid than for a man. A Burman explained this in the following words:—"A woman is worth less than a man *in that way*. A maidservant can be hired for less than a manservant, a daughter can claim less than a son. They cannot do so much work; they are not so strong. If they had been worth more, the law would have been the other way; of course they are worth less."[4] Among Muhammedans the price of blood for a woman is half the sum which is the price of blood for a free man.[5] In ancient India the murder of a woman, unless she was with child, was in the eye of the law on a par with the murder of a Sûdra.[6] According to Cambrian law, the *galanas*, or blood-price, of a woman was half the *galanas* of her brother.[7] Among the Teutons the *wergeld* of a woman varied: sometimes it was the same as that for a man, sometimes only half as much, but sometimes twice as much, or, if she was pregnant,

[1] *Edictus Rothari*, 200 *sqq.*

[2] Maciejowski, *Slavische Rechtsgeschichte*, iv. 292. For a Corsican law concerning matricide, see Cibrario, *Economia politica del medio eve*, i. 344; and for the punishment inflicted for the same crime on a woman in Nuremberg, in 1487, see Du Boys, *Histoire du droit criminel des peuples modernes*, ii. 607.

[3] Blackstone, *Commentaries on the Laws of England*, iv. 203.

[4] Fielding, *The Soul of a People*, p. 171.

[5] Lane, *Arabian Society in the Middle Ages*, p. 18.

[6] *Baudhâyana*, i. 10. 19. 3. Leist, *Alt-arisches Jus Gentium*, p. 305 *sqq.*

[7] *Venedotian Code*, ii. 1. 16. According to the 'Laws of the Brets and Scots,' the estimate of a married woman is less by a third part than that of her husband, whereas the estimate of an unmarried woman is equal to that of her brother (Innes, *Scotland in the Middle Ages*, p. 181).

even more.[1] These variations depended upon the different points of view from which the offence was looked upon. By herself she was worth less than a man, as a mother she was worth more ;[2] and, quite apart from her value, the natural helplessness of her sex tended to aggravate the crime.[3] Among modern savages and barbarians, also, the estimate of a woman's life is in some instances lower than that of a man's,[4] in some equal to it,[5] and in some higher.[6] Among the Gallas the killing of a free man can be atoned for only by one thousand cattle, whereas fifty are deemed sufficient for the killing of a woman.[7] On the other hand, among the Iroquois two hundred yards of wampum were paid for the murder of a woman, and only one hundred for that of a man.[8] Among the Rejangs of Sumatra, whilst the compensation for murder is eighty dollars if the victim was an ordinary man or boy, it is one hundred and fifty dollars if the person murdered was a woman or a girl.[9] Among the Agār, a Dinka tribe, the murder of a man must be atoned for by a fine of thirty cows, that of a woman by forty cows.[10] Where wives are purchased, the killing of a woman involves the destruction of valuable property, and is dealt with accordingly.

As a husband often has "the power of life and death" over his wife, so we may expect to find, even more often,

[1] Grimm, *Deutsche Rechtsalterthumer*, p. 404 *sqq.*

[2] This point of view is very conspicuous in the Salic Law (*Lex Salica* [Herold's text], 28).

[3] Wilda, *op. cit.* p. 571. Keyser, *op. cit.* ii. pt. ii. 29. Brunner, *Deutsche Rechtsgeschichte*, ii. 614 *sq.* Pardessus, *Loi Salique*, p. 662.

[4] Post, *Anfänge des Staats- und Rechtsleben*, p. 192. *Idem*, *Studien zur Entwicklungsgeschichte des Familienrechts*, p. 119 *sq.* Gibbs, 'Tribes of Western Washington and Northwestern Oregon,' in *Contributions to North American Ethnology*, i. 190. Georgi, *Russia*, ii. 261; Vámbéry, *Türkenvolk*, p. 305 (Kirghiz). Decle, *Three Years in Savage Africa*, p. 487 (Wakamba).

[5] Schoolcraft, *Indian Tribes of the United States*, i. 277 (Creeks). Dorsey, 'Omaha Sociology,' in *Ann. Rep. Bur. Ethn.* iii. 370. Woodthorpe, in *Jour. Anthr. Inst.* xxvi. 21 (Shans).

[6] Post, *Studien zur Entwicklungsgeschichte des Familienrechts*, p. 119 *sq.*

[7] Paulitschke, *Ethnographie Nordost-Afrikas*, p. 263.

[8] Loskiel, *History of the Mission of the United Brethren among the Indians in North America*, i. 16.

[9] Marsden, *History of Sumatra*, p. 222.

[10] *Emin Pasha in Central Africa*, p. 338.

that a master has the same power over his slave. The latter, as a rule, can hardly count on the support of his family, and when, as is frequently the case, he is a prisoner of war, the right of killing an enemy easily passes into the right of killing the slave. In the literature dealing with the lower races we repeatedly meet with the statement that the owner may kill his slave at pleasure, or that he is not accountable for killing him.[1] Yet this seems to mean rather that, if he does so, no complaint can be brought against him, or no vengeance taken on him, than that he has an unconditional moral right to put to death a slave whom he no longer cares to keep; we shall see that savage custom very commonly requires that slaves should be treated with kindness by their masters. In many cases the master is expressly denied the right of killing his slave at his own discretion.[2] Among the Bataks, the owner, though allowed to punish his slave, must take care that the latter does not succumb to the punishment.[3] Among the Rejangs, if a man kills his slave, he pays half his price as compensation to the feudal chief of the country.[4] In Madagascar "masters have full power over their slaves, excepting as to life";[5] and the same is said of the Tshi-speaking peoples of the Gold Coast.[6] The Mandingoes allow the owner to do what he likes to a prisoner of war and to a person who has lost his freedom through insolvency, but he is forbidden to kill a house-slave.[7] Among the Barea and Kunáma, by putting

[1] Monrad, *Bidrag til en Skildring af Guinea-Kysten*, p. 42 (Negroes of Accra). Bowdich, *Mission to Ashantee*, p. 258 (people of Ashanti). Ward, *Five Years with the Congo Cannibals*, p. 105 (Bolobo). Macdonald, *Africana*, i. 168 (Eastern Central Africans). Burton, *Zanzibar*, ii. 95 (Wanika). Cooper, *Mishmee Hills*, p. 238. *Glimpses of the Eastern Archipelago*, p. 106 (highlanders of Palembang). Hale, *U.S. Exploring Expedition. Vol. VI. Ethnography and Philology*, p. 33 (Maoris). Gibbs, *loc. cit.* p. 189 (Thlinkets). Steinmetz, *Studien*, ii. 308 *sqq.*

[2] Steinmetz, *Rechtsverhältnisse von eigeborenen Völkern in Afrika und Ozeanien*, p. 43 (Banaka and Bapuku). Mademba, *ibid.* p. 83 (natives of the Sansanding States). Lang, *ibid.* p. 241 (Washambala). Desoignies, *ibid.* p. 278 (Msalala).

[3] *Glimpses of the Eastern Archipelago*, p. 114.

[4] Marsden, *op. cit.* p. 222.

[5] Ellis, *History of Madagascar*, i. 196.

[6] Ellis, *Tshi-speaking Peoples of the Gold Coast*, p. 291.

[7] Post, *Afrikanische Jurisprudenz*, i. 95.

to death a slave who is a native of the country, the master even exposes himself to the blood-revenge of the family of the slain.[1]

The murder of another person's slave is of course largely regarded as an offence against the property of the owner, but, in many cases at least, it is not exclusively looked upon in this light. Where the master himself is not allowed to kill his slave, the slave possesses the right to live in the full sense of the term. Sometimes there is in this respect little difference between him and a freeman. Among the Beni Amer, whilst the murder of a slave who has been bought is merely compensated for by the payment of the purchase sum, the murder of a slave who belongs to his master by birth is avenged by his relatives, or, if he has none, by the master himself; should the murderer be too high a person, the matter drops, but there is no question of payment in any case.[2] Where the system of blood-money prevails, the price paid for the life of a slave is less than that paid for the life of a freeman. Among the Kirghiz the former is only half of the latter.[3] In Axim, on the Gold Coast, according to Bosman, the murderer of a slave was usually fined thirty-six crowns, whilst five hundred crowns were demanded for the murder of a free-born negro.[4]

The rule that the life of a slave is held in less estimation than the life of a freeman applies to the nations of archaic culture; yet not even the master is among them in all circumstances allowed to put his slave to death. In ancient Mexico the murder of a slave, though committed by the master, was a capital offence.[5] In Corea, a slave may not be killed by his owner before the latter has obtained the permission of the board of punishments, or of the high provincial authorities.[6] According to the

[1] Munzinger, *Ostafrikanische Studien*, p. 484.
[2] *Ibid.* p. 309.
[3] Georgi, *op. cit.* ii. 261.
[4] Bosman, *New Description of the Coast of Guinea*, p. 141 *sq.*
[5] Bancroft, *op. cit.* ii. 223.
[6] Rockhill, 'Notes on some of the Laws, Customs, and Superstitions of Korea,' in *American Anthropologist*, iv. 180. *Cf.* Griffis, *Corea*, p. 239.

Chinese Penal Code, a master who, instead of complaining to a magistrate privately, beats to death a slave who has been guilty of theft, adultery, or any other similar crime, shall be punished with one hundred blows. If he beats to death, or intentionally kills, a slave who has committed no crime, he shall be punished with sixty blows and one year's banishment, and the wife or husband, as also the children, of the deceased slave shall be entitled to their freedom.[1] Again, a freeman who kills another's slave shall be strangled.[2]

According to Hebrew law, a master who smites his slave so that he dies under his hand, "shall be surely punished"; but if the slave continues to live for a day or two after the assault, the master goes free on the score that the slave is "his money."[3] Muhammed strongly enjoined the duty of kindness to slaves; yet, according to Muhammedan law, the master may even kill his own slave with impunity for any offence, and incurs but a slight punishment—as imprisonment for a period at the discretion of the judge—if he kills him wantonly.[4] The price of blood for a slave is his or her value; but by the Hanafee law a man is obnoxious to capital punishment for the murder of another man's slave.[5]

Among the ancient Teutons the master was irresponsible in the eye of the law as to all dealings between himself and his slave; legally the slave was on a par with the horse and the ox, and to kill him was only to inflict a certain loss upon the owner.[6] In ancient Wales the position of a slave seems to have been very similar; there was no *galanas* for a bondman, "only payment of his worth to his master, like the worth of a beast."[7] Among the Greeks, in the Homeric age, the master evidently

[1] *Ta Tsing Leu Lee*, sec. cccxiv. p. 340.
[2] *Ibid.* sec. cccxiii. p. 336
[3] *Exodus*, xxi. 20 *sq.*
[4] Lane, *Manners and Customs of the Modern Egyptians*, p. 115. *Idem*, *Arabian Society in the Middle Ages*, p. 251.
[5] *Idem*, *Modern Egyptians*, p. 119. *Idem*, *Arabian Society*, p. 18 *sq.*
[6] Grimm, *Deutsche Rechtsalterthümer*, p. 342 *sqq.* Brunner, *Deutsche Rechtsgeschichte*, i. 96. Kemble, *Saxons in England*, i. 208 *sqq.* Stemann, *op. cit.* p. 281 *sqq.* Keyser, *op. cit.* ii. pt. i. 289.
[7] *Dimetian Code*, iii. 3. 8.

could punish his slaves with death ;[1] but in later times, at least at Athens, he was obliged to hand over to the magistrate any slave of his who deserved capital punishment.[2] What happened to a master who killed his own slave we do not know exactly, but at any rate he had to undergo a ceremony of purification.[3] Plato says in his 'Laws,' that if a person kills the slave of another in anger, he shall pay twice the amount of the loss to his owner.[4] But he adds, "If any one kills a slave who has done no wrong, because he is afraid that he may inform of some base and evil deeds of his own, or for any similar reason, in such a case let him pay the penalty of murder, as he would have done if he had slain a citizen."[5]

In Rome, in ancient times, the master had by law the absolute power of life and death over his slaves ; and he who killed another man's slave was not criminally prosecuted, but had merely to compensate the owner for the destruction of his property.[6] Even during the Empire a slave was counted a thing, not a person ; himself incapable of suffering an *injuria*, he was viewed as a mechanical medium only, through which an insult could be transmitted to his master.[7] Yet this doctrine was not rigidly adhered to. After the publication of the Lex Cornelia, the change was introduced that he who killed a slave belonging to somebody else could be punished for murder ;[8] and later on even the master's power of life and death was restricted by law. Claudius declared that sick slaves who had been exposed by their owners in a languishing condition, and afterwards recovered, should be perfectly free and never more return to their former servitude ; moreover, "if any one chose to kill at once, rather than expose, a slave, he should be liable for murder."[9]

[1] *Odyssey*, iv. 743 ; xix. 489 *sq.*

[2] Schmidt, *Ethik der alten Griechen*, ii. 217. Hermann-Blümner, *Lehrbuch der griechischen Privatalterthümer*, p. 88, n. 3.

[3] Plato, *Leges*, ix. 865, 868. Schmidt, *op. cit.* ii. 217 *sq.*

[4] Plato, *Leges*, ix. 868.

[5] *Ibid.* ix. 872.

[6] Mommsen, *Römisches Strafrecht*, p. 616.

[7] *Institutiones*, iv. 4. 3.

[8] Gaius, *Institutionum juris civilis commentarii*, iii. 213. *Cf.* Mommsen, *Römisches Strafrecht*, p. 616.

[9] Suetonius, *Claudius*, 25.

By a constitution of Antoninus Pius he who put his slave to death without a sufficient cause (*sine causa*) was to be punished equally with him who killed the slave of another.[1] Hadrian even made an attempt to induce slave-owners to hand over to the authorities slaves who had been guilty of some capital crime, instead of themselves inflicting the punishment on the guilty.[2]

Faithful to her principle that human life is sacred, the Church made efforts to secure the life of the slave against the violence of the master; but neither the ecclesiastical nor the secular legislation gave him the same protection as was bestowed upon the free member of the Church and State. Various Councils punished the murder of a slave with two years' excommunication only, if the slave had been killed "sine conscientia judicis";[3] and the same punishment was adopted by some Penitentials.[4] Edgar made the penance last three years, whereas, if a freeman was killed, the penance was of seven years' duration.[5] Facts do not justify Mr. Lecky's statement that, "in the penal system of the Church, the distinction between wrongs done to a freeman, and wrongs done to a slave, which lay at the very root of the whole civil legislation, was repudiated."[6]

Beyond a law of Constantine, to the effect that a master

[1] Gaius, *op. cit.* i. 53. *Institutiones*, i. 8. 2.

[2] Spartian, *Vita Hadriani*, 18. *Cf.* Mommsen, *Romisches Strafrecht*, p. 617, n. 2.

[3] *Concilium Agathense*, A.D. 506, canon 62 (Labbe-Mansi, *Sacrorum Conciliorum collectio*, viii. 335). *Concilium Epaonense*, A.D. 517, canon 34 (*ibid.* viii. 563). *Concilium Wormatiense*, A.D. 868, canon 38 (*ibid.* xv. 876).

[4] *Pœnitentiale Cummeani*, vi. 29 (Wasserschleben, *Bussordnungen der abendlandischen Kirche*, p. 480). *Pœnit. Pseudo-Theodori*, xxi. 12 (*ibid.* p. 587).

[5] *Canons enacted under Edgar*, Modus imponendi pœnitentiam, 4, 11 (*Ancient Laws and Institutes of England*, p. 405 *sq.*).

[6] Lecky, *History of European Morals*, ii. 66. Mr. Lecky states (*ibid.* ii. 66 *sq.*) that the Council of Illiberis excluded for ever from the communion a master who killed his slave. I have only been able to find the following enactment made by a Council held at Illiberis in the beginning of the fourth century:—"Si qua domina furore zeli accensa flagris verberaverit ancillam suam, ita ut in tertium diem animam cum cruciatu effundat; eo quod incertum sit, voluntate, an casu occiderit; si voluntate, post septem annos; si casu, post quinquennii tempora, acta legitima pœnitentia, ad communionem placuit admitti" (*Concilium Eliberitanum*, ch. 5 [Labbe-Mansi, *op. cit.* ii. 6]).

who put his slave to death in a non-judicial way, was to be punished as a murderer,[1] and a reiteration of some previous enactments, the Christian emperors seem to have done little to guard the life of the slave. Whilst it was provided that any master who applied to his slave certain atrocious tortures with the object of killing him should be deemed a manslayer, it was emphatically said that no charge whatever should be brought against him if the slave died under moderate punishment, or under any punishment not inflicted with the intention of killing him.[2] Arcadius and Honorius even passed a law refusing protection to a slave who should fly to a church for refuge from his master;[3] but this law was, in the West, followed by regulations of an opposite character.[4] The barbarian invasions certainly did not improve the condition of slaves, and in Teutonic countries it was only by slow degrees that the introduction and spread of a higher civilisation exercised its humanising influence on the relation between master and slave. The Visigothic Code prohibited a person from killing any of his slaves who had committed no offence.[5] According to the Capitularia, the master had to pay a penalty for causing the death of a guiltless slave, provided that he died at once; but if he survived the injury only a day or two, the master was not punishable for his deed, because the slave was his *pecunia*.[6] In a later period any intentional killing of an innocent slave was punished by law, but the law probably remained a dead letter.[7] In the thirteenth century Beaumanoir, the French jurisconsult, could write:—"Plus cortoise est nostre coustume envers les sers que en autre païs, car li segneur poent penre de lor sers, et à mort et à vie, toutes les fois

[1] *Codex Theodosianus*, ix. 12. 1.

[2] *Ibid.* ix. 12. Lecky, *History of European Morals*, ii. 62 *sq.*

[3] *Codex Theodosianus*, ix. 45. 3.

[4] Babington, *The Influence of Christianity in promoting the Abolition of Slavery in Europe*, p. 37. Biot, *De l'abolition de l'esclavage ancien en Occident*, p. 239.

[5] *Lex Wisigothorum*, vi. 5. 12.

[6] *Capitularia*, vi. 11 (Georgisch, *Corpus Juris Germanici antiqui*, col. 1513). This law is borrowed from *Exodus*, xxi. 20 *sq.*

[7] Grimm, *Deutsche Rechtsalterthümer*, p. 344 *sq.* *Cf.* Potgiesser, *Commuantarii juris Germanici de statu servorum veteri perinde atqve novo*, ii. 1. 10, 13, 24; iii. 6 (pp. 308, 309, 311, 312, 321, 633 *sqq.*).

qu'il lor plest, et tant qu'il lor plet."[1] Nay, even in quite modern times, in Christian countries, where negro slavery prevailed as a recognised institution, the life of the slave was only inadequately protected by their laws.

In most of the British colonies, it was only by force of comparatively recent acts, made for the most part subsequent to the year 1797, that the same punishment was prescribed for the murder of a slave as for the murder of a free person. Prior to this period the former crime was subject only to a small pecuniary penalty, in Barbados not exceeding £15.[2] In the French colonies, according to the Code Noir, a master who killed his slave should be punished "selon l'atrocité des circonstances."[3] In all the North American Slave-States there was a time when the murder of a slave, whether by his master or a third person, was atoned for by a fine. In South Carolina this was the case as late as 1821, and only since then the wilful, malicious, and premeditated killing of a slave, by whomsoever perpetrated, was a capital offence in all the slave-holding States.[4] But this does not mean that no distinction was made between the killing of a slave and the killing of a freeman. In South Carolina, according to an enactment of 1821, he who killed a slave on a sudden heat of passion was punished simply with a fine of five hundred dollars and imprisonment not exceeding six months.[5] In the Statutes of Tennessee the law referring to the wilful murder of a slave contained the provision that it should not be extended to "any person killing any slave in the act of resistance to his lawful owner or master, or any slave dying under moderate correction";[6] and a very similar provision was made by the laws of Georgia.[7] In other words, a correction causing the death of the victim

[1] Beaumanoir, *Les coutumes du Beauvoisis*, xlv. 36, vol. ii. p. 237.

[2] Stephen, *Slavery of the British West India Colonies delineated*, i. 36, 38.

[3] *Code Noir*, Édit donné au mois de Mars 1724, art. 39, p. 304.

[4] Brevard, *Digest of the Public Statute Law of South Carolina*, ii. 240 *sq.* Stroud, *Laws relating to Slavery in the United States of America*, p. 55 *sq.*

[5] Stroud, *op. cit.* p. 64.

[6] Caruthers and Nicholson, *Compilation of the Statutes of Tennessee*, p. 677.

[7] Prince, *Digest of the Laws of the State of Georgia*, p. 787.

was not necessarily immoderate in the eye of the law. In a still higher degree the life of the slave was endangered by another law, which prevailed universally both in the Slave-States and in the British Colonies. Neither a slave, nor a free negro, nor any descendant of a native of Africa whatever might be the shade of his complexion, could be a witness against a white person, either in a civil or criminal case.[1] This law placed the slave, who was seldom within the view of more than one white man at a time, entirely at the mercy of this individual, and its consequences were obvious. Speaking of slavery in the United States in 1853, Mr. Goodell remarks :—"Upon the most diligent inquiry and public challenge, for fifteen or twenty years past, not one single case has yet been ascertained in which, either during that time or previously, a master killing his slave, or indeed any other white man, has suffered the penalty of death for the murder of a slave." Nevertheless, murders of slaves by white men had been notoriously frequent.[2]

That the life of a slave is held in so little regard is due to that want of sympathy with his fate which accounts also for his unfree condition, and to the proprietary rights over him which, in consequence, have been granted to his master. For similar reasons the killing of a freeman by a slave, especially if the victim be his owner, is commonly punished more severely than if the same act were done by a free person. The less the sympathy felt for an individual, the more intense is the resentment which he excites by offensive behaviour. According to the Chinese Penal Code, a slave who designedly kills, or strikes so as to kill, his master, shall suffer death "by a slow and painful execution."[3] Plato says that, if a slave voluntarily murders a freeman,

[1] Brevard, *op. cit.* ii. 242. Stroud, *op. cit.* p. 106 *sq.* Stephen, *Slavery of the British West India Colonies*, i. 166, 174. In the French Colonies, also, slaves could not be legal witnesses, but their testimony might be heard by the judge, merely to serve as a suggestion, or unauthenticated information, which might throw light on the evidence of other witnesses (*Code Noir*, Édit du mois de Mars 1685, art. 30, p. 44).

[2] Goodell, *American Slave Code in Theory and Practice*, p. 209 *sq.*

[3] *Ta Tsing Leu Lee*, sec. cccxiv. p. 338.

the public executioner shall lead him in the direction of the sepulchre of the dead man, to a place whence he can see the tomb, and after inflicting upon him as many stripes as the complainant shall order, put the murderer, if he survives the scourging, to death.[1] Though the slave has committed the act in a fit of passion, the relatives of the deceased shall nevertheless be under an obligation to kill him, and this may be done in any manner they please ;[2] nay, even in self-defence a slave is not allowed to kill a freeman, any more than a son is allowed to kill his father.[3] At Rome, also, a slave was more heavily punished for the commission of homicide than a freeman.[4] Says the ancient jurist, "Maiores nostri in omni supplicio severius servos quam liberos famosos quam integræ famæ homines punierunt."[5]

In the estimate of life a distinction is made not only between freemen and slaves, but between different classes of freemen. Among certain peoples a person who kills a chief is punished with death, though murder is not generally a capital offence.[6] Where the system of compensation prevails, the blood-price very frequently varies according to the station or rank of the victim.[7] Among the Rejangs of Sumatra the compensation for the murder of a superior chief is five hundred dollars, for that of an inferior chief two hundred and fifty dollars ; for that of a common person, man or boy, eighty dollars ; for that of a common person, woman or girl, one hundred and fifty dollars ; for the legitimate child or wife of a superior chief, two hundred and fifty dollars.[8] The body of every Ossetian has

[1] Plato, *Leges*, ix. 872.
[2] *Ibid.* ix. 868.
[3] *Ibid.* ix. 869.
[4] Mommsen, *Römisches Strafrecht*, p. 631 *sq.*
[5] *Digesta*, xlviii. 19. 28. 16.
[6] Woodthorpe, in *Jour. Anthr. Inst.* xxvi. 21 (Shans). Shooter, *Kafirs of Natal*, p. 103.
[7] Maclean, *Compendium of Kafir Laws and Customs*, p. 144. Casalis, *Basutos*, p. 225. Ellis, *Tshi-speaking Peoples of the Gold Coast*, p. 301. Munzinger, *Ostafrikanische Studien*, pp. 242 *sq.* (Marea), 314 (Beni Amer). Forbes, *A Naturalist's Wanderings in the Eastern Archipelago*, p. 145 (Lampongers of Sumatra). Modigliani, *Viaggio a Nias*, p. 494. Richardson, *Arctic Searching Expedition*, i. 386 (Kutchin). Gibbs, *loc. cit.* p. 190 (Indians of Western Washington and Northwestern Oregon). Paget, *Hungary and Transylvania*, ii. 411 n. (Hungarians).
[8] Crawfurd, *History of the Indian Archipelago*, iii. 112.

a settled value in the eyes of the judges, which seems to be fixed by public opinion; thus the father of a family bears a higher value than an unmarried man, and a noble is rated at twice as much as an ordinary freeman.[1] In Eastern Tibet the murderer of a man of the upper class is fined 120 bricks of tea, the murderer of a middle-class man only 80, and so on down through the social scale, the life of a beggar being valued at a nominal amount only; but if the victim was a lama, the murderer has to pay a much higher price, possibly 300 bricks.[2] According to the doctrine of modern Buddhism, "when the life of a man is taken, the demerit increases in proportion to the merit of the person slain."[3] The laws of the Brets and Scots estimated the life of the king of Scots at a thousand cows; that of an earl's son, or a thane, at a hundred cows; that of a villein, at sixteen cows.[4] A similar system prevailed among the Celtic peoples generally,[5] as also among the Teutons. A man's *wergeld*, or life-price, varied according to his rank, birth, or office; and so minutely was it graduated, that a great part of many Teutonic laws was taken up by provisions fixing its amount in different cases.[6] In English laws of the Norman age the *wer* of a *villanus* is still only reckoned at £4, whilst that of the *homo plene nobilis* is £25.[7]

The magnitude of the crime, however, may depend not only on the rank of the victim, but on the rank of the manslayer as well.[8] Among the Philippine Islanders, "murder committed by a slave was punished with death —committed by a person of rank, was indemnified by

[1] von Haxthausen, *Transcaucasia*, p. 409. Kovalewsky, *Coutume contemporaine*, p. 355 *sqq*.

[2] Rockhill, *Land of the Lamas*, p. 221.

[3] Hardy, *Manual of Budhism*, p. 478.

[4] Innes, *Scotland in the Middle Ages*, p. 180 *sq*.

[5] *Ancient Laws of Ireland*, iii. 103, &c. Skene, *Celtic Scotland*, iii. 152. de Valroger, *Les Celtes*, p. 471.

[6] Grimm, *Deutsche Rechtsalterthümer*, pp. 272-275, 289. Brunner, *Deutsche Rechtsgeschichte*, i. 104, 105, 107, 108, 224, 247 *sqq*. Kemble, *Saxons in England*, i. 276 *sqq*.

[7] *Leges Henrici I.* lxx. 1; lxxvi. 4. *Cf. Laws of William the Conqueror*, i. 8.

[8] These two principles do not always go together. Among the Rejangs the amount of the blood-money is not proportioned to the rank and ability of the murderer, but regulated only by the quality of the person murdered (Marsden, *op. cit.* p. 246).

payments to the injured family."[1] In Fijian estimation, says Mr. Williams, offences "are light or grave according to the rank of the offender. Murder by a chief is less heinous than a petty larcency committed by a man of low rank."[2] Among the Ewe-speaking peoples of the Slave Coast, "in cases of murder and manslaughter, if the homicide be of rank superior to the person killed, he pays the compensation demanded by the family of the latter, or, in default of payment, forfeits his own life. If the homicide be of equal rank with the person killed, the family of the deceased have the right to demand his life, though compensation is usually accepted; but when he is lower in rank his life is nearly always forfeited."[3] Very similar rules prevail among the Tshi-speaking peoples of the Gold Coast.[4] Among the Marea, if a nobleman kills another nobleman, the family of the deceased generally take revenge on him; whereas, if a commoner kills a nobleman, he is not only executed himself, but his property is confiscated and his nearest relatives become subject to the murdered man's family.[5] According to the religious law of Brahmanism, the enormity of all crimes depends on the caste of him who commits them, and on the caste of him against whom they are committed.[6] If a Brâhmana slays a Brâhmana, the king shall brand him on the forehead with a heated iron and banish him from his realm, but if a man of a lower caste murders a Brâhmana, he shall be punished with death and the confiscation of all his property.[7] If such a person slays a man of equal or lower caste, other suitable punishments shall be inflicted upon him.[8] A fine of a thousand cows is the penalty for slaying a Kshatriya, that of a hundred for slaying a Vaisya, and that of ten cows only for slaying a Sûdra.[9] In Rome, also, at a certain period of its history, the

[1] Bowring, *Visit to the Philippine Islands*, p. 123.
[2] Williams and Calvert, *Fiji*, p. 22.
[3] Ellis, *Ewe-speaking Peoples*, p. 223.
[4] *Idem*, *Tshi-speaking Peoples*, p. 301.
[5] Munzinger, *Ostafrikanische Studien*, p. 242 *sq.* *Cf. ibid.* p. 314 (Beni Amer).
[6] Hopkins, *Religions of India*, p. 263.
[7] *Baudhâyana*, i. 10. 18. 18 *sq.*
[8] *Ibid.* i. 10. 18. 20.
[9] *Ibid.* i. 10. 19. 1 *sq.*

offence was magnified in proportion to the insignificance of the offender. During the Republic there was no law sanctioning such a distinction, with reference to crimes committed by free citizens; but from the beginning of the Empire, the citizens were divided into privileged classes and commonalty—*uterque ordo* and *plebs*—and, whilst a commoner who was guilty of murder was punished with death, a murderer belonging to the privileged classes was generally punished with *deportatio* only.[1] In the Middle Ages a similar privilege was granted by Italian and Spanish laws to manslayers of noble birth.[2]

In a society which is divided into different classes, persons belonging to a higher class are naturally apt to sympathise more with their equals than with their inferiors. An injury inflicted on one of the former tends to arouse in them a higher degree of sympathetic resentment than a similar injury inflicted on one of the latter. So, also, their resentment towards the criminal will, *ceteris paribus*, be more intense if he is a person of low rank than if he is one of themselves. Where the superior class, as was originally the case everywhere, are the leaders of such a society, their feelings will find expression in its customs and laws, and thus moral distinctions will arise which are readily recognised by the common people also, owing to the admiration with which they look up to those above them. But in a progressive society this state of things will not last. The different classes gradually draw nearer to each other. The once all-powerful class loses much of its exclusiveness, as well as of its importance and influence. Sympathy expands. In consequence, distinctions which were formerly sanctioned by custom and law come to be regarded as unjust prerogatives, worthy only of abolition. And it is at last admitted that each member of the society is born with an equal claim to the most sacred of all human rights, the right to live.

[1] Mommsen, *Römisches Strafrecht*, pp. 650, 1032 *sqq.*

[2] Du Boys, *Histoire du droit criminel des peuples modernes*, ii. 402. *Idem*, *Histoire du droit criminel de l'Espagne*, pp. 357, 359. *Cf. ibid.* p. 635 *sq.*

CHAPTER XIX

HUMAN SACRIFICE

It still remains for us to consider some particular cases in which destruction of human life is sanctioned by custom or law.

Men are killed with a view to gratifying the desires of superhuman beings. We meet with human sacrifice in the past history of every so-called Aryan race.[1] It occurred, at least occasionally, in ancient India, and several of the modern Hindu sects practised it even in the last century.[2] There are numerous indications that it was known among the early Greeks.[3] At certain times it prevailed in the Hellenic cult of Zeus ;[4] indeed, in the second century after Christ men seem still to have been sacrificed to Zeus Lycæus in Arcadia.[5] To the historic age likewise belongs the sacrifice of the three Persian prisoners of war whom Themistocles was compelled to slay before the battle of Salamis.[6] In Rome, also, human sacrifices, though

[1] See Hehn, *Wanderings of Plants and Animals from their First Home*, p. 414 *sqq.*

[2] Weber, *Indische Streifen*, i. 54 *sqq.* Wilson, 'Human Sacrifices in the Ancient Religion of India,' in *Works*, ii. 247 *sqq.* Oldenberg, *Religion des Veda*, p. 363 *sqq.* Barth, *Religions of India*, p. 57 *sqq.* Monier Williams, *Brāhmanism and Hindūism*, p. 24. Hopkins, *Religions of India*, pp. 198, 363. Rājendralāla Mitra, *Indo-Aryans*, ii. 69 *sqq.* Crooke, *Popular Religion and Folk-Lore of Northern India*, ii. 167 *sqq.* Chevers, *Manual of Medical Jurisprudence for India*, p. 396 *sqq.*

[3] See Geusius, *Victimæ Humanæ, passim ;* von Lasaulx, *Sühnopfer der Griechen und Römer, passim ;* Farnell, *Cults of the Greek States*, i. 41 *sq.* ; Stengel, *Die griechischen Kultusaltertümer*, p. 114 *sqq.*

[4] *Cf.* Farnell, *op. cit.* i. 93; Stengel, *op. cit.* p. 116.

[5] Pausanias, viii. 38. 7.

[6] Plutarch, *Themistocles*, 13.

exceptional, were not unknown in historic times.[1] Pliny records that in the year 97 B.C. a decree forbidding such sacrifices was passed by the Roman Senate,[2] and afterwards the Emperor Hadrian found it necessary to renew this prohibition.[3] Porphyry asks, "Who does not know that to this day, in the great city of Rome, at the festival of Jupiter Latiaris, they cut the throat of a man?"[4] And Tertullian states that in North Africa, even to the proconsulship of Tiberius, infants were publicly sacrificed to Saturn.[5] Human sacrifices were offered by Celts,[6] Teutons,[7] and Slavs;[8] by the ancient Semites[9] and Egyptians;[10] by the Japanese in early days;[11] and, in the New World, by the Mayas[12] and, to a frightful extent, by the Aztecs. "Scarcely any author," says Prescott in his 'History of the Conquest of Mexico,' "pretends to estimate the yearly sacrifices throughout the empire at less than twenty thousand, and some carry the number as high as fifty thousand."[13] The same practice is imputed by Spanish writers to the Incas of Peru, and probably not without good reason.[14] Before their rule, at all events, it

[1] *Idem*, *Questiones Romanæ*, 83. See Landau, in *Am Ur-Quell*, iii. 1892, p. 283 *sqq.*

[2] Pliny, *Historia naturalis*, xxx. 3.

[3] Porphyry, *De abstinentia ab esu animalium*, ii. 56.

[4] *Ibid.* ii. 56.

[5] Tertullian, *Apologeticus*, 9 (Migne, *Patrologiæ cursus*, i. 314).

[6] Cæsar, *De bello gallico*, vi. 16. Tacitus, *Annales*, xiv. 30. Diodorus Siculus, *Bibliotheca*, v. 31, p. 354. Pliny, *Historia naturalis*, xxx. 4. Strabo, iv. 5, p. 198. Joyce, *Social History of Ancient Ireland*, i. 281 *sqq.*

[7] Tacitus, *Germania*, 9. Adam of Bremen, *Gesta Hammaburgensis ecclesiæ pontificum*, iv. 27 (Migne, *op. cit.* cxlvi. 644). Grimm, *Teutonic Mythology*, i. 44 *sqq.* Vigfusson and Powell, *Corpus Poeticum Boreale*, i. 409 *sq.* Freytag, 'Riesen und Menschenopfer in unsern Sagen und Märchen,' in *Am Ur-Quell*, i. 1890, pp. 179–183, 197 *sqq.*

[8] Mone, *Geschichte des nordischen Heidenthums*, i. 119, quoted by Frazer, *Golden Bough*, ii. 52. Krauss, in *Am Ur-Quell*, vi. 1896, p. 137 *sqq.* (Servians).

[9] Ghillany, *Die Menschenopfer der alten Hebraer*, *passim*. Robertson Smith, *Religion of the Semites*, p. 362 *sqq.* Wellhausen, *Reste arabischen Heidentums*, p. 115 *sq.* von Kremer, *Studien zur vergleichenden Culturgeschichte*, i. 42 *sqq.* Chwolsohn, *Die Ssabier und der Ssabismus*, ii. 147 *sqq.*

[10] Amélineau, *L'évolution des idées morales dans l'Égypte Ancienne*, p. 12.

[11] Griffis, *Religions of Japan*, p. 75. Lippert, *Seelencult*, p. 79.

[12] Bancroft, *Native Races of the Pacific States*, ii. 704, 725.

[13] Prescott, *History of the Conquest of Mexico*, p. 38. *Cf.* Clavigero, *History of Mexico*, i. 281; Acosta, *Natural and Moral History of the Indies*, ii. 346.

[14] Acosta, *op. cit.* ii. 344. de Molina, 'Fables and Rites of the Yncas,' in *Narratives of the Rites and Laws of the Yncas*, pp. 55, 56, 59. According to

was of frequent occurrence among the Peruvian Indians.[1] It also prevailed, or still prevails, among the Caribs[2] and some North American tribes;[3] in various South Sea islands, especially Tahiti and Fiji;[4] among certain tribes in the Malay Archipelago;[5] among several of the aboriginal tribes of India;[6] and very commonly in Africa.[7]

From this enumeration it appears that the practice of human sacrifice cannot be regarded as a characteristic of savage races. On the contrary, it is found much more

Cieza de Leon (*Segunda parte de la Crónica del Perú*, p. 100), the practice of human sacrifice has been much exaggerated by Spanish writers, but he does not deny its existence among the Incas; nay, he gives an account of such sacrifices (*ibid.* p. 109 *sqq.*). Sir Clements Markham seems to attach undue importance to the statement of Garcilasso de la Vega that human victims were never sacrificed by the Incas (*First Part of the Royal Commentaries of the Yncas*, i. 130, 131, 139 *sqq.* n. †). *Cf* Prescott, *History of the Conquest of Peru*, p. 50 *sq.* n. 3.

[1] Garcilasso de la Vega, *op. cit.* i. 50, 130.

[2] Müller, *Geschichte der Amerikanischen Urreligionen*, p. 212 *sq.*

[3] *Ibid.* p. 142 *sqq.* Réville, *Religions des peuples non-civilisés*, i. 249 *sq.* Dorman, *Origin of Primitive Superstitions*, p. 208 *sqq.*

[4] Schneider, *Naturvolker*, i. 191 *sq.* Fornander, *Account of the Polynesian Race*, i. 129. Ellis, *Polynesian Researches*, i. 106, 346-348, 357 (Society Islanders). Williams, *Missionary Enterprises in the South Sea Islands*, p. 548 *sq.* (especially the Hervey Islanders and Tahitians). von Kotzebue, *Voyage of Discovery*, iii. 248 (Sandwich Islanders). Lisiansky, *Voyage round the World*, pp. 81 *sq.* (Nukahivans), 120 (Sandwich Islanders). Gill, *Myths and Songs from the South Pacific*, p. 289 *sqq.* (Mangaians). Williams and Calvert, *Fiji*, pp. 188, 195; Wilkes, *Narrative of the U.S. Exploring Expedition*, iii. 97; Hale, *U.S. Exploring Expedition, Vol. VI. Ethnography and Philology*, p. 57 (Fijians). Codrington, *Melanesians*, p. 134 *sqq.*

[5] Ling Roth, *Natives of Sarawak and British North Borneo*, ii. 215 *sqq.* Bock, *Head-Hunters of Borneo*, p. 218 *sq.* (Dyaks).

[6] Woodthorpe, in *Jour. Anthr. Inst.* xxvi. 24 (Shans, &c.). Colquhoun, *Amongst the Shans*, p. 152 (Steins inhabiting the south-east of Indo-China). Lewin, *Wild Races of South-Eastern India*, p. 244 (Pankhos and Bunjogees). Godwin-Austen, in *Jour. Anthr. Inst.* ii. 394 (Garo hill tribes). Dalton, *Descriptive Ethnology of Bengal*, pp. 147 (Bhúiyas), 176 (Bhúmij), 281 (Gonds), 285 *sqq.* (Kandhs). Hislop, *Aboriginal Tribes of the Central Provinces*, p. 15 *sq.* (Gonds). Macpherson, *Memorials of Service in India*, p. 113 *sq.*; Campbell, *Wild Tribes of Khondistan, passim* (Kandhs).

[7] Schneider, *Religion der afrikanischen Naturvolker*, p. 118. Reade, *Savage Africa*, p. 52 (Dahomans, &c.). Ling Roth, *Great Benin*, p. 63 *sqq.* Ellis, *Ewe-speaking Peoples of the Slave Coast*, p. 117 *sqq.* *Idem*, *Yoruba-speaking Peoples of the Slave Coast*, p. 296. *Idem*, *Tshi-speaking Peoples of the Gold Coast*, p. 169 *sqq.* Cruickshank, *Eighteen Years on the Gold Coast*, ii. 173. Schoen and Crowther, *Expedition up the Niger*, p. 48 *sq.* (Ibos). Arnot, *Garenganze*, p. 75 (Barotse). Arbousset and Daumas, *Exploratory Tour to the North-East of the Colony of the Cape of Good Hope*, p. 97 (Marimos, a Bechuana tribe). Macdonald, *Africana*, i. 96 *sq.* (Eastern Central Africans). Ellis, *History of Madagascar*, i. 422; Sibree, *The Great African Island*, p. 303 (Malagasy).

frequently among barbarians and semi-civilised peoples than among genuine savages, and at the lowest stages of culture known to us it is hardly heard of. Among some peoples the practice has been noticed to become increasingly prevalent in the course of time. In the Society Islands "human sacrifices, we are informed by the natives, are comparatively of modern institution: they were not admitted until a few generations antecedent to the discovery of the islands;[1] and in ancient legends there seems to be certain indications that they were once prohibited in Polynesia.[2] In India human sacrifices were apparently much rarer among the Vedic people than among the Brahmanists of a later age.[3] We are told that such sacrifices were adopted by the Aztecs only in the beginning of the fourteenth century, about two hundred years before the conquest, and that, "rare at first, they became more frequent with the wider extent of their empire; till, at length, almost every festival was closed with this cruel abomination."[4] Of the Africans Mr. Winwood Reade remarks, "The more powerful the nation the grander the sacrifice."[5]

Men offer up human victims to their gods because they think that the gods are gratified by such offerings. In many cases the gods are supposed to have an appetite for human flesh or blood.[6] The Fijian gods are described as "delighting in human flesh."[7] Among the Ooryahs of India the priest, when offering a human sacrifice to the war-god Manicksoro, said to the god, "The sacrifice we now offer you must eat."[8] Among the Iroquois, when an enemy was tortured at the stake, the savage executioners leaped around him crying, "To thee, Arieskoi, great spirit, we slay this victim, that thou mayest eat his flesh and be moved thereby to give us henceforth luck and

[1] Ellis, *Polynesian Researches*, i. 106.
[2] Fornander, *op. cit* i. 129.
[3] Wilson, *Works*, ii. 268 *sq.*
[4] Prescott, *History of the Conquest of Mexico*, p. 36.
[5] Reade, *Savage Africa*, p 52.
[6] See Lippert, *Seelencult*, p. 77 *sqq.*; Schneider, *Naturvolker*, i. 190.
[7] Williams and Calvert, *op. cit.* p. 195.
[8] Campbell, *Wild Tribes of Khondistan*, p. 211. *Cf.* Macpherson, *Memorials of Service in India*, p. 120 (Kandhs).

victory over our foes."[1] Among the ancient nations of Central America the blood and heart of the human victims offered in sacrifice were counted the peculiar portion of the gods.[2] Thus, in Mexico, the high-priest, after cutting open the victim's breast, tore forth the yet palpitating heart, offered it first to the sun, threw it then at the feet of the idol, and finally burned it; sometimes the heart was placed in the mouth of the idol with a golden spoon, and its lips were anointed with the victim's blood.[3]

But the human victim is not always, as has been erroneously supposed,[4] intended to serve the god as a food-offering. The Tshi-speaking peoples of the Gold Coast, as Major Ellis observes, maintain that their gods require not only food, but attendants; "the ghosts of the human victims sacrificed to them are believed to pass at once into a condition of ghostly servitude to them, just as those sacrificed at the funerals of chiefs are believed to pass into a ghostly attendance."[5] Cieza de Leon mentions the prevalence of a similar belief among the ancient Peruvians. At the hill of Guanacaure, "on certain days they sacrificed men and women, to whom, before they were put to death, the priest addressed a discourse, explaining to them that they were going to serve that god who was being worshipped."[6]

Moreover, an angry god may be appeased simply by the death of him or those who aroused his anger, or of some representative of the offending community, or of somebody belonging to the kin of the offender. Among the Ewe-speaking peoples of the Slave Coast, "in the case of human victims the gods are not believed to devour the

[1] Müller, *Geschichte der Amerikanischen Urreligionen*, p. 142.

[2] Bancroft, *op. cit.* ii. 307, 310, 311, 707 *sqq.*

[3] Clavigero, *op. cit.* i. 279.

[4] Réville, *Hibbert Lectures on the Native Religions of Mexico and Peru*, p. 75 *sq.* *Idem*, *Prolegomena of the History of Religions*, p. 132. Trumbull, *Blood Covenant*, p. 189. Steinmetz, *Endokannibalismus*, p. 60, n. 1. Schrader, *Reallexikon der indogermanischen Altertumskunde*, p. 603.

[5] Ellis, *Tshi-speaking Peoples of the Gold Coast*, p. 169.

[6] Cieza de Leon, *Segunda parte de la Crónica del Perú*, p. 109.

souls; and as these souls are, by the majority of the natives, believed to proceed to Dead-land like all others, the object of human sacrifice seems to be to gratify or satiate the malignancy of the gods at the expense of chosen individuals, instead of leaving it to chance—the victims are in fact slain for the benefit of the community at large."[1] One reason why the human victims are so frequently criminals, is no doubt the intention of appeasing the god by offering up to him an individual who is hateful to him. The Sandwich Islanders "sacrifice culprits to their gods, as we sacrifice them in Europe to justice."[2] Among the Teutons the execution of a criminal was, in many cases at least, a sacrifice to the god whose peculiar cult had been offended by the crime.[3] Thus the Frisian law describes as an immolation to the god the punishment of one who violates his temple.[4] In ancient Rome the corn thief, if he was an adult, was hanged as an offering to Ceres;[5] and Ovid tells us that a priestess of Vesta who had been false to her vows of chastity was sacrificed by being buried alive in the earth, Vesta and Tellus being the same deity.[6] In consequence of the sacrilege of Menalippus and Comætho, who had polluted a temple of Artemis by their amours, the Pythian priestess ordained that the guilty pair should be sacrificed to the goddess, and that, besides, the people should every year sacrifice to her a youth and a maiden, the fairest of their sex.[7] The Hebrew *cherem*, or ban, was originally applied to malefactors and other enemies of Yahveh, and sometimes also to their possessions. "*Cherem*," says Professor Kuenen, "is properly dedication to Yahveh, which in reality amounted to destruction or annihilation. The persons who were

[1] Ellis, *Ewe-speaking Peoples of the Slave Coast*, p. 119.

[2] von Kotzebue, *op. cit.* iii. 248. *Cf.* Lisiansky, *op. cit.* 120.

[3] von Amira, in Paul's *Grundriss der germanischen Philologie*, ii. pt. ii. 177. Brunner, *Deutsche Rechtsgeschichte*, ii. 587, 684 *sq.* Vigtusson and Powell, *op. cit.* i. 410. Gummere, *Germanic Origins*, p. 463.

[4] *Lex Frisionum*, Additio sapientium, 12.

[5] Granger, *Worship of the Romans*, p. 260.

[6] Ovid, *Fasti*, vi. 457 *sq.* *Cf.* Mommsen, *Römisches Strafrecht*, p. 902.

[7] Pausanias, vii. 19. 4.

'dedicated,' generally by a solemn vow, to Yahveh, were put to death, frequently by fire, whereby the resemblance to an ordinary burnt-offering was rendered still more apparent; their dwellings and property were also consumed by fire; their lands were left uncultivated for ever. Such punishments were very common in the ancient world. But in Israel, as elsewhere, they were at the same time religious acts."[1] The sacrifice of offenders has, in fact, survived in the Christian world, since every execution performed for the purpose of appeasing an offended and angry god may be justly called a sacrifice.[2]

It is impossible to discover in every special case in what respect the worshippers believe the offering of a fellow-creature to be gratifying to the deity. Probably they have not always definite views on the subject themselves. They know, or believe, that on some certain occasion, they are in danger of losing their lives; they attribute this to the designs of a supernatural being; and, by sacrificing a man, they hope to gratify that being's craving for human life, and thereby avert the danger from themselves. That this principle mainly underlies the practice of human sacrifice appears from the circumstances in which such sacrifices generally occur.

Human victims are often offered in war, before a battle, or during a siege.

Cæsar wrote of the Gauls, "They who are engaged in battles and dangers, either sacrifice men as victims, or vow that they will sacrifice them . . . ; because they think that unless the life of a man be offered for the life of a man, the mind of the immortal gods cannot be rendered propitious."[3] The Lusitanians sacrificed a man and a horse at the commencement of a military enterprise.[4] Before going to war, or before the beginning of a battle, or during a siege, the Greeks offered a human victim to ensure victory.[5] When hard-pressed in battle,

[1] Kuenen, *Religion of Israel*, i. 290 *sq.*

[2] See *supra*, p. 197 *sq.* For various instances of expiatory human sacrifice, involving vicarious atonement, see *supra*, p. 66 *sq.*

[3] Cæsar, *De bello gallico*, vi. 16.

[4] Livy, *Epitome*, 49.

[5] Pausanias, iv. 9. 4 *sqq.*; ix. 17. 1. Plutarch, *Themistocles*, 13. *Idem*, *Aristides*, 9. *Idem*, *Pelopidas*, 21 *sq.* Lycurgus, *Oratio in Leocratem*, (ch. 24)

the King of Moab sacrificed his eldest son as a burnt offering on the wall.[1] In times of great calamities, such as war, the Phenicians sacrificed some of their dearest friends, who were selected by votes for this purpose.[2] During a battle with king Gelo of Syracuse, the general Hamilcar sacrificed innumerable human victims, from dawn to sunset;[3] and when Carthage was reduced to the last extremities, the noble families were compelled to give up two hundred of their sons to be offered to Baal.[4] In Hindu scriptures and traditions success in war is promised to him who offers a man in sacrifice.[5] In Jeypore "the blood-red god of battle" is propitiated by human victims. "Thus, on the eve of a battle, or when a new fort, or even an important village is to be built, or when danger of any kind is to be averted, this sanguinary being must be propitiated with human blood."[6] In Great Benin human blood was shed in a case of common danger when an enemy was at the gate of the city.[7] The Yorubas sacrifice men in times of national need.[8] Among the Ewe-speaking peoples of the Slave Coast, such sacrifices "are ordinarily only made in time of war, pestilence, or great calamity."[9] The Tahitians offered human sacrifices in seasons of war, or when war was in agitation.[10]

After a victory, captured enemies are sacrificed to the god to whose assistance the success is ascribed. This sacrifice has been represented as a thank-offering;[11] but, in many cases at least, it seems to be offered either to fulfil a vow previously made, or to induce the god to continue his favours for the future.[12] Among the Kayans of Borneo it is the custom that, when captives are brought to an enemy's country, "one should suffer death, to bring prosperity and abolish the curse of the enemy in their lands."[13]

Human sacrifices are offered for the purpose of stopping or preventing epidemics.

99. Apollodorus, *Bibliotheca*, iii. 15. 4. Porphyry, *De abstinentia ab esu animalium*, ii. 56. Geusius, *op. cit.* i. ch. 16 *sq.* Stengel, *op. cit.* p. 115 *sq.*

[1] 2 *Kings*, iii. 27.

[2] Porphyry, *op. cit.* ii. 56.

[3] Herodotus, vii. 167.

[4] Diodorus Siculus, xx. 14.

[5] Chevers, *op. cit.* p. 399.

[6] Campbell, *Wild Tribes of Khondistan*, p. 52.

[7] Ling Roth, *Great Benin*, p. 72.

[8] Ellis, *Yorûba-speaking Peoples of the Slave Coast*, p. 296.

[9] *Idem*, *Ewe-speaking Peoples of the Slave Coast*, p. 117.

[10] Ellis, *Polynesian Researches*, i. 276 *sqq.*, 346.

[11] Diodorus Siculus, xx. 65 (Carthaginians). de Molina, *loc. cit.* p. 59 (Incas); &c.

[12] Ellis, *Tshi-speaking Peoples*, p. 170. Cruickshank, *op. cit.* ii. 173. Dubois, *Character, Manners, and Customs of the People of India*, p. 488. Jordanes, *De origine actibusque Getarum*, 5 (41). *Cf.* Jephthah's vow (*Judges*, xi. 30 *sqq.*).

[13] Brook, *Ten Years in Sarâwak*, ii. 304 *sq.*

The Phenicians sacrificed "some of their dearest friends," not only in war, but in times of pestilence.[1] In similar circumstances the ancient Greeks had recourse to human sacrifices.[2] In seasons of great peril, as when a pestilence was raging, the ancient Italians made a vow that they would sacrifice every living being that should be born in the following spring.[3] In West Gothland, in Sweden, the people decreed a human sacrifice to stay the *digerdöd*, or Plague, hence two beggar children, having just then come in, were buried alive.[4] In Fur, in Denmark, there is a tradition that, for the same purpose, a child was interred alive in the burial ground.[5] Among the Chukchi, in 1814, when a sudden and violent disease had broken out and carried off both men and reindeer, the Shamans, after having had recourse in vain to their usual conjurations, determined that one of the most respected chiefs must be sacrificed to appease the irritated spirits.[6] In Great Benin, "when the doctors declared a man had died owing to Ogiwo, if they think an epidemic imminent, they can tell Overami [the king] that Ogiwo vex. Then he can take a man and a woman, all the town can fire guns and beat drums. The man and woman are brought out, and the head Jujuman can make this prayer: 'Oh, Ogiwo, you are very big man; don't let any sickness come for Ado. Make all farm good, and every woman born man son.'"[7] In the same country twelve men, besides various animals, were offered yearly on the anniversary of the death of Adolo, king Overami's father. King Overami, calling his father loudly by name, spoke as follows: "Oh, Adolo, our father, look after all Ado [that is, Great Benin], don't let any sickness come to us, look after me and my people, our slaves, cows, goats, and fowls, and everything in the farms."[8]

The sacrifice of human victims is resorted to as a method of putting an end to a devastating famine.

[1] Porphyry, *op. cit.* ii. 56.

[2] Geusius, *op. cit.* i. ch. 13. Stengel, *op. cit.* p. 116. Frazer, *Golden Bough*, iii. 125 *sq.*

[3] Festus, *De verborum significatione*, 'Ver sacrum,' Müller's edition, p. 379. Nonius Marcellus, *De proprietate sermonis*, 'Versacrum,' p. 522. Servius, *In Virgilii Æneidos*, vii. 796.

[4] Afzelius, *Swenska Folkets Sago-Häfder*, iv. 181.

[5] Nyrop, *Romanske Mosaiker*, p. 69, n. 1.

[6] von Wrangell, *Expedition to the Polar Sea*, p. 122 *sq.*

[7] Moor and Roupell, quoted by Read and Dalton, *Antiquities from the City of Benin*, p. 7; also by Ling Roth, *Great Benin*, p. 71 *sq.*

[8] Moor and Roupell, quoted by Ling Roth, *op. cit.* p. 70 *sq.*; also by Read and Dalton, *op. cit.* p. 6.

Instances of this practice are reported to have occurred among the ancient Greeks[1] and Phenicians.[2] In a grievous famine, after other great sacrifices, of oxen and of men, had proved unavailing, the Swedes offered up their own king Dómaldi.[3] Chinese annals tell us that there was a great drought and famine for seven years after the accession of T'ang, the noble and pious man who had overthrown the dynasty of Shang. It was then suggested at last by some one that a human victim should be offered in sacrifice to Heaven, and prayer be made for rain, to which T'ang replied, "If a man must be the victim I will be he."[4] Up to quite recent times, the priests of Lower Bengal have, in seasons of scarcity, offered up children to Siva; in the years 1865 and 1866, for instance, recourse was had to such sacrifices in order to avert famine.[5]

For people subsisting on agriculture a failure of crops means starvation and death,[6] and is, consequently, attributed to the murderous designs of a superhuman being, such as the earth spirit, the morning star, the sun, or the rain-god. By sacrificing to that being a man, they hope to appease its thirst for human blood; and whilst some resort to such a sacrifice only in case of actual famine, others try to prevent famine by making the offering in advance. This I take to be the true explanation of the custom of securing good crops by means of human sacrifice, of which many instances have been produced by Dr. Frazer.[7] There are obvious links between this custom and that of the actual famine-sacrifice. Thus the ancient Peruvians sacrificed children after harvest, when they prepared to make ready the land for the next year, not every year, however, but "only when the weather was not good, and seasonable."[8] In Great Benin, "if there is too much

[1] Pausanias, vii. 19. 3 *sq.* Diodorus Siculus, iv. 61. 1 *sqq.* Geusius, *op. cit.* i. ch. 14.

[2] Porphyry, *op. cit.* ii. 56.

[3] Snorri Sturluson, 'Ynglingasaga,' 15, in *Heimskringla*, i. 30.

[4] Legge, *Religions of China*, p. 54.

[5] Hunter, *Annals of Rural Bengal*, i. 128.

[6] *Cf.* Sleeman, *Rambles and Recollections*, i. 204 *sqq.* :—"In India, unfavourable seasons produce much more disastrous consequences than in Europe. . . . More than three-fourths of the whole population are engaged in the cultivation of the land, and depend upon its annual returns for subsistence. . . . Tens of thousands die here of starvation, under calamities of season, which in Europe would involve little of suffering to any class."

[7] Frazer, *Golden Bough*, ii. 238 *sqq.*

[8] Herrera, *op. cit.* ii. 111.

rain, then all the people would come from farm and beg Overami [the king] to make juju, and sacrifice to stop the rain. Accordingly a woman was taken, a prayer made over her, and a message saluting the rain god put in her mouth, then she was clubbed to death and put up in the execution tree so that the rain might see. . . . In the same way if there is too much sun so that there is a danger of the crops spoiling, Overami can sacrifice to the Sun God."[1] The principle of substitution admits of a considerable latitude in regard to the stage of danger at which the offering is made; the danger may be more imminent, or it may be more remote. This holds good of various kinds of human sacrifice, not only of such sacrifices as are intended to influence the crops. I am unable to subscribe to the hypothesis cautiously set forth by Dr. Frazer, that the human victim who is killed for the purpose of ensuring good crops is regarded as a representative of the corn-spirit and is slain as such. So far as I can see, Dr. Frazer has adduced no satisfactory evidence in support of his supposition; whereas a detailed examination of various cases mentioned by him in connection with it indicates that they are closely related to human sacrifices offered on other occasions, and explicable from the same principle, that of substitution.

"The best known case of human sacrifices, systematically offered to ensure good crops," says Dr. Frazer, "is supplied by the Khonds or Kandhs." The victims, or Meriahs, are represented by our authorities[2] as being offered to propitiate the Earth goddess, Tari Pennu or Bera Pennu, but from their treatment both before and after death it appears to Dr. Frazer that the custom cannot be explained as merely a propitiatory sacrifice. The flesh and the ashes of the Meriah, he observes, were believed to possess a magic power of fertilising the land, quite independent of the indirect efficacy which they might have as an offering to secure the goodwill of the deity. For, though a part of the flesh was offered to the Earth Goddess, the rest of it

[1] Moor and Roupell, quoted by Read and Dalton, *op. cit.* p. 7; also by Ling Roth, *Great Benin*, p. 71.

[2] Campbell, *Wild Tribes of Khondistan.* Macpherson, *Memorials of Service in India.*

was buried by each householder in his fields, and the ashes of the other parts of the body were scattered over the fields, laid as paste on the granaries, or mixed with the new corn. The same intrinsic power was ascribed to the blood and tears of the Meriah, his blood causing the redness of the turmeric and his tears producing rain; and magic power as an attribute of the victim appears also in the sovereign virtue believed to reside in anything that came from his person, as his hair or spittle. Considering further that, according to our authorities, the Meriah was regarded as "something more than mortal," or that "a species of reverence, which it is not easy to distinguish from adoration, is paid to him," Dr. Frazer concludes that he may originally have represented the Earth deity or perhaps a deity of vegetation, and that he only in later times came to be regarded rather as a victim offered to a deity than as himself an incarnate deity.[1]

The premise on which Dr. Frazer bases his argument appears to me quite untenable. It is an arbitrary supposition that the ascription of a magical power to the Meriah "indicates that he was much more than a mere man sacrificed to propitiate a deity."[2] A sacrifice is very commonly believed to be endowed with such a power, not as an original quality, but in consequence of its contact or communion with the supernatural being to which it is offered. Just as the Meriah of the Kandhs is taken round the village, from door to door, and some pluck hair from his head, while others beg for a drop of his spittle, so, among the nomadic Arabs of Morocco, at the Muhammedan "Great Feast," a man dressed in the bloody skin of the sheep which has been sacrificed on that occasion, goes from tent to tent, and beats each tent with his stick so as to confer blessings on its inhabitants. For he is now endowed with *l-baraka del-'id*, "the benign virtue of the feast"; and the same power is ascribed to various parts of the sacrificed sheep, which are consequently used for magical purposes. If Dr. Frazer's way of arguing were correct we should have to conclude that the victim was originally the god himself, or a representative of the god, to whom it is now offered in sacrifice. But the absurdity of any such inference becomes apparent at once when we consider that, in Morocco, every offering to a holy person, for instance to a deceased saint, is considered to participate in its sanctity. When the saint has his feast, and animals and other presents are brought to his tomb, it is customary for his descendants—who have a right to the offerings—to distribute

[1] Frazer, *op. cit.* ii. 245 *sq.* [2] *Ibid.* ii. 246.

some flesh of the slaughtered animals among their friends, thereby conferring *l-baraka* of the saint upon those who eat it; and even candles which have been offered to the saint are given away for the same purpose, being instinct with his *baraka*. Of course, what holds good of the Arabs in Morocco does not necessarily hold good of the Kandhs of Bengal; but it should be remembered that Dr. Frazer's argument is founded on the notion that the ascription of a magic power to a victim which is offered in sacrifice to a god indicates that the victim was once regarded as a divine being or as the god himself; and the facts I have recorded certainly prove the arbitrariness of this supposition.

This is by no means the only objection which may be raised against Dr. Frazer's hypothesis. In his description of the rite in question he has emphasised its connection with agriculture to a degree which is far from being justified by the accounts given by our authorities. Mr. Macpherson states that the human sacrifice to Tari Pennu was celebrated as a public oblation by tribes, branches of tribes, or villages, both at social festivals held periodically, and when special occasions demanded exceptional propitiations. It was celebrated "upon the occurrence of an extraordinary number of deaths by disease; or should very many die in childbirth; or should the flocks or herds suffer largely from disease, or from wild beasts; or should the greater crops threaten to fail"; while the occurrence of any marked calamity to the families of the chiefs, whose fortunes were regarded as the principal indication of the disposition of Tari towards their tribes, was held to be a token of wrath which could not be too speedily averted.[1] Moreover, besides these social offerings, the rite was performed by individuals to avert the wrath of Tari from themselves and their families, for instance, if a child, when watching his father's flock, was carried off by a tiger.[2] So, also, Mr. Campbell observes that the human blood was offered to the Earth goddess, "in the hope of thus obtaining abundant crops, averting calamity, and insuring general prosperity";[3] or that it was supposed "that good crops, and safety from all disease and accidents, were ensured by this slaughter."[4] According to another authority, Mr. Russell, the assembled multitude, when dancing round the victim, addressed the earth in the following words, "O God, we offer this sacrifice to you; give us good crops, seasons, and health."[5] Nor was the magic

[1] Macpherson, *op. cit.* p. 113 *sq.* See, also, *ibid.* pp. 120, 128 *sqq.*
[2] *Ibid.* p. 113 *sq.*
[3] Campbell, *op. cit.* p. 51.
[4] *Ibid.* p. 56. *Cf. ibid.* p. 73.
[5] Russell, quoted *ibid.* p. 54.

virtue of the Meriah utilised solely for the benefit of the crops. According to one account, part of the flesh was buried near the village idol as an offering to the earth, and part on the boundaries of the village;[1] whilst in the invocation made by the priest, the goddess was represented as saying, "Let each man place a shred of the flesh in his fields, in his grain-store, and in his yard."[2] The ashes, again, were scattered over the fields, or "laid as paste over the houses and granaries."[3] It is also worth noticing that, among the Kandhs of Maji Deso, the offering was not at all made for the special purpose of obtaining cereal produce, "but for general prosperity, and blessings for themselves and families";[4] and that in the neighbouring principality, Chinna Kimedy, inhabited for the most part by Ooryahs, the sacrifice was not offered to the earth alone, "but to a number of deities, whose power is essential to life and happiness," especially to the god of war, the great god, and the sun god.[5] Now, whilst all these facts are in perfect agreement with the theory of substitution, they certainly do not justify the supposition that the Meriah was the representative of a deity of vegetation.

The same may be said about other cases mentioned by Dr. Frazer, when more closely examined. "The Indians of Guayaquil, in Ecuador," he says, "used to sacrifice human blood and the hearts of men when they sowed their fields."[6] But our authority, Cieza de Leon, adds that those Indians also offered human victims when their chiefs were sick "to appease the wrath of their gods."[7] "The Pawnees," Dr. Frazer writes, "annually sacrificed a human victim in spring when they sowed their fields. The sacrifice was believed to have been enjoined on them by the Morning Star, or by a certain bird which the Morning Star had sent to them as its messenger . . . . They thought that an omission of this sacrifice would be followed by the total failure of the crops of maize, beans, and pumpkins."[8] James, to whom Dr. Frazer refers, and other authorities say that the human sacrifice was a propitiatory offering made *to* that star,[9] a planet which especially with the Skidi—the only section

[1] Russell, quoted *ibid.* p. 55.
[2] Macpherson, *op. cit.* p. 122 *sq.*
[3] *Ibid.* p. 128.
[4] Campbell, *op. cit.* p. 181.
[5] *Ibid.* p. 120. *Cf. ibid.* p. 197:—Among the Ooryahs human sacrifice is "performed on important occasions, such as going to battle, building a fort in an important village, and to avert any threatened danger."
[6] Frazer, *op. cit.* ii. 238.
[7] Cieza de Leon, *La Crónica del Perú* [parte primera], ch. 55 (*Biblioteca de autores españoles*, xxvi. 409).
[8] Frazer, *op. cit.* ii. 238.
[9] James, *Expedition from Pittsburg to the Rocky Mountains*, i. 357. Grinnell, *Pawnee Hero Stories and Folk-Tales*, p. 357. Dunbar, 'Pawnee Indians,' in *Magazine of American History*, viii. 738.

of the Pawnees who offered human sacrifices—was an object of superstitious veneration.[1] Sickness, misfortune, and personal mishaps of various kinds were often spoken of as attributable to the incurred ill-will of the heavenly bodies;[2] and the object of the sacrifice to the morning star is expressly said to have been "to avert the evil influences exerted by that planet."[3] According to Mr. Dunbar, whose important[4] article dealing with the subject has escaped Dr. Frazer's notice, "the design of the bloody ordeal was to conciliate that being and secure a good crop. Hence," he continues, "it has been supposed that the morning star was regarded by them as presiding over agriculture, but this was a mistake. They sacrificed to that star because they feared it, imagining that it exerted malign influence if not well disposed. It has also been stated that the sacrifice was made annually. This, too, was an error. It was made only when special occurrences were interpreted as calling for it."[5] At the present day the Indians speak of the sacrifice as having been made to Ti-ra'-wa, the Supreme Being or the deity "who is in and of everything."[6] In the detailed account of the rite, which was given to Mr. Grinnell by an old chief who had himself witnessed it several times, it is said:—"While the smoke of the blood and the buffalo meat, and of the burning body, ascended to the sky, all the people prayed to Ti-ra'-wa, and walked by the fire and grasped handfuls of the smoke, and passed it over their bodies and over those of their children, and prayed Ti-ra'-wa to take pity on them, and to give them health, and success in war, and plenteous crops .... This sacrifice always seemed acceptable to Ti-ra'-wa, and when the Skidi made it they always seemed to have good fortune in war, and good crops, and they were always well."[7] According to this description, then, the human sacrifice of the Pawnees, like that of the Kandhs, was not an exclusively agricultural rite, but was performed for the purpose of averting dangers of various kinds. And this is also suggested by Mr. Dunbar's relation of the last instance of this sacrifice, which occurred in April, 1838. In the previous winter the Skidi, soon after starting on their hunt, had a successful fight with a band of Oglala Dacotahs, and fearing that the Dacotahs would retaliate by coming upon them in overwhelming force,

[1] Dunbar, *loc. cit.* p. 738.
[2] *Ibid.* p. 736.
[3] Grinnell, *op. cit.* p. 357.
[4] Mr. Dunbar is "born and reared among the Pawnees, familiar with them until early manhood, a frequent visitor to the tribe in later years" (Grinnell, *op. cit.* p. 213).
[5] Dunbar, *loc. cit.* p. 738 *sq.*
[6] Grinnell, *op. cit.* pp. 357, 358, xvii.
[7] *Ibid.* p. 367.

they returned for safety to their village before taking a sufficient number of buffaloes. "With little to eat, they lived miserably, lost many of their ponies from scarcity of forage, and, worst of all, one of the captives proved to have the small-pox, which rapidly spread through the band, and in the spring was communicated to the rest of the tribe. All these accumulated misfortunes the Ski'-di attributed to the anger of the morning star; and accordingly they resolved to propitiate its favour by a repetition of the sacrifice, though in direct violation of a stipulation made two years before that the sacrifice should not occur again."[1]

Nor is there any reason whatever to suppose that the Brahman boys whom the Gonds of India used to kidnap and keep as victims to be sacrificed on various occasions,[2] were regarded as representatives of a spirit or god. They were offered up to Bhímsen, the chief object of worship among the Gonds, represented by a piece of iron fixed in a stone or in a tree,[3] now "to sanctify a marriage, now to be wedded to the soil, and again to be given away to the evil spirit of the epidemic raging," or "on the eve of a struggle."[4]

Dr. Frazer writes:—"At Lagos in Guinea it was the custom annually to impale a young girl alive soon after the spring equinox in order to secure good crops . . . . A similar sacrifice used to be annually offered at Benin."[5] But Dr. Frazer omits an important fact—mentioned or alluded to by the two authorities he quotes—which gives us the key to the custom, without suggesting that it has anything to do with the corn-spirit. Adams states that the young woman was impaled "to propitiate the favour of the goddess presiding over the rainy season, that she may fill the horn of plenty."[6] And M. Bouche observes, "Au Bénin, on a conservé jusqu'à présent un usage qui régnait jadis à Lagos et ailleurs: celui d'empaler une jeune fille, au commencement de la saison des pluies, afin de rendre les orichas propices aux récoltes."[7] From these statements it appears that the sacrifice was intended to influence the rain, on which the crops essentially depend. That its immediate object was to produce rain is expressly affirmed by Sir R. Burton. At Benin he saw "a young woman lashed to a scaffolding upon the summit of a tall blasted tree and being devoured by the turkey-buzzards. The people declared it to be a 'fetish,' or

[1] Dunbar, *loc. cit.* p. 740.
[2] Frazer, *op. cit.* ii. 241.
[3] *Panjab Notes and Queries*, § 550, vol. ii. 90.
[4] *Ibid.* § 721, vol. ii. 127 *sq.*
[5] Frazer, *op. cit.* ii. 239.
[6] Adams, *Sketches taken during Ten Voyages to Africa*, p. 25.
[7] Bouche, *Sept ans en Afrique occidentale*, p. 132.

charm for bringing rain."[1] We have previously noticed that the people of Benin also have recourse to a human sacrifice if there is too much rain, or too much sun, so that the crops are in danger of being spoiled.[2] The theory of substitution accounts for all these cases.

The practice of offering human victims for the purpose of preventing drought and famine by producing rain is apparently not restricted to West Africa. In the beginning of their year, the ancient Mexicans sacrificed many prisoners of war and children who had been purchased for that purpose, to the gods of water, so as to induce them to give the rain necessary for the crops.[3] The Pipiles of Guatemala celebrated every year two festivals which were accompanied by human sacrifices, the one in the beginning of the rainy season, the other in the beginning of the dry season.[4] In India, among the aboriginal tribes to the south-west of Beerbhoom, Sir W. W. Hunter "heard vague reports of human sacrifices in the forests, with a view to procuring the early arrival of the rains."[5] Without venturing to express any definite opinion on a very obscure subject which has already led to so many guesses,[6] I may perhaps be justified in here calling attention to the fact that Zeus Lycæus, in whose cult human sacrifices played a prominent part, was conceived of as a god who sent the rain.[7] It appears from ancient traditions or legends that the idea of procuring rainfall by means of such sacrifices was not unfamiliar to the Greeks. A certain Molpis offered himself to Zeus Ombrios, the rain-god, in time of drought.[8] Pausanias tells us that once, when a drought had for some time afflicted Greece, messengers were sent to Delphi to inquire the cause, and to beg for a riddance of the evil. The Pythian priestess told them to propitiate Zeus, and that Aeacus should be the intercessor; and then Aeacus, by sacrifices and prayers to Panhellenian Zeus, procured rain for Greece.[9] But Diodorus adds that the drought and famine, whilst ceasing in all other parts of the country, still continued in Attica, so that the

[1] Burton, *Abeokuta*, i. 19 n.*

[2] *Supra*, p. 443 *sq.*

[3] Sahagun, *Historia general de las cosas de Nueva España*, i. 50. Torquemada, *Monarchia Indiana*, ii. 251. Clavigero, *op. cit.* i. 297.

[4] Stoll, *Ethnologie der Indianerstämme von Guatemala*, p. 46.

[5] Hunter, *Annals of Rural Bengal*, i. 128.

[6] See Immerwahr, *Die Kulte und Mythen Arkadiens*, i. 16 *sqq.* Professor Robertson Smith suggests ('Sacrifice,' in *Encyclopædia Britannica*, xxi. 136) that the human sacrifices offered to Zeus Lycæus were originally cannibal feasts of a wolf tribe.

[7] Pausanias, viii. 38. 4. Farnell, *op. cit.* i. 41.

[8] Farnell, *op. cit.* i. 42.

[9] Pausanias, ii. 29. 7 *sq.*

Athenians once more resorted to the Oracle. The answer was now given them that they had to expiate the murder of Androgeus, and that this should be done in any way his father, Minos, required. The satisfaction demanded by the latter was, that they every nine years should send seven boys and as many girls to be devoured by the Minotaur, and that this should be done as long as the monster lived. So the Anthenians did, and the calamity ceased.[1]

As an instance of the close relationship which exists between human sacrifices offered for agricultural purposes and other human sacrifices, the following case may also be mentioned. According to Strachey, the Indians in some part of Virginia had a yearly sacrifice of children. These sacrifices they held so necessary that if they should omit them, they supposed their gods "would let them no deare, turkies, corne, nor fish," and, besides, "would make a great slaughter amongst them."[2]

Men require for their subsistence not only food, but drink. Hence when the earth fails to supply them with water, they are liable to regard it as an attempt against their lives, which can be averted only by the sacrifice of a human substitute.

In India, in former times, human victims were offered to several minor gods "whenever a newly excavated tank failed to produce sufficient water."[3] In Kâthiâwâr, for instance, if a pond had been dug and would not hold water, a man was sacrificed; and the Vadala lake in Bombay "refused to hold water till the local spirit was appeased by the sacrifice of the daughter of the village headman."[4] There is a legend that, when the bed of the Saugor lake remained dry, the builder "was told, in a dream, or by a priest, that it would continue so till he should consent to sacrifice his own daughter, then a girl, and the young lad to whom she had been affianced, to the tutelary god of the place. He accordingly built a little shrine in the centre of the valley, which was to become the bed of the lake, put the two children in, and built up the doorway. He had no sooner done so than the whole of the valley became filled with water."[5] When Colonel Campbell was rescuing Meriahs among the

[1] Diodorus Siculus, *op. cit.* iv. 61. 1 *sqq.*

[2] Strachey, *History of Travaile into Virginia Britannia*, p. 95 *sq.*

[3] Rájendralála Mitra, *op. cit.* ii. 111.

[4] Crooke, *Popular Religion of Northern India*, ii. 174.

[5] Sleeman, *Rambles*, i. 129 *sq.*

Kandhs, it was believed by some that he was collecting victims for the purpose of sacrificing them on the plains to the water deity, because the water had disappeared from a large tank which he had constructed.[1] According to a story related by Pausanias, the district of Haliartus was originally parched and waterless, hence one of the rulers went to Delphi and inquired how the people should find water in the land. "The Pythian priestess commanded him to slay the first person he should meet on his return to Haliartus. On his arrival he was met by his son Lophis, and, without hesitation, he struck the young man with his sword. The youth had life enough left to run about, and where the blood flowed water gushed from the ground. Therefore the river is called Lophis."[2]

Human sacrifices are offered with a view to averting perils arising from the sea or from rivers.

When the Greeks were afflicted by stress of weather at Aulis, they were bidden to sacrifice Iphigenia, in order to lull the winds.[3] Menelaus was persecuted by the Egyptians for sacrificing two children when he was desirous of sailing away and contrary winds detained him.[4] According to an Athenian writer, the colonists who first went to Lesbos were directed by an oracle to throw a virgin into the sea, as an offering to Poseidon.[5] Sextus Pompeius cast men into the sea as an offering to Neptune.[6] Hamilcar, also, following a custom of his country, threw a company of priests into the sea, as a sacrifice to the sea god.[7] The Saxons, when they were about to leave the coast of Gaul and sail home, sacrificed the tenth part of their captives.[8] The Vikings of Scandinavia, when launching a new ship, seemed to have bound a victim to the rollers on which the vessel slipped into the sea, thus reddening the keel with sacrificial blood.[9] In 1784, at the launching of one of the Bey of Tripoli's cruisers, a black slave was led forward and fastened at the prow of the vessel.[10] The Fijians launched their canoes over the living bodies of slaves as rollers,[11] or, according to

[1] Campbell, *Wild Tribes of Khondistan*, p. 129.
[2] Pausanias, ix. 33. 4.
[3] Aeschylus, *Agamemnon*, 215 *sq.*
[4] Herodotus, ii. 119.
[5] Athenæus, *Deipnosophistæ*, xi. 15.
[6] Dio Cassius, *Historia Romana*, xlviii. 48.
[7] Diodorus Siculus, xiii. 86.
[8] Sidonius Apollinaris, *Epistulæ*, viii. 6. 15.
[9] Vigfusson and Powell, *op. cit.* i. 410; ii. 349.
[10] Simpson, quoted by Grant Allen, *Evolution of the Idea of God*, p. 263.
[11] Erskine, *Cruise among the Islands of the Western Pacific*, p. 249.

another account, when a large canoe was launched, they laid hold of the first person, man or woman, whom they encountered, and carried the victim home for a feast.[1] On the deck of a new boat belonging to the most powerful chief in the group, ten or more men were slaughtered, in order that it might be washed with human blood.[2]

The Zuñi Indians have a tradition that the waters of their valley once rose in a flood and compelled the inhabitants to flee to a table-land several hundred feet high for safety; and when the waters still rose, threatening to submerge the table-land itself, the priest determined to sacrifice a youth and a maiden to propitiate them.[3] When Seleucus Nicator founded Antioch on the Orontes, the high priest sacrificed a virgin at a place between the town and the river,[4] presumably in order to prevent the town from being flooded by the river. When the converted Franks marched to Italy under their king, Theodebert, to fight against the Goths under Vitigis, and were on the point of crossing the Po, they sacrificed what children and wives of Goths they found, and threw their corpses into the river, according to Procopius, "as the first fruits of the war."[5] At Rome, every year on the Ides of May, the Vestal Virgins threw from the Sublician bridge into the Tiber thirty human effigies formed of rushes; the Romans themselves were of opinion that at an earlier period living men had been hurled into the river, and that it was Hercules who first substituted images of straw.[6] In West Africa human sacrifices are often offered to rivers. Major Ellis states that at each town or considerable village upon the banks of the river Prah sacrifice is held on a day about the middle of October, to Prah. "As loss of life frequently occurs in this river, from persons attempting to cross it when flooded, from a sudden rise, or from those hundred minor accidents which must always occur in the neighbourhood of a deep and strong stream, the gods of the Prah are considered very malignant. The sacrifice is, in consequence, proportionate. The usual sacrifice in former times was two human adults, one male and one female. They. . . . were decapitated on the bank of the river, and the stool and image of the god washed with their

[1] Wilkes, *U.S. Exploring Expedition*, iii. 97. *Cf.* Williams and Calvert, *op. cit.* p. 175.

[2] Wilkes, *op. cit.* iii. 97.

[3] Stevenson, 'A Chapter of Zuñi Mythology,' in *Memoirs of the International Congress of Anthropology*, Chicago, p. 316.

[4] Malala, *Chronographia*, viii. 255 (200).

[5] Procopius, *Bellum Gothicum*, ii. 25.

[6] Ovid, *Fasti*, 621 *sq.* Dionysius of Halicarnassus, *Antiquitates Romanæ*, i. 38. Hartland, *Legend of Perseus*, iii. 78.

blood. The bodies were then cut into a number of pieces, which were distributed amongst the mangroves, or the sedge bordering the river, for the crocodiles to eat; crocodiles being sacred in Prah."[1] According to M. le Comte de Cardi, all the river-side tribes of the Niger Delta used to propitiate the river deity by the sacrifice of a copper-coloured girl, procured from a tribe of Ibos inhabiting a country away in the hinterland of New Calabar, or in some places an Albino; and it seems that this custom is still practised in the British Protectorate.[2] The Ibos themselves were in the habit of throwing human beings into the river to be eaten by alligators or fishes, or to fasten them to trees or branches, close to the river, where they were left to perish by hunger.[3] In Eastern Central Africa, also, human sacrifices are offered to rivers.[4] And in the East Indies there are various traditions of such sacrifices being made to the divine crocodiles of the sea.[5]

In the cases which we have hitherto considered the offering of human sacrifices is mostly a matter of public concern, a method of ensuring the lives of many by the death of one or a few. But human life is also sacrificed, by way of substitution, for the purpose of preventing the death of some particular individual, especially a chief or a king, from sickness, old age, or other circumstances.

In Guatemala, in the case of a dangerous illness, human sacrifice was resorted to when all other attempts to cure the patient failed.[6] Of the Indians of Guayaquil, Cieza de Leon states:—"When the chiefs were sick, to appease the wrath of their gods, and pray for health, they made . . . . sacrifices of a superstitious nature, killing men (as I was told), and believing that human blood was a grateful offering."[7] Acosta writes:—"They vsed in Peru to sacrifice yong children of foure or six yeares old vnto tenne; and the greatest parte of these sacrifices were for the affaires that did import the Ynca, as in sickness for his health, and when he went to the

[1] Ellis, *Tshi-speaking Peoples*, p. 64 *sq.* *Cf.* *Idem*, *Land of Fetish*, p. 122.

[2] Comte de Cardi, 'Ju-Ju Laws and Customs in the Niger Delta,' in *Jour. Anthr. Inst.* xxix. 54. *Cf.* Mockler-Ferryman, *British Nigeria*, p. 235.

[3] Schoen and Crowther, *op. cit.* p. 49.

[4] Macdonald, *Africana*, i. 96.

[5] Tylor, 'Anniversary Address,' in *Jour. Anthr. Inst.* xxi. 408. Hartland, *op. cit.* iii. 70 *sq.*

[6] Stoll, *op. cit.* p. 48.

[7] Cieza de Leon, *La Crónica del Perú* [parte primera], ch. 55 (*Biblioteca de autores españoles*, xxvi. 409).

warres for victory, or when they gave the wreathe to their new Ynca, which is the marke of a King, as heere the Scepter and the Crowne be. In this solemnitie they sacrificed the number of two hundred children, from foure to ten yeares of age . . . . If any Indian qualified or of the common sorte were sicke, and that the Divine told him confidently that he should die, they did then sacrifice his owne sonne to the Sunne or to Virachoca, desiring them to be satisfied with him, and that they would not deprive the father of life."[1] According to Molina, "the Lord Ynca offered sacrifices [of children] when he began to reign, that the *huacas* [or idols] might give him health, and preserve his dominions in peace."[2] Herrera tells us that the ancient Peruvians, when any person of note was sick, and the priest predicted his death, sacrificed the patient's son, "desiring the idol to be satisfie'd with him, and not to take away his father's life."[3] Garcilasso de la Vega, again, denies the existence of any such custom in the kingdom of the Incas,[4] but asserts that, before their reign, the Indians of Peru offered up their own children on certain occasions.[5] According to Jerez, some of the Peruvian Indians sacrificed their own children each month, and anointed with the blood the faces of their idols and the doors of their temples.[6] The Tonga Islanders had a ceremony called *nawgia*, or the ceremony of strangling children as sacrifices to the gods, for the recovery of a sick relative. Our informant says:—"All the bystanders behold the innocent victim with feelings of the greatest pity; but it is proper, they think, to sacrifice a child who is at present of no use to society, and perhaps may not otherwise live to be, with the hope of recovering a sick chief, whom all esteem and whom all think it a most important duty to respect, defend, and preserve, that his life may be of advantage to the country."[7] The Tahitians offered human sacrifices during the illnesses of their rulers.[8] In the Philippines, if a prince was dangerously ill or dying, slaves were slaughtered in order to satisfy the malignant ancestral soul who was supposed to have caused the disease.[9] Among the Dyaks, when a raja "falls sick, or goes on a journey, it is

[1] Acosta, *op. cit.* ii. 344.
[2] de Molina, *loc. cit.* p. 55.
[3] Herrera, *General History of the West Indies*, iv. 347.
[4] Garcilasso de la Vega, *op. cit.* i. 131.
[5] *Ibid.* i. 50.
[6] Jerez, 'Conquista del Perú,' in *Biblioteca de autores españoles*, xxvi. 327.
[7] Mariner, *Natives of the Tonga Islands*, ii. 220.
[8] Ellis, *Polynesian Researches*, i. 346.
[9] Blumentritt, quoted by Wilken, 'Ueber das Haaropfer,' in *Revue coloniale internationale*, 1887, i. 364 *sq.*

common for him to vow a head to his tribe in case of recovery or of safe return. Should he die, one or two heads are usually offered by the tribe as a kind of sacrifice."[1] Among the Banjârîlu of Southern India, who are great travelling traders, it was formerly the custom "before starting out on a journey to procure a little child, and bury it in the ground up to its shoulders, and then drive their loaded bullocks over the unfortunate victim, and in proportion to the bullocks thoroughly trampling the child to death, so their belief in a successful journey increased."[2] In India human sacrifices were also offered to the goddess Chandiká to save the life of a king.[3] It is probable that the idea of substitution likewise accounts for the sacrifice of a young girl which a certain raja is reported to have offered in 1861, at the shrine of the goddess Durga, in the town of Jaipúr, when he installed himself at his father's decease,[4] and for the sacrifice of a Brahmin which a raja of Ratanpúr had offered up to Deví every year.[5] In Great Benin, once a year, at the end of the rainy season, all the king's beads were brought out by the boys in whose care they were kept. They were put in a heap, and a slave was compelled to kneel down over them. The king cut or struck the head of the slave with a spear so that the blood ran over the beads, and said to them, "Oh, beads, when I put you on, give me wisdom and don't let any juju or bad thing come near me." Then the slave was told, "So you shall tell the head juju when you see him." The slave was led out and beheaded, but his head was brought in again, and the beads were touched with it.[6] Among the ancient Gauls persons who were troubled with unusually severe diseases either sacrificed men or promised that they would make such sacrifices.[7] In the Ynglingasaga we are told that King Aun sacrificed nine sons, one after the other, to Odin for the purpose of obtaining a prolongation of his life.[8] According to Macrobius, the ancient Romans immolated children to the goddess Mania, the mother of the Lares, "to promote the health of the families."[9] Suetonius states that Nero, frightened by the sight of a comet, sacrificed a number of Roman noble-

[1] Pfeiffer, *A Lady's Second Journey round the World*, i. 86.

[2] Cain, 'Bhadrachellam and Rekapalli Taluqas,' in *Indian Antiquary*, viii. 219.

[3] Crooke, *Popular Religion in Northern India*, ii. 168.

[4] *North Indian Notes and Queries*, § 310, vol. i. 40.

[5] *Panjab Notes and Queries*, § 869, vol. ii. 162.

[6] Moor and Roupell, quoted by Read and Dalton, *op. cit.* p. 7; also by Ling Roth, *Great Benin*, p. 71.

[7] Cæsar, *De bello gallico*, vi. 16.

[8] Snorri Sturluson, 'Ynglingasaga,' 25, in *Heimskringla*, i. 45 *sqq.*

[9] Macrobius, *Saturnalia*, i. 7.

men in order to avert the disaster from himself.[1] Antinous, according to one account, sacrificed himself to prolong the life of Hadrian.[2] The notion that the death of one person may serve as a substitute for the death of another still prevails in the Vatican. When, during Leo XIII.'s last illness, one of the Cardinals died, it was said that his death had saved the life of the Pope, Heaven being satisfied with one victim. In Morocco, if a son or a daughter dies, it is customary to say to the afflicted parents, "Why are you sorry? Your child took away your misfortune (*bas*)." A similar custom prevails in Syria and Palestine.[3]

Men are sacrificed not only to preserve the lives of other men, but to help other men into existence. Barrenness is attributed to some god keeping back the children which would otherwise be born in the due course of nature. And in order to remove this obstacle a human being, generally a child, is sacrificed to serve, as it were, as a substitute. This I take to be the explanation of the practice of offering a human sacrifice with a view to promoting fecundity, a practice which has been particularly common in India.

In the history of ancient Mexico we read of Nezahualcoyotl, prince of the Tezcucans, who had been married some years without being blest with issue. "The priests represented that it was owing to his neglect of the gods of his country, and that his only remedy was to propitiate them by human sacrifice."[4] In Hindu traditions and books a numerous offspring is promised to him who offers a man in sacrifice.[5] In Jainteapore, east of Sylhet, human sacrifices were made to the goddess Kali, in hopes of procuring progeny.[6] Speaking of the Mahadeo sandstone hills which, in the Sathpore range, overlook the Nerbudda to the south, Sir W. H. Sleeman states:—"When a woman is without children she makes votive offerings to all the gods who can, she thinks, assist her; and promises of still greater in case they should grant what she wants. Smaller promises being found of no avail, she at last promises her first-born, if a

[1] Suetonius, *Nero*, 36.
[2] Spartian, *Vita Hadriani*, 14. Aurelius Victor, *De Cæsaribus*, 14. Dio Cassius, *Historia Romana*, lxix. 11.
[3] Curtiss, *Primitive Semitic Religion To-day*, p 208.
[4] Prescott, *History of the Conquest of Mexico*, p. 91.
[5] Chevers, *op. cit.* p. 399.
[6] Macnaghten, quoted *ibid.* p. 397.

male, to the god of destruction, Mahadeo. If she gets a son she conceals from him her vows till he has attained the age of puberty; she then communicates it to him, and enjoins him to fulfil it." From that moment he regards himself as devoted to the god, and, at the annual fair on the Mahadeo hills, throws himself from a perpendicular height of four or five hundred feet, and is dashed to pieces upon the rocks below.[1] In one of the tales of Somadeva an ascetic tells a woman that, if she killed her young son and offered him to the divinity, another son would certainly be born to her.[2] We meet with a similar idea in the story of king Somaka. For some time he did not succeed in getting a single son from any of his one hundred wives. Finally he got a single son; but he wanted more, and asked the family priest whether there was not a ceremony which could help him to a hundred sons. The family priest answered:—"O king! let me set on foot a sacrifice, and thou must sacrifice thy son, Jantu, in it. Then on no distant date, a century of handsome sons will be born to thee. When Jantu's fat will be put into the fire as an offering to the gods, the mothers will take a smell of that smoke, and bring forth a number of sons, valorous and strong. And Jantu also will once more be born as a self-begotten son of thine, in that very mother; and on his back there will appear a mark of gold." The son was sacrificed; the wives smelt the smell of the burnt-offering; all of them became with child; and when ten months had passed one hundred sons were born to Somaka, of whom Jantu was the eldest, being born of his former mother. But the family priest departed this life, and was grilled for a certain period in a terrible hell as a punishment for what he had done.[3]

Among certain peoples it is a regular custom to kill the firstborn child, or the firstborn son.

Among some natives of Australia a mother used to kill and eat her first child, as this was believed to strengthen her for later births.[4] In New South Wales the firstborn of every lubra used to be eaten by the tribe "as part of a religious ceremony."[5] In the realm of Khai-muh, in China, according to

[1] Sleeman, *op. cit.* i. 132 *sq.*

[2] Crooke, *Popular Religion of Northern India*, ii. 173.

[3] *Mahabharata*, Vana Parva, 127 *sq.* (pt. vi. p. 188 *sq.*).

[4] Brinton, *Religions of Primitive Peoples*, p. 17 n.* *Cf.* von Scherzer, *Reise der Oesterreichischen Fregatte Novara um die Erde*, iii. 32.

[5] Brough Smyth, *Aborigines of Victoria*, ii. 311.

a native account, it was customary to kill and devour the eldest son alive.[1] Among certain tribes in British Columbia the first child is often sacrificed to the sun.[2] The Indians of Florida, according to Le Moyne de Morgues, sacrificed the firstborn son to the chief.[3] We are told that, among the people of Senjero in Eastern Africa, many families "must offer up their firstborn sons as sacrifices, because once upon a time, when summer and winter were jumbled together in a bad season, and the fruits of the field would not ripen, the soothsayers enjoined it."[4] The heathen Russians often sacrificed their firstborn to the god Perun.[5] The rule laid down in Exodus[6] and Numbers,[7] that all the firstborn of men and of beasts belonged to the Lord, but that the former were to be redeemed, seems to indicate the existence of an earlier custom among the Hebrews of offering up as a sacrifice, not only the firstling of an animal, but the firstborn child. As traces of such a custom may probably be regarded the story of Abraham's surrender of his firstborn son to God and the tradition of the origin of the Passover.[8] Among the Hindus, until the beginning of the last century, many parents sacrificed their firstborn to the river Ganges.[9]

In some instances the firstborn seems to be killed, not in sacrifice to a god, but for the purpose of being eaten as a kind of medicine.[10] In other cases the act is a sacrifice in the true sense of the word and, apparently, substitutional in character. Considering that children are occasionally sacrificed to save the lives of their parents, or for the health of the families, or to promote fecundity, it seems probable that the regular sacrifice of the firstborn has similar objects in view. This supposition, indeed, is strongly supported by some statements in which the motive of the act is expressly mentioned.[11] Among the

[1] de Groot, *Religious System of China* (vol. ii. book) i. 679.

[2] Boas, in *Fifth Report on the North-Western Tribes of Canada*, pp. 46, 52.

[3] Bry, *Narrative of Le Moyne*, Descriptions of the Illustrations, 34, p. 13. *Cf.* Lafitau, *Mœurs des sauvages ameriquains*, i. 181; Strachey, *op. cit.* p. 84.

[4] Krapf, *Travels*, p. 69 *sq.*

[5] Mone, quoted by Frazer, *Golden Bough*, ii. 52.

[6] *Exodus*, xiii. 2, 15.

[7] *Numbers*, xviii. 15.

[8] See Ghillany, *op. cit.* p. 494 *sqq.*; Kuenen, *Religion of Israel*, ii. 92; Frazer, *op. cit.* ii. 47 *sqq.*

[9] Rájendrnlála Mitra, *op. cit.* ii. 70, 76.

[10] *Cf. supra*, p. 401.

[11] *Cf. Micah*, vi. 7: "Shall I give my firstborn for my transgression, the fruit of my body for the sin of my soul?"

Coast Salish of British Columbia the first child is sacrificed to the sun "to secure health and happiness to the whole family."[1] The same is reported of a neighbouring people, the Kutonaqa. The mother prays to the sun :—"I am with child. When it is born I shall offer it to you. Have pity upon us."[2] Among some tribes of South-Eastern Africa it is a rule that, when a woman's husband has been killed in battle and she marries again, the first child to which she gives birth after her second marriage must be put to death, whether she has it by her first or her second husband. Such a child is called "the child of the assegai," and if it were not killed, death or accident would be sure to befall the second spouse, and the woman herself would be barren.[3] Among some peoples, including the ancient Hindus, we find the belief that the son is in some sense identical with his father, that he is a new birth, a new manifestation of the same person.[4] The new birth might be supposed to endanger the life of the father, just as, according to a notion prevalent among the ancient Teutons[5] and in some parts of Italy,[6] a person would soon die if his name were given to his son or grandson whilst he was still alive. Among the Brazilian Tupis the father was accustomed to take a new name after the birth of each new son ;[7] whilst, on killing an enemy, a person used to take the enemy's name so as to annihilate not only his body but also his soul.[8] Among the Kafirs, "if a mother gives birth to twins, one is frequently killed by the father, for the natives think that unless the father places a lump of earth in the mouth of one of the babies he will lose his strength."[9] In some

[1] Boas, *op. cit.* p. 46.

[2] *Ibid.* p. 52.

[3] Macdonald, *Light in Africa*, p. 156. Frazer, *op. cit.* ii. 51 *sq.*

[4] Hartland, *op. cit.* i. 217 *sq.* von den Steinen, *Unter den Naturvölkern Zentral-Brasiliens*, p. 336 *sq.* Leist, *Alt-arisches Jus Gentium*, p. 98 *sqq.* *Idem*, *Alt-arisches Jus Civile*, i. 189 *sqq.* *Laws of Manu*, ix. 8 : "The husband, after conception by his wife, becomes an embryo and is born again of her."

[5] Storm, quoted by Noreen, *Spridda Studier*, Andra Samlingen, p. 4.

[6] Placucci, *Usi e pregiudizj dei contadini della Romagna*, p. 23.

[7] von den Steinen, *op. cit.* p. 337.

[8] Staden, quoted by Andree, *Anthropophagie*, p. 103.

[9] Kidd, *The Essential Kafir*, p. 202. I am indebted to Mr. N. W. Thomas for drawing my attention to this statement.

cases the practice of killing the firstborn son might possibly be traced back to a similar belief. But I can quote no fact directly supporting this suggestion.

Human sacrifices are offered in connection with the foundation of buildings. This is a wide-spread custom, which not only occurs among various uncivilised and semi-civilised peoples of the present day, but which is proved to have existed among the so-called Aryan races.[1] In India we find traces of it in traditions and popular beliefs.[2] The Hindu rajas, we are told, used to lay the foundation of public buildings in human blood.[3] When Mr. Grierson wanted to photograph a Bihār peasant house, the grandmother of the family refused to allow any of the children to appear in the picture, her reason being that the Government was building the bridge across the Gandak and wanted children to bury under the foundations.[4] Among the ancient Romans the old custom survived in the practice of placing statues or images under the foundations of their buildings.[5] In the island of Zacynthus the peasants to this day believe that in order to secure the durability of important buildings, such as bridges and fortresses, it is desirable to kill a man, especially a Muhammedan or a Jew, and bury him on the spot.[6] South Slavonian folk-tales speak of the immuration of a woman or a child as a foundation sacrifice.[7] In Servia no city was thought to be secure unless a human being, or at least the shadow of one, was built into its walls;[8] and the Bulgarians, when

[1] Sartori, 'Ueber das Bauopfer,' in *Zeitschrift für Ethnologie*, xxx. 5 *sqq.* Tylor, *Primitive Culture*, i. 104 *sqq.* Baring-Gould, *Strange Survivals*, p. 4 *sqq.* Trumbull, *Threshold Covenant*, p. 46 *sqq.* Grant Allen, *Evolution of the Idea of God*, p. 249 *sqq.* Liebrecht, *Zur Volkskunde*, p. 284 *sqq.* Andree, *Ethnographische Parallelen*, p. 18 *sqq.* Nyrop, *Romanske Mosaiker*, p. 63 *sqq.* Krauss, 'Das Bauopfer bei den Südslaven,' in *Mittheilungen der Anthropologischen Gesellschaft in Wien*, xvii. 18 *sqq.* Wuttke, *Der deutsche Volksaberglaube der Gegenwart*, § 440, p. 300 *sq.*

[2] Winternitz, 'Bemerkungen über das Bauopfer bei den Indern,' in *Mittheil. Anthr. Gesellsch. in Wien*, xvii. [37] *sqq.*

[3] Wheeler, *History of India*, iv. 278.

[4] Grierson, *Bihār Peasant Life*, p. 4.

[5] Coote, 'A Building Superstition,' in *Folk-Lore Journal*, i. 23.

[6] Schmidt, *Volksleben der Neu-Griechen*, p. 197.

[7] Krauss, *loc. cit.* p. 19 *sqq.*

[8] Ralston, *Songs of the Russian People*, p. 127.

going to build, are still said to take a thread and measure the shadow of some casual passer-by, and then bury the measure under the foundation-stone, expecting that the man whose shadow has been thus treated will soon die.[1] A similar custom prevails in Roumania.[2] According to Nennius, when Dinas Emris in Wales was founded by Gortigern, all the materials collected for the fortress were carried away in one night; and materials were thus gathered thrice, and were thrice carried away. When he then asked of his Druids, "Whence this evil?" the Druids told him that it was necessary to find a child whose father was unknown, put him to death, and sprinkle with his blood the ground on which the citadel was to be built.[3] A Scotch legend tells that, when St. Columba first attempted to build a cathedral on Iona, the walls fell down as they were erected; he then received supernatural information that they would never stand unless a human victim was buried alive, and, in consequence, his companion, Oran, was interred at the foundation of the structure.[4] It is reported that, when not long ago the Bridge Gate of Bremen city walls was demolished, the skeleton of a child was found embedded in the groundwork;[5] and when the new bridge at Halle, finished in 1843, was building, "the common people fancied a child was wanted to be walled into the foundations."[6]

It seems highly probable that the building-sacrifice, like other kinds of human sacrifice, is based on the idea of substitution. A new house or dwelling-place is commonly regarded as dangerous, a wall or a tower is liable to fall down and cause destruction of life, a bridge may break, or the person who crosses it may tumble into the water and be drowned. In the Babar Islands, before entering a new house, offerings are thrown inside, that the spirit, Orloo, may not make the

[1] *Ibid.* p. 127. Krauss, *loc. cit.* p. 21.

[2] *Folk-Lore Record*, iii. 283.

[3] Nennius, *Historia Britonum*, Irish Version, ch. 18, p. 93.

[4] Gomme, 'Some Traditions and Superstitions connected with Buildings,' in *The Antiquary*, iii. 11. Carmichael, *Carmina Gadelica*, ii. 316.

[5] Baring-Gould, *Strange Survivals*, p. 5.

[6] Grimm, *Teutonic Mythology*, iii. 1142.

inmates ill.[1] Before the Sandwich Islanders could occupy their houses "offerings were made to the gods, and presents to the priest, who entered the house, uttered prayers, went through other ceremonies, and slept in it before the owner took possession, in order to prevent evil spirits from resorting to it, and to secure its inmates from the effects of incantation."[2] Among the Kayans of Borneo, on the occasion of the king or principal chief taking possession of a newly-built house, a human victim was killed, and the blood was sprinkled on the pillars and under the house.[3] The Russian peasant believes that the building of a new house "is apt to be followed by the death of the head of the family for which the new dwelling is constructed, or that the member of the family who is the first to enter it will soon die"; and, in accordance with a custom of great antiquity, the oldest member of a migrating household enters the new house first.[4] In German folk-tales "the first to cross the bridge, the first to enter the new building or the country, pays with his life."[5] Even nowadays, in the North of Europe, there is a wide-spread fear of being the first to enter a new building or of going over a newly-built bridge; "if to do this is not everywhere and in all cases thought to entail death, it is considered supremely unlucky."[6] This superstition has been interpreted as a survival of a previous sacrifice;[7] but there can be no doubt, I think, that the foundation sacrifice itself owes its origin to similar notions and fears of supernatural dangers. Uncultured people are commonly afraid of anything new, or of doing an act for the first time;[8] and, apart from this, the erecting of a new building is an intrusion upon

[1] Riedel, *De sluik- en kroesharige rassen tusschen Selebes en Papua*, p. 343.

[2] Ellis, *Polynesian Researches*, iv. 322.

[3] Burns, 'Kayans of the North-West of Borneo,' in *Journal of the Indian Archipelago*, iii. 145.

[4] Ralston, *Songs of the Russian People*, p. 126. *Cf.* Krauss, *loc. cit.* p. 21 *sq.* (Southern Slavs).

[5] Grimm, *Teutonic Mythology*, i. 45, n. 2.

[6] Baring-Gould, *Strange Survivals*, p. 2. For various instances of similar beliefs, see Sartori, in *Zeitschr. f. Ethnol.* xxx. 14 *sqq.*; Crawley, *Mystic Rose*, p. 25.

[7] Baring-Gould, *op. cit.* p. 4.

[8] Crawley, *op. cit.* p. 25.

the land of the local spirit, and therefore likely to arouse its anger. There are houses which remain haunted by spirits all their time.[1] It is natural, then, that attempts should be made to avert the danger. And, human life being at stake, no preventive could be more effective than the offering up of a human victim.

On the other hand it is maintained that the foundation-sacrifice is partly, if not exclusively, performed for the purpose of converting the soul of the victim into a protecting demon.[2] This opinion, no doubt, has the support of beliefs actually held by some of the peoples who practise the rite. When the gate of the new city of Tavoy, in Tenasserim, was built, Mason was told by an eye-witness that a criminal was put in each post-hole to become a guardian spirit.[3] The Burmese kings used to have victims buried alive at the gates of their capitals, "so that their spirits might watch over the city."[4] Formerly, in Siam, "when a new city gate was being erected, it was customary for a number of officers to lie in wait near the spot, and seize the first four or eight persons who happened to pass by, and who were then buried alive under the gate-posts, to serve as guardian angels."[5] But whatever be the present notions of certain peoples concerning the object of the building-sacrifice, I do not believe that its primary object could have been to procure a spirit-guardian. According to early ideas, the ghost of a murdered man is not a friendly being, and least of all is he kindly disposed towards those who killed him. Several instances are known in which later generations have put upon human sacrifices an interpretation obviously foreign to their original purpose.[6] Thus, according to a North

[1] Westermarck, 'Nature of the Arab *Ginn*, illustrated by the Present Beliefs of the People of Morocco,' in *Jour. Anthr. Inst.* xxix. 253, 260.

[2] Tylor, *Primitive Culture*, i. 106. Grant Allen, *op. cit.* p. 248 *sqq.* Lippert, *Christenthum, Volksglaube und Volksbrauch*, p. 456 *sq.* *Idem*, *Kulturgeschichte der Menschheit*, ii. 270. Gaidoz, in *Mélusine*, iv. 14 *sqq.* Sartori, in *Zeitschr. f. Ethnol.* xxx. 32 *sqq.*

[3] Tylor, *Primitive Culture*, i. 107.

[4] Woodthorpe, in *Jour. Anthr. Inst.* xxvi. 24. See also Shway Yoe, *The Burman*, i. 286.

[5] Alabaster, *Wheel of the Law*, p. 212 *sq.* *Cf.* Gaidoz, *loc. cit.* p. 14 *sq.*

[6] See Nyrop, *Romanske Mosaiker*, p. 73 *sqq.*; also *infra*, p. 465 *sq.*

German tradition, a master-builder was immured by a certain knight in the tower which he had built, as a punishment for boasting that he could have built a still finer tower if he had liked to do so.[1] An Indian raja, we are told, was once building a bridge over the river Jargoat Chunâr, and when it fell down several times he was advised to sacrifice a Brahman girl to the local deity; however, "she has now become the Marî or ghost of the place, and is regularly worshipped in time of trouble."[2] Considering that the foundation-sacrifice was offered for the purpose of protecting the living against the attacks of the spirit of the place, it is quite intelligible that the ghost of the victim came in time to be looked upon as a guardian spirit; and it was all the more natural to attribute to the dead the function of a guard in cases where he was buried at the gate. But he was buried there, I presume, simply because that spot was thought to be the most dangerous. The gate of a town corresponds to the entrance of a house, and the threshold has almost universally been regarded as the proper haunt of what the Moors call "the owners of the place."[3]

Whilst the man who is sacrificed is in some cases described as a guardian, he is in other cases regarded as a messenger. The Mayas of Yucatan maintained that the human victims whom they offered in times of distress were sent as messengers to the spirit-world to make known the wants of the people.[4] The same idea prevailed in Great Benin. When the head jujuman had said the prayer in which he asked Ogiwo to let no sickness come for Benin, he thus addressed the slaves who were going to be clubbed to death and tied in the sacrifice-trees:—"So you shall tell Ogiwo. Salute him proper."[5] A message was likewise sent to the head juju with the slave who was sacrificed to it;[6] and a message saluting the rain-god was put in the

[1] Nyrop, *op. cit.* p. 73.
[2] Crooke, *Popular Religion of Northern India*, ii. 174.
[3] See Trumbull, *Threshold Covenant*, *passim*.
[4] Dorman, *op. cit.* p. 213.
[5] Moor and Roupell, quoted by Read and Dalton, *op. cit.* p. 7; also by Ling Roth, *Great Benin*, p. 72.
[6] *Supra*, p. 456.

mouth of the woman who was sacrificed when there was too much rain.[1] Mr. Ling Roth suggests that the main object of the human sacrifices which were offered in Benin "was the sending of prayers, by means of the special messengers, for the welfare of the community, to the spirits of the departed, or to other spirits, such as the spirits of the beads, the Rain-God, Sun-God, the God-Ogiwo"; and he thinks that this explains "a cult of world-wide prevalence."[2] But considering that in Yucatan and Benin, as elsewhere, the human victim was sacrificed for the avowed purpose of averting some mortal danger from the community or the king, I conclude that there, also, the primary object of the rite was to offer a substitute, though this substitute came to be used as a messenger.

I do not affirm that the practice of human sacrifice is in every case based on the idea of substitution; the notion that a certain god has a desire for such sacrifices may no doubt induce his worshippers to gratify this desire for a variety of purposes. But I think there is sufficient evidence to prove that, when men offer the lives of their fellow-men in sacrifice to their gods, they do so as a rule in the hopes of thereby saving their own. Human sacrifice is essentially a method of life-insurance—absurd, no doubt, according to our ideas, but not an act of wanton cruelty. When practised for the benefit of the community or in a case of national distress, it is hardly more cruel than to advocate the infliction of capital punishment on the ground of social expediency, or to compel thousands of men to suffer death on the battle-field on behalf of their country. The custom of human sacrifice admits that the life of one is taken to save the lives of many, or that an inferior individual is put to death for the purpose of preventing the death of somebody who has a higher right to live. Sometimes the king or chief is sacrificed in times of scarcity or pestilence, but then he is probably held personally responsible for the calamity.[3] Very frequently

[1] *Supra*, p. 444.
[2] Ling Roth, *op. cit.* p. 72.
[3] *Cf.* Frazer, *Golden Bough*, i. 15 *sq.*

the victims are prisoners of war or other aliens, or slaves, or criminals, that is, persons whose lives are held in little regard. And in many cases these are the only victims allowed by custom.

This was generally the case among the ancient Teutons,[1] though they sometimes deemed a human sacrifice the more efficacious the more distinguished the victim, and the nearer his relationship to him who offered the sacrifice.[2] The Gauls, says Cæsar, "consider that the oblation of such as have been taken in theft, or robbery, or any other offence, is more acceptable to the immortal gods; but when a supply of that class is wanting, they have recourse to the oblation of even the innocent."[3] Diodorus Siculus states that the Carthaginians in former times used to sacrifice to Saturn the sons of the most eminent persons, but that, of later times, they secretly bought and bred up children for that purpose.[4] The chief aim of the wars of the ancient Mexicans was to make prisoners for sacrificial purposes; other victims were slaves who were purchased for this object, and many criminals "who were condemned to expiate their crimes by the sacrifice of their lives."[5] The Yucatans sacrificed captives taken in war, and only if such victims were wanting they dedicated their children to the altar "rather than let the gods be deprived of their due."[6] In Guatemala the victims were slaves or captives or, among the Pipiles, illegitimate children from six to twelve years old who belonged to the tribe.[7] In Florida the human victim who was offered up at harvest time was chosen from among the Spaniards wrecked on the coast.[8] Of the Peruvian Indians before the time of the Incas, Garcilasso de la Vega states that, "besides ordinary things such as animals and maize, they sacrificed men and women of all ages, being captives taken in wars which they made against each other."[9] Among the Tshi-speaking peoples of the Gold Coast, "the persons ordinarily sacrificed to the gods are prisoners of war or slaves. When the latter, they are usually aliens, as a protecting god is not so well satisfied with the sacrifice of his own people."[10] In Great Benin, according to Captain Roupell, the people who were kept for sacrifice were bad men, or men with bad sickness,

[1] Grimm, *Teutonic Mythology*, i. 45.
[2] Holtzmann, *Deutsche Mythologie*, p. 232.
[3] Cæsar, *De bello gallico*, vi. 16.
[4] Diodorus Siculus, xx. 14.
[5] Clavigero, *op. cit.* i. 282.
[6] Bancroft, *op. cit.* ii. 704.
[7] Stoll, *op. cit.* p. 40.
[8] Bry, *op. cit.* p. 11.
[9] Garcilasso de la Vega, *op. cit.* i. 50.
[10] Ellis, *Tshi-speaking Peoples*, p. 170.

and they were all slaves.[1] In Fiji the victims were generally prisoners of war, but sometimes they were slaves procured by purchase from other tribes.[2] In Nukahiva "the custom of the country requires that the men destined for sacrifice should belong to some neighbouring nation, and accordingly they are generally stolen."[3] In Tahiti "the unhappy wretches selected were either captives taken in war, or individuals who had rendered themselves obnoxious to the chiefs or the priests.[4] The Muruts of Borneo "never sacrifice one of their own people, but either capture an individual of a hostile tribe, or send to a friendly tribe to purchase a slave for the purpose."[5] It is said to be contrary to the Káyán custom to sell or sacrifice one of their own nation.[6] The Gāro hill tribes "generally select their victims out of the Bengali villages in the plains."[7] The Kandhs considered that the victim must be a stranger. "If we spill our own blood," they said, "we shall have no descendants";[8] and even the children of Meriahs, who were reared for sacrificial purposes, were never offered up in the village of their birth.[9]

We find that various peoples who at a certain period have been addicted to the practice of human sacrifice, have afterwards, at a more advanced stage of civilisation, voluntarily given it up. The cause of this is partly an increase, or expansion, of the sympathetic sentiment, partly a change of ideas. With the growth of enlightenment men would lose faith in this childish method of substitution, and consequently find it not only useless, but objectionable; and any sentimental disinclination to the practice would by itself, in the course of time, lead to the belief that the deity no longer cares for it, or is averse to it. Brahmanism gradually abolished the immolation of human victims, incompatible as it was with the precept of *ahimsâ*, or respect for everything that has life; "the liberation of the victim, or the substitution in its stead and place of a

[1] Ling Roth, *Great Benin*, p. 70.
[2] Hale, *U.S. Exploring Expedition. Vol. VI. Ethnography and Philology*, p. 57. *Cf.* Wilkes, *op. cit.* iii. 97.
[3] Lisiansky, *op. cit.* p. 81 *sq.*
[4] Ellis, *Polynesian Researches*, i. 346.
[5] Denison, quoted by Ling Roth, *Natives of Sarawak*, ii. 216.
[6] Burns, in *Jour. of Indian Archipelago*, iii. 145.
[7] Godwin-Austen, in *Jour. Anthr. Inst.* ii. 394.
[8] Macpherson, *Memorials of Service in India*, p. 121.
[9] Campbell, *Wild Tribes of Khondistan*, p. 53.

figure made of flour paste, both of which were at first matter of sufferance, became at length matter of requirement." [1] According to the Mahabharata, the priest who performs a human sacrifice is cast into hell.[2] In Greece, in the historic age, the practice was held in horror at least by all the better minds, though it was regarded as necessary on certain occasions.[3] It was strongly condemned by enlightened Romans. Cicero speaks of it as a "monstrous and barbarous practice" still disgracing Gaul in his day;[4] and Pliny, referring to the steps taken by Tiberius to stop it, declares it impossible to estimate the debt of the world to the Romans for their efforts to put it down.[5]

The growing reluctance to offer human sacrifice led to various practices intended to replace it.[6] Speaking of the Italian custom of dedicating as a sacrifice to the gods every creature that should be born in the following spring, Festus adds that, since it seemed cruel to kill innocent boys and girls, they were kept till they had grown up, then veiled and driven beyond the boundaries.[7] Among various peoples human effigies or animals were offered instead of men.

Among the Malays of the Malay Peninsula dough models of human beings, actually called "the substitutes," are offered up to the spirits on the sacrificial trays; and in the same sense are the directions of magicians, that "if the spirit craves a human victim a cock may be substituted." [8] We are told that, in Egypt, King Amosis ordered three waxen images to be burned in the temple of Heliopolis in lieu of the three men who in earlier times used to be sacrificed there.[9] The Romans offered dolls; [10] and in old Hindu families belonging to the sect of the Vámácháris a practice still obtains of sacrificing an effigy

[1] Barth, *Religions of India*, p. 97.
[2] *Supra*, p. 458.
[3] Stengel, *op. cit.* p. 117. *Cf.* Donaldson, *loc. cit.* p. 464.
[4] Cicero, *Pro Fonteio*, 10 (21).
[5] Pliny, *Historia naturalis*, xxx. 4 (1).
[6] *Cf.* Krause, 'Die Ablösung der Menschenopfer,' in *Kosmos*, 1878, iii. 76 *sqq.*
[7] Festus, *op. cit.* 'Ver sacrum,' p. 379.
[8] Skeat, *Malay Magic*, p. 72.
[9] Porphyry, *op. cit.* ii. 55.
[10] Leist, *Græco-italische Rechtsgeschichte*, p. 272 *sqq.*

instead of a living man.[1] In India, Greece, and Rome, animals, also, were substituted for human victims.[2] Of a similar substitution there is probably a trace in the Biblical story of Isaac being exchanged for a ram, and in the paschal sacrifice.[3] On the Gold Coast the human victim who was formerly sacrificed to the god of the Prah is nowadays replaced by a bullock which is specially reserved and fattened for the purpose.[4]

In other cases human sacrifices have been succeeded by practices involving the effusion of human blood without loss of life. We are told that, in Laconia, Lycurgus established the scourging of lads at the altar of Artemis Orthia, in place of the sacrifice of men, which had previously been offered to her;[5] and Euripides represents Athena as ordaining that, when the people celebrate the festival of Artemis the Taurian goddess, the priest, to compensate her for the sacrifice of Orestes, "must hold his knife to a human throat, and blood must flow to satisfy the sacred claims of the goddess, that she may have her honours."[6] There are also many instances of bleeding or mutilation practised for the same purpose as human sacrifice, probably according to the principle of *pars pro toto*, though it is impossible to decide whether they really are survivals of an earlier sacrifice.

Besides the ceremony of *nawgia*, already described,[7] the Tonga Islanders had another ceremony called *tootoo-nima*, or cutting off a portion of the little finger, as a sacrifice to the gods, for the recovery of a superior relation who was ill; and so commonly was this done that, in Mariner's days, there was scarcely a person living in the Tonga Islands who had not lost one or both little fingers, or at least a considerable portion of them.[8] In Chinese literature there are frequently mentioned instances of persons cutting off flesh from their bodies to cure parents or paternal grandparents dangerously ill. In most cases

[1] Rájendralála Mitra, *op. cit.* ii. 109 *sq.*

[2] Leist, *Græco-italische Rechtsgeschichte*, p. 267 *sqq.* Frazer, *Golden Bough*, ii. 38, n. 2. Pausanias, ix. 8. 2. For various modifications of human sacrifice in India, see Wilson, *Works*, ii. 267 *sq.*; Crooke, *Popular Religion of Northern India*, ii. 175 *sq.*

[3] See *supra*, p. 458.

[4] Ellis, *Tshi-speaking Peoples*, p. 66.

[5] Pausanias, iii. 16. 10.

[6] Euripides, *Iphigenia in Tauris*, 1458 *sqq.*

[7] *Supra*, p. 455.

[8] Mariner, *op. cit.* ii. 222.

it remains unmentioned how the flesh was prepared; but it is sometimes stated that porridge or broth was made of it, or that it was mixed with medicine. Dr. de Groot maintains that it was in the first place the ascription of therapeutic virtues to parts of the human body that prompted such filial self-mutilation. But he adds that "often also we read of thigh-cutters invoking Heaven beforehand, solemnly asking this highest power to accept their own bodies as a substitute for the patients' lives they wanted to save; their mutilation thus assuming the character of self-immolation."[1] According to the testimony of a native writer, there is scarcely a respectable house in all Bengal, the mistress of which has not at one time or other shed her blood, under the notion of satisfying the goddess Chandiká by the operation. "Whenever her husband or a son is dangerously ill, a vow is made that on the recovery of the patient, the goddess would be regaled with human blood. . . . The lady performs certain ceremonies, and then bares her breast in the presence of the goddess, and with a nail-cutter (*naruna*) draws a few drops of blood from between her breasts and offers them to the divinity."[2] Garcilasso de la Vega states that, whilst some of the Peruvian Indians before the time of the Incas sacrificed men, there were others who, though they mixed human blood in their sacrifices, did not obtain it by killing anyone, but by bleeding the arms and legs, according to the importance of the sacrifice, and, in the most solemn cases, by bleeding the root of the nose where it is joined by the eyebrows.[3]

There is one form of human sacrifice which has outlived all others, namely, the penal sacrifice of offenders. There can be no moral scruples in regard to a rite which involves a punishment regarded as just. Indeed, this kind of human sacrifice is even found where the offering of animals or lifeless things has fallen out of use or become a mere symbol. For this is the only sacrifice which is intended to propitiate the deity by the mere death of the victim; and gods are believed to be capable of feeling anger and revenge long after they have ceased to have material needs. The last trace of human sacrifice has

[1] de Groot, *Religious System of China*, (vol. iv. book) ii. 386 *sq.*

[2] Rájendralála Mitra, *op. cit.* i. 111 *sq.*

[3] Garcilasso de la Vega, *op. cit.* i. 52.

disappeared only when men no longer punish offenders capitally with a view to appeasing resentful gods.

Human beings are sacrificed not only to gods, but to dead men, in order to serve them as companions or servants, or to vivify their spirits, or to gratify their craving for revenge.

From various quarters of the world we hear of the immolation of men for the service of the dead, the victims generally being slaves, wives, or captives of war, or, sometimes, friends.[1] This rite occurs or has occurred, more or less extensively, in Borneo[2] and the Philippine Islands,[3] in Melanesia and Polynesia,[4] in many different parts of Africa,[5] and among some American tribes.[6] In America, however, it was carried to its height by the more civilised nations of Central America and Mexico, Bogota and Peru.[7] There is evidence to show that the funeral cere-

[1] See Tylor, *Primitive Culture*, i. 458 *sqq.*; Spencer, *Principles of Sociology*, i. 203 *sqq.*; Liebrecht, *Zur Volkskunde*, p. 380 *sq.*; Schneider, *Naturvölker*, i. 202 *sqq.*; Hehn, *op. cit.* p. 416 *sqq.*; Westermarck, *History of Human Marriage*, p. 125 *sq.*; Frazer, *Pausanias*, iii. 199 *sq.*

[2] Brooke, *Ten Years in Sarâwak*, i. 174. Hose and McDougall, 'Relations between Men and Animals in Sarawak,' in *Jour. Anthr. Inst.* xxxi. 207 *sq.* Bock, *Head-Hunters of Borneo*, pp. 210 n., 219 *sq.*

[3] Blumentritt, 'Der Ahnencultus und die religiösen Anschauungen der Malaien des Philippinen-Archipels,' in *Mittheilungen d. Geograph. Gesellsch. in Wien*, xxv. 152 *sq.*

[4] Westermarck, *op. cit.* p. 125 *sq.* Brenchley, *op. cit.* p. 208 (natives of Tana). Williams and Calvert, *op. cit.* p. 161 *sq.* (Fijians). Lisiansky, *op. cit.* p. 81 (Nukahivans). Mariner, *op. cit.* ii. 220 *sq.* (Tonga Islanders). Taylor, *Te Ika a Maui*, p. 218 (Maoris). von Kotzebue, *op. cit.* iii. 247 (Sandwich Islanders).

[5] Rowley, *Africa Unveiled*, p. 127. *Idem*, *Religion of the Africans*, p. 102 *sq.* Schneider, *Religion der afrikanischen Naturvölker*, p. 118 *sqq.* Westermarck, *op. cit.* p. 125. Ramseyer and Kühne, *Four Years in Ashantee*, p. 50. Mockler-Ferryman, *British Nigeria*, pp. 235, 259 *sqq.* Burton, *Mission to Gelele*, ii. 19 *sqq.* (Dahomans). *Idem*, *Abeokuta*, i. 220 *sq.* *Idem*, *Lake Regions of Central Africa*, i. 124 (Wadoe); ii. 25 *sq.* (Wanyamwezi). Wilson, *Western Africa*, pp. 203, 219. Ellis, *Tshi-speaking Peoples of the Gold Coast*, p. 159 *sqq.* *Idem*, *Ewe-speaking Peoples of the Slave Coast*, pp. 117, 118, 121 *sqq.* Nachtigal, *Sahara und Sudan*, ii. 687 (Somrai and Njillem). Baker, *Ismailia*, p. 317 *sq.* (Wanyoro). Casati, *Ten Years in Equatoria*, i. 170 (Mambettu). Callaway, *Religious System of the Amazulu*, p. 212 *sq.*

[6] Spencer, *Principles of Sociology*, i. 204. Dorman, *op. cit.* p. 210 *sqq.* Westermarck, *op. cit.* p. 125. Macfie, *Vancouver Island and British Columbia*, p. 448. Charlevoix, *Voyage to North America*, ii. 196 *sq.* (Natchez). Rochefort, *Histoire naturelle et morale des Iles Antilles*, p. 568 *sq.* (Caribs).

[7] Tylor, *Primitive Culture*, i. 461. Spencer, *Principles of Sociology*, i. 205. Dorman, *op. cit.* p. 212 *sqq.* Acosta, *op. cit.* ii. 313, 314, 344 (Peruvians).

monies of the ancient Egyptians occasionally included human sacrifice at the gate of the tomb, although the practice would seem to have been exceptional, at any rate after Egypt had entered upon her period of greatness.[1] It has been suggested that in China the burial of living persons with the dead dates from the darkest mist of ages, and that the cases on record in the native books are of relatively modern date only because in high antiquity the custom was so common, that it did not occur to the annalists and chroniclers to set down such everyday matters as anything remarkable.[2] In the fourteenth century of our era, the funeral sacrifice of men was abolished, even for emperors and members of the imperial family,[3] but it has assumed a modified shape under which it still maintains itself in China. "Daughters, daughters-in-law, and widows especially imbued with the doctrine that they are the property of their dead parents, parents-in-law, and husbands, and accordingly owe them the highest degree of submissive devotion, often take their lives, in order to follow them into the next world." And though it has been enacted that no official distinctions shall be awarded to such suttees, whereas honours are granted to widowed wives, concubines, and brides who, instead of destroying themselves, simply abjure matrimonial life for good, sutteeism of widows and brides still meets with the same applause as ever, and many a woman is no doubt prevailed upon, or even compelled, by her own relations, to become a suttee.[4] Professor Schrader observes that "it is no longer possible to doubt that ancient Indo-Germanic custom ordained that the wife should die with her husband."[5] It has been argued, it is true, that the burning of widows begins rather late in India;[6] yet, though the modern ordinance of suttee-burning be a corrupt depar-

[1] Wiedemann, *Ancient Egyptian Doctrine of the Immortality of the Soul*, p. 62 n.
[2] de Groot, *op. cit.* (vol. ii. book) i. 721.
[3] *Ibid.* (vol. ii. book) i. 724.
[4] *Ibid.* (vol. ii. book) i. 735, 754, 748.
[5] Schrader, *Prehistoric Antiquities of the Aryan Peoples*, p. 391.
[6] Hopkins, *op. cit.* p. 274.

ture from the early Brahmanic ritual, the practice seems to be, not a new invention by the later Hindu priesthood, but the revival of an ancient rite belonging originally to a period even earlier than the Veda.[1] In the Vedic ritual there are ceremonies which obviously indicate the previous existence of such a rite.[2] From Greece we have the instances of Evadne throwing herself into the funeral pile of her husband,[3] and of the suicide of the three Messenian widows mentioned by Pausanias.[4] Sacrifice of widows occurred, as it seems as a regular custom, among the Scandinavians,[5] Heruli,[6] and Slavonians.[7] "The fact," says Mr. Ralston, "that, in Slavonic lands, a thousand years ago, widows used to destroy themselves in order to accompany their dead husbands to the world of spirits, seems to rest on incontestable evidence"; and if the dead was a man of means and distinction, he was also solaced by the sacrifice of his slaves.[8] Funeral offerings of slaves occurred among the Teutons[9] and the Gauls of Cæsar's time;[10] and in the Iliad we read of twelve captives being laid on the funeral pile of Patroclus.[11]

According to early notions, men require wives and servants not only during their life-time, but after their death. The surviving relatives want to satisfy their needs, out of affection or from fear of withholding from the dead what belongs to them—their wives and their slaves. The destruction of innocent life seems justified by the low social standing of the victims and their subjection to their husbands or masters. However, with advancing civilisation this sacrifice has a tendency to

[1] Tylor, *Primitive Culture*, i. 465 *sqq.* Zimmer, *Altindisches Leben*, p. 331.

[2] *Rig-Veda*, x. 18. 8 *sq.* Macdonell, *Vedic Mythology*, p. 165. Hillebrandt, 'Eine Miscelle aus dem Vedaritual,' in *Zeitschr. d. Deutschen Morgenländ. Gesellsch.* xl. 711. Oldenberg, *Religion des Veda*, p. 587.

[3] Euripides, *Supplices*, 1000 *sqq.*

[4] Pausanias, iv. 2. 7.

[5] Grimm, *Deutsche Rechtsalterthümer*, p. 451.

[6] Procopius, *op. cit.* ii. 14.

[7] Dithmar of Merseburg, *Chronicon*, viii. 2 (Pertz, *Monumenta Germaniæ historica*, v. 861). Zimmer, *op. cit.* p. 330.

[8] Ralston, *Songs of the Russian People*, p. 327 *sq.*

[9] Grimm, *op. cit.* p. 344.

[10] Cæsar, *De bello gallico*, vi. 19. In the ancient annals of the Irish there is one trace of human sacrifice being offered as a funeral rite (Cusack, *History of the Irish Nation*, p. 115 n.*).

[11] *Iliad*, xxiii. 175.

disappear, partly, perhaps, on account of a change of ideas as regards the state after death, but chiefly, I presume, because it becomes revolting to public feelings. It then dwindles into a survival. As a probable instance of this may be mentioned a custom prevalent among the Tacullies of North America: the widow is compelled by the kinsfolk of the deceased to lie on the funeral pile where the body of her husband is placed, whilst the fire is lighting, until the heat becomes intolerable.[1] In ancient Egypt little images of clay, or wood, or stone, or bronze, made in human likeness and inscribed with a certain formula, were placed within the tomb, presumably in the hopes that they would there attain to life and become the useful servants of the dead.[2] So also the Japanese[3] and Chinese, already in early times, placed images in, or at, the tombs of their dead as substitutes for human victims; and these images have always been considered to have no less virtual existence in the next world than living servitors, wives, or concubines. In China the original immolations were, moreover, replaced by the custom of allowing the nearest relatives and slaves of the deceased simply to settle on the tomb, instead of entering it, there to sacrifice to the manes, and by prohibiting widows from remarrying.[4]

The practice of sacrificing human beings to the dead is not exclusively based on the idea that they require servants and companions. It is extremely probable that the funeral sacrifice of men and animals in many cases involves an intention to vivify the spirits of the deceased with the warm, red sap of life.[5] This seems to be the meaning of the Dahoman custom of pouring blood over the graves of the ancestors of the king.[6] So, also, in Ashanti "human sacrifices are frequent and ordinary, to

[1] Wilkes, *U.S. Exploring Expedition*, iv. 453.

[2] Wiedemann, *Ancient Egyptian Doctrine of the Immortality of the Soul*, p. 63.

[3] Tylor, *Primitive Culture*, i. 463.

[4] de Groot, *op. cit.* (vol. ii. book) i. 794 *sqq.*

[5] *Cf.* Spencer, *Principles of Sociology*, i. 288 *sq.*; Rockholz, *Deutscher Glaube und Brauch*, i. 55; Sepp, *Völkerbrauch bei Hochzeit, Geburt und Tod*, p. 154; Trumbull, *Blood Covenant*, p. 110 *sqq.*

[6] Reade, *Savage Africa*, p. 51 *sq.*

water the graves of the Kings."[1] In the German folk-tale known under the name of 'Faithful John,' the statue said to the King, "If you, with your own hand, cut off the heads of both your children, and sprinkle me with their blood, I shall be brought to life again."[2] According to primitive ideas, blood is life; to receive blood is to receive life; the soul of the dead wants to live, and consequently loves blood. The shades in Hades are eager to drink the blood of Odysseus' sacrifice, that their life may be renewed for a time.[3] And it is all the more important that the soul should get what it desires as it otherwise may come and attack the living. The belief that the bloodless shades leave their graves at night and seek renewed life by drawing the blood of the living, is prevalent in many parts of the world.[4] As late as the eighteenth century this belief caused an epidemic of fear in Hungary, resulting in a general disinterment, and the burning or staking of the suspected bodies.[5] It is also possible that the mutilations and self-bleedings which accompany funerals are partly practised for the purpose of refreshing the departed soul.[6] The Samoans called it "an offering of blood" for the dead when the mourners beat their heads with stones till the blood ran.[7]

Finally, as offenders are sacrificed to gods in order to appease their wrath, so manslayers are in many cases killed in order to satisfy their victims' craving for revenge. In the next chapter we shall see that the execution of blood-revenge largely falls under the heading of "human sacrifice for the dead."

[1] Bowdich, *Mission from Cape Castle to Ashantee*, p. 289.
[2] Grimm, *Kinder- und Hausmärchen*, p. 29 *sq.*
[3] *Odyssey*, xi. 153.
[4] Trumbull, *Blood Covenant*, p. 114 *sq.*
[5] Farrer, *Primitive Manners and Customs*, p. 23 *sq.*
[6] *Cf.* Spencer, *Principles of Sociology*, i. 181 *sq.*
[7] Turner, *Nineteen Years in Polynesia*, p. 227.

CHAPTER XX

BLOOD-REVENGE AND COMPENSATION—THE PUNISHMENT OF DEATH

ACCORDING to early custom, a person who takes the life of another may himself be killed by the relatives of his victim, or some other member of his family, clan, or tribe may be killed in his stead.[1] The custom of blood-revenge is found among a host of existing savages and barbarians, and has long survived among many peoples who have reached a higher degree of culture.

We meet with blood-revenge in the midst of Japanese civilisation, not as a mere fact, but as a legally permitted custom. The avenger had only to observe certain prescribed formalities and regulations: there was a regular official to whom he must announce his resolve, and he must fix the time within which he would carry it out. The way in which the enemy was killed was of no importance, except that, even in ancient times, the man who had recourse to assassination was reprehensible.[2] Among the Hebrews blood-revenge continued to exist during the periods of the Judges and Kings, and even later; under the Old Kingdom, says Wellhausen, "the administration of justice was at best but a scanty supplement to the practice of self-help."[3] It is a rule among

[1] The collective responsibility usually involved in the blood-feud has been discussed *supra*, p. 30 *sqq*.

[2] Rein, *Japan*, p. 326. Dautremer, 'The Vendetta or Legal Revenge in Japan,' in *Trans. Asiatic Soc. Japan*, xiii. 84 *sq*.

[3] Wellhausen, *Prolegomena to the History of Israel*, p. 467.

all the Arabs that whoever sheds the blood of a man owes blood on that account to the family of the slain person.[1] Says the Koran:—"O ye who believe! Retaliation is prescribed for you for the slain."[2] In ancient Eran blood-revenge survived the establishment of tribunals.[3] There is evidence left of its prevalence in early times among the Aryan population of India, though no mention is made in the Sûtras of blood revenge as an existing custom.[4] Among the Greeks it was only in the post-Homeric age that it was given up as a fundamental principle, the avenger being transformed into an accuser.[5] In Gaul and Ireland, though justice was administered by Druids or Brehons, their judgments seem to have been merely awards founded upon a submission to arbitration, the injured person being at liberty to take the law into his own hands and redress himself.[6] In the preface to the Senchus Mór we read that retaliation prevailed in Erin before Patrick, and that Patrick brought forgiveness with him.[7] Among the clans of Scotland, as is well known, the blood-feud has existed up to quite modern times; in the Catholic period even the Church recognised its power by leaving the right hand of male children unchristened, that it might deal the more unhallowed and deadly a blow to the enemy.[8] In England it was at least theoretically possible down to the middle of the tenth century for a manslayer to elect to bear the feud of the kindred of the slain, instead of paying the *wer*;[9] and long after the Conquest we still meet with a law against the system of

[1] Burckhardt, *Notes on the Bedouins and Wahábys*, p. 85.

[2] *Koran*, ii. 173. *Cf. ibid.* xvii. 35.

[3] Geiger, *Civilization of the Eastern Irânians*, ii. 31 *sqq.*

[4] Leist, *Alt-arisches Jus Gentium*, p. 422.

[5] *Idem*, *Græco-italische Rechtsgeschichte*, § 50 *sq.*, especially pp. 375, 381. In Rome blood-revenge appears to have been very early suppressed. There is an echo of it in certain legends, but even in them it is represented as objectionable (Mommsen, *History of Rome*, i. 190).

[6] Maine, *Early History of Institutions*, lect. ii. d'Arbois de Jubainville, 'Des attributions judiciaires de l'autorité publique chez les Celtes,' in *Revue Celtique*, vii. 5. *Ancient Laws of Ireland*, iii. p. lxxxix.

[7] Skene, *Celtic Scotland*, iii. 152.

[8] Mackintosh, *History of Civilisation in Scotland*, ii. 279.

[9] Pollock and Maitland, *History of English Law before the Time of Edward I.* i. 48.

private revenge.[1] In Frisland, Lower Saxony, and parts of Switzerland, the blood-feud was practised as late as the sixteenth century.[2] In Italy it prevailed extensively, even among the upper classes, in the sixteenth and seventeenth centuries.[3] In Corsica,[4] Albania,[5] and Montenegro,[6] it exists even to this day.

Blood-revenge is regarded not only as a right, but as a duty. We are told that the holiest duty a West Australian native is called on to perform is that of avenging the death of his nearest relation. "Until he has fulfilled this task, he is constantly taunted by the old women; his wives, if he be married, would soon quit him; if he is unmarried, not a single young woman would speak to him; his mother would constantly cry, and lament she should ever have given birth to so degenerate a son; his father would treat him with contempt, and reproaches would constantly be sounded in his ear."[7] Among the tribes of Western Victoria "a man would consider it his bounden duty to kill his most intimate friend for the purpose of avenging a brother's death, and would do so without the slightest hesitation."[8] In his description of the Eskimo about Behring Strait, Mr. Nelson states that blood-revenge is considered a sacred duty among all the Eskimo, a duty incumbent on the nearest male relative; if the son of the murdered man is an infant, it rests with him to seek revenge as soon as he attains puberty.[9] Among the Dacotahs "no one can escape this law of retaliation; public opinion would brand with disgrace whoever fled under such circumstances."[10] The Brazilian aborigines

[1] Cherry, *Growth of Criminal Law in Ancient Communities*, p. 85.

[2] Günther, *Idee der Wiedervergeltung*, i. 207 *sq.* Frauenstädt, *Blutrache und Todtschlagsühne im Deutschen Mittelalter*, p. 21. *Cf.* Arnold, *Deutsche Urzeit*, p. 342.

[3] Simonde de Sismondi, *Histoire des républiques italiennes du moyen âge*, xvi. 456.

[4] Gregorovius, *Wanderings in Corsica*, i. 176 *sqq.*

[5] Gopčević, *Oberalbanien und seine Liga*, p. 322 *sqq.*

[6] Kohl, *Reise nach Istrien*, i. 406 *sqq.* Popović, *Recht und Gericht in Montenegro*, p. 69.

[7] Grey, *Journals of Expeditions of Discovery in North-West and Western Australia*, ii. 240.

[8] Dawson, *Australian Aborigines*, p. 71.

[9] Nelson, 'Eskimo about Bering Strait,' in *Ann. Rep. Bur. Ethn.* xviii. p. 292 *sq.*

[10] Domenech, *Seven Years' Residence in the Great Deserts of North America*, ii. 338.

consider it a moral obligation, a matter of conscience, for a son, a brother, or a nephew, to avenge the death of his relative.[1] Speaking of the Guiana Indians, Sir E. F. Im Thurn observes that, "in all primitive societies where there are no written laws and no supreme authority to enforce justice, such vengeance has been held as a sacred duty."[2] Confucius affirmed, in the strongest and most unrestricted terms, the duty of avenging the murder of a father or a brother.[3] In Japan "the man who was weak enough not to try to put to death the murderer of his father or his lord, was obliged to flee into hiding; from that day, he was despised by his own companions."[4] The Lord said to Moses:—"The revenger of blood himself shall slay the murderer; when he meeteth him, he shall slay him."[5] A similar rule, as we have seen, is laid down in the Koran.[6] The idea that blood-revenge is a sacred duty incumbent on the kindred of the deceased was probably held by all so-called Aryan peoples.[7] It still prevails in Albania,[8] Montenegro,[9] and Corsica. "Not to take revenge is considered by the genuine Corsicans as degrading. . . . Any one who shrinks from avenging himself . . . is allowed no rest by his relations, and all his acquaintances upbraid him with pusillanimity."[10]

[1] von Martius, *Beiträge zur Ethnographie Amerika's*, i. 128.

[2] Im Thurn, *Among the Indians of Guiana*, p. 329 *sq.*

[3] Legge, *Chinese Classics*, i. 111. Douglas, *Confucianism and Taouism*, p. 145.

[4] Dautremer, *loc. cit.* p. 83. *Cf.* Griffis, *Corea*, p. 227 (Coreans).

[5] *Numbers*, xxxv. 19.

[6] For modern Arabs, see Burckhardt, *Notes on the Bedouins and Wahábys*, p. 313 *sq.*; Blunt, *Bedouin Tribes of the Euphrates*, ii. 207.

[7] Geiger, *op. cit.* ii. 32 (Avesta people). Leist, *Alt-arisches Jus Gentium*, p. 422. *Idem*, *Græco-italische Rechtsgeschichte*, p. 323 *sqq.* de Valroger, *op. cit.* p. 472 (Celts). Nordström, *Bidrag till den svenska samhällsförfattningens historia*, ii. 229; Stemann, *Den Danske Retshistorie indtil Christian V.'s Lov*, p. 574; Keyser, *Efterladte Skrifter*, ii. pt. ii. 95; Rosenberg, *Nordboernes Aandsliv*, i. 487 (Teutons). Miklosich, 'Die Blutrache bei den Slaven,' in *Denkschriften der kaiserl. Akademie d. Wissensch. Philos. histor. Classe*, Vienna, xxxvi. 127 *sqq.* Ewers, *Das älteste Recht der Russen*, p. 50 *sq.*

[8] Hahn, *Albanesische Studien*, i. 176.

[9] Popović, *op. cit.* p. 69. Kohl, *op. cit.* i. 409, 413 *sqq.* Miklosich, *loc. cit.* p. 145.

[10] Gregorovius, *op. cit.* i. 180 *sq.* For other instances of blood-revenge as a duty, see Boas, 'Central Eskimo,' in *Ann. Rep. Bur. Ethn.* vi. 582; Petroff, 'Report on Alaska,' in *Tenth Census of the United States*, p. 158 (Atkha Aleuts); Kohler, in *Zeitschr. f. vergl. Rechtswiss.* vii. 376 (Papuans of New

The duty of blood-revenge is, in the first place, regarded as a duty to the dead, not merely because he has been deprived of his highest good, his life, but because his spirit is believed to find no rest after death until the injury has been avenged.[1] The disembodied soul carries into its new existence an eager longing for revenge, and, till the crime has been duly expiated, hovers about the earth, molesting the manslayer or trying to compel its own relatives to take vengeance on him.

According to Yakut beliefs, a person who is murdered becomes a *yor*, that is, his ghost never comes to rest.[2] The Cheremises imagine that the spirits of persons who have died a violent death cause illness, especially fever and ague.[3] The Saoras of India seem to have most fear of the spirits of those who have died violent deaths.[4] The Burmese believe that persons who meet a violent death become "nats" and haunt the place where they were killed.[5] The Hudson Bay Eskimo regard the island of Akpatok as tabooed since the murder of part of the crew of a wrecked vessel, who camped on that island; "not a soul visits that locality lest the ghosts of the victims should appear and supplicate relief from the natives, who have not the proper offerings to make to appease them."[6] The Omahas believe that the spirits of those who have been killed reappear after death, their errand being "to solicit vengeance on the perpetrators of the deed."[7] According to Genesis, the voice of

Guinea); Modigliani, *Viaggio a Nias*, p. 471; Bowring, *Visit to the Philippine Islands*, p. 177; Macpherson, *Memorials of Service in India*, p. 82 (Kandhs); Radde, *Die Chews'uren*, p. 115; von Haxthausen, *Transcaucasia*, p. 406 *sqq.* (Ossetes); Munzinger, *Die Sitten und das Recht der Bogos*, p. 87; Mungo Park, *Travels in the Interior of Africa*, p. 13 (Feloops bordering on the Gambia); Leuschner, in Steinmetz, *Rechtsverhältnisse von eingeborenen Völkern in Afrika und Oceanien*, p. 23 (Bakwiri); *ibid.* p. 49 (Banaka and Bapuku); Nicole, *ibid.* p. 132 (Diakité-Sarrakolese); Lang, *ibid.* p. 256 *sq.* (Washambala); Kraft, *ibid.* p. 292 (Wapokomo); Viehe, *ibid.* p. 311 (Ovaherero); Rautanen, *ibid.* p. 341 (Ondonga); Sorge, *ibid.* p. 418 (Nissan Islanders in the Bismarck Archipelago).

[1] See Kohler, *Shakespeare vor dem Forum der Jurisprudenz*, p. 131 *sq.*; Steinmetz, *Ethnol. Studien zur ersten Entwicklung der Strafe*, i. 291 *sqq.*; *Idem*, *Rechtsverhältnisse*, p. 49 (Banaka and Bapuku); Nicole, *ibid.* p. 132 (Diakité-Sarrakolese); Lang, *ibid.* p. 257 (Washambala).

[2] Sumner, in *Jour. Anthr. Inst.* xxxi. 101.

[3] Abercromby, *Pre- and Proto-historic Finns*, i. 168 *sq.*

[4] Fawcett, in *Jour. Anthrop. Soc. Bombay*, i. 59.

[5] Schway Yoe, *The Burman*, i. 286.

[6] Turner, 'Ethnology of the Ungava District,' in *Ann. Rep. Bur. Ethn.* xi. 186.

[7] James, *Expedition from Pittsburgh to the Rocky Mountains*, i. 267.

blood shed cried for vengeance until the murderer was punished.[1] A similar notion prevailed among the Bedouins, hence they thought they might escape the taking of revenge by covering up the blood with earth.[2] One of the most popular ghost stories in folk-tales is that which treats of the ghost of a murdered person flitting about the haunts of the living with no gratification but to terrify them.[3] According to Rohde, this belief was in full force at Athens in the fifth and fourth centuries before Christ.[4] Aeschylus attributes an Erinys to the heinous crime of a man's neglecting his duty as avenger of blood[5]—in other words, the soul of the slain turned its anger against the neglectful relative. Traces of the same belief still survive in various parts of Europe.[6] In Wärend, in Sweden, the people maintain that the unsatisfied ghost of a murdered man visits his relatives at night, and disturbs their rest; and it was an ancient custom among them that, if the murderer was not known, the nearest relation of the dead, before the knell began, went forward to the corpse and asked the dead himself to avenge his murder.[7]

From one point of view, blood-revenge is thus a form of human sacrifice. Sometimes it even formally bears a strong resemblance to certain other human sacrifices which are offered to the dead. Among some Queensland tribes, when the assassin has been caught red-handed, the slayer and slain are buried together in the same grave;[8] and among the ancient Teutons the avenger by preference slew the culprit at the feet of the murdered man, or at his tomb.[9] Blood-revenge also resembles other kinds of human sacrifice so far that it serves as a safeguard for the sacrificer—in this case the avenger, who would otherwise expose himself to the persecutions of the revengeful spirit of the dead.

But the practice of blood-revenge is not exclusively

[1] *Genesis*, iv. 10.

[2] Jacob, *Leben der vorislâmischen Beduinen*, p. 146. *Cf.* Schwally, *Leben nach dem Tode*, p. 52 *sq.*

[3] See Dyer, *The Ghost World*, p. 65 *sqq.*; Andree, *Ethnographische Parallelen*, p. 80 *sqq.*

[4] Rohde, *Psyche*, p. 240. *Cf. Idem*, 'Paralipomena,' in *Rheinisches Museum für Philologie*, 1895, p. 19 *sq.*; Schmidt, *Ethik der alten Griechen*, ii. 125 *sqq.*

[5] Aeschylus, *Choephori*, 283 *sqq. Cf. ibid.* 400 *sqq.*; Plato, *Leges*, ix. 866.

[6] Dyer, *op. cit.* p. 68 *sqq.* Thorpe, *Northern Mythology*, ii. 19 *sq.*

[7] Hyltén-Cavallius, *Wärend och Wirdarne*, ii. 274; i. 473.

[8] Roth, *Ethnological Studies among the North-West-Central Queensland Aborigines*, p. 165.

[9] Wilda, *Strafrecht der Germanen*, pp. 170, 692.

based on a desire to avenge the injury done to a fellow-creature and to gratify the angry passion of his soul. The act which caused his death is at the same time an injury inflicted upon the survivors. Hence, in many cases, a murder committed within the family or kin is left unavenged.[1] Among the Iroquois, says Loskiel, any one who has murdered his own relative escapes without much difficulty, since the family, who alone have a right to take revenge, do not choose to weaken their influence by depriving themselves of another member besides the one whom they have already lost.[2] Again, when the murderer belongs to an extraneous family, the injury inflicted on the relatives of the murdered man suggests not only revenge, but reparation.

The taking of life for life may itself, in a way, serve as compensation. It seems that, in some cases, the blood of the slain homicide is supposed to restore, as it were, to the family of his victim the loss of life which he has caused them.[3] Such an idea probably underlies a custom which Burckhardt heard existed among the Hallenga, who draw their origin from Abyssinia. When the slayer has been seized by the relatives of the deceased, a family feast is proclaimed, at which the murderer is brought into their midst. While his throat is then slowly cut with a razor, the blood is caught in a bowl and handed round amongst the guests, "every one of whom is bound to drink of it at the moment the victim breathes his last."[4] Among various Arabic-speaking tribes in Morocco I have met with a practice which also, possibly, involves a vague idea of restoration. On the perpetration of his deed the avenger

[1] Steinmetz, *Ethnologische Studien zur ersten Entwicklung der Strafe*, ii. 159 *sqq.* Mauss, 'La religion et les origines du droit pénal,' in *Revue de l'histoire des religions*, xxxv. 44. Kovalewsky, 'Les origines du devoir,' in *Revue internationale de Sociologie*, ii. 86. *Cf.* Seebohm, *Tribal Custom in Anglo-Saxon Law*, pp. 30, 42 (Welsh); Robertson Smith, *Religion of the Semites*, p. 420; *Idem*, *Marriage and Kinship in early Arabia*, p. 25. Among the Jbâla of Northern Morocco blood-revenge is taken for the killing of a cousin, but not for the killing of a brother.

[2] Loskiel, *History of the Mission of the United Brethren among the Indians in North America*, i. 16.

[3] *Cf.* Trumbull, *Blood Covenant*, p. 126 *sqq.*

[4] Burckhardt, *Travels in Nubia*, p. 356.

licks off the blood from the blade of the dagger with which he killed his victim; and in one instance related to me, he bit off a piece of flesh from the dead body and sucked its blood.[1] Mr. Trumbull even goes so far as to believe that, among the Hebrews, the primal idea of the *goel*'s mission was not to wreak vengeance, but "to restore life for life, or to secure the adjusted equivalent of a lost life."[2] But it is difficult to suppose that the exacting of blood-revenge ever could have been looked upon as an equivalent in the full sense of the term. If the loss of life is to be compensated some other practice must take its place.

Sometimes the manslayer, instead of being killed, is adopted as a member of the family of his victim.[3] Among the Kabyles of Algeria, for instance, a person who has killed another unintentionally, goes to the parents of the dead and says to them:—"If you want to kill me, kill me, here is my winding-sheet. If not, pardon me, and I shall henceforth be one of your children." And from this day the manslayer is considered to belong to the *kharouba*, or *gens*, of the deceased.[4] Among the Jbâla of Northern Morocco, again, a homicide sometimes induces the avenger to abstain from his persecutions by giving him his sister or daughter in marriage; and a similar custom has been noticed among the Beni Amer[5] and Bogos.[6] In other cases slaves are given to the relatives of the slain in order to atone for the guilt;[7] but most commonly the compensation consists of cattle, money, or other property.

By giving presents to the relatives of his victim, the offender not only repairs the loss which he has inflicted

[1] *Cf.* Goldziher, in Robertson Smith, *Kinship and Marriage in Early Arabia*, p. 296 n. 1.

[2] Trumbull, *Blood Covenant*, pp. 260, 263.

[3] See Steinmetz, *Studien*, i. 410 *sqq.*, 439 *sqq.*; Kovalewsky, in *Revue Internationale de Sociologie*, ii. 87 *sq.*

[4] Hanoteau and Letourneux, *La Kabylie*, iii. 68 *sq.*

[5] Munzinger, *Ostafrikanische Studien*, p. 322.

[6] *Idem*, *Die Sitten und das Recht der Bogos*, p. 83. *Cf.* Kohler, *Nachwort zu Shakespeare vor dem Forum der Jurisprudenz*, p. 15 *sq.*

[7] Squier, 'Archæology and Ethnology of Nicaragua,' in *Trans. American Ethn. Soc.* iii. pt. i. 129. *Idem*, *Nicaragua*, ii. 345 (ancient Nicaraguans). Macdonald, *Africana*, i. 171 (Eastern Central Africans).

upon them, but also appeases their wounded feelings.[1] The pleasure of gain tends to suppress their passion, and the loss and humiliation which the adversary suffers by the gift exercise a healing influence on their resentment.[2] Sometimes the present is chiefly intended to serve as an apology. Among the Iroquois, according to Mr. Morgan, the white wampum which the murderer sent to the family of his victim and which, if accepted, for ever wiped out the memory of his deed, "was not in the nature of a compensation for the life of the deceased, but of a regretful confession of the crime, with a petition for forgiveness."[3] Compensation, moreover, has the advantage of saving the injured party the dangers involved in a blood-feud, the uncertainty of the issue, and the serious consequences which may result from the accomplished act of revenge. Whilst the carrying out of the principle of "life for life" often leads to protracted hostilities between the parties, compensation has a tendency to bring about a durable peace. For this reason it is to the interest of society at large to encourage the latter practice; and this encouragement naturally adds to its attractions.

But in spite of its merits, the practice of composition has, in comparison with blood-revenge, various disadvantages. It is not equally calculated to satisfy a revengeful mind. It has to contend with the conservatism of ancient custom. It may be taken as a token of cowardice or weakness, whereas the blood-feud gives to its perpetrator an opportunity to display his courage and skill. It may be considered offensive to the dead kinsman. Finally, if it is to flourish, it presupposes a certain amount of wealth.[4]

[1] Rée, *Entstehung des Gewissens*, p. 57 *sqq.* Steinmetz, *Studien*, i. 472 *sq.*

[2] *Cf.* Miklosich, *loc. cit.* p. 148; Kohl, *op. cit.* i. 426, 436 (Montenegrines and Albanians).

[3] Morgan, *League of the Iroquois*, pp. 331, 333. *Cf.* Turner, *Samoa*, p. 326 (people of Aneiteum).

[4] For the influence of wealth on the practice of composition, see Steinmetz, *Studien*, i. 427 *sqq.*, and Lippert, *Kulturgeschichte der Menschheit*, ii. 591. Occasionally, however, composition occurs even among such a poor people as the Yahgans of Tierra del Fuego. "Sometimes," says Mr. Bridges (in *A Voice for South America*, xiii. 207), "the murderer is suffered to live, but he is much beaten and hurt, and has to make many presents to the relatives of the dead."

The importance of these difficulties depends on the circumstances in each special case. Vindictiveness, conservatism, the desire for fighting, and the estimation in which courage and martial ability are held, are naturally subject to variations, and so are people's wealth and their willingness to compensate. The ideas held concerning the spirits of the departed are likewise variable. The readiness with which blood-money was accepted among the Greeks of the Homeric age has been explained by their belief in the disembodied soul's dreamlike existence in Hades, without strong passions and without the power to molest the living; whilst the later custom of demanding life for life has been interpreted as the result of a change of ideas which attributed much greater activity to the dead.[1] In other cases the deceased is supposed to be appeased by a mere ceremony, or by a vicarious sacrifice. The Ossetes believe that he often appears in a dream to some of his descendants, "tantôt pour exiger de lui la vengeance, tantôt pour lui permettre, au contraire, de la remplacer par un simple office des morts . . . . Revêtu d'habits de deuil, les cheveux épars, l'assassin Ossète vient sur la tombe de celui qu'il a tué, pour accomplir une cérémonie dont le but avéré est de se consacrer lui-même à sa victime. Cette cérémonie est connue sous le nom de *kifaeldicïn*: le meurtrier se livre spontanément au défunt, qui, en la personne de son descendant, lui pardonne son offense."[2] In Eastern Central Africa, says Mr. Macdonald, "if one man slay another, the friends of the deceased are justified in killing the murderer on the spot. But if they catch him alive they put him in a slave-stick, till compensation be made by a heavy fine of from four to twenty slaves. When the fine is paid the life of the murderer is not demanded, but several of the slaves obtained in compensation are killed, to accompany the deceased."[3] In other instances the dead is perhaps supposed to be appeased by the mere compensa-

[1] Schmidt, *Ethik der alten Griechen*, ii. 125 *sqq.* Rohde, *Psyche*, pp. 8 *sqq.*, 238.

[2] Kovalewsky, *Coutume contemporaine et loi ancienne*, p. 238.

[3] Macdonald, *Africana*, i. 170 *sq.*

tion paid to his descendants, or his feelings are simply disregarded when they collide with the interests of the living.[1] Generally speaking, the question whether compensation is to be accepted or not, must be settled by a balancing of advantages and drawbacks.

We may expect, then, to find the customs regarding blood-revenge and compensation to vary exceedingly among different peoples. Among many the rule of revenge is strictly followed, and compensation never, or rarely, accepted, at least for intentional homicide. This group includes not only tribes who are in a state of savagery, but peoples like the Beni Amer,[2] Marea,[3] Kabyles of Jurjura,[4] and Jbâla of Morocco. Burckhardt says of the Bedouins:—"The stronger and the more independent a tribe is, the more remote from cultivated provinces, and the wealthier its individuals, the less frequently are the rights of the *Thar* commuted into a fine. Great sheiks, all over the Desert, regard it as a shameful transaction to compromise in any degree for the blood of their relations."[5] Among the mountains of Daghestan[6] and in parts of Albania[7] it is likewise considered disgraceful to accept compensation for the murder of a relative.

In some instances the acceptance of compensation does not necessarily mean that the family of the slain altogether renounce their right of revenge. Among the Ahts, "though it is usual to accept large presents as expiation for murder, yet, practically, this expiation is not complete, and blood alone effectually atones for blood. An accepted present never quite cancels the obligation to punish in the breast of the offended person or tribe."[8] Among the Somals, "after the equivalent is paid, the

[1] *Cf.* Steinmetz, *Studien*, i. 452.

[2] Munzinger, *Ostafrikanische Studien*, p. 321 *sq.*

[3] *Ibid.* p. 242.

[4] Hanoteau and Letourneux, *op. cit.* iii. 61 *sq.*

[5] Burckhardt, *Notes on the Bedouins and Wahábys*, p. 178. *Cf.* Burton, *Pilgrimage to Al-Madinah and Meccah*, ii. 103.

[6] Kovalewsky, in *Revue internationale de Sociologie*, ii. 87.

[7] Hahn, *op. cit.* i. 178.

[8] Sproat, *Scenes and Studies of Savage Life*, p. 153.

murderer or one of his clan, contrary to the spirit of El Islam, is generally killed by the kindred or tribe of the slain."[1] Among the Berbers (Shluḥ) of the province of Sûs, in Southern Morocco, a person who commits homicide immediately flees to another tribe, and places himself under its protection. His relatives then pay *ddit*, or blood-money, to the family of the victim, but this only prevents the offended party from taking revenge on any of them, and does not entitle the murderer to return; if he appears outside the tribe to whom he has fled for refuge, he is at any time liable to be killed. Among the Ossetes, again, it was formerly "a prevalent custom for a murderer to pay a fixed price for a certain time to the family of the murdered man, say for a year, during which time the blood-revenge remained dormant."[2]

In many instances, on the other hand, custom allows the acceptance of compensation as a perfectly justifiable alternative for blood-revenge, or even regards it as the proper method of settling the case. Among the Indians of Western Washington and North-Western Oregon the principle of life for life, though fully recognised, is sometimes abrogated in favour of material damages.[3] Among the Thlinkets "the murder of a relative can be atoned for by a certain number of blankets."[4] Among the Californian Karok the murder of a man's nearest relative may be compounded for by the payment of money.[5] The Kutchin demand blood-money for a slain kinsman, but avenge his death should such be denied.[6] Among the Kandhs the custom of blood-revenge was modified by the principle of money compensation, the acceptance of such compensation being in no case considered disgraceful.[7] In the Malay Archipelago, whilst the more ferocious tribes

[1] Burton, *First Footsteps in East Africa*, p. 87 n.†. *Cf.* Paulitschke, *Ethnographie Nordost-Afrikas*, p. 263.

[2] von Haxthausen, *Transcaucasia*, p. 405.

[3] Gibbs, 'Tribes of Western Washington and Northwestern Oregon,' in *Contributions to North American Ethnology*, i. 189.

[4] Petroff, *loc. cit.* p. 165.

[5] Powers, *Tribes of California*, p. 21.

[6] Richardson, *Arctic Searching Expedition*, i. 386.

[7] Hunter, *Annals of Rural Bengal*, ii. 76. Macpherson, *Memorials of Service in India*, p. 82.

insist, in many situations, upon a literal compliance with the law of retaliation, other tribes constantly accept a pecuniary compensation.[1] Among the majority of the Bedawee tribes of Egypt compensation is generally taken in commutation for vengeance ;[2] and the same is the case among the Aenezes, though it would reflect shame on the friends of the slain person if they were to make the first overture.[3] Among the Wadshagga, again, the acceptance of blood-money is obligatory.[4] The Vendîdâd forbids the followers of Zoroastrianism to refuse the compensation offered for a deed of bloodshed.[5] Among the Irish the public opinion of the village held that the quarrels between its members should be compromised in a certain manner. However, if the guilty party did not pay the amount awarded, the community did not compel him to do so, and the injured party was then at liberty to avenge his own wrongs by reprisals or levying of private war.[6] Among the Teutons the kindred of the slain might, in early times, choose between taking revenge or accepting compensation, just as they liked ; but later on they were expected by public opinion, and finally required by public authority, not to pursue the feud if the proper composition was forthcoming, except in a few extreme cases.[7]

Thus the exaction of life for life, from being a duty incumbent on the family of the dead, becomes a mere right of which they may or may not avail themselves, as they please, and is at last publicly disapproved of or actually prohibited. Among the circumstances by which this process has been brought about there is still one which calls for special attention, namely, the pressure of some intervening authority, the elders of the tribe,[8] or

[1] Crawfurd, *History of the Indian Archipelago*, iii. 111.

[2] Lane, *Manners and Customs of the Modern Egyptians*, p. 120.

[3] Burckhardt, *Notes on the Bedouins and Wahábys*, p. 87.

[4] Merker, quoted by Kohler, in *Zeitschr. f. vergl. Rechtswiss.* xv. 56.

[5] Geiger, *op. cit.* ii. 34.

[6] *Ancient Laws of Ireland*, iii. p. lxxx.

[7] Keyser, *op. cit.* ii. pt. ii. 95. Pollock and Maitland, *op. cit.* i. 46 *sq. Gotlands-Lagen*, 13.

[8] *Cf.* Vámbéry, *Das Turkenvolk*, p. 305 *sq.* (Kirghiz); Munzinger, *Ostafrikanische Studien*, p. 500 (Barea and Kunáma).

the chief, inducing the avenger to lay down his weapon and to accept money for blood. I do not say that the practice of compensation has originated in such an intervention ; we meet it among peoples who know nothing of courts, judges, or regular arbitrators.[1] But when we hear of chiefs making efforts to check the blood-feud by persuading the injured party to accept remuneration in money or property, it is impossible to doubt that some connection exists between the system of compensation and the judicial power of the chief. Among the Indians of Brazil, when blood is shed, either designedly or accidentally, by one of the same tribe, the chief not seldom insists upon the acceptance of compensation by the family of the deceased.[2] Of the people of Nias, amongst whom the offender may suffer death at the hands of the avenger, we read that even grave cases, when brought before the chief, are often punished by fines only.[3] Among the Dooraunees, in Western Afghanistan, "if the offended party complains to the Sirdar, or if *he* hears of a murder committed, he first endeavours to bring about a compromise, by offering the Khoon Behau, or price of blood."[4] The Teutonic nations, as Kemble observes, in the course of time made the State the arbitrator between the parties "by establishing a tariff at which injuries should be rated, and committing to the State the duty of compelling the injured person to receive, and the wrong-doer to pay, the settled amount. It thus engaged to act as a mediator between the conflicting interests, with a view to the maintenance of the general peace."[5]

We have previously discussed the important measure of substituting punishment for revenge by transferring the judicial and executive power of the avenger to a special authority within the body politic, commissioned with

[1] *E.g.*, the Fuegians (Bridges, in *South American Missionary Magazine*, xiii. 152. *Idem*, in *A Voice for South America*, xiii. 207).

[2] von Martius, *Beiträge zur Ethnographie Amerika's*, i. 130. *Idem*, in *Jour. Roy. Geographical Soc.* ii 199.

[3] Modigliani, *Viaggio a Nias*, p. 496.

[4] Elphinstone, *Kingdom of Caubul*, ii. 105 *sq.*

[5] Kemble, *Saxons in England*, i. 270.

the administration of justice. The system of compensation was only one of the methods adopted by such an authority for the settling of disputes; and, on the whole, it was a sign of weakness. Speaking of the Rejangs of Sumatra, Marsden observes that the practice of expiating murder by the payment of a certain sum of money "had doubtless its source in the imbecility of government, which being unable to enforce the law of retaliation, the most obvious rule of punishment, had recourse to a milder scheme of retribution, as being preferable to absolute indemnity."[1] When the central power of jurisdiction is firmly established, the rule of life for life regains its sway.[2] Thus, in the mature legislation of semi-civilised and civilised peoples, up to quite recent times, murder has almost invariably been treated as a capital offence—unless, indeed, committed by some person belonging to a specially privileged class, such as the Peruvian Incas,[3] the Brâhmanas of India,[4] or, in England, all who had the benefit of Clergy, that is, every man who knew how to read, with the exception of those who were married to widows.[5] But among many of the lower races, also, manslayers are subject to capital punishment, in the proper sense of the term—to death inflicted, not by an individual avenger, but by the community at large or by some special authority.[6]

It is not only by the slaying of a fellow-creature that a person may forfeit his right to live. Among various peoples custom allows, or sometimes even compels, the offended party to kill the offender in cases which involve

[1] Marsden, *History of Sumatra*, p. 246.

[2] *Cf.* Brunner, *Deutsche Rechtsgeschichte*, ii. 599 *sq.* (Teutonic peoples).

[3] Réville, *Hibbert Lectures on the Native Religions of Mexico and Peru*, p. 151.

[4] *Laws of Manu*, viii. 380 *sq.*

[5] Stephen, *History of the Criminal Law of England*, i. 458 *sqq.* According to the Cornelian law, a free Roman citizen could not be punished capitally for the commission of murder, but was simply exiled from Italy, whereas a slave was executed for a similar crime (Mommsen, *Römisches Strafrecht*, p. 631 *sq.*).

[6] *Supra*, pp. 171, 172, 189. Veniaminof, quoted by Petroff, *loc. cit.* p. 152 (Aleuts). Adair, *History of the American Indians*, p. 150. Morgan, *League of the Iroquois*, p. 331. Harmon, *Journals of Voyages and Travels*, p. 348 (Indians on the east side of the Rocky Mountains). Turner, *Samoa*, pp. 178, 295, 334 (Samoans, natives of Arorae, Efatese). Thomson, in *Jour.*

no blood-guiltiness, especially adultery;[1] and we hear of capital punishment being inflicted not only for homicide, but for treason,[2] incest,[3] adultery,[4] witchcraft,[5] sacrilege,[6] theft,[7] and other offences.[8] We have seen that among semi-civilised and civilised nations, particularly, the punishment of death has been applied to a great variety of offences, many of which appear to us almost venial.[9] And we have discussed both the origin of the idea that justice requires life for life, and the circumstances that have led to the infliction of punishments the severity of which, apparently at least, bears no proportion to the magnitude of the crime.[10]

But whilst, among peoples of culture, capital punishment has been inflicted far beyond the limits of the *lex talionis*, we meet, on the other hand, among such peoples with opinions to the effect that it should not be applied even in the most atrocious cases. The old philosopher Lao-tsze, the founder of Taouism, condemned it both as useless and as irreverent. The people, he argued, do not fear death; to what purpose, then, is it to try to frighten them with death? There is only one who presides over the infliction of it. "He who would inflict death in the room of him who presides over it may be described as hewing wood instead of a great carpenter. Seldom is it that he who undertakes the hewing, instead of the great carpenter, does not cut his own hands."[11] Nor does Confucius seem to have been in favour of capital punishment. When Chî

Anthr. Inst. xxxi. 143 (Savage Islanders). Hickson, *A Naturalist in North Celebes*, p. 198 (Sangirese, in former days). Abreu de Galindo, *History of the Discovery and Conquest of the Canary Islands*, p. 27 (aborigines of Ferro). Johnston, *Uganda Protectorate*, ii. 882 (Mutei). Beltrame, *Il Fiume Bianco e i Dénka*, p. 77. In all these cases homicide or murder is said to be punished with death; but it may be that, in some of them, our authorities have not sufficiently distinguished between punishment and blood-revenge.

[1] *Supra*, p. 290 *sqq.* *Infra*, on Sexual Morality. Post, *Studien zur Entwicklungsgeschichte des Familienrechts*, p. 134 *sq.*

[2] *Supra*, p. 189.

[3] *Infra*, on Sexual Morality.

[4] *Supra*, p. 189. *Infra*, on Sexual Morality.

[5] *Supra*, p. 189 *sq.*

[6] *Supra*, p. 197.

[7] *Infra*, on the Right of Property.

[8] *Supra*, p. 195.

[9] *Supra*, p. 186 *sqq.*

[10] *Supra*, ch. vii.

[11] *Tâo Teh King*, 74.

K'ang asked his opinion as to the killing of "the unprincipled for the good of the principled," Confucius replied:—"Sir, in carrying on your government, why should you use killing at all? Let your evinced desires be for what is good, and the people will be good."[1] The early Christians generally condemned the punishment of death, as well as all other forms of shedding human blood;[2] but when the Church obtained an ascendency, the condemnation of it was modified into the doctrine that no priest or bishop must take any part in a capital charge.[3] Later on, from the twelfth century at least, the priest might assist at judicial proceedings resulting in a sentence of death, if only he withdrew for the moment, when the sentence was passed.[4] And whilst ostentatiously sticking to the principle, "Ecclesia non sitit sanguinem,"[5] the Church had frequent recourse to the convenient method of punishing heretics by relegating the execution of the sentence to the civil power, with a prayer that the culprit should be punished "as mildly as possible and without the effusion of blood," that is, by the death of fire.[6] In modern times the views of the early Christians regarding capital punishment have been revived by the Quakers;[7] but the powerful movement in favour of its abolition chiefly derives its origin from the writings of Beccaria and the French Encyclopedists.

The great motive force of this movement has been sympathy with human suffering and horror of the destruction of human life—feelings which have been able to operate the more freely, the less they have been checked either by the belief in the social expediency of

[1] *Lun Yu*, xii. 19.

[2] Hetzel, *Die Todesstrafe*, p. 71 *sqq.* Günther, *Die Idee der Wiedervergeltung*, i. 271. Lactantius, *Divinæ Institutiones*, vi. ('De vero cultu') 20 (Migne, *Patrologiæ cursus*, vi. 708): "... occidere hominem sit semper nefas, quem Deus sanctum animal esse voluit."

[3] *Supra*, p. 381 *sq.* Lecky, *History of European Morals*, ii. 39. Laurent, *Études sur l'histoire de l'Humanité*, iv. 223; vii. 233.

[4] Gerhohus, *De ædificio Dei*, 35 (Migne, *op. cit.* cxciv. 1282).

[5] Katz, *Grundriss des kánonischen Strafrechts*, p. 54.

[6] Lecky, *History of European Morals*, ii. 41.

[7] Gurney, *Views & Practices of the Society of Friends*, pp. 377 n. 1, 389.

capital punishment, or by the notion of a vindictive god who can be conciliated only by the death of the offender. It has been argued that the punishment of death is no more effective as a deterrent from crime than are certain other punishments. According to Beccaria, it is not the intensity of a pain which produces the greatest effect on the mind of man, but its continuance ; hence the execution of a culprit, occupying a short time only, must be a less deterring example than perpetual slavery, which ought to be the penalty for the greatest crimes.[1] Moreover, the circumstances which unavoidably attend the practical application of the punishment of death are such as excite the sympathy of the public in favour of the perpetrator of the crime and thereby seriously impair the efficacy of the punishment as an example.[2] An execution is regarded as less degrading than many other forms of punishment; when a man dies on the scaffold there is a counterpoise to the disgrace in the admiration excited by his firmness, whereas there is no such counterpoise when a man goes off in the prison van to be immured in a cell.[3] Statistical data prove, it is said, that, where capital punishment has been abolished either for certain crimes or generally, crime has not become more frequent after the abolition, whilst the re-enactment of capital punishment, or greater strictness in its execution, has nowhere diminished the number of offences punishable with death.[4] And the punishment of death is no more required by the dictates of abstract justice than it is requisite for the safety of the community. It is quite an arbitrary assumption, based on the rude theory of talion, that death must be inflicted on him who has caused death; such an assumption can be refuted simply by showing that there are many degrees of homicide.[5] Nay, far from being postulates of the highest justice, laws which

[1] Beccaria, *Dei delitti e delle pene*, § 16.

[2] Romilly, *Punishment of Death*, p. 56 *sqq.*

[3] *Ibid.* p. 47 *sq.* Hetzel, *op. cit.* p. 454 *sqq.*

[4] Mittermaier, *Die Todesstrafe*, p. 150 *sqq.* Olivecrona, *Om dödsstraffet*, p. 130 *sqq.*

[5] Mittermaier, *op. cit.* pp. 62, 133. von Mehring, *Frage von der Todesstrafe*, p. 19 *sqq.*

prescribe capital punishment may lead to the highest injustice. As Bentham observes, "the punishment of death is not remissible"; error is possible in all judgments, but whilst in every other case of judicial error compensation can be made, death alone admits of no compensation.[1] And not only may the innocent have to suffer an irreparable punishment, but the criminal easily escapes his punishment altogether. Experience shows that the punishment of death has the disadvantage of diminishing the repressive power of the legal menace, because witnesses, judges, and jurymen exert themselves to the utmost in order to avoid arriving at a verdict of guilty in many cases where an execution would be the consequence of such a verdict.[2] Finally, the punishment of death almost entirely misses one of the most essential aims of every legitimate punishment, the reformation of the criminal. Nay, by putting him to a speedy death we actually prevent him from morally reforming himself, and from manifesting the fruits of sincere repentance; and we perhaps deprive him of the opportunity of making good his claim to mercy at the hands of another and a higher Tribunal, on which we are arrogantly encroaching in a matter of which we are wholly unfit to judge.[3]

Under the influence of these and similar arguments, but chiefly owing to an increasing reluctance to take human life, the legislation of Europe has, from the end of the eighteenth century, undergone a radical change with reference to the punishment of death. In several European and American States it has been formally abolished, or is nowadays never inflicted,[4] whilst in the rest it is practically restricted to cases of wilful murder. But it still has as strenuous advocates as ever, and receives much support from popular feelings. It is said that the abolition of capital punishment would remove one of the

[1] Bentham, *Rationale of Punishment*, p. 186 *sqq.* *Cf.* Hetzel, *op. cit.* p. 442 *sqq.*

[2] Bentham, *op. cit.* p. 191 *sq.* Mittermaier, *op. cit.* pp. 98 *sqq.*, 148.

[3] Romilly, *op. cit.* p. 3 *sqq.*

[4] Günther, *op. cit.* iii. 347 *sqq.* von Liszt, *Lehrbuch des Deutschen Strafrechts*, p. 261.

best safeguards of society; that it definitely prevents the criminal from doing further mischief; that it is a much more effective means of deterring from crime than any other penalty; that its abolition would have the disadvantage of crimes widely differing in their nature being placed on the same footing; that a person criminally disposed, if he knew that he would only be punished with imprisonment for life, would, instead of merely perpetrating robbery, commit murder at the same time, being aware that no higher penalty on that account would be inflicted; and so forth. As usually, religion also is called in to give strength to the argument. Several writers maintain that the statements in the Bible which command capital punishment have an obligatory power on all Christian legislators;[1] we even meet with the assertion that the object of this punishment is not the protection of civil society, but to carry out the justice of God, in whose name "the judge should sentence and the executioner strike."[2] But I venture to believe that the chief motive for retaining the punishment of death in modern legislation is the strong hold which the principle of talion has on the minds of legislators, as well as on the mind of the public. This supposition derives much support from the fact that capital punishment is popular only in the case of murder. "Blood, it is said, will have blood, and the imagination is flattered with the notion of the similarity of the suffering, produced by the punishment, with that inflicted by the criminal."[3]

[1] Mittermaier, *op. cit.* p. 128 *sqq.*
[2] Clay, *The Prison Chaplain*, p. 357.
[3] Bentham, *Rationale of Punishment*, p. 191.

CHAPTER XXI

THE DUEL

When the system of revenge was replaced by the system of punishment, the offended party generally lost the right of killing the offender. But there are noteworthy exceptions to this rule. In a previous chapter we have seen that, among various peoples, in cases involving unusually great provocation, an avenger who slays his adversary is either entirely excused by custom or law, or becomes subject to a comparatively lenient punishment.[1] A few words still remain to be said about the most persistent survival of the custom of exacting vengeance with eventual destruction of life, the modern duel. But in connection with this survival it seems appropriate to discuss the practice of duelling in general, in its capacity of a recognised social institution.

Duelling, or the fighting in single combat on previous challenge, is sometimes resorted to as a means of bringing to an end hostilities between different groups of people. Among the aborigines of New South Wales "the war often ends in a single combat between chosen champions."[2] In Western Victoria quarrels between tribes are sometimes settled by duels between the chiefs, and the result is accepted as final. "At other times disputes are decided by combat between equal numbers of warriors, painted

[1] *Supra*, p. 290 *sqq.*

[2] Fraser, *Aborigines of New South Wales*, p. 40.

with red clay and dressed in war costume; but real fighting seldom takes place, unless the women rouse the anger of the men and urge them to come to blows. Even then it rarely results in a general fight, but comes to single combats between warriors of each side; who step into the arena, taunt one another, exchange blows with the liangle, and wrestle together. The first wound ends the combat."[1] Among the Thlinkets feuds between clans or families were commonly settled by duels between chosen champions, one from each side.[2] Ancient writers tell us that among the Greeks, Romans, and Teutons, combats were likewise agreed upon to take place between a definite number of warriors, for the sake of ending a war.[3] According to Tacitus, the Germans had the custom of deciding the event of battle by a duel fought between some captive of the enemy and a representative of the home army.[4] In all these cases, as it seems, the duel originates in a desire for a speedy peace.

In other instances duels are fought for the purpose of settling disputes between individuals, either by conferring on the victor the right of possessing the object of the strife, or by gratifying a craving for revenge and wiping off the affront.

Thus, among the pagan Norsemen, any person who confided in his strength and dexterity with his weapons could acquire property by simply challenging its owner to surrender his land or fight for it. The combat was strictly regulated; the person challenged was allowed to strike first, he who retired or who lost his weapon was regarded as vanquished, and he who received the first wound, or who was most seriously wounded, had to pay a fixed sum of money in order to save his life.[5] In the

[1] Dawson, *Australian Aborigines*, p. 77.

[2] Holmberg, 'Ethnographische Skizzen über die Völker des russischen Amerika,' in *Acta Societatis Scientiarum Fennicæ*, iv. 322 *sq.*

[3] See Grotius, *De jure belli et pacis*, ii. 20. 43. 1; Grimm, *Deutsche Rechtsalterthümer*, p. 928.

[4] Tacitus, *Germania*, 10.

[5] Lea, *Superstition and Force*, p. 111 *sq.* Keyser, *Efterladte Skrifter*, ii. pt. i. 391. Weinhold, *Altnordisches Leben*, p. 297. von Amira, 'Recht,' in Paul's *Grundriss der germanischen Philologie*, iii. 217 *sq.* Arnesen,

islands outside Kamchatka, if a husband found that a rival had been with his wife, he would admit that the rival had at least an equal claim to her. "Let us try, then," he would say, "which of us has the greater right, and shall have her." After that they would take off their clothes and begin to beat each other's backs with sticks, and he who first fell to the ground unable to bear any more blows, lost his right to the woman.[1] Among the Eskimo about Behring Strait Mr. Nelson was told by an old man that in ancient times, when a husband and a lover quarrelled about a woman, they were disarmed by the neighbours and then settled the trouble with their fists or by wrestling, the victor in the struggle taking the woman.[2] Among the Chippewyans Richardson saw more than once a stronger man assert his right to take the wife of a weaker countryman in consequence of a successful combat. "Any one," he says, "may challenge another to wrestle, and, if he overcomes, may carry off his wife as the prize. . . . The bereaved husband meets his loss with the resignation which custom prescribes in such a case, and seeks his revenge by taking the wife of another man weaker than himself."[3] In the tribes of Western Victoria, described by Mr. Dawson, a young chief who cannot get a wife, and falls in love with one belonging to a chief who has more than two, can, with her consent, challenge the husband to single combat, and, if the husband is defeated, the conqueror makes her his legal wife.[4] "In some points," says Mr. Riedel, "the aboriginal law of retaliation in Australia corresponds with the code of honour, so called, which certain classes in Europe have long maintained. When one blackfellow carries off the

Historisk Indledning til den gamle og nye Islandske Raettergang, p. 158 *sq.* Rosenberg, *Traek af Livet paa Island i Fristats-Tiden*, p. 98 n.

[1] Steller, *Beschreibung von dem Lande Kamtschatka*, p. 348.

[2] Nelson, 'Eskimo about Behring Strait,' in *Ann. Rep. Bur. Ethn.* xviii. 292.

[3] Richardson, *Arctic Searching Expedition*, ii. 24 *sq.*

[4] Dawson, *op. cit.* p. 36. For other instances of rights to women being acquired by duels, see Westermarck, *History of Human Marriage*, p. 159 *sqq.*; Post, *Afrikanische Jurisprudenz*, ii. 23 *sq.* (people of Kordofan).

wife of another, the injured husband and the betrayer meet in mortal combat; and the spear that spills the life blood repairs the wounded honour of the one, or justifies in the eyes of society the crime of the other."[1] Among the aborigines of Western Australia "duels are common between individuals who have private quarrels to settle, a certain number of spears being thrown until honour is satisfied."[2] Among the Dieyerie tribe, should anybody accuse another wrongfully, he is challenged to fight by the person he has accused, and this settles the matter.[3] Of the duels fought among the natives of North-West-Central Queensland Dr. Roth gives us an interesting account. Supposing an individual considers himself aggrieved, a duel often takes place at a distance from camp. There is no intention of killing. With two-handed swords, the combatants would only aim at striking each other on the head; with spears, they would only make for the fleshy parts of the thighs; with stone-knives, they would only cut into the shoulders, flanks, and buttocks, producing gashes an inch or more deep, and up to seven or even eight inches long. The lying upon the back on the ground—a posture in which no lawful incisions with a stone-knife can be made—is the sign of defeat, indicating that the combatant has had enough, and gives in. But the matter has not yet come to an end; the duels of these savages are not so defective in point of justice as the modern duels of Europe. "The fight between the two individuals being at length brought to a termination, steps are taken by the old men and elders to inquire into the rights or wrongs of the dispute. If the victor turns out to be the aggrieved party he has to show good cause, as for instance that the man whom he had just taken upon himself to punish had raped his gin, gave him the *munguni* [or death-bone], or wrought him some similarly flagrant wrong: under such circumstances, no further action is taken by anyone. If,

[1] Riedel, *Aborigines of Australia*, p. 6.

[2] Calvert, *Aborigines of Western Australia*, p. 22.

[3] Gason, 'Manners and Customs of the Dieyerie Tribe,' in Woods, *Native Tribes of South Australia*, p. 266.

on the other hand, the victor happens to be the aggrieved party only in his own opinion, and not in that of those to whom he is answerable, and who do not believe the grounds on which he commenced the fight to be sufficient, he has to undergo exactly the same mutilations subsequently at the hands of the vanquished as he himself had inflicted." And should one of the combatants be killed in the duel, which may sometimes happen, the survivor, unless he can show that he had sufficient provocation or cause, "will be put to death in similar manner, at the instance of the camp-council, and usually undergo the extra degradation of digging his own as well as his victim's grave."[1] Of the South American Charruas Azara writes:—"Ce sont les parties elles-mêmes qui arrangent leurs différends particuliers: si elles ne sont pas d'accord, elles se chargent à coups de poing, jusqu'à ce qu'une des deux tourne le dos et laisse l'autre, sans reparler de l'affaire. Dans ces duels, ils ne font jamais usage des armes; et je n'ai jamais ouï dire qu'il y ait eu quelqu'un de tué."[2] If an Apache kills another, "the next-of-kin to the defunct individual may kill the murderer—if he can. He has the right to challenge him to single combat, which takes place before all assembled in the camp, and both must abide the result of the conflict. There is no trial, no set council, no regular examination into the crime or its causes; but the ordeal of battle settles the whole matter."[3] Among the Central Eskimo, "strange as it may seem, a murderer will come to visit the relatives of his victim (though he knows that they are allowed to kill him in revenge) and will settle with them. He is kindly welcomed, and sometimes lives quietly for weeks and months. Then he is suddenly challenged to a wrestling match, and if defeated is killed, or if victorious he may kill one of the opposite party, or when hunting, he is

[1] Roth, *Ethnological Studies among the North-West-Central Queensland Aborigines*, p. 139 *sq.*

[2] Azara, *Voyages dans l'Amérique méridionale*, ii. 16.

[3] Cremony, *Life among the Apaches*, p. 293.

suddenly attacked by his companions and slain."[1] Richardson heard that some of the Eskimo "decided their quarrels by alternate blows of the fist, each in turn presenting his head to his opponent."[2] The Tunguses formerly had a duel with arrows called *koutschiguera*, which was fought "only in the presence of the elders, who marked out the spot, settled the distance of the combatants, and gave the signal for letting fly."[3] The Santals have a tradition that years long since there was a custom amongst them "of deciding their disputes, when the parties were males, by the ordeal of single combat. The bow and arrow or hanger served in lieu of pistol and sword for these rustic duels. Such affairs of honour were always fatal to one party, but of late times, as equitable remedies have been brought nearer to them, this remnant of a barbarous age has disappeared.[4] Mr. Man also heard that the Kols at one time preferred the duel to any other mode of seeking redress for a wrong.[5] The ancient Swedes were even compelled by law to fight duels to repair their wounded honour. The so-called 'Hedna-lag,' a fragment of an old pagan law, prescribes that, if any man says to another, "You are not a man's equal, you have not the heart of a man," and the other replies, "I am a man as good as you," they shall encounter in a place where three roads meet. If he who has suffered the insult does not appear, he shall be held to be what the other one called him, and he shall henceforth be allowed neither to swear nor to give evidence in any case. If, on the other hand, they meet in single combat, and the offended party kills the offender, he shall have to pay no compensation for it; but if the offender kills his opponent, he shall pay half his price.[6]

[1] Boas, 'Central Eskimo,' in *Ann. Rep. Bur. Ethn.* vi. 582.

[2] Richardson, *Arctic Searching Expedition*, i. 367 *sq.*

[3] Georgi, *Russia*, iii. 83.

[4] Man, *Sonthalia and the Sonthals*, p. 90.

[5] *Ibid.* p. 90.

[6] Leffler, *Om den fornsvenska hednalagen*, p. 40 *sq.* (in *K. Vitterhets Historie och Antiqvitets Akademiens Månadsblad*, 1879, p. 139 *sq.*). Professor Leffler is inclined to believe that this fragment once formed a part of the older Vestgötalag (*op. cit.* p. 35, in the *Månadsblad*, p. 134).

These customs and rules are due to a variety of circumstances. To recognise the duel as a means of acquiring a right to land or women, is a concession to superior strength in a society where there is no government, or where the government is weak; whilst in the opportunity given to the challenged party to oppose the avenger on equal terms we may trace the interfering influence of public opinion. The duel is also in a higher degree than downright violence calculated to bring about a definite arrangement; and in some cases, as we have seen, it is a mere sham-fight, which may serve as a preventive against the infliction of more serious injuries, by showing which party is the weaker and, consequently, has to give in. In other cases, again, the challenge is a method of bringing forward an offender who otherwise might be out of reach, and of limiting the fight to the parties themselves, so as to prevent whole families from making war upon each other.[1] Moreover, a duel may be preferable to an ordinary act of revenge as a means of wiping off an affront and of satisfying the claims of honour; it displays more courage, it commands more respect. In several of the cases referred to it is obviously a mitigated form of revenge, a method of settling a point of honour in a comparatively harmless way, and as such it has certain advantages over the practice of compensation; it requires no wealth on the part of the offender, and allows of no doubt as to the courage of the sufferer.[2] The Queensland aborigines are said to be very proud of the wounds they receive in their single combats,[3] and the duelling Eskimo "consider it cowardly to evade a stroke."[4] The duel

[1] *Cf.* Arnesen, *op. cit.* pp. 150, 166 *sq.*

[2] According to Dr. Steinmetz, the origin of the duel is "die Beschränkung des Rachekampfes. . . . Die treibende Kraft, welche zu dieser duellartigen Beschränkung führte, war die Exogamie, die verwandtschaftlichen Beziehungen zwischen Gruppen, der Friedensverlangen erzeugende, erweiterte Verkehr derselben. Negative Bedingungen waren; das Fehlen einer rechtsprechenden centralen Regierungsgewalt, und das nicht Erfülltsein der Entwicklungsbedingungen der Composition, namentlich der Mangel an ökonomischen Gütern, welche die materielle Entschädigung unmöglich machte" (Steinmetz, *Studien zur ersten Entwicklung der Strafe*, ii. 67, 87).

[3] Roth, *op. cit.* p. 140.

[4] Richardson, *Arctic Searching Expedition*, i. 368.

may, finally, be regarded as the most equitable form of settling disputes in cases where both parties claim to be in the right. Sometimes it is even resorted to as a means of ascertaining the truth, as an ordeal or "judgment of God."

The wager of battle is well known to every student of mediæval law. Outside Europe we meet with a similar institution in the Malay Archipelago. In his 'History of the Indian Archipelago,' Mr. Crawfurd states :—"The trial by combat or duel, and the appeal to the judgment of God by various descriptions of ordeal, are not unknown. The Malay laws direct that the combat or ordeal shall be had recourse to in the absence of evidence, in the following words : 'If one accuse and another deny, and there be no witnesses on either side, the parties shall either fight or submit to the ordeal of melted tin or boiling oil.'"[1] The natives of the Barito River basin in Borneo have the following ordeal, called the *Hagalangang* :—"Both parties are placed in boxes at a distance of seven fathoms opposite one another, the boxes being made of ribong laths and so high as to reach a man's breast. Then both receive a sharpened bamboo of a lance's length to throw at each other at a given signal. The wounded person is supposed to be guilty."[2] Among the Teutons the judicial combat seems to have developed out of the ancient practice of settling disputes by private duelling. In a time when the community did its best to suppress acts of revenge, it was no doubt a wise measure to adopt the duel as a form of judicial procedure, investing it with the character of an ordeal.[3] It seems probable that the duel assumed this character already among the pagan Teutons.[4] Like other ordeals it was resorted to in cases where there was some doubt as to the guilt of the accused.[5] To

[1] Crawfurd, *History of the Indian Archipelago*, iii. 92.

[2] Schwaner, *Borneo*, i. 212.

[3] Dahn observes (*Bausteine*, ii. 57) that "der Kampf ursprünglich gar kein Gottesurtheil, sondern lediglich eine Verweisung der Parteien auf Selbsthülfe . . . war." *Cf.* Patetta, *Le ordalie*, p. 178.

[4] Patetta, *op. cit.* p. 179.

[5] See Unger, 'Der gerechtliche Zweikampf bei den germanischen Völkern,' in *Göttinger Studien*, 1847, Zweite Abtheilung, p. 358 *sq.*

appeal to "the judgment of God" was an expedient substitute for human evidence in a society where nothing was more difficult than to procure reliable witnesses, and where superstition reigned supreme. Speaking of the Franks, M. Esmein observes :—"En dehors du flagrant délit ou de l'aveu de l'accusé, tout était incertitude. . . . Par solidarité forcée, jamais un homme ne témoignera contre un autre homme du même groupe ; il ne témoignera pas non plus par crainte de la vengeance et des représailles contre un homme appartenant à un autre groupe."[1] I shall later on try to prove that the ordeal is not, as it is often supposed to be, primordially based on the belief in an all-knowing, all-powerful, and just god, who protects the innocent and punishes the guilty, but that it largely springs from the same notion as underlies the belief in the efficacy of an oath. The ordeal, then, intrinsically involves an imprecation with reference to the guilt or innocence of a suspected person, and its proper object is to give reality to this imprecation, for the purpose of establishing the validity or invalidity of the suspicion. This also holds good of the judicial combat. The issue of the fight decided the question of guilt because of the imprecation involved in the oath preceding the duel. Before the conflict commenced each party asserted his good cause in the most positive manner, confirmed his assertion by a solemn oath on the Gospels or on a relic of approved sanctity, and called upon God to grant victory to the right. Such an oath was an indispensable preliminary to every combat, and the defeat was thus not merely the loss of the suit, but also a conviction of perjury, to be punished as such.[2] That the real object of the judicial duel was to correct the abuses of compurgation by oath appears from various

[1] Esmein, *Cours élémentaire du droit français*, p. 96 *sq.*

[2] *Lex Baiuwariorum*, ii. 1. Jourdan, Decrusy, and Isambert, *Recueil général des anciennes lois françaises*, ii. 840 *sqq.* Bracton, *De Legibus et Consuetudinibus Angliæ*, fol. 141 b *sq.*, vol. ii. 438 *sqq.* : "Sic me Deus adjuvet & haec sancta." Lea, *Superstition and Force*, p. 166 *sq.* Brunner, *Deutsche Rechtsgeschichte*, ii. 415. von Amira, 'Recht,' in Paul's *Grundriss der germanischen Philologie*, iii. 218. Unger, *loc. cit.* p. 386. Tuchmann, in *Mélusine*, iv. 130.

facts. Gundebald, king of the Burgundians, says expressly, in the preamble to a law by which he authorises the wager of battle, that his reason for doing so is, that his subjects may no longer take oaths upon uncertain matters, or forswear themselves upon certain.[1] Charlemagne urged the use of the duel as greatly preferable to the shameless oaths which were taken with so much facility, and Otho II. ordered its employment in various forms of procedure for the same reason.[2] Witnesses might have to fight as well as principals. A Bavarian law even directed the claimant of an estate to combat not the defendant, but his witness;[3] and in the later Middle Ages, after enlightened legislators had been strenuously and not unsuccessfully endeavouring to limit the abuse of the judicial combat, the challenging of witnesses was still the favourite mode of escaping legal condemnation.[4] Some codes required the witnesses to come into court armed, and to have their weapons blessed on the altar before giving their testimony.[5] The practice of blessing the arms before the duel took place,[6] was no doubt intended to enable them the better to carry out the imprecation by saturating them with sanctity, or by increasing their natural sanctity; weapons are commonly regarded with superstitious veneration, hence oaths taken upon them are held to be particularly binding.[7] But though the judicial duel fundamentally derived its efficacy as a means of ascertaining the truth from its connection with an oath, it has, owing to the tendency of magic to fuse into religion, readily come to be regarded as an appeal to the justice of God, just as curses are transformed into

[1] *Leges Burgundionum*, Leges Gundebati, 45.

[2] Lea, *op. cit.* p. 118.

[3] *Lex Baiuwariorum*, xvii. 2 (xvi. 2).

[4] Beaumanoir, *Coutumes du Beauvoisis*, lxi. 58, vol. ii. 398. Lea, *op. cit.* p. 120 *sq.* Unger, *loc. cit.* p. 379 *sqq.*

[5] Lea, *op. cit.* p. 120.

[6] Esmein, *op. cit.* p. 95.

[7] For the worship of, and swearing by, weapons, see Du Cange, 'Juramentum super arma,' in *Glossarium ad scriptores mediæ et infimæ Latinitatis*, iii. 1616 *sq.*; Grimm, *Deutsche Rechtsalterthümer*, pp. 165, 166, 896; Pollock, *Oxford Lectures*, p. 269 *sq.* n. 1; Joyce, *Social History of Ancient Ireland*, i. 286 *sq.* In Morocco, also, an oath taken on a weapon is considered a particularly solemn form of swearing.

prayers and perjury becomes an offence against the Deity.

In most European countries the judicial duel survived the close of the Middle Ages, but disappeared shortly afterwards.[1] Various circumstances contributed to its decline and final disappearance. From an early period Councils and popes had declared against it,[2] but with little success; many ecclesiastics, indeed, not only connived at the practice, but authorised it, and questions concerning the property of churches and monasteries were decided by combat.[3] There were other more powerful causes at work—the growth of communes, devoted to the arts of peace, seeking their interest in the pursuits of industry and commerce, and enjoying the advantage of settled and permanent tribunals; the revival of Roman law, which began to undermine all the institutions of feudalism;[4] the ascendency of the royal power in its struggle against the nobles; the increase of enlightenment, the decrease of superstition. But though finally banished from the courts of justice, the duel did not die. In the sixteenth century, when the judicial combat faded away, the duel of honour began to flourish.[5] Buckle justly observes that, "as the trial by battle became disused, the people, clinging to their old customs, became more addicted to duelling";[6] hence the judicial duel may be regarded as the direct parent of the modern duel.[7] The Church and the State naturally tried to suppress this sanguinary survival of barbarism. The Council of Trent declared that "the detestable custom of duelling, introduced by the contrivance of the devil, that by the bloody death of the body

[1] Lea, *op. cit.* p. 199 *sqq.* In England, however, it was formally abolished by law as late as 1819 (Stephen, *History of the Criminal Law of England*, i. 249 *sq.*).

[2] Du Boys, *Histoire du droit criminel des peuples modernes*, ii. 182. Lea, *op. cit.* p. 206 *sqq.*

[3] Robertson, *History of the Reign of the Emperor Charles V.* i 357 *sq.* 'Notitia gurpitionis,' in Bouquet, *Recueil des historiens des Gaules et de la France*, ix. 729.

[4] Lea, *op. cit.* pp. 200-205, 211 *sq.* Unger, *loc. cit.* p. 392 *sqq.*

[5] Storr, 'Duel,' in *Encyclopædia Britannica*, vii. 512.

[6] Buckle, *Miscellaneous and Posthumous Works*, i. 386. *Cf.* Bosquett, *Treatise on Duelling*, p. 79.

[7] Storr, *loc. cit.* p. 511.

he may accomplish the ruin of the soul," was to be utterly exterminated from the Christian world, and that not only principals and seconds, but anyone who had given counsel in the case of a duel, or had in any other way persuaded a person thereunto, as also the spectators thereof, should be subjected to excommunication and perpetual malediction.[1] In England, Cromwell's Parliament made a determined effort to check the practice.[2] A Scotch law of 1600 rendered the bare act of engaging in a duel, without license from the king, a capital offence.[3] About the same period the Spanish Cortes passed a law which subjected all parties to a duel to the penalties of treason.[4] In 1602, Henry IV. of France issued an edict condemning to death whoever should give or accept a challenge or act as second;[5] and already several edicts against duelling had been promulgated under Louis XIII.[6] when, in 1626, there was published a new one punishing with death any person who had killed his adversary in a duel, or had been found guilty of sending a challenge a second time.[7] But all these enactments had little or no effect. We are told that in the eight years between 1601 and 1609, two thousand men of noble birth fell in duels in France; and, according to Lord Herbert of Cherbury, who was ambassador at the court of Louis XIII., there was scarce a Frenchman worth looking on who had not killed his man in a duel.[8] As Robertson observes, in reference to duelling, "no custom, how absurd soever it may be, if it has subsisted long, or derives its force from the manners and prejudices of the age in which it prevails, was ever abolished by the bare promulgation of laws and statutes."[9] In spite of laws which directly prohibit duelling, or which punish with great severity anyone who kills another in a duel, sometimes even sub-

[1] *Canons and Decrees of the Council of Trent*, Session xxv. 19, p. 274 *sq.*

[2] Pike, *History of Crime in England*, ii. 192.

[3] Hume, *Commentaries on the Law of Scotland*, ii. 281. Erskine, *Principles of the Law of Scotland*, p. 560.

[4] Truman, *Field of Honor*, p. 70.

[5] Isambert, Taillandier, and Decrusy, *Recueil général des anciennes lois françaises*, xv. 351 *sq.*

[6] *Ibid.* xvi. 21, 106, 146.

[7] *Ibid.* xvi. 176, 179.

[8] Storr, *loc. cit.* p. 512.

[9] Robertson, *op. cit.* i. 66.

jecting him to punishment for murder,[1] the duel still prevails in many European countries as a recognised custom, so much supported by public opinion that the laws referring to it are seldom or never applied.

This curious practice of taking the law into one's own hands, which we find existing in the midst of modern civilisation, is explicable, partly from the indifference with which legislators have treated offences against honour,[2] partly from the force of habit. The insulted person, finding no adequate legal remedy for the affront he has suffered, determines to be his own avenger, and challenges the offender to fight. Nor is revenge his only motive. He desires also to wash off the indignity by showing that he respects his honour more than his life. The notion that a challenge to mortal combat effaces the blot which an insult has imprinted upon a man's honour is a survival from a period when the honourable man was above everything a brave man.[3] By displaying courage the offended party demonstrates that he is not worthy of contempt, by showing timidity he condemns himself. So far as justice is concerned, the duel, of course, became an absurdity as soon as it ceased to be looked upon in the light of an ordeal. It compels the insulted person to expose himself to a fresh injury from the side of an impudent offender, it allows the scoundrel to repay the most condign censure with a mortal stroke. But when a man's honour is at stake the voice of justice is easily silenced, and the pressure of ancient habit is greater than ever. As is usual in similar cases, a variety of more or less futile arguments are adduced to give their support to the survival. Lord Kames maintained that, if two persons agree to decide their quarrel by single combat, the State has nothing to do with it, since they need not make use of the protection which the State offers them.[4] But, as a matter of fact, the

[1] Günther, *Die Idee der Wiedervergeltung*, iii. 225, n. 467. Stephen, *History of the Criminal Law of England*, iii. 99 *sqq.* Gelli, *Il duello*, p. 21.

[2] *Cf.* Bentham, *Theory of Legislation*, p. 299 *sqq.*

[3] That the modern duel is a special development of Chivalry has been pointed out by Buckle (*History of Civilization in England*, ii. 136 *sq.*).

[4] Kames, *Sketches of the History of Man*, i. 415 n.

duel is not a private affair between two individuals. As Moore observed, "a refusal of the duel is attended with such mortifying circumstances, with such an imputation of meanness and cowardice . . . , with such a studied contempt in public, and exclusion from the polite circle in private, as renders the alternative both cruel and inhuman";[1] and it would seem that the State ought to protect its members against such a compulsion. It is said that the duel "grasps the sword of justice, which the laws have dropped, punishing what no code can chastise—contempt and insult."[2] But we find that in countries where it no longer prevails, laws against insults, courts of honour, and especially more refined ideas as regards honorary satisfaction, have made it as useless as it is absurd, a matter of the past which nobody desires to revive.

[1] Moore, *Full Inquiry into the Subject of Suicide*, ii. 276.

[2] Quoted by Millingen, *History of Duelling*, i. 300.

CHAPTER XXII

BODILY INJURIES

Closely related to the right to life is the right to bodily integrity. Indeed, homicide is, generally speaking, the highest form of bodily injury which can, in the nature of things, be inflicted, although there are some forms of ill-treatment which are more terrible than death itself.[1]

In the case of bodily injuries the magnitude of the offence is, other things being equal, proportionate to the harm inflicted. At the lower stages of civilisation we meet with the principle of an eye for an eye and a tooth for a tooth, or the offender has to pay an adequate compensation for the injury.[2] It is said in the Laws of Manu that, if a blow is struck against men in order to give them pain, the judge shall inflict a fine in proportion to the amount of pain caused.[3] According to Muhammedan law, retaliation for intentional wounds and mutilations is allowed, but a fine may be accepted instead. The fine for depriving a man of any of his five senses, or dangerously wounding him, or grievously disfiguring him for life, or cutting off a member that is single, as the

[1] *Cf.* Stephen, *History of the Criminal Law of England*, iii. 11.

[2] Post, *Afrikanische Jurisprudenz*, ii. 61 *sqq.* Munzinger, *Ostafrikanische Studien*, pp. 208 (Takue), 502 (Barea and Kunama). Burton, *Two Trips to Gorilla Land*, i. 105 (Mpongwe). Maclean, *Compendium of Kafir Laws and Customs*, p. 61 *sq.* Macpherson, *Memorials of Service in India*, p. 82 (Kandhs). Earl, *Papuans*, p. 83 (Papuans of Dory). Kubary, *Die socialen Einrichtungen der Pelauer*, p. 74 (Pelew Islanders). Petroff, 'Report on Alaska,' in *Tenth Census of the United States*, p. 105 (Thlinkets).

[3] *Laws of Manu*, viii. 286.

nose, is the whole price of blood; the fine for a member of which there are two and not more, as a hand or a foot, is half the price of blood; the fine for a member of which there are ten, as a finger or a toe, is a tenth of the price of blood.[1] The scale of fines for bodily injuries contained in many of the early Teutonic law-books is minute to a degree.[2] According to various texts of the Salic law, 100 solidi—that is, a moiety of the *wergeld*—must be paid for depriving a man of a hand, foot, eye, or the nose; the thumb and great toe were valued at 50 solidi; the second finger with which the bow was drawn, at 35.[3] With respect to other acts of violence, the fine varied according to several circumstances, as, whether the blow was given with a stick or with closed fist, whether the brain was laid bare, whether certain bones were obtruded and how much, whether blood flowed from the wound on the ground, and so forth.[4] In the Anglo-Saxon codes almost every part and particle of the body, every tooth, toe, and nail, had its price. According to the Laws of Aethelbirht, for instance, twenty shillings were paid for striking off a thumb, three for a thumb nail, eight for the forefinger, eleven for the little finger.[5] In early Celtic law different amounts of injury were taxed with a similar affected precision.[6] Nothing can better give us an idea of the business-like manner in which the whole subject was treated than the Irish law against castration. If the injured persons be people to whom the organs extirpated are of no use, "such as a decrepit old man or a man in orders, there is nothing due to them for the loss of them, but body-fine according to the severity of the wound."[7]

[1] Lane, *Manners and Customs of the Modern Egyptians*, p. 120. Sachau, *Muhammedanisches Recht*, p. 764.

[2] Wilda, *Strafrecht der Germanen*, p. 729. Stemann, *Den danske Retshistorie indtil Christian V.'s Lov*, p. 658. Stephen, *History of the Criminal Law of England*, i. 56. Lappenberg, *History of England under the Anglo-Saxon Kings*, ii. 422.

[3] *Lex Salica*, edited by Hessels, coll. 163-167, 170, 172-177, 179.

[4] *Ibid.* col. 100 *sqq.*

[5] *Laws of Æthelbirht*, 54.

[6] *Ancient Laws of Ireland*, iii. pp. cix., 349. *Venedotian Code*, iii. 23 (*Ancient Laws and Institutes of Wales*, p. 151 *sqq.*). *Dimetian Code*, ii. 17 (*ibid.* p. 246 *sqq.*). *Gwentian Code*, ii. 6 *sq.* (*ibid.* p. 340 *sq.*).

[7] *Ancient Laws of Ireland*, iii. 355.

After this one is almost surprised to read in the ancient laws of Ireland that, when a person had once been maimed, and received part or all of his body-fine, no subsequent wrong-doer could insist that the injured person should be rated as a damaged article.[1]

However, the degree of the offence depends not only on the suffering inflicted, but on the station of the parties concerned; and in some cases the infliction of pain is held allowable or even a duty.

By using violence against their parents, children grossly offend against the duty of filial regard and submissiveness. It is said in the Laws of Hammurabi, that a man who has struck his father shall lose his hands.[2] According to Exodus, "he that smiteth his father, or his mother, shall be surely put to death."[3] In Corea the man who strikes his father is beheaded.[4] On the other hand, parents are allowed to inflict corporal punishment on their children; but this is not the case everywhere—indeed, among many of the lower races children are never, or hardly ever, subject to such punishment.[5] Among the Australian Dieyerie the children are never beaten, and should any woman violate this law, she is in turn beaten by her husband.[6] The Efatese, says Mr. Macdonald, "are shocked to see Europeans correcting their children; I never saw an Efatese beating a child."[7] The Eskimo

[1] *Ibid.* iii. pp. cix., cxi., 349, 351.
[2] *Laws of Hammurabi*, 195.
[3] *Exodus*, xxi. 15.
[4] Griffis, *Corea*, p. 236.
[5] Curr, *Recollections of Squatting in Victoria*, p. 252 (Bangerang tribe). Angas, *Savage Life and Scenes in Australia*, i. 94 (tribes of the Lower Murray). Calvert, *Aborigines of Western Australia*, p. 30 *sq.* Lumholtz, *Among Cannibals*, p. 192 *sq.* (Northern Queensland aborigines). Kubary, 'Die Palau-Inseln in der Südsee,' in *Journal des Museum. Godeffroy*, iv. 56 (Pelew Islanders). Man, *Sonthalia and the Sonthals*, p. 78. von Siebold, *Die Aino auf der Insel Yesso*, p. 11. Murdoch, 'Ethnological Results of the Point Barrow Expedition,' in *Ann. Rep. Bur. Ethn.* ix. 417 (Point Barrow Eskimo). Boas, 'Central Eskimo,' *ibid.* vi. 566. Richardson, in Franklin, *Journey to the Shores of the Polar Sea*, p. 68 (Crees). Lumholtz, *Unknown Mexico*, p. 274 (Tarahumares). Rautahen, in Steinmetz, *Rechtsverhaltnisse*, p. 329 (Ondonga). See also Steinmetz, *Ethnologische Studien zur ersten Entwicklung der Strafe*, ii. ch. vi. § 2, especially p. 203; *Idem*, 'Das Verhältnis zwischen Eltern und Kindern bei den Naturvölkern,' in *Zeitschrift für Socialwissenschaft*, i. 610 *sqq.*
[6] Gason, 'Manners and Customs of the Dieyerie Tribe,' in Woods, *Native Tribes of South Australia*, p. 258.
[7] Macdonald, *Oceania*, p. 195.

visited by Mr. Hall never inflict physical chastisement upon the children; "if a child does wrong—for instance, if it becomes enraged, the mother says nothing to it till it becomes calm. Then she talks to it, and with good effect."[1] Among the Tehuelches of Patagonia "the children are indulged in every way, ride the best horses, and are not corrected for any misbehaviour."[2] Among the Gaika tribe of the Kafirs, again, parents may inflict corporal punishment on their children, but are fined for causing permanent injuries to their persons, such as the loss of an eye or a tooth.[3]

The power which the husband possesses over his wife much more commonly implies the right of inflicting pain on her than of punishing her capitally; but even among savages and barbarians the former right is not universally granted to him. The Pelew Islanders do not allow a husband to beat his wife.[4] Among various Eskimo tribes the women are rarely, if ever, beaten.[5] Among the Central Eskimo the husband "is not allowed to maltreat or punish his wife; if he does, she may leave him at any time, and the wife's mother can always command a divorce."[6] Many, or most, of the North American Indians consider it disgraceful for a husband to beat his wife.[7] Among the Kalmucks a man has no right to raise his hand against a woman.[8] Among the Madis women are never beaten.[9] Among the Ondonga a man is not allowed to chastise his wife.[10] Among the Gaika tribe of the Kafirs "a husband may beat his wife for misconduct; but if he should strike out her eye or a tooth, or otherwise maim her, he is fined at the discretion of the Chief."[11]

[1] Hall, *Arctic Researches*, p. 568.
[2] Musters, *At Home with the Patagonians*, p. 197.
[3] Brownlee, in Maclean, *Compendium of Kafir Laws and Customs*, p. 118.
[4] Kubary, 'Die Palau-Inseln,' in *Jour. des Museum Godeffroy*, iv. 43.
[5] King, in *Jour. Ethn. Soc.* i. 147. *Cf.* Murdoch, *loc. cit.* p. 414.
[6] Boas, in *Ann. Rep. Bur. Ethn.* vi. 579.
[7] Waitz, *Anthropologie der Naturvölker*, iii. 101. *Cf.* Powers, *Tribes of California*, p. 178 (Gallinomero).
[8] Liadov, in *Jour. Anthr. Inst.* i. 405.
[9] Ratzel, *History of Mankind*, iii. 40.
[10] Rautanen, in Steinmetz, *Rechtsverhältnisse*, p. 329.
[11] Brownlee, in Maclean, *op. cit.* p. 117.

According to the native code of Malacca, "a man may beat his wife, but not as he would chastise a slave, and not till blood flows"; if he should do so, he is fined.[1] According to Muhammedan law, a husband may chastise an obstinate wife, but he must not cause her great suffering, nor inflict on her a wound.[2] We read in the Laws of Manu :—"A wife, a son, a slave, a pupil, and a younger brother of the full blood, who have committed faults, may be beaten with a rope or a split bamboo, but on the back part of the body only, never on a noble part; he who strikes them otherwise will incur the same guilt as a thief."[3] In Europe the idea expressed by the ancient Roman that "he who beats his wife or children lays hands on that which is most sacred and holy,"[4] was shared neither by the ancient Teutons[5] nor by mediæval legislators. According to the Jydske Lov, a husband was allowed to chastise his wife with a stick or rod, though not with a weapon; but he had to take care not to break any limb of her body.[6] In the Coutumes du Beauvoisis it is said that a man may beat his wife if she belies or curses him, or disobeys his "reasonable" commands, or for some other similar reason, though he must not kill or maim her.[7] Among Russian and South Slavonian[8] peasants public opinion still permits the husband to inflict corporal punishment on his wife. In Russia "the bridegroom, while he is leading his bride to her future home, gives her from time to time light blows from a whip, saying at each stroke: 'Forget the manners of thine own

[1] Newbold, *British Settlements in the Straits of Malacca*, ii. 311 *sq.*

[2] Sachau, *Muhammedanisches Recht*, pp. 10, 44, 849.

[3] *Laws of Manu*, viii. 299 *sq.*

[4] Plutarch, *Cato Major*, xx. 3.

[5] Nordström, *Bidrag till den svenska samhällsförfattningens historia*, ii. 61 *sq.* Stemann, *op. cit.* p. 323 *sq.*

[6] *Jydske Lov*, ii. 82.

[7] Beaumanoir, *Coutumes du Beauvoisis*, lvii. 6, vol. ii. p. 333: "Il loist bien à l'omme batre se feme, sans mort et sans mehaing, quant ele le meffet; si comme quant ele est en voie de fere folie de son cors, ou quant ele dement son baron ou maudist, ou quant ele ne veut obeir à ses resnables commandemens que prode feme doit fere: en tel cas et en sanllables est il bien mestiers que li maris soit castierres de se feme resnablement. . . . Li maris le doit castier et repenre selonc toutes les manieres qu'il verra que bon sera por li oster de tel visse, exepté mort ou mehaing."

[8] Krauss, *Sitte und Brauch der Südslaven*, p. 526.

family, and learn those of mine.' As soon as they have entered their bedroom, the husband says to his wife, 'Take off my boots.' The wife immediately obeys her husband's orders, and, taking them off, finds in one of them a whip, symbol of his authority over her person. This authority implies the right of the husband to control the behaviour of his wife, and to correct her every time he thinks fit, not only by words, but also by blows. The opinion which a Russian writer of the sixteenth century . . . expresses as to the propriety of personal chastisement, and even as to its beneficial effects on the health, is still shared by the country people. . . . The customary Court seems to admit the use of such disciplinary proceedings by not interfering in the personal relations of husband and wife. 'Never judge the quarrel of husband and wife,' is a common saying, scrupulously observed by the village tribunals, which refuse to hear any complaint on the part of the aggrieved woman, at least so long as the punishment has not been of such a nature as to endanger life or limb."[1]

It seems that, wherever slavery exists, the master has a right to inflict corporal punishment on his slave, even though he be forbidden to deprive him of any of his limbs. According to the Chinese Penal Code, the master, or relations of the master of a guilty slave, may chastise such slave in any degree short of occasioning his death, without being liable to any punishment;[2] whereas "all slaves who are guilty of designedly striking their masters, shall, without making any distinction between principals and accessories, be beheaded."[3] Among the Hebrews, if a man by blows destroyed an eye or a tooth, or any other member belonging to his man-servant or maid-servant, he was bound to let the injured person go free, though full retribution was legally ordained for bodily injuries done to free Israelites.[4] In the North American Slave States and

[1] Kovalewsky, *Modern Customs and Ancient Laws of Russia*, p. 44 *sq.* *Cf.* Meiners, *Vergleichung des ältern und neuern Russlandes*, ii. 167 *sq.*; *Idem*, *History of the Female Sex*, i. 160.

[2] *Ta Tsing Leu Lee*, sec. cccxiv. p. 340.

[3] *Ibid.* sec. cccxiv. p. 338.

[4] *Exodus*, xxi. 24 *sqq.*

in the colonies of all European Powers the master could inflict any number of blows upon his slave, but if he mutilated him he was fined or subjected to a very moderate term of imprisonment.[1]

The maltreatment of another person's slave has, even by civilised legislators, been regarded as an injury done to the master rather than to the slave. According to Muhammedan law, the fine imposed on a free person for injuring a slave varies according to the value of the slave.[2] In the Institutes of Justinian it is said that, "if a man were to flog another man's slave in a cruel manner, an action would, in this case, lie against him," but that the master has no right of action against a person who has struck the slave with his fist.[3] In the Negro Act of 1740 it was prescribed that, if a slave was beaten by any person who had not sufficient cause or lawful authority for so doing, and if he or she was maimed or disabled by such beating from performing his or her work, the offender should pay to the owner of the slave "the sum of 15 shillings current money per diem, for every day of his lost time, and also the charge of the cure of such slave."[4] But if the beating of the slave caused no loss of service to his master, the offender was not, as a rule, punished by law. A decision of the Supreme Court of Maryland established expressly the law to be, in that State, that trespass would not lie by a master for an assault and battery on his slave, unless it were attended with a loss of service.[5] If, on the other

[1] 'Negro Act' of 1740, § 37, in Brevard, *Digest of the Public Statute Law of South Carolina*, ii. 241. Stephen, *Slavery of the British West India Colonies*, i. 36 *sq.* Edwards, *History of the British West Indies*, ii. 192.

[2] Lane, *Manners and Customs of the Modern Egyptians*, p. 120.

[3] *Institutiones*, iv. 4. 3.

[4] Brevard, *op. cit.* ii. 231 *sq.*

[5] Harris and Johnson, *Reports of Cases argued and determined in the General Court and Court of Appeals of the State of Maryland*, i. 4. Of all the Slave States, so far as I know, Kentucky was the only one where the owner of a slave might bring an action of trespass against anyone who whipped, stroke, or otherwise abuse the slave without the owner's consent, notwithstanding the slave was not so injured that the master lost his services thereby (Morehead and Brown, *Digest of the Statute Laws of Kentucky*, ii. 1481). In Tennessee, according to an act of 1813, a person was punished if he "wantonly and without sufficient cause" beat or abused the slave of another (Caruthers and Nicholson, *Compilation of the Statutes of Tennessee*, p. 678).

hand, the offender was a slave and his victim a white man, the injury was regarded in a very different light. We read in an act of Georgia passed in 1770:—"If any slave shall presume to strike any white person, such slave . . . shall . . . for the second offence suffer death: But in case any such slave shall grievously wound, maim, or bruise any white person, though it shall be only the first offence, such slave shall suffer death."[1] And to offer violence, to strike, attempt to strike, struggle with, or resist any white person, was, even by the latest meliorating laws issued in the British Colonies, declared to be a crime in a slave which, if the white person had been wounded or hurt, and in some islands even without that condition, should subject the offender to death, dismemberment, or other severe penalties.[2] We read in one of the codes of ancient Wales:—"If a freeman strike a bondman, let him pay him twelve pence. . . . If a bondman strike any freeman, it is just to cut off his right hand, or his right foot."[3] According to Chinese law, a freeman striking a slave shall "be punished less severely by one degree than in the ordinary cases of the same offence"; whereas "a slave striking a freeman shall, in proportion to the consequences, be punished one degree more severely than is by law provided in similar cases between equals."[4]

Very frequently the penalties or fines for bodily injuries are influenced by the class or rank of the parties even when both of them are freemen. Among the Marea, whilst a commoner who wounds another commoner simply pays him compensation for the hurt, a commoner who wounds a nobleman must abandon to him all his property and become his slave.[5] At Zimmé the fines for assaults "vary greatly, according to the rank of the party com-

[1] Prince, *Digest of the Laws of the State of Georgia*, p. 781

[2] Stephen, *Slavery of the British West India Colonies*, i. 188. Edwards, *History of the British West Indies*, ii. 102 *sq.*

[3] *Gwentian Code*, ii. 5. 31 *sq.* (*Ancient Laws and Institutes of Wales*, p. 339). For ancient Swedish law on this subject, see *Gotlands-Lagen*, i. 19. 37.

[4] *Ta Tsing Leu Lee*, sec. cccxiii. p. 336.

[5] Munzinger, *Ostafrikanische Studien*, p. 244.

plaining."[1] Among the Ossetes the limbs of a noble are rated at twice as much as the limbs of an ordinary freeman.[2] The Laws of Hammurabi contain the following provisions :—"If a man has caused the loss of a gentleman's eye, his eye one shall cause to be lost. If he has shattered a gentleman's limb, one shall shatter his limb. If he has caused a poor man to lose his eye or shattered a poor man's limb, he shall pay one mina of silver. If a man has made the tooth of a man that is his equal to fall out, one shall make his tooth fall out. If he has made the tooth of a poor man to fall out, he shall pay one-third of a mina of silver."[3] According to the Laws of Manu, if a man of a low caste does hurt to a man of any of the three highest castes, the offending member shall be cut off;[4] and he who intentionally strikes a Brâhmana in anger, even if it were only with a blade of grass, "will be born during twenty-one existences in the wombs of such beings where men are born in punishment of their sins."[5] In early Teutonic and Celtic codes we meet with the principle that the compensation by which a bodily injury is to be atoned for varies according to the rank of the parties concerned.[6]

We have noticed that men in their estimation of human life, particularly at the earlier stages of culture, discriminate between fellow-tribesmen or compatriots and aliens. A similar distinction is made with reference to other bodily injuries. It reaches its pitch in the sufferings inflicted on vanquished enemies. The treatment to which the Kamchadales subjected their male prisoners of war included "burning, hewing them to pieces, tearing their entrails out when alive, and hanging them by the feet."[7] Some of the Dacotahs, when they had taken a captive, "secured him

[1] Colquhoun, *Amongst the Shans*, p. 132.
[2] von Haxthausen, *Transcaucasia*, p. 409.
[3] *Laws of Hammurabi*, 196-198, 200 *sq.* *Cf. ibid.* 202 *sqq.*
[4] *Laws of Manu*, viii. 279.
[5] *Ibid.* iv. 166. *Cf. ibid.* iv. 167.
[6] Kemble, *Saxons in England*, i. 134. *Ancient Laws of Ireland*, iii. p. cxi. *Dimetian Code*, ii. 17. 17 (*Ancient Laws and Institutes of Wales*, p. 248). *Gwentian Code*, ii. 7. 13 (*ibid.* 342). de Valroger, *Les Celtes*, p. 470. Innes, *Scotland in the Middle Ages*, p. 180.
[7] Krasheninnikoff, *History of Kamschatka*, p. 200.

to a stake and allowed their women to torture him by mutilating him previous to killing him";[1] and of many other North American Indians it is said that they "devote their captives to death, with the most agonising tortures."[2] The wars of the Society Islanders, Ellis observes, were most merciless and destructive; "invention itself was tortured to find out new modes of inflicting suffering."[3] On the other hand, there are not wanting instances of savage warfare being conducted on more humane principles. Dobrizhoffer tells us that "cruelty towards captives and enemies is abhorred by the Abipones, who never torture the dying";[4] and among the Somals no injury is done to enemies who have been severely wounded in the battle.[5] Civilised nations maintain that, in time of war, no greater injuries should be inflicted upon the enemy than are necessary to obtain the end of the war.

The right to bodily integrity is influenced by religious differences as well as national. According to Muhammedan law, the compensation for injuries inflicted on a Jew or a Christian is a third, for those inflicted on a Parsee only a fifteenth, of the sum to be paid for similar injuries done to a Moslem.[6] A mediæval Spanish law prescribes that a Christian who beats a Jew shall pay four maravedis, but that a Jew who beats a Christian shall pay ten.[7]

The right to bodily integrity may be forfeited by the commission of a crime. As has been already noticed, physical injuries are frequently resented according to the law of like for like;[8] and in other cases, also, the inflic-

[1] Dorsey, 'Omaha Sociology,' in *Ann. Rep. Bur. Ethn.* iii. 313.

[2] Adair, *History of the American Indians*, p. 388.

[3] Ellis, *Polynesian Researches*, i. 293. *Cf.* Williams, *Narrative of Missionary Enterprises*, p. 533 (Samoans); Foreman, *Philippine Islands*, p. 185; Ellis, *Tshi-speaking Peoples of the Gold Coast*, p. 172 *sq.*

[4] Dobrizhoffer, *Account of the Abipones*, ii. 411.

[5] Paulitschke, *Ethnographie Nordost-Afrikas*, p. 255.

[6] Sachau, *op. cit.* p. 764.

[7] 'Fuero de Sepulveda,' art. 37 *sq.*, quoted by Du Boys, *Histoire du droit criminel de l'Espagne*, p. 74.

[8] *Supra*, p. 178. See also *Laws of Hammurabi*, 196, 197, 200; *Exodus*, xxi. 24 *sq.*; *Leviticus*, xxiv. 19 *sq.*; *Deuteronomy*, xix. 21; *Koran*, v. 49; Sachau, *op. cit.* p. 762 *sq.* (Muhammedan law); Leist, *Alt-arisches Jus Gentium*, p. 426 *sq.* (Greeks); *Lex Duodecim Tabularum*, viii. 2; Günther, *Idee der Wiedervergeltung*, p. 186 *sqq.* (Teutons).

tion of corporal suffering—by mutilation, scourging, and so forth—is a common penalty. Amputation or mutilation of the offending member has particularly been in vogue among so-called peoples of culture.[1] It is often mentioned in the Code of Ḫammurabi[2] and in the Laws of Manu.[3] It occurred among the Greeks,[4] Romans,[5] and Teutons.[6] Mediæval codes contain numerous instances of it.[7] The Laws of Alfred prescribe that a male *theow* who commits a rape upon a female *theow* shall be emasculated;[8] and in a later age Bracton reserves the same punishment for the deflowerer of a virgin, with the addition that the offender shall also lose his eyes, "on account of his looking at the beauty, for which he coveted possession of the virgin."[9] According to a law of Cnut, an adulteress shall have her nose and ears cut off.[10] Aethelstan enjoined that an illicit coiner should lose his right hand;[11] whereas in later times this punishment was restricted to those who struck anybody in the king's presence or in his court.[12] By the statute law of Scotland the punishment of forgery, or falsifying of writings, was at first the amputation of the hand, afterwards dismembering of it, joined with other pains.[13] In some countries a perjurer lost the offending fingers or his right hand,[14] in others he had his tongue cut

[1] For its occurrence in modern Persia, see Polak, *Persien*, i. 256, 329 *sq.*; in Fez, see Leo Africanus, *History and Description of Africa*, ii. 470. The Koran (v. 42) orders theft to be punished by cutting off the hands of the thief, but this punishment is now seldom practised in Muhammedan countries. Among the lower races I have met only with a few instances of punishing the offending member. In Ashanti intrigue with the female slaves of the royal household is punished by emasculation (Ellis, *Tshi-speaking Peoples of the Gold Coast*, p. 287); and the Kamchadales burn the hands of people who have been frequently caught in theft (Krasheninnikoff, *op. cit.* p. 179).

[2] *Laws of Ḫammurabi*, 192, 194, 195, 218, 226, 253.

[3] *Laws of Manu*, viii. 270–272, 279–283, 322, 334, 374; xi. 105.

[4] Günther, *op. cit.* i. 94 *sqq.*

[5] *Ibid.* i. 155 *sqq.*

[6] *Ibid.* i. 195 *sqq.* Wilda, *op. cit.* p. 510. Grimm, *Deutsche Rechtsalterthümer*, p. 740.

[7] Du Boys, *Histoire du droit criminel des peuples modernes*, ii. 699. *Idem*, *Histoire du droit criminel de l'Espagne*, p. 94. Cibrario, *Economia politica del medio eve*, i. 346 *sq.*

[8] *Laws of Alfred*, ii. 25.

[9] Bracton, *De Legibus et Consuetudinibus Angliæ*, fol. 147, vol. ii. 480 *sq.*

[10] *Laws of Cnut*, ii. 54.

[11] *Laws of Æthelstan*, 14.

[12] Strutt, *View of the Manners, Customs, &c., of the Inhabitants of England*, iii. 43.

[13] Erskine, *Principles of the Law of Scotland*, p. 571.

[14] Stemann, *op. cit.* p. 645. Charles V.'s *Peinliche Gerichts Ordnung*, art.

off or pierced with a hot iron;[1] and in England, before the Conquest, a man might lose his tongue by bringing a false and scandalous accusation.[2] In the seventeenth century a person in Scotland was sentenced to have his tongue bored because he had libelled the Lord Justice General.[3] In German and Austrian codes we find, even in the eighteenth century, traces of the principle of punishing the offending member;[4] and in France the last survival of it—the amputation of the right hand of a parricide before his execution—disappeared only in 1832.[5] Growing refinement of feeling has made people averse from the use of surgery in the administration of justice; and in most European countries grown-up offenders are no longer liable to corporal punishment of any kind.[6]

Corporal punishment has generally been, by preference, a punishment for poor and common people or slaves.[7] Blows and abusive language, says Plutarch, seem to be more fitting for slaves than the freeborn.[8] According to the religious law of the Hindus, a Brâhmana shall not suffer corporal punishment for any offence.[9] Among the Hebrews[10] and Muhammedans,[11] among the Romans[12] and in the Middle Ages,[13] the punishment of mutilation could generally be commuted to a fine. For a long period, in

107, p. 235. Pollock and Maitland, *History of English Law before the Time of Edward I.* ii. 453. Günther, *op. cit.* ii. 57.

[1] Du Boys, *Histoire du droit criminel des peuples modernes*, ii. 699. *Idem*, *Histoire du droit criminel de l'Espagne*, p. 599 *sq.* Pitcairn, *Criminal Trials in Scotland*, iii. 539.

[2] Pollock and Maitland, *op. cit.* ii. 539.

[3] Rogers, *Social Life in Scotland*, ii. 35.

[4] Günther, *op. cit.* ii. 55–57, 65; iii. 79.

[5] Chauveau and Hélie, *Théorie du Code Pénal*, iii. 394.

[6] See von Liszt, *Le droit criminel des états européens, passim;* Wrede, *Die Körperstrafen bei allen Volkern, passim.*

[7] See, for instance, the *Laws of Manu*, viii. 267, 279.

[8] Plutarch, *De educatione puerorum*, 12.

[9] *Baudhâyana*, i. 10. 18. 17. *Institutes of Vishnu*, v. 2.

[10] Günther, *op. cit.* i. 55.

[11] *Ibid.* i. 74 *sq.* Lane, *Manners and Customs of the Modern Egyptians*, p. 120. Sachau, *op. cit.* p. 764. According to Muhammedan law, it is not obligatory for the injured party to accept compensation in lieu of mutilation.

[12] Günther, *op. cit.* i. 124 *sqq.* Mommsen, *Römisches Strafrecht*, p. 981.

[13] Du Boys, *Histoire du droit criminel des peuples modernes*, ii. 557 *sq.* Strutt, *op. cit.* ii. 8.

Christian Europe, as well as in Pagan Rome during the Empire,[1] the punishment was more savage in proportion as the delinquent was more helpless. "En crimes," says Loysel, "les villains sont plus griévement punis en leurs corps que les nobles. . . . Et où le vilain perdroit la vie, ou un membre de son corps, le noble perdra l'honneur, et réponse en cour."[2] Indeed, whilst the slave incurred the penalty of mutilation for the most trifling offence, the noble might be exempted from corporal punishment of any kind.[3] In a similar manner the social *status* of a person has influenced his right to bodily integrity with reference to judicial torture. According to the Chinese Penal Code, "it shall not, in any tribunal of government, be permitted to put the question by torture to those who belong to any of the eight privileged classes, in consideration of the respect due to their character."[4] In Rome, under the Republic, torture was exclusively confined to the slaves.[5] In mediæval Christendom it was made use of to an extent and with a cold-blooded ferocity unknown to any heathen nation, and in cases of heresy and treason it was applied to every class of the community.[6] But the tortures inflicted on the nobles and the clergy were lighter than in the case of ordinary laymen, and proof of a more decided character was required to justify their being exposed to torment.[7] "Noble persons and persons of quality," says Dumoulin, "cannot so easily be subjected to torture as persons who are of mean and plebeian rank."[8] Guazzini, an eminent Italian jurisconsult and a recognised expositor of the law of torture in the days of its highest ascendency and ripest maturity, observes that the torment inflicted

[1] *Cf.* Mackenzie, *Studies in Roman Law*, p. 414 *sq.*

[2] Loysel, *Institutes coutumières*, vi. 2. 31 *sq.*, vol. ii. 219 *sq.*

[3] Du Boys, *Histoire du droit criminel de l'Espagne*, p. 469.

[4] *Ta Tsing Leu Lee*, sec. cccciv. p. 441.

[5] Mommsen, *Römisches Strafrecht*, p. 405.

[6] Suarez de Paz, *Praxis ecclesiastica et secularis*, v. 1. 3. 12, fol. 154 b. *Cf.* Lecky, *Rise and Influence of the Spirit of Rationalism in Europe*, i. 328.

[7] Lea, *Superstition and Force*, p. 526 *sq.*

[8] Dumoulin, quoted by Welling, 'Law of Torture,' in *The American Anthropologist*, v. 210 *sq.*

on a person shall be proportionate to his age, his physical constitution, his mental habits, and his social *status*;[1] and he adds that bishops and others in high civil dignity are exempt from torture even under strong presumptions of guilt.[2]

The moral notions regarding the infliction of bodily injuries require little comment. They are based on the principle of sympathetic resentment, modified by the ascription of particular rights to some and particular duties to others, on account of the relation in which the parties stand to each other; and they follow the same rules as the ideas concerning homicide, to the exclusion, of course, of all such considerations as result from fear of the slain man's ghost or from the religious horror of taking life. One point, however, calls for special attention. The forcible interference with another person's body not only causes physical pain but commonly entails disgrace upon the sufferer. This largely accounts for the fact that a person's right to bodily integrity varies so much according to his social standing.[3] Even among the lower races we meet with the notions that an act of bodily violence involves a gross insult, and that corporal punishment disgraces the criminal more than any other form of penalty. According to the Malay Code, "the persons who may be put to death without the previous knowledge of the king or nobles, are an adulterer, a person guilty of treason, a thief who cannot otherwise be apprehended, and a person who offers another a grievous affront, such as a blow over the face."[4] Among the Maoris a blow with the fist would lead to a combat with arms.[5] The Thlinkets consider corporal punishment to

[1] Guazzini, *Tractatus ad defensam inquisitorum*, xxx. 4. 24, vol. ii. 86.

[2] *Ibid.* xxx. 17, vol. ii. 102 *sq.*

[3] *Cf. Dimetian Code*, ii. 17. 17 (*Ancient Laws and Institutes of Wales*, p. 248): "The Law says that the limbs of all persons are of equal worth; if a limb of the king be broken, that it is of the same worth as the limb of the villain: yet, nevertheless, the worth of saraad [or fine for insult] to the king, or to a breyr, is more than the saraad of a villain, if a limb belonging to him be cut." See also *Gwentian Code*, ii. 7. 12 *sq.* (*ibid.* p. 342).

[4] Crawfurd, *History of the Indian Archipelago*, iii. 105 *sq.*

[5] Shortland, *Traditions and Superstitions of the New Zealanders*, p. 227.

be the greatest indignity to which a freeman can be subjected, hence they never inflict it.[1] And civilised nations who are ready to punish certain criminals with death, hold whipping to be a punishment too infamous to be employed.

[1] Holmberg, 'Ethnograph. Skizzen über die Völker des russischen Amerika,' in *Acta Societatis Scientiarum Fennicæ*, iv. 321.

CHAPTER XXIII

CHARITY AND GENEROSITY

In previous chapters we have examined the regard for the life and physical well-being of others as displayed in moral ideas concerning homicide and the infliction of bodily harm. We shall now consider the same subject from another point of view, namely, the valuation of such conduct as positively promotes the existence and material comfort of a fellow-creature.

There is one duty so universal and obvious that it is seldom mentioned: the mother's duty to rear her children, provided that they are suffered to live. Another duty—equally primitive, I believe, in the human race—is incumbent on the married man: the protection and support of his family. We hear of this duty from all quarters of the savage world.

Among the North American Indians it was considered disgraceful for a man to have more wives than he was able to maintain.[1] Mr. Powers says that among the Patwin, a Californian tribe which he believes to rank among the lowest in the world, "the sentiment that the men are bound to support the women—that is to furnish the supplies—is stronger even than among us."[2] Among the Iroquois it was the office of the husband "to make a mat, to repair the cabin of his wife, or to construct a new one." The product of his hunting expeditions,

[1] Waitz, *Anthropologie der Naturvölker*, iii. 109. Carver, *Travels through the Interior Parts of North America*, p. 367.

[2] Powers, *Tribes of California*, p. 222.

during the first year of marriage, belonged of right to his wife, and afterwards he shared it equally with her, whether she remained in the village, or accompanied him to the chase.[1] Among the Botocudos, whose girls are married very young, remaining in the house of the father till the age of puberty, the husband is even then obliged to maintain his wife, though living apart from her.[2] Among the Lengua Indians of the Paraguayan Chaco the child of a woman whose husband deserts her is generally killed at birth, the mother feeling that it is the man's part of married life to provide meat for his offspring.[3] Azara states that, among the Charruas, "du moment où un homme se marie, il forme une famille à part, et travaille pour la nourrir."[4] Of the Fuegians it is said that, "as soon as a youth is able to maintain a wife, by his exertions in fishing or bird-catching, he obtains the consent of her relations."[5] The wretched Rock Veddahs in Ceylon "acknowledge the marital obligation and the duty of supporting their own families."[6] Among the Maldivians, "although a man is allowed four wives at one time, it is only on condition of his being able to support them."[7] The Nairs, we are told, consider it a husband's duty to provide his wife with food, clothing, and ornaments;[8] and almost the same is said by Dr. Schwaner with reference to the tribes of the Barito district, in the south east part of Borneo.[9] Among the cannibals of New Britain the chiefs have to see that the families of the warriors are properly maintained.[10] Concerning the Tonga Islanders Mariner states that "a married woman is one who cohabits with a man, and lives under his roof and protection."[11] Among the Maoris "the mission of woman was to increase and multiply, that of man to defend his home."[12] With reference to the Kurnai in South Australia, Mr. Howitt states that "the man has to provide for his family with the assistance of his wife. His share is to hunt for their support, and to fight for their protection."[13] In Lado, in Africa, the bridegroom has to assure his father-in-law three times that he will

[1] Heriot, *Travels through the Canadas*, p. 338.
[2] von Tschudi, *Reisen durch Südamerika*, ii. 283.
[3] Hawtrey, in *Jour. Anthr. Inst.* xxxi. 295.
[4] Azara, *Voyages dans l'Amérique méridionale*, ii. 22.
[5] King and Fitzroy, *Voyages of the "Adventure" and "Beagle,"* ii. 182.
[6] Tennent, *Ceylon*, ii. 441.
[7] Rosset, 'Maldive Islands,' in *Jour. Anthr. Inst.* xvi. 168 *sq.*
[8] Stewart, 'Notes on Northern Cachar,' in *Jour. Asiatic Soc. Bengal*, xxiv. 614.
[9] Schwaner, *Borneo*, i. 199.
[10] Angas, *Polynesia*, p. 373.
[11] Mariner, *Natives of the Tonga Islands*, ii. 167.
[12] Johnston, *Maoria*, p. 28 *sq.*
[13] Fison and Howitt, *Kamilaroi and Kurnai*, p. 206.

protect his wife, calling the people present to witness.[1] Among the Touareg a man who deserts his wife is blamed, as he has taken upon himself the obligation of maintaining her.[2]

Among many of the lower races a man is not even permitted to marry until he has given some proof of his ability to support and protect his family.[3] Indeed, so closely is the idea that a man is bound to maintain his family connected with that of marriage and fatherhood, that sometimes even repudiated wives with their children are, at least to a certain extent, supported by their former husbands.[4] And upon the death of a husband, the obligation of maintaining his wife and her children devolves on his heirs, the wide-spread custom of a man marrying the widow of his deceased brother being not only a privilege, but, among several peoples, even a duty.[5]

Turning to peoples who have reached a higher stage of culture:—Abû Shugâ' says that, among Muhammedans, parents are obliged to support their families, "if the children are both poor and under age, or both poor and lastingly infirm, or both poor and insane."[6] But that this duty chiefly devolves on the father is evident from the fact that the mother is even entitled to claim wages for nursing them.[7] Buddhistic law goes so far as to prescribe that the parents shall provide their son with a beautiful wife, and give him a share of the wealth belonging to the family.[8] It has been observed that in the Confucian books there is no mention of any real duties incumbent upon the father towards his children;[9] nor does the Decalogue contain anything on the subject; nor any law of ancient Greece or Rome.[10] But, as has been justly

[1] Wilson and Felkin, *Uganda*, ii. 90.
[2] Chavanne, *Die Sahara*, p. 209. *Cf.* Hanoteau and Letourneux, *La Kabylie*, ii. 167.
[3] Westermarck, *History of Human Marriage*, p. 18.
[4] *Ibid.* p. 19.
[5] *Ibid.* p. 511 *sq.*
[6] Sachau, *Muhammedanisches Recht*, p. 18.
[7] *Ibid.* p. 99 *sq.*
[8] Hardy, *Manual of Budhism*, p. 495.
[9] Faber, *Digest of the Doctrines of Confucius*, p. 82.
[10] Leist, *Græco-italische Rechtsgeschichte*, p. 13.

argued, if legal prescriptions are wanting, that is because they are thought to be superfluous, nature itself having sufficiently prepared men for the performance of their duties towards their offspring.[1] So, also, it is regarded as a matter of course that the husband shall support his wife, however great power he may possess over her. Among the Romans *manus* implied not only the wife's subordination to the husband, but also the husband's obligation to protect the wife.[2]

The parents' duty of taking care of their offspring is, in the first place, based on the sentiment of parental affection. That the maternal sentiment is universal in mankind is a fact too generally admitted to need demonstration; not so the father's love of his children. Savage men are commonly supposed to be very indifferent towards their offspring; but a detailed study of facts leads us to a different conclusion. It appears that, among the lower races, the paternal sentiment is hardly less universal than the maternal, although it is probably never so strong and in many cases distinctly feeble. But more often it displays itself with considerable intensity even among the rudest savages. In the often-quoted case of the Patagonian chief who, in a moment of passion, dashed his little son with the utmost violence against the rocks because he let a basket of eggs which the father handed to him fall down, we have only an instance of savage impetuosity. The same father "would, at any other time, have been the most daring, the most enduring, and the most self-devoted" in the support and defence of his child.[3] Similarly the Central Australian natives, in fits of sudden passion, when hardly knowing what they do, sometimes treat a child with great severity; but as a rule, to which there are very few exceptions, they are kind and considerate to their children, the men as well as the women carrying them when they get tired on the march,

[1] *Ibid.* p. 13. Schmidt, *Ethik der alten Griechen*, ii. 141. Adam Smith, *Theory of Moral Sentiments*, p. 199 *sq.*

[2] Rossbach, *Untersuchungen über die römische Ehe*, p. 32. *Cf. Laws of Manu*, ix. 74, 75, 95.

[3] King and Fitzroy, *op. cit.* ii. 155. *Cf. ibid.* ii. 154; Musters, *At Home with the Patagonians*, p. 196 *sq.*

and always seeing that they get a good share of any food.[1] All authorities agree that the Australian Black is affectionate to his children.[2] "From observation of various tribes in far distant parts of Australia," says Mr. Howitt, "I can assert confidently that love for their children is a marked feature in the aboriginal character. I cannot recollect having ever seen a parent beat or cruelly use a child; and a short road to the goodwill of the parents is, as amongst us, by noticing and admiring their children. No greater grief could be exhibited, by the fondest parents in the most civilised community at the death of some little child, than that which I have seen exhibited in an Australian native camp, not only by the immediate parents, but by the whole related group."[3] Other representatives of the lowest savagery, as the Veddahs[4] and Fuegians,[5] are likewise described as tender parents. Though few peoples have acquired a worse reputation for cruelty than the Fijians, even the greatest censurer of their character admits that the exhibition of parental love among them "is sometimes such as to be worthy of admiration";[6] whilst, according to another authority, "it is truly touching to see how parents are attached to their children."[7] The Bangala of the Upper Congo, "swayed one moment by a thirst for blood and indulging in the most horrible orgies, . . . may yet the next be found approaching their homes looking forward with

[1] Spencer and Gillen, *Native Tribes of Central Australia*, p. 50 *sq.*

[2] Curr, *The Australian Race*, i. 402; iii. 155. *Idem*, *Recollections of Squatting in Victoria*, p. 252. Angas, *Savage Life and Scenes in Australia*, i. 94. Brough Smyth, *Aborigines of Victoria*, i. 51; ii. 311. Ridley, *Aborigines of Australia*, p. 23. Eyre, *Journals of Expeditions of Discovery into Central Australia*, ii. 214 *sq.* Sturt, *Expedition into Central Australia*, ii. 137. Calvert, *Aborigines of Western Australia*, p. 30 *sq.* Taplin, 'Narrinyeri,' in Woods, *Native Tribes of South Australia*, p. 15. Gason, 'Manners and Customs of the Dieyerie Tribe,' *ibid.* p. 258. Hill and Thornton, *Aborigines of New South Wales*, pp. 2, 4. Fraser, *Aborigines of New South Wales*, pp. 2, 44. Lumholtz, *Among Cannibals*, p. 193.

[3] Fison and Howitt, *op. cit.* p. 189. *Cf. ibid.* p. 259.

[4] Bailey, 'Wild Tribes of the Veddahs of Ceylon,' in *Trans. Ethn. Soc.* N.S. ii. 291. Deschamps, *Carnet d'un voyageur au pays des Veddas*, p. 380.

[5] King and Fitzroy, *op. cit.* i. 76; ii. 186. Weddell, *Voyage towards the South Pole*, p. 156. Pertuiset, *Le Trésor des Incas à la Terre de Feu*, p. 217.

[6] Williams and Calvert, *Fiji and the Fijians*, p. 116.

[7] Seemann, *Viti*, p. 193. *Cf. ibid.* p. 194.

the liveliest interest to the caresses of their wives and children."[1] Carver asserts that he never saw among any other people greater proofs of parental or filial tenderness than among the North American Naudowessies.[2] Among the Point Barrow Eskimo "the affection of parents for their children is extreme";[3] and the same seems to be the case among the Eskimo in general.[4] Concerning the Aleuts Veniaminof wrote long ago :—"The children are often well fed and satisfied, while the parents almost perish with hunger. The daintiest morsel, the best dress, is always kept for them."[5] Mr. Hooper, again, found parental love nowhere more strongly exemplified than among the Chukchi; "the natives absolutely doat upon their children."[6] Innumerable facts might indeed be quoted to prove that parental affection is not a late product of civilisation, but a normal feature of the savage mind as it is known to us.[7]

[1] Ward, *Five Years with the Congo Cannibals*, p. 141. *Cf. ibid.* p. 139.

[2] Carver, *op. cit.* p. 240 *sq. Cf. ibid.* p. 378 *sq.*

[3] Murdoch, 'Ethnological Results of the Point Barrow Expedition,' in *Ann. Rep. Bur. Ethn.* ix. 417.

[4] Hall, *Arctic Researches*, p. 568. Parry, *Second Voyage for the Discovery of a North-West Passage*, p. 529. Boas, 'Central Eskimo,' in *Ann. Rep. Bur. Ethn.* vi. 566. Turner, 'Ethnology of the Ungava District,' *ibid.* xi. 191. Seemann, *Voyage of "Herald,"* ii. 65. Cranz, *History of Greenland*, i. 174.

[5] Veniaminof, quoted by Dall, *Alaska*, p. 397. *Cf. ibid.* p. 393; Petroff, 'Report on Alaska,' in *Tenth Census of the United States*, p. 158.

[6] Hooper, *Ten Months among the Tents of the Tuski*, p. 201.

[7] Dobrizhoffer, *Account of the Abipones*, ii. 214 *sq.* Wied-Neuwied, *Reise nach Brasilien*, ii. 40 (Botocudos). Wallace, *Travels on the Amazon*, p. 518 *sq.* (Amazon Indians; but on the Brazilian Indians generally, *cf.* von Martius, in *Jour. Roy. Geo. Soc.* ii. 198, and *Idem*, *Beiträge zur Ethnographie Amerika's*, i. 125). Im Thurn, *Among the Indians of Guiana*, pp. 213, 219. MacCauley, 'Seminole Indians of Florida,' in *Ann. Rep. Bur. Ethn.* v. 491. Dunbar, 'Pawnee Indians,' in *Magazin of American History*, viii. 745. Catlin, *North American Indians*, ii. 242. Ten Kate, *Reizen en onderzoekingen in Noord-Amerika*, p. 364 *sq.* Sproat, *Scenes and Studies of Savage Life*, p. 160 (Ahts). Franklin, *Journey to the Shores of the Polar Sea*, p. 68 (Crees). Elliott, 'Report on the Seal Islands,' in *Tenth Census of the United States*, p. 238. Krasheninnikoff, *History of Kamschatka*, p. 232 (Koriaks). Georgi, *Russia*, i. 25 (Laplanders); iii. 13 (Tunguses), 158 (Kamchadales). Castrén, *Nordiska resor och forskningar*, ii. 121 (Ostyaks). Prejevalsky, *Mongolia*, i. 71. Scott Robertson, *Káfirs of the Hindu-Kush*, p. 189. Blunt, *Bedouin Tribes of the Euphrates*, ii. 214. Dalton, *Descriptive Ethnology of Bengal*, p. 68 (Garos). Marshall, *A Phrenologist amongst the Todas*, p. 200; Shortt, 'Hill Tribes of the Neilgherries,' in *Trans Ethn. Soc.* N.S. vii. 254 (Todas). Kloss, *In the Andamans and Nicobars*, p. 228 (Nicobarese). Man, *Sonthalia and the Sonthals*, p. 78. Wallace, *Malay Archipelago*, p. 450 (Malays). Schwaner,

When dealing with the origin of the altruistic sentiment we shall find reason to believe that paternal affection not only prevails among existing men, savage and civilised, but that it belonged to the human race from the very beginning, and that the same was the case with the germ of marital affection, inducing the male to remain with the female till after the birth of the offspring, and to defend and support her during the periods of pregnancy and motherhood. It is true that among several savage peoples conjugal love is said to be unknown; but what is meant by this is, I think, typically expressed in Major Ellis's statement referring to some Gold Coast natives, that among them "love, as understood by the people of Europe, has no existence."[1] The love of a savage is certainly very different from the love of a civilised man; nevertheless we may discover in it traces of the same ingredients. Even rude savages, such as the Bushmans, Fuegians, Andaman Islanders, and Australian aborigines, seem often to be lovingly attached to their wives.[2]

op. cit. i. 162 (Malays of the Barito River Basin in Borneo). Low, *Sarawak*, p. 148 (Malays). Bock, *Head-Hunters of Borneo*, p. 210 (Dyaks). Ling Roth, *Natives of Sarawak and British North Borneo*, i. 68 (Land Dyaks). Forbes, *A Naturalist's Wanderings in the Eastern Archipelago*, p. 321 (natives of Timor-laut). Forbes, *Insulinde*, p. 182 (natives of Ritobel) Seligmann, in *Reports of the Cambridge Anthropological Expedition to Torres Straits*, v. 199; Haddon, *ibid.* v. 229, 274 (Western Islands). Romilly, *From my Verandah in New Guinea*, p. 51. Chalmers, *Pioneering in New Guinea*, p. 163. Christian, *Caroline Islands*, p. 72 (Ponapeans). Kubary, 'Die Bewohner der Mortlock Inseln,' in *Mittheilungen der Geogr. Gesellsch. in Hamburg*, 1878-9, p. 261. Macdonald, *Oceana*, p. 195 (Efatese). Turner, *Samoa*, p. 317 (natives of Tana). von Kotzebue, *Voyage of Discovery*, iii. 165 (Natives of Radack). Mariner, *op. cit.* ii. 179 (Tongans). Dieffenbach, *Travels in New Zealand*, ii. 26, 107; Crozet, *Voyage to Tasmania*, p. 66 (Maoris). Dove, 'Aborigines of Tasmania,' in *Tasmanian Journal of Natural Science*, i. 252. Reade, *Savage Africa*, p. 245 (Equatorial Africans). Casati, *Ten Years in Equatoria*, i. 186 (Central African Negroes). Caillié, *Travels through Central Africa*, i. 352 (Mandingoes). Holub, *Seven Years in South Africa*, ii. 296 (Marutse). Livingstone, *Missionary Travels*, p. 126 (Bechuanas). Johnston, *Uganda Protectorate*, ii. 539 (Pigmies). Sparrman, *Voyage to the Cape of Good Hope*, i. 219 (Hottentots). Shaw, 'Betsileo Country and People,' in *Antananarivo Annual and Madagascar Magazine*, iii. 82. See also *supra*, p. 405; Steinmetz, 'Verhältnis zwischen Eltern und Kindern bei den Naturvölkern,' in *Zeitschrift für Socialwissenschaft*, i. 610 *sqq.*; *Idem*, *Ethnologische Studien zur ersten Entwicklung der Strafe*, ii. ch. vi. §2.

[1] Ellis, *Tshi-speaking Peoples of the Gold Coast*, p. 285. I have dealt with this subject in my *History of Human Marriage*, p. 356 *sqq.*

[2] *Ibid.* p. 358 *sq.*

The prevalence of paternal and marital affection accounts for the origin of the family (consisting of parents and children), and for the functions of the man as father and husband. The growing intensity of these sentiments has naturally increased the stability of the family tie; and other factors, of a selfish nature, have contributed towards the same result. From various points of view it is desirable for a man to have children. They are to him objects of pride; when grown-up, they add to his safety and power; they support him when he gets old; they make offerings to his spirit when he is dead. And no less useful is the possession of a wife. When the generative power is no longer restricted to a certain season of the year, she becomes a lasting cause of sensual delight; she is a mother of children; she manages the household; she acts as a carrier, she works in the field.

Every social institution has a tendency to become a matter of moral concern because of the persistence of habit. But the simplest paternal and marital duties have a deeper foundation than the mere force of the habitual. If a man leaves his wife and children without protection and support, the other members of the community will sympathise with them, and feel resentment towards the neglectful husband and father. He will be looked upon as the cause of their sufferings, because he omitted to do what other men in his position would have done. His conduct will be repulsive to everyone who himself possesses those sentiments of which he proves destitute. He will be held guilty of a breach of contract, since by marrying he took upon himself the burden of maintaining his wife and their common offspring. To thoughtful minds his responsibility towards his children is further increased by the fact that he is the author of their being, and for that reason the source of their misery. Finally, the community as a whole will suffer by his negligence.

The parents' duty of taking care of their offspring lasts until the latter are able to shift for themselves. On the other hand, when the parents, in their turn, get in need of

support, their care is to be reciprocated by the children. The practice of killing or abandoning decrepit parents is an exception even in the savage world, and, as we have seen, restricted to extreme cases in which it may be regarded as an act of kindness or of hard necessity. There are always savage peoples among whom aged parents, though suffered to live, are said to be grossly neglected by their children. But, so far as I know, these peoples are not numerous, and can hardly be regarded as representatives of a custom common to any larger ethnic group.

Thus, according to Hearne, "old age is the greatest calamity that can befall a Northern Indian; for when he is past labour, he is neglected, and treated with great disrespect, even by his own children. They not only serve him last at meals, but generally give him the coarsest and worst of the victuals; and such of the skins as they do not chuse to wear, are made up in the clumsiest manner into clothing for their aged parents."[1] Yet among the same people Richardson witnessed "several unquestionable instances of tenderness and affection shown by children to their parents, and of compliance with their whims, much to their own personal inconvenience."[2] In his work on the tribes of California Mr. Powers observes:—"Filial piety cannot be said to be a distinguishing quality of the Wailakki, or, in fact, of any Indians. No matter how high may be their station, the aged and decrepit are counted a burden. The old man, hero of a hundred battles, sometime 'lord of the lion heart and eagle eye,' when his fading eyesight no more can guide the winged arrow as of yore, is ignominiously compelled to accompany his sons into the forest, and bear home on his poor old shoulders the game they have killed."[3] But concerning the Indians of Upper California Beechey writes, "When any of their relations are indisposed, the greatest attention is paid to their wants, and it was remarked by Padre Arroyo that filial affection is stronger in these tribes than in any civilised nation on the globe with which he was acquainted."[4] Among the Indians on the east side of the Rocky Mountains, "the aged are commonly treated with much respect, which they consider themselves as entitled to claim"; and they "are not suffered to want any thing which they need, and which

[1] Hearne, *Journey to the Northern Ocean*, p. 345 *sq.*

[2] Richardson, *Arctic Searching Expedition*, ii. 17.

[3] Powers, *op. cit.* p. 118 *sq.*

[4] Beechey, *Voyage to the Pacific and Behring's Strait*, ii. 402.

it is in the power of their relations to procure for them."[1] The religious teachers of the Iroquois inculcated the duty of protecting aged parents, as divinely enjoined :—"It is the will of the Great Spirit that you reverence the aged, even though they be as helpless as infants."[2] The Aleuts described by Veniaminof considered disregard of one's parents to be the greatest and most dishonourable of crimes ; "we should sincerely love them," they said, "do all we could toward their support, remain with them, and care for them until their death."[3] The children of the Central Eskimo are very dutiful, obeying the wishes of their parents and taking care of them in their old age ;[4] and statements to the same effect are made with reference to other Eskimo tribes.[5] Cranz, who did not generally panegyrise the moral qualities of the Greenlanders, wrote that the bonds of filial and parental love seem stronger in them than amongst other nations, and that "ingratitude in up-grown children towards their old decrepit parents, is scarcely exemplified among them."[6] Among the Botocudos Prince Wied-Neuwied saw a young man carrying about his blind father, not leaving him alone for a single moment.[7] Among the Fuegians "grown-up children are expected to support their parents when they become aged ; the son generally makes his father, if he is past work, a canoe every season, and if the aged man is a widower he lives entirely under the charge of his eldest son."[8] The Australian natives are much praised for the regard with which they treat their parents and elders. With reference to the Western tribes, Bishop Salvado observes :—"Les fils adultes payent de retour l'affection de leurs parents. S'ils sont vieux, ils réservent pour eux les meilleurs pièces de gibier, ou de tout autre mets, et se chargent de venger leurs offenses."[9] Among the Kukis of India, "when past work, the father and mother are supported by their children."[10] Among the Bódo and Dhimáls "it is

[1] Harmon, *Voyages and Travels in the Interior of North America*, p. 348.

[2] Morgan, *League of the Iroquois*, p. 171.

[3] Veniaminof, quoted by Petroff, *loc. cit.* p. 155.

[4] Boas, 'Central Eskimo,' in *Ann. Rep. Bur. Ethn.* vi. 566.

[5] Murdoch, 'Point Barrow Expedition,' in *Ann Rep. Bur. Ethn.* ix. 417. Turner, 'Ungava District,' *ibid.* xi. 191.

[6] Cranz, *op. cit.* i. 174, 150. *Cf.* Egede, *Description of Greenland*, p. 147 ; Holm, 'Ethnologisk Skizze af Angmagsalikerne,' in *Meddelelser om Grönland*, x. 93.

[7] Wied-Neuwied, *op. cit.* ii. 40.

[8] Bridges, 'Manners and Customs of the Firelanders,' in *A Voice for South America*, xiii. 206.

[9] Salvado, *Mémoires historiques sur l'Australie*, p. 277. *Cf.* Curr, *The Australian Race*, iii. 155 ; Gason, 'Dieyerie Tribe,' in Woods, *Native Tribes of South Australia*, p. 258 ; Mathew, 'Australian Aborigines,' in *Jour. & Proceed. Roy. Soc. N. S. Wales*, xxiii. 388.

[10] Lewin, *Wild Races of South-Eastern India*, p. 256.

deemed shameful to leave old parents entirely alone; and the last of the sons, who by his departure does so, is liable to fine as well as disinheritance."[1] Among the Betsileo of Madagascar "the old are never left destitute or to their own devices. . . . It is by no means uncommon to see the son carrying the aged parent on his back, when necessity or inclination demands locomotion."[2] Among the Mandingoes "the aged who are unable to support themselves are always maintained and treated with respect by their children."[3] That uncivilised races commonly regard it a stringent duty for children to maintain their aged parents and to administer to their wants, is also obvious from statements testifying their filial regard in general terms.[4] On the other hand, the fact that some peoples are said to be deficient in this sentiment, does not imply that they fail to recognise the simple duty of supporting old and helpless parents.

At a higher stage of civilisation reverence for parents reaches its pitch, and the duty of maintaining them in their old age is taken for a matter of course. Among the present Hindus "it would certainly be regarded as a most disgraceful thing were a man who could do anything for the support of an aged father or mother to allow the burden of their maintenance to fall on strangers";[5] and it is common for unmarried soldiers to stint themselves almost to starvation point, that they may send home money to their parents.[6] The priesthood of modern Buddhism teach that children shall "respect their parents, and perform all kinds of offices for them, even though they should have servants whom they could command to do all that they require."[7] At ancient Athens, before a man could become a magistrate, evidence was to be produced that he had treated his parents properly; and a person who refused his parents food and dwelling lost his right of speaking in the national assembly.[8] According to

[1] Hodgson, *Miscellaneous Essays*, i. 123.
[2] Shaw, in *Antananarivo Annual*, iii. 82.
[3] Caillié, *op. cit.* i. 352.
[4] See *infra*, on the Subjection of Children.
[5] Wilkins, *Modern Hinduism*, p. 418.
[6] Monier Williams, *Indian Wisdom*, p. 440, n. 1.
[7] Hardy, *op. cit.* p. 494. *Cf. ibid.* p. 495.
[8] Schmidt, *Ethik der alten Griechen*, ii. 144.

the Icelandic Grágás, a man should maintain in the first place his mother, in the second his father, in the third his own children.[1] The Talmud enjoins the duty of maintaining parents;[2] and so does Muhammedan law, "if the parents are both poor and lastingly infirm, or both poor and insane."[3]

Christianity, as will be shown, in one essential point changed the notions of antiquity regarding children's duties towards their parents: it made these duties subordinate to men's duties towards God. "Verily I say unto you, There is no man that hath left house, or brethren, or sisters, or father, or mother, or wife, or children, or lands, for my sake, and the gospel's, but he shall receive an hundredfold now in this time, houses, and brethren, and sisters, and mothers, and children, and lands, with persecutions; and in the world to come eternal life."[4] There are numerous legends and lives of saints in which the desertion of the nearest relations is recorded as one of the leading features of their sanctity, and as one of their chief titles to honour.[5] Some Catholic writers were of opinion that a man might lawfully abandon his parents, even though they could not be supported without him, and enter religion, committing the care of them to God. But Thomas Aquinas says that this would be tempting God, adding however that he who has already professed religion "ought not, on any plea of supporting his parents, to quit the cloister in which he is buried with Christ, and entangle himself again in worldly business."[6] Yet our duties towards our parents come next to our duties towards God. We ought to aid them when in want, and to supplicate God in their behalf that they may lead prosperous and happy lives.[7]

The duty of supporting aged parents has its root in

[1] *Grágás*, Omaga-balkr, 1, vol. i. 232.
[2] Katz, *Der wahre Talmudjude*, p. 119.
[3] Sachau, *op. cit.* p. 17 *sq.*
[4] *St. Mark*, x. 29 *sq.*
[5] *Cf.* Farrer, *Paganism and Christianity*, p. 196.
[6] Thomas Aquinas, *Summa Theologica*, ii.-ii. 101. 4.
[7] *Catechism of the Council of Trent*, iii. 5. 10 *sq.*

the sentiments of affection, gratitude, and regard, and, to some extent, in superstitious fear. However feeble they be, the parents have in their hands a powerful weapon—the curse; or, when they are dead, their ghosts may avenge their wrongs on their neglectful children. All these circumstances will be discussed in the chapter dealing with the subjection of children.

We have further to consider the duty of assisting brothers and sisters and more distant relatives. Among the Aleuts, says Veniaminof, a brother "must always aid his brother in war as well as in the chase, and each protect the other; but if anybody, disregarding this natural law, should go to live apart, caring only for himself, such a one should be discarded by his relatives in case of attack by enemies or animals, or in time of storms; and such dishonourable conduct would lead to general contempt."[1] Among the Point Barrow Eskimo "the older children take very good care of the smaller ones";[2] and of the Sia Indians (Pueblos) we are told that "a marked trait is their loving kindness and care for younger brothers and sisters."[3] Dr. Schweinfurth writes:—"Notwithstanding . . . that certain instances may be alleged which seem to demonstrate that the character of the Dinka is unfeeling, these cases never refer to such as are bound by the ties of kindred. Parents do not desert their children, nor are brothers faithless to brothers, but are ever prompt to render whatever aid is possible."[4] I presume that these examples of fraternal relations may, on the whole, be regarded as expressive of universal facts. According to Confucius, the love which brother should bear to brother is second only to that which is due from children to parents.[5]

The duty of assisting more distant relatives is much more variable. It may be said that, as a general rule, among

[1] Veniaminof, quoted by Petroff, *loc. cit.* p. 155.
[2] Murdoch, in *Ann. Rep. Bur. Ethn.* ix. 417.
[3] Stevenson, 'Sia,' in *Ann. Rep. Bur. Ethn.* xi. 22.
[4] Schweinfurth, *Heart of Africa*, i. 169.
[5] Douglas, *Confucianism and Taouism*, p. 123.

savages and barbarians—with the exception, perhaps, of those who live in small family-groups—as also among the peoples of archaic culture, this duty is more prominent and extends further than amongst ourselves. The blood-tie has much greater strength, related families keep more closely together for mutual protection and aid. The Angmagsaliks of Eastern Greenland, says Lieutenant Holm, consider that the tie of blood imposes mutual assistance as a duty under all circumstances.[1] The Omahas maintain that "generosity cannot be exercised toward kindred, who have a natural right to our assistance."[2] Among the natives of Madagascar "the claims of relationship are distinctly recognised by custom and law. If one branch of a family becomes poor, the members of the same family support him; if he be sold into slavery for debt, they often unite in furnishing the price of his redemption. . . . The laws facilitate and encourage, and sometimes even enforce, such acts of kindness."[3] In his description of the Australian Bangerang, Mr. Curr observes, "Though their ways were different from ours, it always seemed to me that the bonds of friendship between blood relations were stronger, as a rule, with savages than amongst ourselves."[4] Among the Philippine Islanders "families are very united, and claims for help and protection are admitted, however distant the relationship may be."[5] Of the Burmans it is said, "No people can be more careful in preserving and acknowledging the bonds of family relationship to the remotest degrees, and not merely as a matter of form, but as involving the duty of mutual assistance."[6] Among the ancient Hindus, Persians, Greeks, and Romans, persons belonging to the four generations of near relatives—the Sapindas, Syngeneis, Anchisteis, or Propinqui—were expected to assist

[1] Holm, in *Meddelelser om Grönland*, x. 87.
[2] Dorsey, 'Omaha Sociology,' in *Ann. Rep. Bur. Ethn.* iii. 274.
[3] Ellis, *History of Madagascar*, i. 138. *Cf.* Sibree, *The Great African Island*, p. 256 *sq.*
[4] Curr, *Recollections of Squatting in Victoria*, p. 274.
[5] Foreman, *Philippine Islands*, p. 186.
[6] Forbes, *British Burma*, p. 59.

each other whenever it was needed.[1] The Scandinavians considered him to be a bad man who did not help his kindred against strangers, even though there was enmity between the relatives.[2]

But the duty of helping the needy and protecting those in danger goes beyond the limits of the family and the *kin*. Uncivilised peoples are, as a rule, described as kind towards members of their own community or tribe. Between themselves charity is enjoined as a duty, and generosity is praised as a virtue. Indeed, their customs regarding mutual aid are often much more stringent than our own. And this applies even to the lowest savages.[3]

"La disposition à la générosité," says M. Hyades, "est un trait caractéristique des Fuégiens. Ils aiment à partager ce qu'ils ont avec tous ceux qui les entourent."[4] Captain Weddell likewise speaks of "the philanthropic principle which these people exhibit towards one another."[5] Burchell tells us that the Bushmans, between themselves, "exercise the virtues of hospitality and generosity, often in an extraordinary degree."[6] The Veddahs of Ceylon are friendly towards each other, and ready to help a person in distress.[7] The Andamanese display much mutual affection in their social relations, and frequently make presents of the best that they possess. "Every care and consideration," says Mr. Man, "are paid by all classes to the very young, the weak, the aged, and the helpless, and these, being made special objects of interest and attention, invariably fare better in regard to the comforts and necessaries of daily life than any of the otherwise more fortunate members of the community."[8] The Australian natives are almost universally praised for their friendly behaviour towards persons

[1] Leist, *Alt-arisches Jus Civile*, i. 47 *sqq.*, 231 *sqq.*

[2] Rosenberg, *Nordboernes Aandsliv*, i. 488.

[3] The prevalence of mutual aid in uncivilised communities has been duly emphasised by Prince Kropotkin, *Mutual Aid*, p. 76 *sqq.*

[4] Hyades and Deniker, *Mission scientifique du Cap Horn*, vii. 243.

[5] Weddell, *op. cit.* p. 168. According to other authorities, the Fuegians, though free from malevolence and cruelty, are not distinguished for active benevolence (Bridges, in *A Voice for South America*, xiii. 208, 213. Bove, *Patagonia*, pp. 133, 137. Lovisato, 'Appunti etnografici sulla Terra del Fuoco,' in *Cosmos di Guida Cora*, viii. 145, 151. *Cf.* also Hyades and Deniker, *op. cit.* vii. 238, 240, 243 *sq.*).

[6] Burchell, *Travels in the Interior of Southern Africa*, ii. 54.

[7] Sarasin, *Ergebnisse naturwissenschaftlicher Forschungen auf Ceylon*, iii. 545, 550. Schmidt, *Ceylon*, p. 276.

[8] Man, in *Jour. Anthr. Inst.* xii. 93 *sq.* *Cf.* Portman, *ibid.* xxv. 368.

belonging to their own people.[1] Presents given to one of a group are speedily divided as far as possible among the rest, and when a black man has employment at a station he generally gives away most of his earnings to his comrades in the camp.[2] "Between the males of a tribe," says Mr. Curr, "there always exists a strong feeling of brotherhood, so that, come weal come woe, a man can always calculate on the aid, in danger, of every member of his tribe."[3] Regarding the Central Australian natives, Messrs. Spencer and Gillen observe that their treatment of one another "is marked on the whole by considerable kindness, that is, of course, in the case of members of friendly groups, with every now and then the perpetration of acts of cruelty."[4] Collins says that the aborigines about Botany Bay and Port Jackson "applauded acts of kindness and generosity, for of both these they were capable."[5]

Passing to savages and barbarians who have reached a somewhat higher level of culture:—We are told by Mr. Catlin, with reference to the North American Indians, that, "to their friends, there are no people on earth that are more kind."[6] According to Adair, "they are very kind and liberal to every one of their own tribe, even to the last morsel of food they enjoy"; Nature's school "teaches them the plain easy rule, 'do to others, as you would be done by.'"[7] Harmon praises the generosity of the Indians:—"They are more ready, in proportion to their means, to assist a neighbour who may be in want, than the inhabitants, generally, of civilised countries. An Indian rarely kills an animal, without sending a part of it to a neighbour if he has one near him."[8] The Naudowessies "supply the deficiency of their friends with any superfluity of their own," and "in dangers they readily give assistance to those of their band

[1] Curr, *The Australian Race*, i. 49. Hodgson, *Reminiscences of Australia*, p. 88. Oldfield, 'Aborigines of Australia,' in *Trans. Ethn. Soc.* N.S. iii. 226. Eyre, *op. cit.* ii. 385 *sq.* Brough Smyth, *op. cit.* ii. 279. Lumholtz, *Among Cannibals*, p. 176. Mathew, in *Jour. & Proceed. Roy. Soc. N.S. Wales*, xxiii. 387 *sq.* Breton, *Excursions in New South Wales*, p. 218. Fison and Howitt, *op. cit.* p. 259. Wyatt, 'Manners and Superstitions of the Adelaide and Encounter Bay Aboriginal Tribes,' in Woods, *Native Tribes of South Australia*, p. 162. Schuermann, 'Aboriginal Tribes of Port Lincoln,' *ibid.* pp. 243, 244, 247.

[2] Schuermann, *loc. cit.* p. 244. Ridley, *Kámilaróí*, p. 158. Fison and Howitt, *op. cit.* p. 256. Lumholtz, *Among Cannibals*, pp. 199, 343. Stirling, *Report of the Horn Expedition to Central Australia. Part IV. Anthropology*, p. 36.

[3] Curr, *The Australian Race*, i. 62.

[4] Spencer and Gillen, *Native Tribes of Central Australia*, p. 50.

[5] Collins, *English Colony in New South Wales*, i. 549

[6] Catlin, *North American Indians*, ii. 241.

[7] Adair, *History of the American Indians*, pp. 431, 429.

[8] Harmon, *op. cit.* p. 349.

who stand in need of it, without any expectation of return."[1] Among the Iroquois "kindness to the orphan, hospitality to all, and a common brotherhood, were among the doctrines held up for acceptance by their religious instructors"; an Iroquois "would surrender his dinner to feed the hungry, vacate his bed to refresh the weary, and give up his apparel to clothe the naked."[2] Among the Omahas grades of merit or bravery were of two sorts: to the first class belonged such as had given to the poor on many occasions, and had invited guests to many feasts. To the second class belonged those who, besides having done these things many times, had killed several of the foe, and had brought home many horses. When a person sees a poor man or woman, they said, he should make presents to the unfortunate being; thus he can gain the goodwill of Wakanda as well as that of his own people.[3] The Ahts of Vancouver Island succour any one in need of help, without looking for any ulterior benefit.[4] The Aleuts were instructed to be kind to others and to refrain from selfishness; it was the custom for the successful hunter or fisher, particularly in times of scarcity, to share his prize with all, not only taking no larger share, but often less than the others.[5] Among the Eskimo about Behring Strait, whenever a successful trader accumulates property and food, and is known to work solely for his own welfare, he becomes an object of enmity and hatred among his fellow-villagers, which ends in one of two ways—the villagers may compel him to make a feast and distribute his goods, or they may kill him and divide his property among themselves.[6] According to the Greenland creed, all those who had striven and suffered for the benefit of their fellow-men should find a happy existence after death in the abodes of the supreme being, Tornarsuk.[7] "The Greenlander," says Dr. Nansen, "is the most compassionate of creatures with regard to his neighbour. His first social law is to help others."[8] Captain Hall holds an equally favourable opinion of those Eskimo with whom he came in contact. "As between themselves," he says, "there can be no people exceeding them in this virtue—kindness of heart. Take, for instance, times of great scarcity of food. If one family happens to have any provisions on

[1] Carver, *op. cit.* p. 247.

[2] Morgan, *League of the Iroquois*, pp. 172, 329

[3] Dorsey, 'Omaha Sociology,' in *Ann. Rep. Bur. Ethn.* iii. 333, 274. *Cf. Idem*, 'Siouan Sociology,' *ibid.* xv. 232 (Kansas).

[4] Sproat, *op. cit.* p. 166.

[5] Veniaminof, quoted by Petroff, *loc. cit.* p. 155, and Dall, *Alaska*, p. 392.

[6] Nelson, 'Eskimo about Bering Strait,' in *Ann. Rep. Bur. Ethn.* xviii. 305.

[7] Rink, *Greenland*, p. 141.

[8] Nansen, *First Crossing of Greenland*, ii. 304. *Cf. ibid.* ii. 334; Nansen, *Eskimo Life*, pp. 116, 177; Egede, *op. cit.* pp. 123, 126 *sq.*

hand, these are shared with all their neighbours. If one man is successful in capturing a seal, though his family may need it all to save them from the pangs of hunger, yet the whole of his people about, including the poor, the widow, the fatherless, are at once invited to a seal-feast."[1] They believe that all Innuits who have been good, "that is, who have been kind to the poor and hungry," will after death go to Koodleparmiung, or heaven, whereas those who have been bad, "that is, unkind to one another," will go to Adleparmeun, or hell.[2] Many of the South American peoples are praised for their kind disposition of mind;[3] the Guiana Indians seemed to a Christian missionary to be "generous to a fault."[4] The Caribs had all their interests in common, lived in great harmony, and loved each other heartily.[5]

Among the Tonga Islanders the sentiment of humanity, or a fellow-feeling for one another, is universally approved. They "are not only not selfish, but admire liberality, and are practically liberal." When any one is about to eat, he always shares what he has with those about him without any hesitation, and not to do so would be considered exceedingly vile and selfish. So, also, "if one chief sees something in the possession of another, which he has a strong desire to have, he has only to ask him for it, and in all probability it is readily and liberally given."[6] Not even the Fijians, who took great pains to instil into the minds of their youth a contempt for compassionate impulses and an admiration for relentless cruelty,[7] were destitute of humanity and friendly feelings.[8] In Aneiteum, of the New Hebrides, the people believed that the sin which would be visited with the severest punishment in the land of the dead was stinginess or niggardliness in giving away food, and that the virtue which received the highest reward was a generous hospitality and a giving liberally at feasts.[9] In Tana, another island belonging to the same group, "one man has only to ask anything from his neighbours, and he gets it."[10] Of the New Caledonians Mr. Atkinson states that, among themselves, they are "of a generosity that seems to arise mainly from aversion to refuse any request."[11] The Dyaks are described as hospitable,

[1] Hall, *Arctic Researches*, p. 567.
[2] *Ibid.* p. 571 *sq.*
[3] von Martius, *Beiträge zur Ethnographie Amerika's*, i. 217, 641 (Guarayos, Macusis). Musters, *op. cit.* p. 195 (Patagonians).
[4] Brett, *Indian Tribes of Guiana*, p. 276.
[5] de Poircy-Rochefort, *Histoire naturelle et morale des Iles Antilles*, p. 460.
[6] Mariner, *op. cit.* ii. 153, 154, 165.
[7] Erskine, *Cruise among the Islands of the Western Pacific*, p. 247.
[8] *Ibid.* pp 247, 273. Williams and Calvert, *op. cit.* pp. 93, 115 *sqq.* Seemann, *Viti*, p. 192.
[9] Inglis, *In the New Hebrides*, p. 31.
[10] Campbell, *A Year in the New Hebrides*, p. 169.
[11] Atkinson, in *Folk-Lore*, xiv. 248.

kindly, and humane, "to a degree which well might shame ourselves";[1] whilst the practice of head-hunting is carried on by every tribe at the expense of its neighbour, the members of each community have strong feelings of sympathy for each other.[2] Among the Sea Dyaks, says Crossland, "if any are sick or unable to work, the rest help; and there seems to me a much stronger bond of union amongst them than I have ever seen among the labouring classes in England."[3]

The Santals are gentle and very obliging, and sociable to a fault among their own people.[4] The Hos "are charitable to those deserving aid."[5] The Todas believe that, after death, the souls of good people will have enjoyment in heaven, whilst the souls of bad people will suffer punishment; "a good man is, in the Toda estimation, one who is given to deeds of charity, and a bad man one who is uncharitable (this in order of precedence), quarrelsome, thieving, &c."[6] Mr. Batchelor states that "a more kind, gentle, and sympathetic people than the Ainos of Japan would be very difficult to find"; anything given to them they always divide with their friends.[7] The Samoyedes are ready to share their last morsel with their companions; and it is said that nobody can surpass the poor Ostyak in benevolence and other virtues of the heart.[8] "The finest trait in the character of a Bedouin (next to good faith)," Burckhardt observes, "is his kindness, benevolence, and charity. . . . Among themselves, the Bedouins constitute a nation of brothers; often quarrelling, it must be owned, with each other, but ever ready, when at peace, to give mutual assistance."[9] Generosity is a virtue which always commands particular respect in the desert.[10] The Arabs of the Soudan have a saying that "you must always put other people's things on your head, and your own under your arm. Then, if there be danger of the things falling off your head, you must raise your arm, and let fall your own things to save those of others."[11]

[1] Boyle, *Adventures among the Dyaks of Borneo*, p. 215.

[2] Bock, *Head-Hunters of Borneo*, p. 210 *sq.* Brooke, *Ten Years in Sarâwak*, i. 57.

[3] Crossland, quoted by Ling Roth, *Natives of Sarawak*, i. 85.

[4] Man, *Sonthalia*, p. 19 *sq.* Hunter, *Annals of Rural Bengal*, i. 215.

[5] Tickell, 'Memoir on the Hodésum,' in *Jour. Asiatic Soc. Bengal*, ix. (pt. ii.) 807.

[6] Thurston, 'Todas of the Nilgiris,' in the Madras Government Museum's *Bulletin*, i. 166 *sq.*

[7] Batchelor, *Ainu of Japan*, p. 19. Holland, 'Ainos,' in *Jour. Anthr. Inst.* iii. 235.

[8] Castrén, *op. cit.* i. 238; ii. 55.

[9] Burckhardt, *Notes on the Bedouins and Wahábys*, p. 208.

[10] Wallin, *Reseanteckningar från Orienten*, iii. 244. Blunt, *Bedouin Tribes of the Euphrates*, ii. 224.

[11] Richardson, *Mission to Central Africa*, i. 117.

The Barea are a benevolent people, kind even to strangers.[1] The Manganja, in the neighbourhood of Lake Nyassa, "are generous in the distribution of food," and even when starving they share the last morsel with their friends.[2] Sir H. Johnston says that he has never met with "a more kindly, sensible, considerate set of beings" than the Wa-taveita.[3] The Eastern Central Africans, the Rev. D. Macdonald observes, "are not mere animals composed of greed and selfishness. They often shew great bravery and devotedness. I can point to one man who saved my life on three separate occasions at the risk of his own."[4] Among the Bechuanas a regard for the poor, for widows, and for orphans, is everywhere considered to be a sacred duty.[5] Among all the virtues the Basutos appreciate none more than kindness. They have a saying that "one link only sounds because of another"—which implies that we cannot do without the help of our fellow-creatures,—and another saying that "one does not skin one's game without showing it to one's friends"—that is, when we have been successful in our undertakings, it becomes us to be generous. If any food is brought to them while they are in each other's society, however small may be the quantity, every one must have a taste.[6] The Kafirs are a kindly race; Lichtenstein says that "whenever anyone kills an ox he must invite all his neighbours to partake of it, and they remain his guests till the whole is eaten."[7] Of the Hottentots Kolben states:—"They are certainly the most friendly, the most liberal, and the most benevolent people to one another that ever appear'd upon earth . . . . They are charmed with opportunities of obliging each other, and one of their greatest pleasures lies in interchanging gifts and good offices."[8] "A Hottentot," says Barrow, "would share his last morsel with his companions."[9] Drury wrote of the people of Madagascar:—"They certainly treat one another with more humanity than we do. Here is no one miserable, if it is in the power of his neighbours to help him. Here is love, tenderness, and generosity which might

[1] Munzinger, *Ostafrikanische Stu-ien*, p. 534.
[2] Rowley, *Africa Unveiled*, p. 47.
[3] Johnston, *Kilima-njaro Expedi-on*, p. 436.
[4] Macdonald, *Africana*, i. 270, 266.
[5] Arbousset and Daumas, *Explor-tory Tour to the North-East of the olony of the Cape of Good Hope*, p. 02.
[6] Casalis, *Basutos*, pp. 206, 207, 301, 306, 309 *sqq.*
[7] Leslie, *Among the Zulus and Amatongas*, p. 203. Lichtenstein, *Travels in Southern Africa*, i. 272.
[8] Kolben, *Present State of the Cape of Good Hope*, i. 334 *sq.* *Cf. ibid.* i. 167.
[9] Barrow, *Travels into the Interior of Southern Africa*, i. 151.

shame us; and . . . . this is . . . . all over the island."[1] Ellis likewise observes that, in Madagascar, assisting in distress, and lending and borrowing property and money, are carried on much more commonly and freely than amongst neighbours or relatives in England, and that a kindness of heart in these things is always esteemed excellent.[2]

Among many savages the old people, in particular, have a claim to support and assistance, not only from their own children or relatives, but from the younger members of the community generally.

Among the Australian natives the old men get the best and largest share of everything, and are allowed to monopolise the youngest and best-looking women, whilst a young man must consider himself fortunate if he can get an old woman for wife.[3] Among the Tonga Islanders "every aged man and woman enjoys the attentions and services of the younger branches of society."[4] In the Kingsmill Islands "generosity, hospitality, and attention to the aged and infirm are virtues highly esteemed and generally practised among all the natives."[5] Among the Kafirs, when persons advanced in years become sick and helpless, "everyone is eager to afford them assistance."[6] In the opinion of the Aleuts, "feeble old men must be respected and attended when they need aid, and the young and strong should give them a share of their booty and help them through all their troubles, endeavouring to obtain in exchange their good advice only."[7]

The sick, also, are often very carefully attended to.

Among the coast tribes of British Columbia Mr. Duncan "always found one or two nurses to an invalid, if the case was

[1] Drury, *Adventures during Fifteen Years' Captivity on the Island of Madagascar*, p. 172 *sq.*

[2] Ellis, *History of Madagascar*, i. 139. For other African instances, see Mungo Park, *Travels in the Interior of Africa*, p. 17 (Mandingoes); Burton, *Abeokuta*, i. 303 (Yoruba); *Idem*, *Two Trips to Gorilla Land*, i. 106 (Mpongwe); Monrad, *Guinea-Kysten og dens Indbyggere*, p. 7; Johnston, *River Congo*, p. 423 (races of the Upper Congo); Wilson and Felkin, *op. cit.* i. 225 (Waganda).

[3] Eyre, *op. cit.* ii. 385 *sq.* Mathew, in *Jour. & Proceed. Roy. Soc. N.S. Wales*, xxiii. 407. Lumholtz, *Among Cannibals*, p. 163. *Cf.* Grey, *Journals of Two Expeditions of Discovery in North-West and Western Australia*, ii. 248; Brough Smyth, *op. cit.* i. 138; Spencer and Gillen, *Native Tribes of Central Australia*, p. 51.

[4] Mariner, *op. cit.* ii. 155.

[5] Hale, *U.S. Exploring Expedition. Vol. VI. Ethnography and Philology*, p. 95.

[6] Lichtenstein, *op. cit.* i. 265.

[7] Veniaminof, quoted by Petroff, *loc. cit.* p. 155.

at all bad; the sympathy of the nurses, too, seemed very great."[1] Beechey says of the wild Indians of Upper California :— "The very great care taken of all those who are affected with any disease ought not to be allowed to escape a remark. When any of their relations are indisposed, the greatest attention is paid to their wants."[2] Keating noticed the kind and humane treatment which the Potawatomis extended even to the idiots.[3] The Koriaks "carefully attend those who are sick."[4] The same is said of the Ainos of Japan,[5] and the Tagbanuas of the Philippine Islands.[6] In Sarawak no relative is abandoned because an injury or illness may have incapacitated him for work.[7] When a Dyak is ill at home, the women nurse the patient in turn.[8] In Samoa "the treatment of the sick was invariably humane."[9] In Tana,[10] Humphrey's Island,[11] Erromanga,[12] and Tasmania,[13] they were likewise kindly attended to; and the same is the case at least among many of the Australian tribes.[14] Concerning the aborigines of Herbert River, in Northern Queensland, Lumholtz writes :—"The natives are very kind and sympathetic towards those who are ill, and they carry them from camp to camp. This is the only noble trait I discovered in the Australian natives."[15] In various parts of Australia the blind, and especially the aged blind, are carefully tended; travellers on the northern coast of the continent have noticed that these are generally the fattest of the company, being supplied with the best of everything.[16] "No trait in the character of the Malagasy," says Ellis, "is more creditable to their humanity, and more gratifying to our benevolent feelings, than the kind, patient, and affectionate manner in which they attend upon the sick."[17] A similar praise is bestowed upon the

[1] Duncan, quoted by Mayne, *Four Years in British Columbia*, p. 292 *sq.*
[2] Beechey, *op. cit.* ii. 402.
[3] Keating, *Expedition to the Source of St. Peter's River*, i. 100.
[4] Krasheninnikoff, *op. cit.* p. 233.
[5] von Siebold, *Die Aino auf der Insel Yesso*, p. 11.
[6] Worcester, *Philippine Islands*, p. 494.
[7] St. John, *Life in the Forests of the Far East*, ii. 323.
[8] Bock, *Head-Hunters of Borneo*, p. 211.
[9] Turner, *Samoa*, p. 141. *Cf.* Pritchard, *Polynesian Reminiscences*, p. 146.
[10] Turner, *Samoa*, p. 323.
[11] *Ibid.* p. 276.
[12] Robertson, *Erromanga*, p. 399.
[13] Ling Roth, *Aborigines of Tasmania*, p. 47. Bonwick, *Daily Life and Origin of the Tasmanians*, p. 10.
[14] Brough Smyth, *op. cit.* ii. 284 (West Australian natives). Schuermann, 'Aboriginal Tribes of Port Lincoln,' in Woods, *Native Tribes of South Australia*, p. 225.
[15] Lumholtz, *Among Cannibals*, p. 183.
[16] Ridley, *Kámilaróí*, p. 169. Eyre, *op. cit.* ii. 382 Barrington, *History of New South Wales*, p. 23. Stirling, *op. cit.* p. 36.
[17] Ellis, *History of Madagascar*, i. 231 *sq.*

Mandingoes[1] and Kafirs.[2] Among the Zulus, says Mr. J. Tyler, "work, however important, is at once suspended that they may help their afflicted friends."[3]

Whilst the information which I have been able to gather on the social customs of uncivilised races seems to indicate that, in the majority of cases, mutual kindness and goodwill prevail within their communities, there are not wanting statements of a different character. But these statements are, after all, exceptional, and some of them are either ambiguous or obviously inexact. Only too often travellers represent to us the savage, not as he is in his daily life amidst his own people, but as he behaves towards his enemy, or towards a stranger who enters his country uninvited. As an experienced observer remarks, "the savage, passionate and furious with the feeling of revenge, slaughtering and devouring his enemy and drinking his blood, is no longer the same being as when cultivating his fields in peace; and it would be as unjust to estimate his general character by his actions in these moments of unrestrained passion, as to judge of Europeans by the excesses of an excited soldiery or an infuriated mob."[4] Moreover, many accounts of savages date from a period when they have already been affected by contact with a "higher culture," as we call it, a culture which almost universally has proved to exercise a deteriorating influence on the character of the lower races. Among the North American Indians, for instance, "there was more good-will, hospitality, and charity, practised towards one another" before white people came and resided among them;[5] whereas contact with civilisation has made them "false, suspicious, avaricious and hard-hearted."[6] As has been truly said, "search modern history, and in the North

[1] Caillié, *op. cit.* i. 354.
[2] Lichtenstein, *op. cit.* i. 266.
[3] Tyler, *Forty Years among the Zulus*, p. 195.
[4] Dieffenbach, *Travels in New Zealand*, ii. 130 *sq.*
[5] Warren, in Schoolcraft, *Indian Tribes of the United States*, ii. 139.
[6] Domenech, *Seven Years' Residence in the Great Deserts of North America*, ii. 69.

and South and East and West the story is ever the same—we come, we civilise, and we corrupt or exterminate."[1]

Among the semi-civilised and civilised nations charity has universally been regarded as a duty, and has often been strenuously enjoined by their religions. When Spain and Peru first came into contact, the Americans surpassed the Spaniards in brotherly love and systematic care for the needy. They had a poor-law according to which the blind, lame, aged, and infirm, who could not till their own lands so as to clothe and feed themselves, should receive sustenance from the public stores.[2] The ancient Mexicans, according to Clavigero, seemed to give without reluctance what had cost them the utmost labour to acquire.[3] "The great virtue of the Coreans is their innate respect for and daily practice of the laws of human brotherhood. Mutual assistance and generous hospitality among themselves are distinctive national traits."[4] According to Chinese law, "all poor destitute widowers and widows, the fatherless and childless, the helpless and the infirm, shall receive sufficient maintenance and protection from the magistrates of their native city or district, whenever they have neither relations nor connections upon whom they can depend for support."[5] "Benevolence," said Confucius, "is more to man than either water or fire."[6] To assist the needy, to feed the hungry, to clothe the naked, to succour the sick, to save men in danger—these and similar acts of kindness are, according to Chinese beliefs, merits which will be rewarded by the unseen powers that watch human conduct, whereas the uncharitable and parsimonious are threatened with divine punishments.[7] In a book of Buddhistic-Confucian flavour,

[1] Boyle, *op. cit.* p. 108.

[2] Garcilasso de la Vega, *First Part of the Royal Commentaries of the Yncas*, ii. 34.

[3] Clavigero, *History of Mexico*, i. 81.

[4] Griffis, *Corea*, p. 288.

[5] *Ta Tsing Leu Lee*, sec. lxxxix. p. 93. On the charitable institutions of the Chinese, see Staunton, *ibid.* p. 93 n. * ; Smith, *Chinese Characteristics*, p. 186 *sq.*

[6] Douglas, *Confucianism and Taouism*, p. 109.

[7] 'Merits and Errors Scrutinized,' in *Indo-Chinese Gleaner*, iii. 159, 161 *sqq.*; *Thâi Shang*, 3. 'Divine Panorama,' in Giles, *Strange Stories from a Chinese Studio*, ii. 370, 371, 374, 379. Douglas,

as familiar to the youth of Japan as the Sermon on the Mount is to us, it is said, "Above all things, men must practise charity; it is by almsgiving that wisdom is fed."[1] According to the Dhammapada, "the uncharitable do not go to the world of the gods; fools only do not praise liberality; a wise man rejoices in liberality, and through it becomes blessed in the other world."[2] Indeed, in the didactic poetry of Buddhism the virtue of beneficence occupies the most prominent place; without any regard to what is the measure of the real benefit thereby extended to the recipient of the gift, the legends set before us as a duty the most unbounded generosity, pushed even to the extreme of self-destruction.[3] And in its conception of charity and liberality, as in all other points of worldly morality, Buddhism does not differ from the standard recognised in India since ancient times.[4] Already in the Vedic hymns praise is bestowed on those who from their abundance willingly dispense to the needy, on those who do not turn away from the hungry, on those who are kind to the poor.[5] In the Hitopadesa it is said that the good man shows pity even to the worthless, as the moon does not withdraw its light even from a member of the lowest caste.[6] The sacred law-books of India are full of prescriptions enjoining almsgiving as a duty on all twice-born men.[7] "A householder must give as much food as he is able to spare to those who do not cook for themselves, and to all beings one must distribute food without detriment to one's own interest."[8] The student "should always without sloth give alms out of whatever he has for food."[9] The Brâhmana who has completed his studentship should without tiring "perform works of

Confucianism and Taouism, pp. 259, 272 *sq.* Davis, *China*, ii. 48. Edkins, *Religion in China*, p. 89 *sq.*

[1] Chamberlain, *Things Japanese*, p. 309.

[2] *Dhammapada*, 177.

[3] Oldenberg, *Buddha*, p. 301.

[4] *Cf.* Kern, *Manual of Indian Buddhism*, p. 72.

[5] *Rig-Veda*, x. 117. Kaegi, *Rigveda*, p. 18.

[6] *Hitopadesa*, Mitralâbhâ, 63.

[7] *Gautama*, v. 21; x. 1 *sqq.* *Institutes of Vishnu*, lix. 28. *Baudhâyana*, ii. 7. 13. 5. *Laws of Manu*, ix. 333; x. 75, 79; xi. 1 *sqq.*

[8] *Laws of Manu*, iv. 32.

[9] *Anugîtâ*, 31.

charity with faith."[1] Almsgiving confers merit on the giver, it frees him from guilt, it destroys sin;[2] "for whatever purpose a man bestows any gift, for that purpose he receives in his next birth with due honour its reward."[3] On the other hand, he who cooks for himself alone eats nothing but sin.[4] Speaking of the modern Hindus, Mr. Wilkins observes:—"The charity of the Hindus is great. . . . There is no poor-law in India, no guardians of the poor, no workhouses, excepting for the Europeans in the Presidency towns. The poor of a family, the halt, the lame, the blind, the weak, the insane, are provided for by their family, if it is at all able to do it; in cases where there are few or no relatives, then the burden is taken up by others. It is a 'work of merit.'"[5]

Of the ancient Persians Thucydides said that they preferred giving to receiving.[6] To be charitable towards the poor of their own faith was among them a religious duty of the first order.[7] Zoroaster thus addressed Vîshtâspa:—"Let no thought of Angra Mainyu ever infect thee, so that thou shouldst indulge in evil lusts, make derision and idolatry, and shut to the poor the door of thy house."[8] The holy Sraosha is the protector of the poor.[9] In the Shâyast it is said that the clothing of the soul in the next world is formed out of almsgiving.[10]

It seems that among the ancient Egyptians charity was considered no less meritorious.[11] "The god," M. Maspero observes, "does not confine his favour to the prosperous and the powerful of this world; he bestows it also upon

[1] *Laws of Manu*, iv. 226. *Cf. ibid.* iv. 227.

[2] *Institutes of Vishnu*, lix. 15, 30; ch. xc. *sqq.* *Gautama*, xix. 11, 16. *Vasishtha*, xx. 47; xxii. 8. *Laws of Manu*, iii. 95; iv. 229 *sqq.*; xi. 228.

[3] *Laws of Manu*, iv. 234.

[4] *Institutes of Vishnu*, lxvii. 43. *Laws of Manu*, iii. 118. *Cf. Rig-Veda*, x. 117. 6.

[5] Wilkins, *Modern Hinduism*, p. 416 *sq.*

[6] Thucydides, ii. 97. 4.

[7] See Geiger, *Civilization of the Eastern Irânians*, i. 164 *sqq.*; Mills, in *Sacred Books of the East*, xxxi. p. xxii.

[8] *Yasts*, xxiv. 37.

[9] *Ibid.* xi. 3.

[10] *Shâyast Lâ-Shâyast*, xii. 4. *Cf. Bundahis*, xxx. 28.

[11] Brugsch, *History of Egypt under the Pharaohs*, i. 29 *sq.* Tiele, *History of the Egyptian Religion*, p. 226 *sq.* Renouf, *Hibbert Lectures on the Religion of Egypt*, p. 72 *sqq.* Amélineau, *L'évolution des idées morales dans l'Égypt Ancienne*, pp. 145, 354.

the poor. His will is that they be fed and clothed, and exempted from tasks beyond their strength; that they be not oppressed, and that unnecessary tears be spared them."[1] In the memorial inscriptions, where the dead plead their good deeds, charity is often referred to. "I harmed not a child," says one Egyptian, "I injured not a widow; there was neither beggar nor needy in my time; none were hungered, widows were cared for as though their husbands were still alive."[2] In the inscription in honour of a lady who had been charitable to persons of her own sex, whether girls, wives, or widows, it is said, "The god rewarded me for this, rejoicing me with the happiness which he has granted me for walking after his way."[3]

Charity was urgently insisted upon by the religious law of the Hebrews.[4] "Thou shalt open thine hand wide unto thy brother, to thy poor, and to thy needy, in thy land"; "for this thing the Lord thy God shall bless thee in all thy works, and in all that thou puttest thine hand unto."[5] Even "if thine enemy be hungry, give him bread to eat; and if he be thirsty, give him water to drink: . . . the Lord shall reward thee."[6] Especially in the Old Testament Apocrypha and in Rabbinical literature almsgiving assumed an excessive prominence—so much so that the word which in the older writings means "righteousness" in general, came to be used for almsgiving in particular.[7] "Shut up alms in thy storehouses: and it shall deliver thee from all affliction."[8] "As water will quench a flaming fire, so alms maketh an atonement for sins."[9] "For alms doth deliver from death, and shall purge away all sin. Those that exercise alms and

[1] Maspero, *Dawn of Civilization*, p. 191. *Cf.* Schiapparelli, *Del sentimento religioso degli antichi egiziani*, p. 18; Amélineau, *op. cit.* p. 268.

[2] Wiedemann, *Religion of the Ancient Egyptians*, p. 253.

[3] Renouf, *op. cit.* p. 75.

[4] *Deuteronomy*, xiv. 29; xv. 7 *sqq.*; xvi. 11, 14. *Leviticus*, xix. 9 *sq.*; xxv. 35.

[5] *Deuteronomy*, xv. 11, 10.

[6] *Proverbs*, xxv. 21 *sq.*

[7] Addis, 'Alms,' in *Encyclopædia Biblica*, i. 118. *Cf.* Montefiore, *Hibbert Lectures on the Religion of the Ancient Hebrews*, p. 484 *sq.*

[8] *Ecclesiasticus*, xxix. 12.

[9] *Ibid.* iii. 30.

righteousness shall be filled with life."[1] The charitable man is rewarded with the birth of male issue.[2] Almsgiving is equal in value to all other commandments.[3] He who averts his eyes from charity commits a sin equal to idolatry.[4] To such an extreme was almsgiving carried on by the Jews, that some Rabbis at length decreed that no man should give above a fifth part of his goods in charity.[5]

Almsgiving, prayer, and fasting were the three cardinal disciplines which the synagogue transmitted to both the Christian Church and the Muhammedan mosque.[6] According to Islam, the duty next in importance to prayer is that of giving alms.[7] Muhammed repeatedly announces that the path which leads to God is the helping of the orphans and the relieving of the poor.[8] "Ye cannot attain to righteousness until ye expend in alms of what ye love."[9] "Those who expend their wealth by night and day, secretly and openly, they shall have their hire with their lord."[10] It is said that "prayer carries us half-way to God, fasting brings us to the door of His palace, and alms procure us admission."[11] Certain alms, called Zakât, are prescribed by law; it is an indispensable duty for every Muhammedan of full age to bestow in charity about one-fortieth of all such property as has been a year in his possession, provided that he has sufficient for his subsistence and has an income equivalent to about £5 per annum.[12] Other charitable gifts are voluntary, and confer merit upon the giver.

By Christianity charity of the religious type which we

[1] *Tobit*, xii. 9. *Cf. ibid.* i. 3, 16; ii. 14; iv. 7 *sqq.*; xii. 8.

[2] *Bava Bathra*, fol. 10 B, quoted by Hershon, *Treasures of the Talmud*, p. 24.

[3] Rab Assi, quoted by Kohler, 'Alms,' in *Jewish Encyclopedia*, i. 435.

[4] *Kethuboth*, fol. 68 A, quoted by Katz, *Der wahre Talmudjude*, p. 36.

[5] Katz, *op. cit.* p. 42.

[6] *Cf. Tobit*, xii. 8; Kohler, in *Jewish Encyclopedia*, i. 435.

[7] See Sale's 'Preliminary Discourse,' in Wherry, *Commentary on the Qurán*, i. 172; Lane, *Manners and Customs of the Modern Egyptians*, p. 105.

[8] *Koran*, ii. 267, 269, 275; viii. 42; ix. 60; xc. 12, 14 *sq.*; xciii. 6 *sqq.*; &c.

[9] *Ibid.* iii. 86.

[10] *Ibid.* ii. 275

[11] Sell, *Faith of Islám*, p. 284.

[12] *Ibid.* p. 283. Palmer, 'Introduction' to his translation of *The Qur'án*, i. p. lxxiii. Ameer Ali, *Life and Teachings of Mohammed*, p. 268.

find in the East was introduced into Europe. We have certainly no reason to blame the ancient Greeks and Romans for neglecting their poor. Among them slavery in a great measure replaced pauperism ; and what slavery did for the very poor, the Roman system of clientage did for those of a somewhat higher rank.[1] Moreover, the relief of the indigent was an important function of the State.[2] The Areopagus provided public works for the poor.[3] At Rome gratuitous distribution of corn was the rule for many centuries ;[4] agrarian laws furnished free homesteads to the landless, on conquered or public territory ;[5] since the days of Nerva a systematic support of poor children was enjoined in all the cities of Italy.[6] A few examples of private charity, also, have descended to us already from early times, such as Epaminondas collecting dowers for poor girls,[7] and Cimon feeding and clothing the poor ;[8] and from the days of the Pagan Empire there are recorded several cases of individual beneficence. Charitable bequests are alluded to in the burial inscriptions ; when some great catastrophe happened, relief was willingly given to the sufferers ; private infirmaries were established for slaves.[9] The duty of charity was forcibly enjoined by some of the moralists. The wise man, says Seneca, "will dry the tears of others, but will not mingle his own with them ; he will stretch out his hand to the shipwrecked mariner, will offer hospitality to the exile, and alms to the needy."[10] But his alms are not thrown away by chance ; his purse will open easily, but never leak. He will choose out the worthiest with the utmost care, and never give without sufficient reason; for unwise gifts must be reckoned among foolish extravagances.[11] So also Cicero,

[1] See Lecky, *History of European Morals*, ii. 73.
[2] Boissier, *Religion Romaine*, ii. 206.
[3] Farrer, *Paganism and Christianity*, p. 183.
[4] Naudet, 'Des secours publics chez les Romains,' in *Mémoires de l'Académie des inscriptions et belles-lettres*, xiii. 43 *sq.*
[5] *Ibid.* p. 71 *sq.*
[6] Aurelius Victor, *Epitome*, xii. 8.
[7] Cornelius Nepos, *Epaminondas*, 3.
[8] Plutarch, *Cimon*, 10.
[9] Lecky, *History of European Morals*, ii. 77 *sq.* Boissier, *op. cit.* ii. 213 *sq.* Farrer, *Paganism and Christianity*, p. 182.
[10] Seneca, *De clementia*, ii. 6.
[11] *Idem*, *De vita beata*, 23 *sq.*

whilst styling beneficence and liberality "virtues that are the most agreeable to the nature of man," is anxious to warn his readers against imprudence in practising them, "lest our kindness should hurt both those whom it is meant to assist, and others."[1]

In a very different light was charity viewed by the Christians. Unlimited open-handedness became a cardinal virtue. An ideal Christian was he who did what Jesus commanded the young man to do: who went and sold what he had and gave it to the poor.[2] Promiscuous almsgiving was enjoined as a duty:—"Give to him that asketh thee, and from him that would borrow of thee turn not thou away."[3] The discharge of this duty was even more profitable to the giver than to the receiver. There is perhaps no precept in the Gospel to which a promise of recompense is so frequently annexed as to that concerning charity. Eternal life is promised to those who feed the hungry, give drink to the thirsty, take in the stranger, clothe the naked, visit the sick.[4] Charity was regarded as an atonement. "God," says St. Augustine, "is to be propitiated through alms for sins past";[5] and countless times is the thought expressed, that almsgiving is a safe investment of money at good interest with God in heaven.[6] Cyprian, who is the father of the Romish doctrine of good works, establishes an arithmetical relation between the number of alms-offerings and the blotting out of sins.[7] "The food of the needy," says Leo the Great, "is the purchase-money of the kingdom of heaven."[8] "As long as the market lasts," says St. Chrysostom, "let us buy alms, or rather let us purchase salvation through alms."[9] The rich man is only a debtor; all that he possesses beyond

[1] Cicero, *De officiis*, i. 14 *sq.*
[2] *Cf. Acts*, ii. 45.
[3] *St. Matthew*, v. 42. *Cf. St. Luke*, vi. 30.
[4] *St. Matthew*, xxv. 34 *sqq.*
[5] St. Augustine, *Enchiridion*, 70 (Migne, *Patrologiæ cursus*, xl. 265).
[6] See Uhlhorn, *Die christliche Liebesthätigkeit*, i. 270.
[7] Cyprian, *De opere et eleemosynis*, 24 (Migne, *op. cit.* iv. 620). *Cf.* Harnack, *History of Dogma*, ii. 134, n. 2.
[8] Leo Magnus, *Sermo X., de Collectis*, 5 (Migne, *op. cit.* liv. 165 *sq.*).
[9] St. Chrysostom, *Homilia VII., de Pœnitentia* (Migne, *op. cit.* Ser. Graeca, xlix. *sq.* 333).

what is necessary, belongs to the poor, and ought to be given away.[1] The poor, no longer looked down upon, became instruments of salvation. To them was given the first place in the Church and in the Christian community. St. Chrysostom says of them, "As fountains flow near the place of prayer that the hands that are about to be raised to heaven may be washed, so were the poor placed by our fathers near to the door of the Church, that our hands might be consecrated by benevolence before they are raised to God."[2] Gregory the Great announces, and the Middle Ages re-echo, "The poor are not to be lightly esteemed and despised, but to be honoured as patrons."[3] Thus it happened that even in the darkest periods, when all other Christian virtues were nearly extinct, charity survived unimpaired.[4] Later on Protestantism, by denying the atoning effect of good deeds, deprived charity of a great deal of its religious attraction. And in modern times the enlightened opinion on the subject, recognising the demoralising influence of indiscriminate almsgiving, rather agrees with the principles laid down by Cicero and Seneca, than with the literal interpretation of the injunctions of Christ.

In the course of progressing civilisation the obligation of assisting the needy has been extended to wider and wider circles of men. The charity and generosity which savages require as a duty or praise as a virtue have, broadly speaking, reference only to members of the same community or tribe. Kindness towards foreigners is looked upon in a very different light. "The virtues of the Negroes," Monrad observes, "are entirely restricted to their own tribe. The doing good to a stranger they would generally find ridiculous."[5] To the Greenlander a foreigner, especially if he be of another race, is "an indifferent object, whose welfare he has no interest in furthering."[6]

[1] Uhlhorn, *op. cit.* p. 294 *sq.*
[2] St. Chrysostom, *De verbis Apostoli, Habentes eumdem spiritum*, iii. 11 (Migne, *op. cit.* Ser. Graeca, li. *sq.* 300).
[3] Quoted by Uhlhorn, *op. cit.* i. 315.
[4] *Cf.* Milman, *History of Latin Christianity*, ix. 33 *sq.*
[5] Monrad, *op. cit.* p. 4.
[6] Nansen, *Eskimo Life*, p. 159.

The Bedouin, says Doughty, "has two faces, this of gentle kindness at home, the other of wild misanthropy and his teeth set against the world besides." [1] At higher stages of civilisation the duty of charity embraces a wider group of people, in proportion to the largeness of the social unit or to the scope of the religion by which it is enjoined. But it is still more or less restrained by national or religious boundaries. M. Amélineau observes that the charity referred to on ancient Egyptian papyri is "la charité limitée à ceux de la même nation." [2] According to Zoroastrianism, charity should be restricted to the followers of the true religion; to succour an unbeliever would be like a strengthening of the dominion of Evil.[3] The Zakât, or legal alms of the Muhammedans, must not be given to a non-Muslim, because it is regarded as a fundamental part of worship; [4] similarly the Ṣadaqah, or offering on the feast-day known as 'Idu'l-Fiṭr, is confined to true believers.[5] Nor has Christian charity always been free from religious narrowness. Fleury says that the early Christians, in the care they took of the poor, always preferred Christians before infidels, because "their principal regard was to their spiritual concerns, and to their temporal welfare only in order to their spiritual." [6] The principle of the Church was, "Omnem hominem *fidelem* judica tuum esse fratrem." [7] In the seventeenth century the Scotch clergy taught that food or shelter must on no occasion be given to a starving man unless his opinions were orthodox.[8] On the other hand, Christianity of a higher type preaches charity towards all men; and so does advanced Judaism and Buddhism. It is said in the Talmud, with reference to the treatment of the poor, that no distinction should be made between such as are Jews and such as are not.[9] In modern times charity now and then

[1] Doughty, *Arabia Deserta*, i. 368 *sq.*
[2] Amélineau, *op. cit.* p. 354.
[3] Geiger, *op. cit.* i. 165.
[4] Sell, *op. cit.* p. 284. *Cf. Koran*, ix. 60.
[5] Sell, *op. cit.* p. 318.
[6] Fleury, *Manners and Behaviour of the Christians*, p. 133 *sq.*
[7] Laurent, *Études sur l'histoire de l'Humanité*, iv. 94.
[8] Buckle, *History of Civilization in England*, iii. 277.
[9] *Gitin*, fol. 61 A, quoted by Katz,

steps over the barriers of nationality even when the sufferers belong to distant nations. Whilst our indigent compatriots are generally recognised to have a greater claim on our pity than needy strangers, a great calamity in one country readily calls forth a charitable response in other nations. Mr. Pike believes that the contribution of one hundred thousand pounds sterling which England, in the year 1755, when Lisbon was laid in ruins by an earthquake, sent for the relief of the sufferers, inaugurated this new era of international charitableness. "Compassion," he observes, "was at last shown by Englishmen, not simply for Englishmen and Protestants, but for foreigners professing a different religion; pity, for once, triumphed over intolerance and national prejudice."[1] And in war, in the case of enemies rendered harmless by wounds or disease, the growth of human feeling has passed beyond the simple requirement that they shall not be killed or ill-used, and has cast upon belligerents the duty of tending them so far as is consistent with the primary duty to their own wounded.[2] However, it must not be imagined that this humane principle, which has only lately been recognised in Europe, is a unique outcome of Christian civilisation at its height. It is said in the Mahabharata that, when a quarrel arises among good men, a wounded enemy is to be cured in the conqueror's own country, or to be conveyed to his home.[3] Strangely enough, even from the savage world we hear of something like an anticipation of the Geneva Convention. Among certain tribes in New South Wales, as soon as the fight is concluded, "both parties seem perfectly reconciled, and jointly assist in tending the wounded men."[4]

Der wahre Talmudjude, p. 38. *Cf.* Chaikin, *Apologie des Juifs*, p. 10.

[1] Pike, *History of Crime in England*, ii. 346.

[2] 'Convention signed at Geneva, August 22, 1864, for the Amelioration of the Condition of the Wounded in Armies in the Field,' in Lorimer, *Institutes of the Law of Nations*, ii. Appendix no. vi. Hall, *Treatise on International Law*, p. 399. Heffter, *Das Europäische Völkerrecht der Gegenwart*, § 126, p. 267, n. 5.

[3] *Mahabharata*, xii. 3547, quoted by Lorimer, *op. cit.* ii. 431.

[4] Brough Smyth, *op. cit.* i. 160.

The gradual expansion of the duty of charity is due to the fact that this duty, in the first place, is based on the altruistic sentiment, and consequently follows the same general law of development. Many cases referred to above imply that savages are by no means strangers to affection, and that in their communities there is not only mutual assistance, but general kindness of heart. Numerous instances to the same effect might easily be added. When a Fuegian is very ill the near relatives show much grief;[1] and Darwin tells us that the Fuegian boy who was taken on board the *Beagle* and brought to Europe, used to go to the sea-sick and say, in a plaintive voice, "Poor, poor fellow!"[2] The Veddahs are praised not only for their charitable behaviour towards each other, but for their natural tenderness of heart.[3] The aborigines of Victoria are said to "have the greatest love for their friends and relatives," and to testify the liveliest joy when a companion after a long absence returns to the camp.[4] Forster mentions an instance of affection among the natives of Tana, which, as he says, "strongly proves that the passions and innate quality of human nature are much the same in every climate."[5] Melville declares that, after passing a few weeks in the Typee valley of the Marquesas, he formed a higher estimate of human nature than he ever before entertained.[6] It can hardly be doubted that in every human society there is, normally, some degree of social affection between its members;[7] and it seems that the evolution of this sentiment in mankind has been much more in the direction of greater extensiveness than of greater intensity.

Where the members of a group have affection for each other, mutual aid will be regarded as a duty both because it will be practised habitually, and because a

[1] Bridges, in *A Voice for South America*, xiii. 206.
[2] Darwin, *Journal of Researches*, p. 207.
[3] Sarasin, *op. cit.* iii. 545, 550.
[4] Brough Smyth, *op. cit.* i. 138.
[5] Forster, *Voyage round the World*, ii. 325.
[6] Melville, *Typee*, p. 297.
[7] See *infra*, on the Origin and Development of the Altruistic Sentiment.

failure to afford it will call forth sympathetic resentment on behalf of the sufferer. But we need, here again, to look below the surface. Men may be induced to do good to their fellow-creatures not only by kindly feelings towards them, but by egoistic motives; and such motives, through having a share in making beneficence a tribal habit, at the same time influence the moral estimation in which it is held. The Basutos say that "the knife that is lent does not return alone to its master"—a kindness is never thrown away.[1] Of the Asiniboin, a Siouan tribe, Mr. Dorsey states that "nothing is given except with a view to a gift in return."[2] When the Andaman Islanders make presents of the best that they possess, they tacitly understand that an equivalent should be rendered for every gift.[3] Among the Makololo "the rich show kindness to the poor, in expectation of services."[4] In his description of the Greenlanders, Dr. Nansen observes that all the small communities depend for their existence on the law of mutual assistance, on the principle of common suffering and common enjoyment. "A hard life has taught the Eskimo that even if he is a skilful hunter and can, as a rule, manage to hold his own well enough, there may come times when, without the help of his fellows, he would have to succumb. It is better, therefore, for him to help in his turn."[5] That similar considerations largely lie at the bottom of the custom of mutual aid and charity both in uncivilised and more advanced communities, we may assume from the experience of human nature which we have acquired at home. And such motives must be particularly active in a society the members of which are so dependent on each other's services and return-services, as is generally the case with a horde of savages.

Moreover, by niggardliness a person may expose him-

[1] Casalis, *op. cit.* p. 310.
[2] Dorsey, 'Siouan Sociology,' in *Ann. Rep. Bur. Ethn.* xv. 225 *sq.*
[3] Man, in *Jour. Anthr. Inst.* xii. 95.
[4] Livingstone, *Missionary Travels*, p. 511.
[5] Nansen, *First Crossing of Greenland*, ii. 304 *sq.* *Cf.* Cranz, *History of Greenland*, i. 173; Parry, *op. cit.* p. 525.

self to supernatural dangers, whereas liberality may entail supernatural reward. In Morocco nobody would like to eat in the presence of other people without sharing his meal with them ; otherwise they might poison his food by looking at it with an evil eye. So also, if anybody shows a great liking for a thing belonging to you, wanting, for instance, to buy your gun or your horse, it is best to let him have it, since otherwise an accident is likely to happen to the object of his desire.[1] But baneful energy, what the Moors call *l-bas*, is transferable not only by the eye, but by the voice. The poor and the needy have thus in their hands a powerful weapon and means of retaliation, the curse. The ancient Greeks believed that the beggar had his Erinys,[2] his avenging demon, which was obviously only a personification of his curse.[3] It is said in the Proverbs, "He that giveth unto the poor shall not lack : but he that hideth his eyes shall have many a curse."[4] The same idea is expressed in Ecclesiasticus :—"Turn not away thine eye from the needy, and give him none occasion to curse thee : for if he curse thee in the bitterness of his soul, his prayer shall be heard of him that made him. . . . A prayer out of a poor man's mouth reacheth to the ears of God, and his judgment cometh speedily."[5] According to the Zoroastrian Yasts, the poor man who follows the good law, when wronged and deprived of his rights, invokes Mithra for help, with hands uplifted.[6] Mr. Chapman states that, "though the Damaras are, generally speaking, great gluttons, they would not think of eating in the presence of any of their tribe without sharing their meal with all comers, for fear of being visited by a curse from their 'Omu-kuru' [or deity], and becoming impoverished."[7] There is all reason

[1] Similar beliefs prevail in modern Egypt (Klunzinger, *Upper Egypt*, p. 391).

[2] *Odyssey*, xvii. 475.

[3] *Supra*, p. 60.

[4] *Proverbs*, xxviii. 27.

[5] *Ecclesiasticus*, iv. 5 *sq.* ; xxi. 5. *Cf. Deuteronomy*, xv. 9. Rabbi Johanan says that almsgiving "saves man from sudden, unnatural death" (Kohler, in *Jewish Encyclopedia*, i. 435). *Cf. Proverbs*, x. 2.

[6] *Yasts*, x. 84.

[7] Chapman, *Travels in the Interior of South Africa*, i. 341.

to suppose that in this case the curse of the deity was originally the curse, or evil wish, of an angry man.

A poor man is able not only to punish the uncharitable by means of his curses, but to reward the generous giver by means of his blessings. During my residence among the Andjra tribe in the mountains of Northern Morocco, our village was visited by a band of ambulant scribes who went from house to house, receiving presents and invoking blessings in return. When a goat was given them they asked God to increase the flocks of the giver, when money was given they asked God to increase his money, and so forth. Some of the villagers told me that it was a profitable bargain, since they would be tenfold repaid for their gifts through the blessings of the scribes. A town Moor who starts for a journey to the country generally likes to give a coin to one of the beggars who are sitting near the gate, so as to receive his blessings. It is said in Ecclesiasticus :—"Stretch thine hand unto the poor, that thy blessing may be perfected. A gift hath grace in the sight of every man living."[1] Whilst he that withholdeth corn shall be cursed by the people, "blessing shall be upon the head of him that selleth it."[2] Among the early Christians those who brought gifts for the poor were specially remembered in the prayers of the Church.[3] Of the Nayādis of Malabar Mr. Iyer says that the purport and object of their prayers are, among other things, "that all the superior castes, who give them alms, may enjoy long life and prosperity."[4] In various cases the nature of the rewards promised for charitable acts suggests that they are due to the blessings of the recipient. According to Vasishtha, "through liberality man obtains all his desires, even longevity."[5] In the Yasts it is said that the children of a charitable man will thrive.[6] According to Talmudic ideas, men acquire wealth for their children by

[1] *Ecclesiasticus*, vii. 32. *Cf. Proverbs*, xxii. 9.
[2] *Proverbs*, xi. 26.
[3] Uhlhorn, *op. cit.* i. 141.
[4] Iyer, in the Madras Government Museum's *Bulletin*, iv. 72.
[5] *Vasishtha*, xxix. 1 *sq.*
[6] *Yasts*, xxiv. 36.

distributing alms among the poor.[1] Considering how widely spread is the belief in the efficacy of curses and blessings, there can be little doubt that charity and generosity are connected with this belief in many cases where no such connection has been noticed by the European visitor.

The curses and blessings of the poor partly account for the fact that charity has come to be regarded as a religious duty. Originally, it is true, they had not the character of an appeal to a god, but were believed to possess a purely magical power, independent of any superhuman will. This belief is rooted in the close association between the wish, more particularly the spoken wish, and the idea of its fulfilment. The wish is looked upon in the light of energy which may be transferred—by material contact, or by the eye, or by means of speech—to the person concerned, and then becomes a fact. This process, however, is not taken quite as a matter of course; there is always some mystery about it. Hence the words of a holy man, a magician or priest, are considered more efficacious than those of ordinary mortals. The Australian natives believe that the curse of a potent magician will kill at the distance of a hundred miles. Among the Maoris "the anathema of a priest is regarded as a thunderbolt that an enemy cannot escape."[2] Among the Gallas no man will under any circumstances slay either a priest or a wizard, from a dread of his dying curse.[3] Some of the Rabbis maintained that a curse uttered by a scholar is unfailing in its effect, even if undeserved.[4] In Muhammedan countries the curses of saints or shereefs are particularly feared. According to the Laws of Manu, a Brâhmana "may punish his foes by his own power alone," speech being his weapon.[5] But though a curse may derive particular potency from the person who utters it,

[1] Kohler, in *Jewish Encyclopedia*, i. 436. *Cf. Proverbs*, xxviii. 27.

[2] Polack, *Manners and Customs of the New Zealanders*, i. 248 *sq.*

[3] Harris, *Highlands of Æthiopia*, iii. 50.

[4] *Makkoth*, fol. 11 A. *Berakhoth*, fol. 56 A.

[5] *Laws of Manu*, xi. 32 *sq.*

it is by no means ineffective even in the mouth of an ordinary man.[1] In the Old Testament children are forbidden to curse their parents,[2] subjects their rulers,[3] men their god;[4] and according to Talmudic conceptions, a curse should not be regarded lightly however ignorant be the person who utters it.[5] All that is required is that the words should possess that supernatural quality which alone can bring about the result desired, and this quality may be inherent in the curse quite independently of the person who utters it. It is inherent in certain mystic formulas or spells and in the invocations of some spirit or god. The will of the invoked being is not considered at all; his name is simply brought in to give the curse that mystic efficacy which the plain word lacks. Thus both in the Old Testament[6] and in the Talmud[7] there are traces of the ancient idea that the name of the Lord might be used with advantage in any curse however undeserved. But with the deepening of the religious sentiment this idea had to be given up. A righteous and mighty god cannot agree to be a mere tool in the hand of a wicked curser. Hence the curse comes to be looked upon in the light of a prayer, which is not fulfilled if undeserved; as it is said in the Proverbs, "the curse causeless shall not come."[8] And the same is the case with the blessing. Whilst in ancient days Jacob could take away his brother's blessing by deceit,[9] the efficacy of a blessing was later on limited by moral considerations.[10] The Psalmist declares that only the offspring of the righteous can be blessed;[11] and according to the Apostolic Constitutions, "although a widow who eateth and is filled from the wicked, pray for them, she shall not be heard."[12]

[1] Taylor, *Te Ika a Maui*, p. 204 (Maoris). Wellhausen, *Reste arabischen Heidentums*, p. 139.

[2] *Exodus*, xxi. 17. *Leviticus*, xx. 9. *Proverbs*, xx. 20; xxx. 11.

[3] *Exodus*, xxii. 28. *Ecclesiastes*, x. 20.

[4] *Exodus*, xxii. 28.

[5] *Megilla*, fol. 15 A.

[6] *Supra*, p. 564.

[7] *Makkoth*, fol. 11 A. *Berakhoth*, foll. 19 A, 56 A.

[8] *Proverbs*, xxvi. 2.

[9] *Genesis*, xxvii. 23 *sqq.*

[10] *Cf.* Cheyne, 'Blessings and Curses,' in *Encyclopædia Biblica*, i. 592.

[11] *Psalms*, xxxvii. 26.

[12] *Constitutiones Apostolicæ*, iv. 6. *Cf. Jeremiah*, vii. 16.

On the other hand, curses and blessings, when well deserved, continued to draw down calamity or prosperity upon their objects, by inducing God to put them into effect; this idea prevails both in post-exilic Judaism and in Muhammedanism,[1] and underlies the Christian oath and benediction. The final, but not the original view was that, as an uncharitable man deserves to be punished and a charitable man merits reward, the curses and blessings of the poor will naturally be heard by a righteous God. "The Lord will plead their cause."[2]

The chief cause, however, of the extraordinary stress which the higher religions put on the duty of charity seems to lie in the connection between almsgiving and sacrifice. When food is offered as a tribute to a god, the god is supposed to enjoy its spiritual part only, whilst the substance of it is left behind and is eaten by the poor. And when the offering is continued in ceremonial survival in spite of the growing conviction that, after all, the deity does not need and cannot profit by it,[3] the poor become the natural heirs of the god, and the almsgiver inherits the merit of the sacrificer. The chief virtue of the act, then, lies in the self-abnegation of the donor, and its efficacy is measured by the "sacrifice" which it costs him.

Many instances may be quoted of sacrificial food being left for the poor or being distributed among them. At Scillus, where Xenophon had built an altar and a temple to Artemis and a sacrifice was afterwards made every year, the goddess supplied the poor people living there in tents with "barley-meal, bread, wine, sweetmeats, and a share of the victims offered from the sacred pastures, and of those caught in hunting."[4] According to Yasna, sacrifices to Mazda were given to his poor.[5] In ancient Arabia the poor were allowed to partake of the meal-

[1] *Cf.* Cheyne, in *Encyclopedia Biblica*, i. 592; Goldziher, *Abhandlungen zur arabischen Philologie*, i. 29 *sqq.*

[2] *Proverbs*, xxii. 23.

[3] For such a survival, see Tylor, *Primitive Culture*, ii. 396 *sqq.*

[4] Xenophon, *Anabasis*, v. 3. 9.

[5] *Yasna*, xxxiv. 5.

offering which was laid before the god Uqaiçir.[1] In Zinder, in the Soudan, there are some trees, regarded as divine, to which annual offerings of bullocks, sheep, and so forth, are made, "though the poor of the country get the benefit of them."[2] In Morocco even animals which are killed as *'âr*—a sacrifice embodying a conditional curse—on departed saints or living people, with a view to compelling them to grant a request, are commonly eaten by the poor, though nobody else would dare to partake of them.

In other cases we find that almsgiving is itself regarded as a form of sacrifice, or takes the place of it. In the sacred books of India the two things are repeatedly mentioned side by side. "The householder offers sacrifices, the householder practises austerities, the householder distributes gifts."[3] Of a Brâhmana who has completed his studentship it is said, "Let him always practise, according to his ability, with a cheerful heart, the duty of liberality, both by sacrifices and by charitable works, if he finds a worthy recipient for his gifts."[4] "In the Krita age the chief virtue is declared to be the performance of austerities, in the Tretâ divine knowledge, in the Dvâpara the performance of sacrifices, in the Kali liberality alone."[5] In the Egyptian 'Book of the Dead' the soul, on approaching to the gods who are in the Tuat, pleads:—"I have done that which man prescribeth and that which pleaseth the gods. I have propitiated the god with that which he loveth. I have given bread to the hungry, water to the thirsty, clothes to the naked, a boat to the shipwrecked. I have made oblations to the gods and funeral offerings to the departed."[6] In the Zoroastrian prayer Ahuna-Vairya, to which great efficacy is ascribed, it is said, "He who relieves the poor makes Ahura king."[7]

[1] Wellhausen, *Reste arabischen Heidentums*, p. 64. Robertson Smith, *Religion of the Semites*, p. 223.

[2] Richardson, *Mission to Central Africa*, ii. 259.

[3] *Institutes of Vishnu*, lix. 28.

[4] *Laws of Manu*, iv. 227. *Cf. ibid.* iv. 226.

[5] *Ibid.* i. 86.

[6] *Book of the Dead*, 125, Renouf's translation, p. 217.

[7] *Vendîdâd*, xix. 2.

In the Koran almsgiving is often mentioned in connection with prayer;[1] and the Zakât, or alms prescribed by law, is regarded by the Muhammedans as a fundamental part of their religion, hence infidels, who cannot perform acceptable worship, have nothing to do with these alms.[2] Among the Muhammedans of India it is common for men and women to vow "that when what they desire shall come to pass, they will, in the name of God, the Prophet, his companions, or some *wullee*, present offerings and oblations." One of these offerings, called "an offering unto God," consists in preparing particular victuals, and in "distributing them among friends and the poor, and giving any sort of grain, a sacrificed sheep, clothes, or ready-money in alms to the indigent."[3] When the destruction of the Temple with its altar filled the Jews with alarm as they thought of their unatoned sins, Johanan ben Zakkai comforted them by saying, "You have another means of atonement, as powerful as the altar, and that is the work of charity, for it is said: 'I desired mercy, and not sacrifice.'"[4] Many other passages show how closely the Jews associated almsgiving with sacrifice. "He that giveth alms sacrificeth praise."[5] "As sin-offering makes atonement for Israel, so alms for the Gentiles."[6] "Almsdeeds are more meritorious than all sacrifices."[7] An orphan is called an "altar to God."[8] And as a sacrificer should be a person of a godly character, so it is better to perish by famine than to receive an oblation from the ungodly.[9] Alms were systematically collected in the synagogues, and officers were appointed to make the collection.[10] So, also, among the early Christians the collection of alms for the relief of the poor was an act of the Church life itself. Almsgiving took place in public worship, nay formed itself a part of worship.

[1] *Koran*, ii. 40, 104; ix. 54.
[2] Sell, *op. cit.* 284.
[3] Jaffur Shureef, *Qanoon-e-Islam*, p. 179.
[4] Kohler, in *Jewish Encyclopedia*, i. 467. *Hosea*, vi. 6.
[5] *Ecclesiasticus*, xxxv. 2.
[6] Quoted by Levy, *Neuhebräisches und Chaldäisches Wörterbuch*, iv. 173.
[7] Quoted *ibid.* iv. 173.
[8] *Constitutiones Apostolicæ*, iv. 3.
[9] *Ibid.* iv. 8.
[10] Addis, in *Encyclopædia Biblica*, i. 119.

Gifts of natural produce, the so-called oblations, were connected with the celebration of the Lord's Supper. They were offered to God as the first-fruits of the creatures (*primitiæ creaturarum*), and a prayer was said :— "O Lord, accept also the offerings of those who to-day bring an offering, as Thou didst accept the offerings of righteous Abel, the offering of our father Abraham, the incense of Zachariah, the alms of Cornelius, and the two mites of the widow." These oblations were not only used for the Lord's Supper, but they formed the chief means for the relief of the poor. They were regarded as sacrifice in the most special sense ; and, as no unclean gift might be laid upon the Lord's altar, profit made from sinful occupations was not accepted as an oblation, neither were the oblations of impenitent sinners.[1] The author of the Epistle to the Hebrews speaks of almsgiving as a sacrifice of thanksgiving which continues after the Jewish altar has been done away with.[2] Like sacrifice, almsgiving is connected with prayer, as a means of making the prayer efficacious and furnishing it with wings ; the angel said to Cornelius, "Thy prayers and thine alms are come up for a memorial before God."[3] When the Christians were reproached for having no sacrifices, Justin wrote, "We have been taught that the only honour that is worthy of Him is not to consume by fire what He has brought into being for our sustenance, but to use it for ourselves and those who need."[4] So, also, Irenæus observes that sacrifices are not abolished in the New Testament, though their form is indeed altered, because they are no longer offered by slaves, but by freemen, of which just the oblations are the proof.[5] And God has enjoined on Christians this sacrifice of oblations, not because He needs them, but "in order that themselves

[1] Uhlhorn, *op. cit.* i. 135 *sqq.* Harnack, *History of Dogma*, i. 205.

[2] *Hebrews*, xiii. 14 *sqq.* *Cf.* Addis, in *Encyclopædia Biblica*, i. 119.

[3] *Acts*, x. 4. Cyprian, *De opere et eleemosynis*, 4. St. Chrysostom, *Homilia VII., de Pœnitentia*, 6 (Migne, *Patrologiæ cursus*, Ser. Gr. xlix. *sq.* 332).

[4] Justin, *Apologia I. pro Christianis*, 13.

[5] Irenæus, *Adversus hæreses*, iv. 18. 82.

might be neither unfruitful nor ungrateful."[1] St. Augustine says, "The sacrifice of the Christians is the alms bestowed upon the poor."[2]

The objection will perhaps be raised that I have here tried to trace back the most beautiful of all religious virtues to a magical and ritualistic origin without taking into due account the benevolent feelings attributed to the Deity. But in the present connection I have not had to show why charity, like other human duties, has been sanctioned by religious beliefs, but why, in the ethics of the higher religions, it has attained the same supreme importance as is otherwise attached only to devotional exercises. And this is certainly a problem by itself, for which the belief in a benevolent god affords no adequate explanation. That the religious duty of charity is not merely an outcome of the altruistic sentiment is well illustrated by the fact that Zoroastrianism, whilst exalting almsgiving to the rank of a cardinal virtue, at the same time excludes the sick man from the community of the faithful until he has been cured and cleansed according to prescribed rites.[3]

[1] *Ibid.* iv. 17. 5.

[2] St. Augustine, *Sermo XLII.* 1 (Migne, *op. cit.* xxxviii. 252).

[3] Darmesteter, 'Introduction' to the Zend-Avesta, in *Sacred Books of the East*, iv. p. lxxx.

CHAPTER XXIV

HOSPITALITY

We have seen that in early society regard for the life and physical well-being of a fellow-creature is, generally speaking, restricted to members of the social unit, whereas foreigners are subject to a very different treatment. But to this rule there are remarkable exceptions. Side by side with gross indifference or positive hatred to strangers we find, among the lower races, instances of great kindness displayed even towards persons of a foreign race. The Veddahs are ready to help any stranger in distress who asks for their assistance, and Sinhalese fugitives who have sought refuge in their wilds have always been kindly received.[1] Mr. Moffat was deeply affected by the sympathy which some poor Bushmans showed to him during an illness, although he was an utter stranger to them. Speaking of the mutual affection which the Andaman Islanders display in their social relations, Mr. Man adds that, "in their dealings with strangers, the same characteristic is observable when once a good understanding has been established."[2] We have also to remember the friendly manner in which the aborigines in various parts of the savage world behaved to the earliest European visitors. Nothing could be more courteous than the reception which Cook and his party met with in New Caledonia, where the natives guided and accompanied them on their

[1] Sarasin, *Ergebnisse naturwissenschaftlicher Forschungen auf Ceylon*, iii. 544.

[2] Man, 'Aboriginal Inhabitants of the Andaman Islands,' in *Jour. Anthr. Inst.* xii. 93.

excursions. Forster says of the Society Islanders, "We should indeed be ungrateful if we did not acknowledge the kindness with which they always treated us."[1] De Clerque observes with reference to the Papuans on the north coast of New Guinea:—"The inhabitants seemed always ready to help. . . . On our visit to the village all the male and female inhabitants with their children flocked around me, and offered me cocoanuts and sugar-cane; which, for the first contact with Europeans, is certainly remarkable."[2] On the arrival of white people in various parts of Australia, the natives were not only inoffensive, but disposed to meet them on terms of amity and kindness.[3] "In a short intercourse," says Eyre, "they are easily made friends. . . . On many occasions where I have met these wanderers in the wild, far removed from the abodes of civilisation, and when I have been accompanied only by a single native boy, I have been received by them in the kindest and most friendly manner, had presents made to me of fish, kangaroo, or fruit, had them accompany me for miles to point out where water was to be procured, and been assisted by them in getting at it."[4] Nor must we forget the kind reception which Australian Blacks have given to men cast upon their mercy,[5] and the tenderness with which the natives of Cooper's Creek wept for the death of Burke and Wills, and comforted King, the survivor.[6] Unfortunately, native races have often received anything but favourable impressions from their earliest interviews with Europeans; and both in Australia and elsewhere prolonged intercourse with white people has, in many instances, induced them to change

[1] Forster, *Voyage Round the World*, ii. 157.

[2] De Clerque, in *Glimpses of the Eastern Archipelago*, p. 14.

[3] Breton, *Excursions in New South Wales*, p. 218. Curr, *The Australian Race*, i. 64. Salvado, *Mémoires historiques sur l'Australie*, p. 340. Ridley, *Aborigines of Australia*, p. 24. Eyre, *Journals of Expeditions of Discovery into Central Australia*, ii. 212, 382.

[4] Eyre, *op. cit.* ii. 211.

[5] Mathew, 'Australian Aborigines,' in *Jour. & Proceed. Roy. Soc. N. S. Wales*, xxiii. 388. Brough Smyth, *Aborigines of Victoria*, ii. 229. Ridley, *Aborigines of Australia*, p. 22.

[6] Jung, 'Aus dem Seelenleben der Australier,' in *Mittheilungen des Vereins für Erdkunde zu Leipzig*, 1877, p. 11 *sq.*

their friendly behaviour into unkindness or hostility. The Canadian traders, for instance, when they first appeared among the Beaver and Rocky Mountain Indians, were treated by these people with the utmost hospitality and attention; but by their subsequent conduct they taught the natives to withdraw their respect, and sometimes to treat them with indignity.[1] Harmon writes, "I have always experienced the greatest hospitality and kindness among those Indians who have had the least intercourse with white people."[2] Many facts seem to verify the statement made by a missionary who speaks from forty years' experience among the natives of New Guinea and Polynesia, that our conduct towards savages determines their conduct towards us.[3]

The friendly reception which white men have met with in savage countries is closely connected with a custom which, as it seems, prevails universally among the lower races while in their native state,[4] as also among the

[1] Mackenzie, *Voyage to the Frozen and Pacific Oceans*, p. 149.

[2] Harmon, *Journal of Voyages and Travels in the Interior of North America*, p. 315.

[3] Murray, *Forty Years' Mission Work in Polynesia and New Guinea*, p. 499. For other instances of kindness displayed by savages towards white men, see von Kotzebue, *Voyage of Discovery into the South Sea*, iii. 174 (people of Radack); Yate, *Account of New Zealand*, p. 102 *sq.*; Dieffenbach, *Travels in New Zealand*, ii. 112; Keate, *Account of the Pelew Islands*, p. 329 *sq.*; Earl, *Papuans*, p. 79 (natives of Port Dory, New Guinea); Sarytschew, 'Voyage of the Discovery to the North-East of Siberia,' in *Collection of Modern and Contemporary Voyages and Travels*, vi. 78 (Aleuts); King and Fitzroy, *Voyages of the "Adventure" and "Beagle,"* ii. 168, 174 (Patagonians); Wilson and Felkin, *Uganda*, i. 225.

[4] Azara, *Voyages dans l'Amérique méridionale*, ii. 91 (Guanas). Southey, *History of Brazil*, i. 247 (Tupis). Davis, *El Gringo*, p. 421 (Pueblos). Lafitau, *Mœurs des sauvages ameriquains*, i. 106; ii. 88. Heriot, *Travels through the Canadas*, p. 318 *sq.* Buchanan, *North American Indians*, p. 6. Perrot, *Memoire sur les mœurs, coustumes et relligion des sauvages de l'Amerique septentrionale*, pp. 69, 202. Neighbors, in Schoolcraft, *Indian Tribes of the United States*, ii. 132 (Comanches). James, *Expedition from Pittsburgh to the Rocky Mountains*, i. 321 *sq.* (Omahas). Morgan, *League of the Iroquois*, p. 327 *sqq.*; Loskiel, *History of the Mission of the United Brethren among the Indians in North America*, i. 15; Colden, in Schoolcraft, *op. cit.* iii. 190 (Iroquois). Powers, *Tribes of California*, p. 183. Sproat, *Scenes and Studies of Savage Life*, p. 56 *sqq.* (Ahts). Boas, 'Report on the Indians of British Columbia,' in the *Report read at the Meeting of the British Association*, 1889, p. 36. Keating, *Expedition to the Source of St. Peter's River*, i. 101 (Potawatomis); ii. 167 (Chippewas). Richardson, *Arctic Searching Expedition*, ii. 18 (Crees and Chippewas). *Idem*, in Franklin, *Journey to the Shores of the Polar Sea*, p. 66; Mackenzie, *Voyages to the Frozen and Pacific Oceans*, p. xcvi. (Crees). Dall, *Alaska*, p. 397; Sarytschew, *loc.*

peoples of culture at the earlier stages of their civilisa

cit. vi. 78; Sauer, *Billing's Expedition to the Northern Parts of Russia*, p. 274 (Aleuts). Lyon, *Private Journal*, p. 349 *sq.*; Parry, *Second Voyage for the Discovery of a North-West Passage*, p. 526 (Eskimo of Igloolik). Egede, *Description of Greenland*, p. 126; Cranz, *History of Greenland*, i. 172 *sq.*; Kane, *Arctic Explorations*, ii. 122; Holm, 'Ethnologisk Skizze af Angmagsalikerne,' in *Meddelelser om Grönland*, x. 87, 175 *sq.* (Greenlanders). Beechey, *Voyage to the Pacific and Behring's Strait*, ii. 571; Richardson, *Arctic Searching Expedition*, i. 367; Seemann, *Voyage of "Herald,"* ii. 65 (Western Eskimo). Hooper, *Ten Months among the Tents of the Tuski*, pp. 160, 193, 194, 208; Nordenskiöld, *Vegas fard kring Asien och Europa*, ii. 145 (Chukchi). Dall, *op. cit.* pp. 381 (Tuski), 517 (Kamchadales), 526 (Ainos). Sarytschew, *loc. cit.* v. 67 (Kamchadales). Dobell, *Travels in Kamtschatka and Siberia*, i. 63, 82 *sq.* (Kamchadales); ii. 42 (Jakuts). Sauer, *op. cit.* p. 124 (Jakuts). Vámbéry, *Das Türkenvolk*, pp. 159 (Jakuts), 336 (natives of Eastern Turkestan), 411 (Turkomans), 451 (Tshuvashes), 509 (Baskirs), &c. Krasheninnikoff, *History of Kamschatka*, p. 236 (Kurile Islanders). Georgi, *Russia*, i. 113 (Mordvins); iii. 111 (Tunguses), 167 (Koriaks); iv. 22 (Kalmucks). Bergmann, *Nomadische Streifereien unter den Kalmüken*, ii. 281 *sqq.* Prejevalsky, *Mongolia*, i. 71 *sq.* Castrén, *Nordiska resor och forskningar*, i. 41 (Laplanders), 319 (Ostyaks). Scott Robertson, *Kâfirs of the Hindu-Kush*, p. 187 *sq.* Fraser, *Tour through the Himâlû Mountains*, pp. 264 (people of Kunawar), 335 (Butias). Dalton, *Descriptive Ethnology of Bengal*, pp. 46 (Kukis), 68 (Garos). Hunter, *Annals of Rural Bengal*, i. 215 (Santals). Tickell, 'Memoir on the Hodésum,' in *Jour. Asiatic Soc. Bengal*, ix. (pt. ii.) 807 *sq.* (Hos). Lewin, *Wild Races of South-Eastern India*, p. 217 (Tipperahs). Colquhoun, *Amongst the Shans*, pp. 160 *sq.* (Steins), 371 (Shans). Foreman, *Philippine Islands*, p. 187. de Crespigny, 'Milanows of Borneo,' in *Jour. Anthr. Inst.* v. 34. Low, *Sarawak*, pp. 243 (Hill Dyaks), 336 (Kayans). Boyle, *Adventures among the Dyaks of Borneo*, p. 215. Ling Roth, *Natives of Sarawak*, i. 82 (Sea Dyaks). Marsden, *History of Sumatra*, p. 208 (natives of the interior of Sumatra). Raffles, *History of Java*, i. 249; Crawfurd, *History of the Indian Archipelago*, i. 53 (Javanese). Riedel, *De sluik- en kroesharige rassen tusschen Selebes en Papua*, p. 41 (natives of Ambon and Uliase). von Kotzebue, *op cit.* iii. 165 (natives of Radack), 215 (Pelew Islanders). Hale, *U.S. Exploring Expedition. Vol. VI.—Ethnography and Philology*, p 95 (Kingsmill Islanders). Macdonald, *Oceania*, p. 195 (Efatese). Erskine, *Cruise among the Islands of the Western Pacific*, p. 273 *sq.*; Williams and Calvert, *Fiji and the Fijians*, p. 110; Anderson, *Travel in Fiji and New Caledonia*, p. 134 *sq.* (Fijians). Ellis, *Polynesian Researches*, i. 95. *Idem*, *Tour through Hawaii*, p. 346 *sq.* Forster, *op. cit.* ii. 158 (Tahitians), 364 (natives of Tana), 394 (South Sea Islanders generally). Cook, *Voyage round the World*, p. 40 (Tahitians). Tregear, 'Niue,' in *Jour. Polynesian Soc.* ii. 13 (Savage Islanders). Turner, *Samoa*, p. 114; Pritchard, *Polynesian Reminiscences*, p. 132; Brenchley, *Jottings during the Cruise of H.M.S. Curaçoa among the South Sea Islands*, p. 76 (Samoans). Mariner, *Natives of the Tonga Islands*, ii. 154. Yate, *op. cit.* p. 100; Dieffenbach, *op. cit.* ii. 107 *sq.*; Polack, *Manners and Customs of the New Zealanders*, ii. 155 *sq.*; Angas, *Savage Life and Scenes in Australia and New Zealand*, ii. 22 (Maoris). Gason, 'Manners and Customs of the Dieyerie Tribe,' in Woods, *Native Tribes of South Australia*, p. 258; Brough Smyth, *op. cit.* i. 25; Salvado, *op. cit.* p. 340 (Australian aborigines). Ellis, *History of Madagascar*, i. 198; Sibree, *The Great African Island*, pp. 126, 129; Rochon, *Voyage to Madagascar*, p. 62; Little, *Madagascar*, p. 61; Shaw, 'Betsileo,' in *Antananarivo Annual and Madagascar Magazine*, ii. 82. Burchell, *Travels in the Interior of Southern Africa*, ii. 54 (Bushmans), 345 (Hottentots). Kolben, *Present State of*

tion[1]—hospitality towards strangers. This custom presents several remarkable characteristics, which, to all appearance, ill agree with their tribal or national exclusiveness generally. The stranger is often welcomed with special marks of honour. The best seat is assigned to him; the best food at the host's disposal is set before

the Cape of Good Hope, i. 166, 337; Le Vaillant, *Travels from the Cape of Good Hope*, ii. 143 *sq.*; Schinz, *Deutsch-Südwest-Afrika*, p. 81 (Hottentots). Lichtenstein, *Travels in Southern Africa*, i. 272; Leslie, *Among the Zulus and Amatongas*, p. 203 (Kafirs). Casalis, *Basutos*, pp. 209, 224. Andersson, *Lake Ngami*, p. 198 (Ovambo). Macdonald, *Africana*, i. 27, 263 (Eastern Central Africans). Wilson and Felkin, *op. cit.* i. 211, 225 (Waganda). Rowley, *Africa Unveiled*, p. 47 (natives of Manganja, in the neighbourhood of Lake Nyassa). New, *Life, Wanderings, and Labours in East Africa*, pp. 102 (Wanika), 361 (Taveta). Thomson, *Through Masai Land*, p. 64 (Wa-kwafi, of the Taveta). Tuckey, *Expedition to explore the River Zaire*, p. 374 (Congo natives). Bosman, *Description of the Coast of Guinea*, p. 108. Burton, *Two Trips to Gorilla Land*, i. 106 (Mpongwe). *Idem*, *Abeokuta*, i. 303 (Yoruba). Caillié, *Travels through Central Africa*, i. 165 (Bagos). Chavanne, *Die Sahara*, p. 185 (Touareg). Hanoteau and Letourneux, *La Kabylie*, ii. 45 *sqq.* Munzinger, *Ostafrikanische Studien*, p. 534 (Barea). Lobo, *Voyage to Abyssinia*, p. 82 *sq.*

For the deteriorating influence which contact with a "higher culture" exercises on savage hospitality, see Nansen, *First Crossing of Greenland*, ii. 306 *sq.*; Ellis, *Tour through Hawaii*, p. 346; von Kotzebue, *op. cit.* iii. 250 (Hawaiians); Meade, *Ride through the Disturbed Districts of New Zealand*, p. 164; Dieffenbach, *op. cit.* ii. 107, 108, 110.

[1] According to a law of the Peruvian Incas, strangers and travellers should be treated as guests, and public houses were provided for them (Garcilasso de la Vega, *First Part of the Royal Commentaries of the Yncas*, ii. 34). For Yucatan, see Landa, *Relacion de las cosas de Yucatan*, p. 134. Though hospitality, according to Mr. Wells Williams (*Middle Kingdom*, i. 835), is not a trait of the character of the modern Chinese, kindness to strangers and travellers is enjoined in their moral and religious books (Chalmers, 'Chinese Natural Theology,' in *China Review*, v. 281. Douglas, *Confucianism and Taouism*, p. 273. *Indo-Chinese Gleaner*, iii. 160). In Corea it would be a grave and shameful thing to refuse a portion of one's meal with any person, known or unknown, who presents himself at eating-time (Griffis, *Corea*, p. 288). For the Hebrews, see *Genesis*, xviii. 2 *sqq.*, xxiv. 31 *sqq.*; *Leviticus*, xix. 9 *sq.*, xxv. 35; *Deuteronomy*, xiv. 29, xvi. 11, 14; *Judges*, xix. 17 *sqq.*; *Job*, xxxiv. 32; also Bertholet, *Die Stellung der Israeliten und der Juden zu den Fremden*, p 22 *sqq.*, and Nowack, *Lehrbuch der hebräischen Archäologie*, p. 186 *sq.* For Muhammedans, see Lane, *Manners and Customs of the Modern Egyptians*, p. 296 *sq.*; Burckhardt, *Notes on the Bedouins and Wahábys*, pp. 100-102, 192 *sqq.*; Wood, *Journey to the Source of the River Oxus*, p. 148; Hamilton, *Researches in Asia Minor*, ii. 379. For ancient India, see Leist, *Alt-arisches Jus Gentium*, pp. 39, 40, 223 *sqq.* For Greece, see Schmidt, *Ethik der alten Griechen*, ii. 325 *sqq.* For Rome, see Leist, *Alt-arisches Jus Civile*, i. 355 *sqq.*; von Jhering, *Geist des römischen Rechts*, i. 227 *sq.* For ancient Teutons, see Grimm, *Deutsche Rechtsalterthümer*, p. 399 *sq.*; Gummere, *Germanic Origins*, p. 162 *sqq.*; Keyser, *Efterladte Skrifter*, ii. pt. ii. 93; Weinhold, *Altnordisches Leben*, p. 441 *sqq.*; Gudmundsson and Kâlund, 'Sitte,' in Paul's *Grundriss der germanischen Philologie*, iii. 450 *sq.* For Slavonians, see Schrader, *Reallexikon der indogermanischen Alterthumskunde*, i. 270; Krauss, *Die Südslaven*, p. 644 *sqq.*

him; he takes precedence over all the members of the household; he enjoys extraordinary privileges. M. Hyades says of the Fuegians, "Quelque encombrée que soit une hutte, et si réduite que soit la quantité d'aliments dont on dispose, le nouvel arrivant est toujours assuré d'avoir une place près du foyer et une part de la nourriture."[1] The Mattoal of California, though they are sometimes heartlessly indifferent even to their parents, "will divide the last shred of dried salmon with any casual comer who has not a shadow of claim upon them, except the claim of that exaggerated and supererogatory hospitality that savages use."[2] A Creek Indian would not only receive into his house a traveller or sojourner of whatever nation or colour, but would treat him as a brother or as his own child, divide with him the last grain of corn or piece of flesh, and offer him the most valuable things in his possession.[3] Among the Arawaks, "when a stranger, and particularly an European, enters the house of an Indian, every thing is at his command."[4] Notwithstanding the Karen's suspicious nature, says Mr. Smeaton, his hospitality is unbounded. "He will entertain every stranger that comes, without asking a question. He feels himself disgraced if he does not receive all comers, and give them the very best cheer he has. The wildest Karen will receive a guest with a grace and dignity and entertain him with a lavish hospitality that would become a duke. Hundreds of their old legends inculcate the duty of receiving strangers without regard to pecuniary circumstances either of host or guest."[5] Among many uncivilised peoples it is customary for a man to offer even his wife, or one of his wives, to the stranger for the time he remains his guest.[6] The Bedouins of Nejd have a

[1] Hyades and Deniker, *Mission scientifique du Cap Horn*, vii. 243.
[2] Powers, *op. cit.* p. 112.
[3] Bartram, 'Creek and Cherokee Indians,' in *Trans. American Ethn. Soc.* iii. pt. i. 42.
[4] Hilhouse, in *Jour. Roy. Geo. Soc.* ii. 230. *Idem*, *Indian Notices*, p. 14. *Cf.* von Martius, *Beitrage zur Ethnographie Amerika's*, i. 692.
[5] Smeaton, *Loyal Karens of Burma*, p. 144 *sq.*
[6] Westermarck, *History of Human Marriage*, p. 73 *sqq.*

saying that "the guest while in the house is its lord";[1] and in the Institutes of Vishnu we read that, as the Brâhmanas are lords over all other castes, and as a husband is lord over his wives, so the guest is the lord of his host.[2]

Custom may require that hospitality should be shown even to an enemy. Captain Holm tells us of a Greenlander of bad character who, though he had murdered his step-father, was received, and for a long time entertained, when he paid a visit to the nearest kindred of the murdered man; and this, as it seems, was agreeable to old custom.[3] Among the Aeneze Bedouins, says Burckhardt, all means are reckoned lawful to avenge the blood of a slain relative, "provided the homicide be not killed while he is a guest in the tent of a third person, or if he has taken refuge even in the tent of his deadly foe."[4] In Afghanistan "a man's bitterest enemy is safe while he is under his roof."[5] We read in the Hitopadesa:—"On even an enemy arrived at the house becoming hospitality should be bestowed; the tree does not withdraw its sheltering shadow from the wood-cutter. . . . The guest is everyone's superior."[6] The old Norsemen considered it a duty to treat a guest hospitably even though it came out that he had killed the brother of his host.[7] A mediæval

[1] Palgrave, *Journey through Central and Eastern Arabia*, i. 345.

[2] *Institutes of Vishnu*, lxvii. 31. For other instances of the precedence granted to guests, see Man, in *Jour. Anthr. Inst.* xii. 94, 148 (Andaman Islanders); Buchanan, *North American Indians*, p. 324 (Indians of Pennsylvania); Lyon, *Private Journal*, p. 350 (Eskimo of Igloolik); Seemann, *Voyage of "Herald,"* ii. 65 (Western Eskimo); Krasheninnikoff, *op. cit.* p. 211 (Kamchadales), Georgi, *op. cit.* iii. 153 *sq.* (Kamchadales), 183 *sq.* (Chukchi). Ling Roth, *Natives of Sarawak*, i. 86 (Sea Dyaks); Mariner, *op. cit.* ii. 154 (Tonga Islanders); New, *op. cit.* p. 102 (Wanika); Hanoteau and Letourneux, *op. cit.* ii. 45 (Kabyles); Wells Williams, *op. cit.* i. 540 (Chinese); Krauss, *op. cit.* p. 649 *sq.* (Southern Slavs).

[3] Nansen, *First Crossing of Greenland*, ii. 305 *sq.*

[4] Burckhardt, *Bedouins and Wahábys*, p. 87. *Cf.* Daumas, *La vie Arabe*, p. 317 (Algerian Arabs).

[5] Elphinstone, *Kingdom of Caubul*, i. 296.

[6] *Hitopadesa*, Mitralâbhâ, 60, 62.

[7] Grimm, *Deutsche Rechtsalterthümer*, p. 400. Weinhold, *Altnordisches Leben*, p. 441. For other instances of hospitality towards enemies, see James, *Expedition to the Rocky Mountains*, i. 322 (Omahas); Bartram, in *Trans. American Ethn. Soc.* iii. pt. i. 42 (Creeks and Cherokees); Lomonaco, 'Sulle razze indigene del Brasile,' in *Archivio per l'antropologia e la etnologia*, xix. 57 (Tupis); Krauss, *op. cit.* p. 650 (Montenegrines).

knight granted safe conduct through his territories to all who required it, including those who asserted pretensions which, if established, would deprive him of his possessions.[1]

To protect a guest is looked upon as a most stringent duty under all circumstances. "Le Kabyle qui accorde son *âna'ïa* doit, sous peine d'infamie, y faire honneur, dût-il s'exposer à tous les dangers. . . . La violation de leur *âna'ïa* est la plus grave injure que l'on puisse infliger à des Kabyles. Un homme qui viole, ou, suivant l'expression consacrée, qui brise l'*âna'ïa* de son village ou de sa tribu, est puni de mort et de la confiscation de tous ses biens ; sa maison est démolie."[2] Among the Bedouins a breach of the law of *dakheel* "would be considered a disgrace not only upon the individual but upon his family, and even upon his tribe, which never could be wiped out. No greater insult can be offered to a man, or to his clan, than to say that he has broken the *dakheel*."[3] Among the Aenezes, according to Burckhardt, "a violation of hospitality, by the betraying of a guest, has not occurred within the memory of man."[4] In Egypt, "most Bedawees will suffer almost any injury to themselves or their families rather than allow their guests to be ill-treated while under their protection."[5] Among the Kandhs, "for the safety of a guest life and honour are pledged ; he is to be considered before a child" ; in order to save his guest a man is even allowed to speak falsely, which is otherwise condemned by them as a heinous sin.[6] Vámbéry tells us of cases in which the Kara-Kirghiz have preferred being harassed with war by the Chinese to surrendering to them such Chinese fugitives as have sought and received their hospitality.[7] Among the Ossetes the host not only considers himself responsible for the safety of his guest,

[1] Mills, *History of Chivalry*, p. 154.
[2] Hanoteau and Letourneux, *op. cit.* ii. 61 *sq.*
[3] Layard, *Discoveries in the Ruins of Nineveh and Babylon*, p. 317.
[4] Burckhardt, *Bedouins and Wahábys*, p. 100. *Cf. ibid.* p. 192.
[5] Lane, *Modern Egyptians*, p. 297.
[6] Macpherson, *Memorials of Service in India*, pp. 65, 94.
[7] Vámbéry, *Das Türkenvolk*, p. 268. *Cf. ibid.* p. 411 (Turkomans).

but "revenges the murder or wounding of the latter as he would that of a kinsman."[1] In Albania it is considered infamous to leave an injury inflicted on a guest unavenged.[2] Among the Takue, though a man would accept compensation for the murder of a relative, he would in all cases exact blood-revenge for the murder of his guest.[3] On the other hand, in Sierra Leone a guest "is scarcely accountable for any faults which he may commit, whether through inadvertency or design, the host being considered as responsible for the actions of 'his stranger.'"[4]

Hospitality is not only regarded as a duty of the first order, but has, in a remarkable degree, been associated with religion. Among the doctrines held up for acceptance by the religious instructors of the Iroquois there was the following precept:—"If a stranger wander about your abode, welcome him to your home, be hospitable towards him, speak to him with kind words, and forget not always to mention the Great Spirit."[5] The natives of Aneiteum, of the New Hebrides, maintained that generous hospitality would receive the highest reward in the Land of the Dead.[6] The Kalmucks believe that want of hospitality will be punished by angry gods.[7] The Kandhs say that the first duty which the gods have imposed upon man is that of hospitality; and "persons guilty of the neglect of established observances are punished by the divine wrath, either during their current lives, or when they afterwards return to animate other bodies," the penalties being death, poverty, disease, the loss of children, or any other form of calamity.[8] In the sacred books of India hospitality is repeatedly spoken of as a most important duty, the discharge of which will be

[1] von Haxthausen, *Transcaucasia*, p. 412.

[2] Gopčević, *Oberalbanien und seine Liga*, p. 328.

[3] Munzinger, *Ostafrikanische Studien*, p. 208. Among the Barea and Kunáma a man avenges the death of his guest by killing the guest of the murderer (*ibid.* p. 477).

[4] Winterbottom, *Native Africans in the Neighbourhood of Sierra Leone*, i. 214.

[5] Morgan, *League of the Iroquois*, p. 172.

[6] Inglis, *In the New Hebrides*, p. 31.

[7] Bergmann, *op. cit.* ii. 281 *sq.*

[8] Macpherson, 'Religious Opinions and Observances of the Khonds,' in *Jour. Roy. Asiatic Soc.* vii. 196.

amply rewarded. "The inhospitable man," the Vedic singer tell us, "acquires food in vain. I speak the truth—it verily is his death. . . . He who eats alone is nothing but a sinner." [1] "He who does not feed these five, the gods, his guests, those whom he is bound to maintain, the manes, and himself, lives not, though he breathes." [2] According to the Vishnu Purána, a person who neglects a poor and friendless stranger in want of hospitality, goes to hell.[3] On the other hand, by honouring guests a householder obtains the highest reward.[4] "He who entertains guests for one night obtains earthly happiness, a second night gains the middle air, a third heavenly bliss, a fourth the world of unsurpassable bliss; many nights procure endless worlds. That has been declared in the Veda." [5] It is said in the Mahabharata that "he who gives food freely to a fatigued wayfarer, whom he has never seen before, obtains great virtuous merit." [6] According to Hesiod, Zeus himself is wrath with him who does evil to a suppliant or a guest, and at last, in requital for his deed, lays on him a bitter penalty.[7] Plato says:—"In his relations to strangers, a man should consider that a contract is a most holy thing, and that all concerns and wrongs of strangers are more directly dependent on the protection of God, than wrongs done to citizens. . . . He who is most able is the genius and the god of the stranger, who follows in the train of Zeus, the god of strangers. And for this reason, he who has a spark of caution in him, will do his best to pass through life without sinning against the stranger. And of offences committed, whether against strangers or fellow-countrymen, that against suppliants is the greatest." [8] Similar opinions prevailed in ancient Rome. *Jus hospitii*, whilst

[1] *Rig-Veda*, x. 117. 6.
[2] *Laws of Manu*, iii. 72. *Cf. Institutes of Vishnu*, lxvii. 45.
[3] *Vishńu Puráńa*, p. 305.
[4] *Institutes of Vishnu*, lxvii. 28, 32.
[5] *Âpastamba*, ii. 3. 7. 16.
[6] *Mahabharata*, Vana Parva, ii. 61, pt. v. p. 5.
[7] Hesiod, *Opera et dies*, 331 *sq.* (333 *sq.*).
[8] Plato, *Leges*, v. 729 *sq.*

forming no part of the civil law, belonged to *fas*; the stranger, who enjoyed no legal protection, was, as a guest, protected by custom and religion.[1] The *dii hospitales* and Jupiter were on guard over him;[2] hence the duties towards a guest were even more stringent than those towards a relative.[3] Cæsar[4] and Tacitus[5] attest that the Teutons considered it impious to injure a guest or to exclude any human being from the shelter of their roof. The God of Israel was a preserver of strangers.[6] In the Talmud hospitality is described as "the most important part of divine worship,"[7] as being equivalent to the duty of honouring father and mother,[8] as even more meritorious than frequenting the synagogue.[9] Muhammedanism likewise regards hospitality as a religious duty.[10] "Whoever," said the Prophet, "believes in God and the day of resurrection, must respect his guest."[11] But the idea that a guest enjoys divine protection prevailed among the Arabs long before the times of Muhammed.[12] The Bedouins say that the guests are "guests of God."[13] The Christian Church, again, regarded hospitality as a duty imposed by Christ.[14]

That a stranger, who under other circumstances is treated as an inferior being or a foe, liable to be robbed and killed with impunity, should enjoy such extraordinary privileges as a guest, is certainly one of the most curious contrasts which present themselves to a student of the moral ideas of mankind. It may be asked, why should

[1] Servius, *In Virgilii Æneidos*, iii. 55: "Fas omne; et cognationis, et iuris hospitii." von Jhering, *Geist des römischen Rechts*, i. 227. Leist, *Altarisches Jus Civile*, i. 103, 358 *sq.*

[2] Servius, *In Virgilii Æneidos*, i. 736. Livy, *Historiæ Romanæ*, xxxix. 51. Tacitus, *Annales*, xv. 52. Plautus, *Pœnuli*, v. 1. 25.

[3] Gellius, *Noctes Atticæ*, v. 13. 5: "In officiis apud maiores ita observatum est, primum tutelae, deinde hospiti, deinde clienti, tum cognato, postea affini."

[4] Cæsar, *De bello Gallico*, vi. 23.

[5] Tacitus, *Germania*, 21.

[6] *Psalms*, cxlvi. 9.

[7] Deutsch, *Literary Remains*, p. 57.

[8] *Kiddushin*, fol. 39 B, quoted by Hershon, *Treasures of the Talmud*, p. 145.

[9] *Sabbath*, fol. 127 A, quoted by Katz, *Der wahre Talmudjude*, p. 103.

[10] *Koran*, iv. 40 *sqq.*

[11] Lane, *Arabian Society in the Middle Ages*, p. 142.

[12] Wellhausen, *Reste arabischen Heidentums*, p. 223 *sq.*

[13] Doughty, *Arabia Deserta*, i. 228, 504.

[14] Laurent, *Études sur l'histoire de l'Humanité*, vii. 346.

he be received at all? Of course, he stands in need of protection and support, but why should those who do not know him care for that?

One answer is that his helpless condition may excite pity; facts seem to prove that even among savages the altruistic feelings, however narrow, can be stirred by the sight of a suffering and harmless stranger. Another answer is that the host himself may expect to reap benefit from his act. And there can be little doubt that the rules of hospitality are in the main based on egoistic considerations.

It has been justly observed that in uncivilised countries, where there is no public accommodation for travellers, "hospitality is so necessary, and so much required by the mutual convenience of all parties, as to detract greatly from its merit as a moral quality."[1] When the stranger belongs to a community with which a reciprocity of intercourse prevails, it is prudent to give him a hearty reception; he who is the host to-day may be the guest to-morrow. "If the Red Indians are hospitable," says Domenech, "they also look for their hospitality being returned with the same marks of respect and consideration."[2] Moreover, the stranger is a bearer of news and tidings, and as such may be a welcome guest where communication between different places is slow and rare.[3] During my wanderings in the remote forests of Northern Finland I was constantly welcomed with the phrase, "What news?" But the stranger may be supposed to bring with him something which is valued even more highly, namely, good luck or blessings.

[1] Winterbottom, *op. cit.* i. 214.

[2] Domenech, *Seven Years' Residence in the Great Deserts of North America*, ii. 319. *Cf.* Dunbar, 'Pawnee Indians,' in *Magazine of American History*, viii. 745; Brett, *Indian Tribes of Guiana*, p. 347; Bernau, *Missionary Labours in British Guiana*, p. 51; von den Steinen, *Unter den Naturvölkern Zentral-Brasiliens*, p. 333 *sq.* (Bakairi); Georgi, *op. cit.* iii. 154 (Kamchadales); Smeaton, *op. cit.* p. 146 (Karens); Ellis, *Polynesian Researches*, i. 95 (Society Islanders); Pritchard, *Polynesian Reminiscences*, p. 132, and Brenchley, *op. cit.* p. 76 (Samoans); Williams and Calvert, *op. cit.* p. 110, and Anderson, *Notes of Travel in Fiji and New Caledonia*, p. 135 (Fijians); Chavanne, *Die Sahara*, p. 393 (Arabs of the Sahara).

[3] *Cf.* Wright, *Domestic Manners and Sentiments in England during the Middle Ages*, p. 329.

During the first days of my stay at Demnat, in the Great Atlas, the natives in spite of their hostility towards Europeans, said they were quite pleased with my coming to see them, because I had brought with me rain and an increase of the import of victuals, which just before my arrival had been very scarce. So, too, whilst residing among the Andjra mountaineers in the North of Morocco, I was said to be a person with "propitious ankles," because, since I settled down among them, the village where I stayed was frequently visited by Shereefs—presumed descendants of the Prophet Muhammed—who are always highly valued guests on account of the *baraka*, or holiness, with which they are supposed in a smaller or greater degree to be endowed. The stranger may be a source of good fortune either involuntarily, as a bearer of luck, or through his good wishes; and there is every reason to hope that he will, if treated hospitably, return the kindness of his host with a blessing. According to the old traveller d'Arvieux, strangers who come to an Arab village are received by the Sheikh with some such words as these:—"You are welcome; praised be God that you are in good health; your arrival draws down the blessing of heaven upon us; the house and all that is in it is yours, you are masters of it."[1] It is said in one of the sacred books of India that through a Brâhmana guest the people obtain rain, and food through rain, hence they know that "the hospitable reception of a guest is a ceremony averting evil."[2] When we read in the Laws of Manu that "the hospitable reception of guests procures wealth, fame, long life, and heavenly bliss,"[3] it is also reasonable to suppose that this supernatural reward is a result of blessings invoked on the host. In the 'Suppliants' of Aeschylus the Chorus sings:—"Let us utter for the Argives blessings in requital of their blessings. And may Zeus of Strangers watch to their fulfilment the rewards that issue from a stranger's tongue, that

[1] d'Arvieux, *Travels in Arabia the Desart*, p. 131 *sq.*

[2] *Vasishtha*, xi. 13.

[3] *Laws of Manu*, iii. 106.

they reach their perfect goal."[1] We can now understand the eagerness with which guests are sought for. When a guest enters the hut of a Kalmuck, "the host, the hostess, and everybody in the hut, rejoice at the arrival of the stranger as at an unexpected fortune."[2] Among the Arabs of Sinai, "if a stranger be seen from afar coming towards the camp, he is the guest for that night of the first person who descries him, and who, whether a grown man or a child, exclaims, 'There comes my guest.' Such a person has a right to entertain the guest that night. Serious quarrels happen on these occasions; and the Arabs often have recourse to their great oath—'By the divorce (from my wife) I swear that I shall entertain the guest'; upon which all opposition ceases."[3] It is also very usual in the East to eat before the gate of the house where travellers pass, and every stranger of respectable appearance is invariably requested to sit down and partake of the repast.[4] Among the Maoris, "no sooner does a stranger appear in sight, than he is welcomed with the usual cry of 'Come hither! come hither!' from numerous voices, and is immediately invited to eat of such provisions as the place affords."[5]

If efficacy is ascribed to the blessings even of an ordinary man, the blessings of a stranger are naturally supposed to be still more powerful. For the unknown stranger, like everything unknown and everything strange, arouses a feeling of mysterious awe in superstitious minds. The Ainos say, "Do not treat strangers slightingly, for you never know whom you are entertaining."[6] According to the Hitopadesa, "a guest consists of all the deities."[7] It is significant that in the writings of ancient India, Greece, and Rome, guests are mentioned next after gods as due objects of regard.[8] Thus Aeschylus speaks of a man's

[1] Aeschylus, *Supplices*, 632 *sqq.*
[2] Bergmann, *op. cit.* ii. 282.
[3] Burckhardt, *Bedouins and Wahábys*, p. 198.
[4] *Idem*, *Arabic Proverbs*, p. 218. Chasseboeuf de Volney, *Travels through Syria and Egypt*, i. 413.
[5] Yate, *op. cit.* p. 100. *Cf.* Turner, *Nineteen Years in Polynesia*, p. 325 (Samoans); Sproat, *op. cit.* p. 57 (Ahts).
[6] Batchelor, *Ainu and their Folk-Lore*, p. 259.
[7] *Hitopadesa*, Mitralâbhâ, 65.
[8] *Anugitâ*, 3, 31 (*Sacred Books of the*

"impious conduct to a god, or a stranger, or to his parents dear."[1] According to Homeric notions, "the gods, in the likeness of strangers from far countries, put on all manner of shapes, and wander through the cities, beholding the violence and the righteousness of men."[2] The author of the Epistle to the Hebrews writes, "Be not forgetful to entertain strangers: for thereby some have entertained angels unawares."[3]

The visiting stranger, however, is regarded not only as a potential benefactor, but as a potential source of evil. He may bring with him disease or ill-luck. He is commonly believed to be versed in magic;[4] and the evil wishes and curses of a stranger are greatly feared, owing partly to his quasi-supernatural character, partly to the close contact in which he comes with the host and his belongings.

In the Mentawey Islands, in the Malay Archipelago, "if a stranger enters a house where there are children, the father or some other member of the family who happens to be present, takes the ornament with which the children decorate their hair, and hands it to the stranger, who holds it in his hands for a while, and then gives it back"; this is supposed to protect the child from the evil effect which the eye of a stranger might have on it.[5] With reference to the Californian Pomo, Mr. Powers states, "Let a perfect stranger enter a wigwam and offer the lodge-father a string of beads for any object that takes his fancy—merely pointing to it, but uttering no word—and the owner holds himself bound in savage honour to make the exchange, whether it is a fair one or not." When we compare this idea of "savage honour" with certain cases mentioned in the last chapter, we cannot doubt that it is based on superstitious fear; indeed, the next day the former owner of the article "may thrust the stranger through with his spear, or crush his forehead with a pebble from his sling, and the bystanders will look

East, viii. 243, 361). Gellius, *Noctes Atticæ*, v. 13. 5.

[1] Aeschylus, *Eumenides*, 270 *sq.*

[2] *Odyssey*, xvii. 485 *sqq.*

[3] *Hebrews*, xiii. 2.

[4] Frazer, *Golden Bough*, i. 298 *sqq.*

[5] Rosenberg, *Der Malayische Archipel*, p. 198.

upon it as only the rectification of a bad bargain."[1] Among the African Herero "no curse is regarded as heavier than that which one who has been inhospitably treated would hurl at those who have driven him from the hearth."[2] According to Greek ideas, guests and suppliants had their Erinyes[3]—personifications of their curses; and it would be difficult to attribute any other meaning to "the genius (δαίμων) and the god of the stranger, who follow in the train of Zeus," spoken of by Plato, and to the Roman *dii hospitales*, in their capacity of avengers of injuries done to guests. Aeschylus represents Apollo as saying, "I shall assist him (Orestes), and rescue my own suppliant; for terrible both among men and gods is the wrath of a refugee, when one abandons him with intent."[4] It is no doubt the same idea that the Chorus in the 'Suppliants' expresses, in a modified form, when singing:—"Grievous is the wrath of Zeus Petitionary. . . . I must needs hold in awe the wrath of Zeus Petitionary, for that is the supremest on earth."[5] Âpastamba's Aphorisms contain a sûtra the object of which is to show the absolute necessity of feeding a guest, owing to the fact that, "if offended, he might burn the house with the flames of his anger";[6] for "a guest comes to the house resembling a burning fire,"[7] "a guest rules over the world of Indra."[8] According to the Institutes of Vishnu, "one who has arrived as a guest and is obliged to turn home disappointed in his expectations, takes away from the man to whose house he has come his religious merit, and throws his own guilt upon him";[9] and the

[1] Powers, *op. cit.* p. 153. The same privilege as "the perfect stranger" possesses among the Pomo, was granted by the tribes of the Niger Delta to the Ibo girl who was destined to be offered as a sacrifice. She "was allowed to claim any piece of cloth or any ornament she set her eyes upon, and the native to whom it belonged was obliged to present it to her" (Comte de Cardi, 'Ju-Ju Laws and Customs,' in *Jour. Anthr. Inst.* xxix. 54).

[2] Ratzel, *History of Mankind*, ii. 480.

[3] Plato, *Epistolæ*, viii. 357. Apollonius Rhodius, *Argonautica*, iv. 1042 *sq.*

[4] Aeschylus, *Eumenides*, 232 *sqq.*

[5] *Idem*, *Supplices*, 349, 489.

[6] *Sacred Books of the East*, ii. 114, n. 3.

[7] *Âpastamba*, ii. 3. 6. 3.

[8] *Laws of Manu*, iv. 182.

[9] *Institutes of Vishnu*, lxvii. 33.

same idea is found in many other ancient books of India.[1] That a dissatisfied guest, or a Brâhmana,[2] thus takes with him the spiritual merit of his churlish host, allows of a quite literal interpretation. In Morocco, a Shereef is generally unwilling to let a stranger kiss his hand, for fear lest the stranger should extract from him his *baraka*, or holiness; and the Shereefs of Wazzan are reputed to rob other Shereefs, who visit them, of their holiness, should the latter leave behind any remainder of their meals, even though it be only a bone.

The efficacy of a wish or a curse depends not only upon the potency which it possesses from the beginning, owing to certain qualities in the person from whom it originates, but also on the vehicle by which it is conducted—just as the strength of an electric shock depends both on the original intensity of the current and on the condition of the conductor. As particularly efficient conductors are regarded blood, bodily contact, food, and drink. In Morocco, the duties of a host are closely connected with the institution of *l-'âr*, one of the most sacred customs of that country. If a person desires to compel another to help him, or to forgive him, or, generally, to grant some request, he makes *'âr* on him. He kills a sheep or a goat or only a chicken at the threshold of his house, or at the entrance of his tent; or he grasps with his hands either the person whom he invokes, or that person's child, or the horse which he is riding; or he touches him with his turban or a fold of his dress. In short, he establishes some kind of contact with the other person, to serve as a conductor of his wishes and of his conditional curses. It is universally believed that, if the person so appealed to does not grant the request, his own welfare is at stake, and that the danger is particularly great if an animal has been killed at his door, and he steps over the blood or only catches a glimpse of it. As appears from the expression, "This is *'âr* on you if you do not do this or that," the blood, or

[1] *Vasishtha*, viii. 6. *Laws of Manu*, ii. 100. *Hitopadesa*, Mitralâbhâ, 64.

[2] *Vasishtha*, viii. 6. *Laws of Manu*, iii. 100.

the direct bodily contact, is supposed to transfer to the other person a conditional curse:—If you do not help me, then you will die, or your children will die, or some other evil will happen to you. So also the owner of a house or a tent to which a person has fled for refuge must, in his own interest, assist the fugitive, who is in his *'âr*; for, by being in his dwelling, the refugee is in close contact with him and his belongings. Again, the restraint which a common meal lays on those who partake of it is conspicuous in the usual practice of sealing a compact of friendship by eating together at the tomb of some saint. The true meaning of this is made perfectly clear by the phrase that "the food will repay" him who breaks the compact. The sacredness of the place adds to the efficacy of the imprecation, but its vehicle, the real punisher, is the eaten food, because it embodies a conditional curse.

Now the idea underlying these customs is certainly not restricted to Morocco. As will be shown in subsequent chapters, blood is very commonly used as a conductor of conditional curses; for instance, one object of the practice of sacrifice is to transfer an imprecation to the god by means of the blood of the victim. Bodily contact is another common means of communicating curses; and this accounts for many remarkable cases of compulsory hospitality and protection which have been noticed in different quarters of the world. In Fiji "the same native who within a few yards of his house would murder a coming or departing guest for sake of a knife or a hatchet, will defend him at the risk of his own life as soon as he has passed his threshold."[1] In the Pelew Islands "an enemy may not be killed in a house, especially not in the presence of the host."[2] If an Ossetian receives into his house a stranger whom he afterwards discovers to be a man to whom he owes blood-revenge, this makes no difference in his hospitality; but when the guest takes his leave, the

[1] Wilkes, *U.S. Exploring Expedition*, iii. 77.

[2] Kubary, 'Die Palau-Inseln in der Südsee,' in *Journal des Museum Godeffroy*, iv. 25.

host accompanies him to the boundary of the village, and on parting from him exclaims, "Henceforth beware!"[1] Among the Kandhs, if a man can make his way by any means into the house of his enemy he cannot be touched, even though his life has been forfeited to his involuntary host by the law of blood-revenge.[2] In none of these cases is an explanation given of the extraordinary privilege granted to the stranger; but it seems highly probable that it has the same origin as the exactly similar custom prevalent among the Moors. In other words, as soon as the stranger has come in touch with a person by entering his house, he is thought to be able to transmit to that person and his family and his property any evil wishes he pleases. So, also, in the East any stranger may place himself under the protection of an Arab by merely touching his tent or his tent-ropes,[3] and after this is done "it would be reckoned a disgraceful meanness, an indelible shame, to satisfy even a just vengeance at the expense of hospitality."[4] "Amongst the Shammar," says Layard, "if a man can seize the end of a string or thread, the other end of which is held by his enemy, he immediately becomes his Dakheel [or *protégé*]. If he touch the canvas of a tent, or can even throw his mace towards it, he is the Dakheel of its owner. If he can spit upon a man or touch any article belonging to him with his teeth, he is Dakhal, unless of course, in case of theft, it be the person who caught him. . . . . The Shammar never plunder a caravan within sight of their encampment, for as long as a stranger can see their tents they consider him their Dakheel."[5] But one of the Bedouin tribes described by Lady Anne and Mr. Blunt, whilst ready to rob the stranger who comes to their tents,

[1] von Haxthausen, *Transcaucasia*, p. 412.

[2] Macpherson, *Memorials of Service in India*, p. 66.

[3] Robertson Smith, *Kinship and Marriage in Early Arabia*, p. 48. Blunt, *Bedouin Tribes of the Euphrates*, ii. 211.

[4] Chasseboeuf de Volney, *op. cit.* i. 412.

[5] Layard, *op. cit.* p. 317 *sq.* Burckhardt says (*Bedouins and Wahábys*, p. 72) that one of the most common oaths in the domestic life of the Bedouins is "to take hold with one hand of the *wasat*, or middle tent-pole, and to swear 'by the life of this tent and its owners.'"

"count their hospitality as beginning only from the moment of his eating with them."[1] All Bedouins regard the eating of "salt" together as a bond of mutual friendship, and there are tribes who—quite in accordance with the Moorish principle, "the food will repay you"—require to renew this bond every twenty-four hours, or after two nights and the day between them, since otherwise, as they say, "the salt is not in their stomachs," and can therefore no longer punish the person who breaks the contract. The "salt" which gives a claim to protection consists in eating even the smallest portion of food belonging to the protector.[3] The Sultan Saladin did not allow the Crusader Renaud de Chatillon, when brought before him as a prisoner, to quench his thirst in his tent, for, had he drunk water there, the enemy would have been justified in regarding his life as safe.[4] We find a similar custom among the Omaha Indians: "should an enemy appear in the lodge and receive a mouthful of food or water, or put the pipe in his mouth, he cannot be injured by any member of the tribe, as he is bound for the time being by the ties of hospitality, and they are compelled to protect him and send him home in safety."[5] In these and similar cases, where there is no common meal, the guest may nevertheless transmit to his host a curse by the exceedingly close contact established between him and the food or drink or tobacco of the host, according to the principle of *pars pro toto*. This is an idea very familiar to the primitive mind. It lies, for instance, at the bottom of the common belief that a person may bewitch his enemy by getting hold of some of his spittle or some leavings of his food—a belief which has led to the custom of guests carrying away with them all they are unable to eat of the food which is placed before them,

[1] Blunt, *op. cit.* ii. 211.

[2] Burton, *Pilgrimage to Al-Madinah and Meccah*, ii. 112. Doughty, *op. cit.* i. 228.

[3] Burckhardt, *Bedouins and Wahábys*, p. 187. Quatremère, 'Mémoire sur les asiles chez les Arabes,' in *Mémoires de l'Institut de France, Académie des Inscriptions et Belles-Lettres*, xv. pt. ii. 346 *sq.*

[4] Quatremère, *loc. cit.* p. 346.

[5] Dorsey, 'Omaha Sociology,' in *Ann. Rep. Bur. Ethn.* iii. 271.

out of dread lest the residue of their meal should be eaten by somebody else.[1] The magic wire may conduct imprecations in either direction. In Morocco, if a person gives to another some food or drink, it is considered dangerous, not only for the recipient to receive it without saying, "In the name of God," but also for the giver to give it without uttering the same formula, by way of precaution.[2]

The stranger thus being looked upon as a more or less dangerous individual, it is natural that those who are exposed to the danger should do what they can to avert it. With this end in view certain ceremonies are often performed immediately on his arrival. Many such reception ceremonies have been described by Dr. Frazer,[3] but I shall add a few others which seem to serve the object of either transferring to the stranger conditional curses or purifying him from dangerous influences. I am told by a native that among some of the nomadic Arabs of Morocco, as soon as a stranger appears in the village, some water, or, if he be a person of distinction, some milk, is presented to him. Should he refuse to partake of it, he is not allowed to go freely about, but has to stay in the village mosque. On asking for an explanation of this custom, I was told that it is a precaution against the stranger; should he steal or otherwise misbehave himself, the drink would cause his knees to swell so that he could not escape. In other words, he has drunk a conditional curse.[4] The

[1] Shortland, *Traditions and Superstitions of the New Zealanders*, pp. 86, 97. *Cf.* Ellis, *Tour through Hawaii*, p. 347; Harmon, *op. cit.* p. 361 (Indians on the east side of the Rocky Mountains).

[2] Isaac also blessed his son by eating of *his* food (*Genesis*, xxvii. 4, 19, 24). The subject of hospitality has been incidentally dealt with by Mr. Crawley in his interesting book, *The Mystic Rose* (p. 239 *sqq.*; *cf.*, also, p. 124 *sqq.*). I must leave the reader to decide how far the theory I am here advocating, which mainly rests upon my researches in Morocco, coincides with his. All through his book Mr. Crawley lays much emphasis on the principle of transference; but, if I understand him rightly, he also regards commensality as involving a supposed "exchange of personality" between the host and the guest, in consequence of which "injury done to B by A is equivalent to injury done by A to himself" (p. 237). To this opinion I cannot subscribe (*cf. infra*, on the Origin and Development of the Altruistic Sentiment). So far as I can see, the mutual obligations arising from eating together are fundamentally based on the idea that the common meal serves as a conductor of conditional imprecations.

[3] Frazer, *Golden Bough*, i. 299 *sqq.*

[4] *Cf.* the "trial of jealousy" in

Arabs of a tribe in Nejd "welcome" a guest by pouring on his head a cup of melted butter,[1] the South African Herero greet him with a vessel of milk.[2] Sir S. W. Baker describes a reception custom practised by the Arabs on the Abyssinian frontier, which is exactly similar to one form of *l-'âr* of the Moors :—"The usual welcome upon the arrival of a traveller, who is well received in an Arab camp, is the sacrifice of a fat sheep, that should be slaughtered at the door of his hut or tent, so that the blood flows to the threshold."[3] Reception sacrifices also occur among the Shulis,[4] in Liberia,[5] and in Afghanistan.[6] Among the Indians of North America, again, it is a common rule that a dish of food should be placed before the new-comer immediately on his arrival, that he should taste of it even though he has just arisen from a feast, and that no word should be spoken to him or no question put to him until he has partaken of the food.[7] Among the Omahas "the master of the house is evidently ill at ease, until the food is prepared for eating; he will request his squaws to expedite it, and will even stir the fire himself."[8] Among many peoples it is considered necessary that the host should give food to his guest before he eats himself. This is a rule on which much stress is laid in the literature of ancient India.[9] A Brâhmana never takes food "without having offered it duly to gods and guests."[10] "He who eats before his guest consumes the food, the prosperity, the issue, the cattle, the merit which his family acquired by sacrifices and charitable works."[11] It is probable that this punishment has something to do

Numbers, v. 11 *sqq.*, particularly verse 22: "This water that causeth the curse shall go into thy bowels, to make thy belly to swell, and thy thigh to rot."

[1] Burckhardt, *Bedouins and Wahábys*, p. 102.

[2] Ratzel, *op. cit.* ii. 480.

[3] Baker, *Nile Tributaries of Abyssinia*, p. 94.

[4] *Emin Pasha in Central Africa*, p. 107.

[5] Trumbull, *Threshold Covenant*, p. 9.

[6] Frazer, *Golden Bough*, i. 303.

[7] Lafitau, *op. cit.* ii. 88. James, *Expedition to the Rocky Mountains*, i. 321 *sq.* Morgan, *League of the Iroquois*, p. 328. Sproat, *op. cit.* p. 57 (Ahts).

[8] James, *op. cit.* i. 322.

[9] *Gautama*, v. 25.

[10] *Mahabharata*, Shanti Parva, clxxxix. 2 *sq.*, pt. xxviii. *sq.* p. 281.

[11] *Apastamba*, ii. 3. 7. 3.

with the evil eye of the neglected guest, for the idea of eating the evil wishes of others was evidently quite familiar to the ancient Hindus. It is said in Âpastamba's Aphorisms :—"A guest who is at enmity with his host shall not eat his food, nor shall he eat the food of a host who hates him or accuses him of a crime, or of one who is suspected of a crime. For it is declared in the Veda that he who eats the food of such a person eats his guilt."[1] In Tonga Islands, "at meals strangers or foreigners are always shewn a preference, and females are helped before men of the same rank"—according to our informant, "because they are the weaker sex and require attention."[2] As to the correctness of this explanation, however, I have some doubts ; the Moors, also, at their feasts, allow the women to eat first, and one reason they give for this custom is that otherwise the hungry women might injure the men with their evil eyes. In Hawaii the host and his family do not at all partake of he entertainment with which a passing visitor is generally provided on arriving among them ;[3] and that their abstinence is due to superstitious fear is all the more probable as, among the same people, it is the custom for the guest invariably to carry away with him all that remains of the entertainment.[4]

Among the precautions taken against the visiting stranger kind and respectful treatment is of particularly great importance. No traveller among an Arabic-speaking people can fail to notice the contrast between the lavish welcome and the plain leave-taking. The profuse greetings mean that the stranger will be treated as a friend and not as an enemy ; and it is particularly desirable to secure his goodwill in the beginning, since the first glance of an evil eye is always held to be the most dangerous. We can now realise that the extreme regard shown to a guest, and the preference given to him in every matter, must, in a

[1] *Ibid.* ii. 3. 6. 19 *sq.* *Cf. Proverbs*, xxiii. 6 : "Eat not the bread of him that hath an evil eye."

[2] Mariner, *op. cit.* ii. 154.

[3] Ellis, *Tour through Hawaii*, p. 347.

[4] *Ibid.* p. 347.

large measure, be due to fear of his anger, as well as to hope of his blessings. Even the peculiar custom which requires a host to lend his wife to a guest becomes more intelligible when we consider the supposed danger of the stranger's evil eye or his curses, as also the benefits which may be supposed to result from his love.[1] And when the guest leaves, it is wise of the host to accept no reward ; for there may be misfortune in the stranger's gift.

That hospitality should be free of cost is implied in the very meaning of the word. Wherever the custom of entertaining guests has been preserved pure and genuine, remuneration is neither asked nor expected ; indeed, to offer payment would give offence, and to accept it would be disgraceful.[2] Such a custom might no doubt result from absence or scarcity of money, as it cannot be expected that the wandering stranger shall carry with him heavy presents to all his future hosts ; and where the intercourse is mutual, the hospitable man may hope one day to be paid back in his own coin. But it seems likely that the custom of not receiving payment from a guest is largely due to that same dread of strangers which underlies many other rules of hospitality. The acceptance of gifts is frequently considered to be connected with some danger. According to rules laid down in the sacred books of India, he who is about to accept gifts, or he who has accepted gifts, must repeatedly recite the four Vedic verses called Taratsamandîs ;[3] or all gifts are to be preceded by pouring out

[1] Egede informs us (*op. cit.* p. 140) that the native women of Greenland thought themselves fortunate if an Angekokk, or "prophet," honoured them with his caresses ; and some husbands even paid him for having intercourse with their wives, since they believed that the child of such a holy man could not but be happier and better than others. Some similar belief may be held in regard to intercourse with a guest, though I can adduce no direct evidence for my supposition. *Cf.* also the *jus primae noctis* accorded to priests (Westermarck, *History of Human Marriage*, p. 76 *sq.* ; *cf. ibid.* p. 80).

[2] Veniaminof, quoted by Dall, *op. cit.* p. 397 (Aleuts). Bartram, in *Trans. American Ethn. Soc.* iii. pt. i. 42. Foreman, *Philippine Islands*, p. 187 (Tagalogs). Hunter, *Annals of Rural Bengal*, i. 216. Bogle, *Narrative of Mission to Tibet*, p. 109 *sq.* Vámbéry, *Das Turkenvolk*, p. 614 (Turks in Asia Minor). Robinson, *Biblical Researches in Palestine*, ii. 18 *sq.* ; Burton, *Pilgrimage to Al-Madinah & Meccah*, i. 36 ; Blunt, *op. cit.* ii. 212 ; Lane, *Modern Egyptians*, p. 297 (Bedouins). Krauss, *Die Sudslaven*, p. 648.

[3] *Baudhâyana*, iv. 2. 4.

water into the extended palm of the recipient's right hand,[1] evidently because the water is supposed to cleanse the gift from the baneful energy with which it may be saturated. On the other hand, "without a full knowledge of the rules prescribed by the sacred law for the acceptance of presents, a wise man should not take anything, even though he may pine with hunger. But an ignorant man who accepts gold, land, a horse, a cow, food, a dress, sesamum-grains, or clarified butter, is reduced to ashes like a piece of wood. . . . Hence an ignorant man should be afraid of accepting any presents; for by reason of a very small gift even a fool sinks into hell as a cow into a morass."[2] Moreover, a gift, to be accepted by a Brâhmana, ought to be given voluntarily, not to be asked for.[3] So, too, Hebrew writers are anxious to inculcate the duty of giving alms with an ungrudging eye, as also of not giving anything before witnesses—the latter, perhaps, with a view to preventing the evil influence which is likely to emanate from an envious spectator.[4] An Atlas Berber, who had probably never before had anything to do with a European, spat on the coin which I gave him for rendering me a service, and my native friends told me that he did so for fear lest the coin, owing to some sorcery on my part, should not only itself return to me, but at the same time take with it all the money with which it had been in contact in his bag. Of the Annamites it is said that "for fear of bringing ill-luck into the place the people even decline presents."[5]

The duty of hospitality is probably always limited by time, even though, among some peoples, a guest is said to be entertained as long as he pleases to stay.[6] According

[1] *Âpastamba*, ii. 4. 9. 8. Bühler, in *Sacred Books of the East*, ii. 122, n.[8]

[2] *Laws of Manu*, iv. 187, 188, 191.

[3] *Ibid.* iv. 247 *sq.*

[4] *Tobit*, iv. 7. Kohler, in *Jewish Encyclopedia*, i. 436. *Cf. St. Matthew*, vi. 1 *sqq.*; Brandt, *Mandäische Schriften*, pp. 28, 64: "If you give alms do not do it before witnesses." The Mandæans were also forbidden to eat food prepared by a stranger or to take a meal in his company (Brandt, *Mandäische Religion*, p. 94).

[5] Ratzel, *op. cit.* iii. 418.

[6] Veniaminof, quoted by Dall, *op. cit.* p. 397 (Aleuts). Morgan, *League of the Iroquois*, p. 328. Bartram, in *Trans. American Ethn. Soc.* iii. pt. i. 42 (Creeks and Cherokee Indians).

to Teutonic custom, a guest might tarry only up to the third day.[1] The Anglo-Saxon rule was, "Two nights a guest, the third night one of the household," that is, a slave.[2] A German proverb says, "Den ersten Tag ein Gast, den zweiten eine Last, den dritten stinkt er fast."[3] So, also, the Southern Slavs declare that "a guest and a fish smell on the third day."[4] Burckhardt states that, among the Bedouins, if the stranger intends to prolong his visit after a lapse of three days and four hours from the time of his arrival, it is expected that he should assist his host in domestic matters; should he decline this, "he may remain, but will be censured by all the Arabs of the camp."[5] The Moors say that "the hospitality of the Prophet lasts for three days"; the first night the guest is entertained most lavishly, for then, but only then, he is "the guest of God." The Prophet laid down the following rule: "Whoever believes in God and the day of resurrection, must respect his guest; and the time of being kind to him is one day and one night; and the period of entertaining him is three days; and after that, if he does it longer, he benefits him more; but it is not right for a guest to stay in the house of the host so long as to incommode him."[6] According to Javanese custom, it is a point of honour to supply a stranger with food and accommodation for a day and a night at least.[7] Among the Kalmucks special honour is paid to a stranger for one day only, whereas, if he remains longer, he is treated without ceremonies.[8] Growing familiarity with the stranger naturally tends to dispel the superstitious dread which he inspired at first, and this, combined with the feeling that it is unfair of him to live at his host's expense longer than necessity requires, seems to account for the

[1] Grimm *Deutsche Rechtsalterthümer*, p. 400. Weinhold, *Altnordisches Leben*, p. 447.

[2] Quoted in *Leges Edwardi Confessoris*, 23: "Tuua nicte geste þe þirdde nicte agen hine." *Cf. Laws of Cnut*, ii. 28; *Laws of Hlothhære and Eadric*, 15; *Leges Henrici I.* viii. 5.

[3] Weinhold, *op. cit.* p. 447.

[4] Krauss, *op. cit.* p. 658.

[5] Burckhardt, *Bedouins and Wahábys*, p. 101 *sq.*

[6] Lane, *Arabian Society*, p. 142 *sq.*

[7] Crawfurd, *op. cit.* i. 53.

[8] Beigmann, *op. cit.* ii. 285.

rapid decline of his extraordinary privileges and for the short duration of his title to hospitable treatment.

Contrary to what is the case with other duties which men owe to their fellow-creatures, in every progressive society we find hospitality on the wane. In the later days of Greece and Rome it almost dwindled into a survival.[1] In the Middle Ages hospitality was extensively practised by high and low; it was enjoined by the tenets of Chivalry,[2] and the poorer people, also, considered it disgraceful to refuse to share their meals with a needy stranger.[3] However, in the reign of Henry IV., Thomas Occlif complains of the decline of hospitality in England; and in the middle of the Elizabethan age, Archbishop Sandys says that "it is come to pass that hospitality itself is waxen a stranger."[4] The reasons for this decline are not difficult to find. Increasing intercourse between different communities or different countries not only makes hospitality an intolerable burden, but leads to the establishment of inns, and thus hospitality becomes superfluous. It habituates the people to the sight of strangers, and, in consequence, deprives the stranger of that mystery which surrounds the lonely wanderer in an isolated district whose inhabitants have little communication with the outside world. And, finally, increase of intercourse gives rise to laws which make an individual protector needless, by placing the stranger under the protection of the State.

[1] Becker-Göll, *Charikles*, ii. 3 *sqq.* *Idem*, *Gallus*, iii. 28 *sqq.*

[2] Sainte-Palaye, *Mémoires sur l'ancienne chevalerie*, i. 310.

[3] Wright, *Domestic Manners and Sentiments in England during the Middle Ages*, p. 329 *sqq.*

[4] Sandys, *Sermons*, p. 401.

CHAPTER XXV

THE SUBJECTION OF CHILDREN

FROM the modes of conduct which affect the life or bodily welfare of a fellow-creature we shall pass to those relating to personal freedom. In its absolute form the right of liberty may be granted to a perfect being, but has no existence on earth. Ever since the conduct of men became subject to moral censure, the right of doing what they pleased was *eo ipso* denied them; and in resisting wrong men have not only in various ways interfered with the liberty of their fellow-creatures, but have considered such interference to be their right or even their duty. As to the question what conduct is wrong opinions have differed, and so also as to the proper means of interference; but with neither of these questions are we concerned at present. Nor shall I deal with the subject of political liberty, nor with such restrictions as people lay on their own freedom by contract. I shall only consider facts bearing upon that state of subjection to which large classes of individuals are doomed by custom or law, on account of their birth or other circumstances beyond their own control—the subjection of children, wives, and slaves to their parents, husbands, or masters.

Among the lower races every family has its head, who exercises more or less authority over its members. In some instances where the maternal system of descent prevails, a man's children are in the power of the head of

their mother's family or of their maternal uncle;[1] but this is by no means the rule even among peoples who reckon kinship through females only. The facts which have been adduced as examples of the so-called "mother-right" in most instances imply, chiefly, that children are named after their mothers, not after their fathers, and that property and rank descend exclusively in the female line;[2] and this is certainly very different from a denial of paternal rights.[3] Among those Australian tribes which have the system of maternal descent the father is distinctly said to be the master of his children.[4] In Melanesia, where the clan of the children is determined by that of the mother, she is, to quote Dr. Codrington, "in no way the head of the family. The house of the family is the father's, the garden is his, the rule and government are his."[5] As regards the Iroquois—among whom, at the death of a man, his property is divided between his brothers, sisters, and mother's brothers, whilst the property of a woman is transmitted to her children and sisters[6]—we are told that the mother superintends the children, but that the word of the father is law and must be obeyed by the whole household.[7] Among the Mpongwe, who reckon kinship through the mother, the father has by law unrestricted power over his children.[8] And in Madagascar, where children generally follow the condition of the mother,[9] the commands of a father or an ancestor are, among all the tribes, "held as most sacredly binding upon his descendants."[10] Whatever might have been the case in earlier times, it is a fact beyond dispute that among the great bulk of existing savages children are in the power of

[1] Westermarck, *History of Human Marriage*, p. 40 *sq.* Grosse, *Die Formen der Familie*, p. 183 *sq.* Post, *Afrikanische Jurisprudenz*, i. 51 *sq.* Marsden, *History of Sumatra*, p. 262 *sq.*

[2] Westermarck, *op. cit.* p. 97.

[3] See von Dargun, *Mutterrecht und Vaterrecht*, p. 3 *sqq.*

[4] Curr, *The Australian Race*, i. 60, 61, 69.

[5] Codrington, *Melanesians*, p. 34.

[6] Westermarck, *op. cit.* p. 110.

[7] Seaver, *Narrative of the Life of Mrs. Mary Jemison*, p. 165.

[8] Hübbe-Schleiden, *Ethiopien*, pp. 151, 153.

[9] Westermarck, *op. cit.* p. 103.

[10] Sibree, *The Great African Island*, p. 326.

their father, though he may to some extent have to share his authority with the mother.

The extent of the father's power, however, is subject to great variations. Among some savage peoples, as we have seen, he may destroy his new-born child; among others infanticide is prohibited by custom. Among some he may sell his children,[1] among others such a right is expressly denied him.[2] Frequently he gives away his daughter in marriage without consulting her wishes; but in other cases her own consent is required, or she is allowed to choose her husband herself.[3] Marriage by purchase does not imply that "a girl is sold by her father in the same manner, and with the same authority, with which he would dispose of a cow."[4] It seems that the paternal authority is always in some degree limited by public opinion. Among the Káfirs of the Hindu-Kush, for instance, though the head of the house is described as an autocrat in his own family, the son, backed by public opinion, may, and does, openly quarrel with and threaten his father in cases when the father's actions have been of a particularly gross character.[5]

The essence of dependence lies in obedience and submission. To judge from what is said about children's behaviour towards their parents, the authority of the father must among some savages be practically very slight.

The South American Charruas "ne défendent rien à leurs enfans, et ceux-ci n'ont aucun respect pour leurs pères."[6] Among the Brazilian Indians, according to von Martius, respect and obedience on the part of children towards their parents are un-

[1] Schadenberg, 'Negritos der Philippinen,' in *Zeitschr. f. Ethnologie*, xii. 137. Post, *Afrikanische Jurisprudenz*, i. 51 *sq.* (Bogos, Fantis, Dahomans). Paulitschke, *Ethnographie Nordost-Afrikas*, p. 189. Leuschner, in Steinmetz, *Rechtsverhältnisse*, p. 16 *sq.* (Bakwiri). Among the Banaka and Bapuku, in the Cameroons, the father may give his daughter in payment for a debt, but not his son (*ibid.* p. 31).

[2] Kraft, in Steinmetz, *Rechtsverhältnisse*, p. 285 (Wapokomo). Rautanen, *ibid.* p. 329 (Ondonga).

[3] Westermarck, *op. cit.* p. 215 *sqq.*

[4] Leslie, *Among the Zulus and Amatongas*, p. 194. Westermarck, *op. cit.* ch. x.

[5] Scott Robertson, *Káfirs of the Hindu-Kush*, p. 474.

[6] Azara, *Voyages dans l'Amérique méridionale*, ii. 23.

known.[1] Among the Tarahumares of Mexico "the children grow up entirely independent, and if angry a boy may even strike his father."[2] We are told that among the Aleuts parents "scarcely ever enjoy so much authority as to compel their own children to shew them the least obedience, or to go a single step in their service"; [3] but this does not seem to hold good of all of their tribes.[4] Of the Kamchadales Steller states that the children insult their parents with all sorts of bad talk, stand in no fear of them, obey them in nothing, and are consequently never commanded to do anything, nor punished.[5]

Other savages, again, are by no means deficient in filial piety.[6]

Among various Eskimo[7] and North American Indian tribes[8] children are described as very obedient to their parents. Parry says of the Eskimo of Winter Island and Igloolik that disobedience is scarcely ever known, and that "a word or even a look from a parent is enough."[9] The Potawatomis hold the violation of the advice and directions of their parents one of the most atrocious crimes.[10] In Tonga "filial duty is a most important duty and appears to be universally felt."[11] One of the chief duties which the Ainos taught their children was obedience to parents.[12] Among the Central Asiatic Turks a son, whilst young, behaves as if he were his father's slave.[13] Among the

[1] von Martius, in *Jour. Roy. Geo. Soc.* ii. 199. *Cf.* Southey, *History of Brazil*, iii. 387 (Guaycurus).

[2] Lumholtz, *Unknown Mexico*, p. 275.

[3] Georgi, *Russia*, iii. 212.

[4] Veniaminof, quoted by Petroff, 'Report on Alaska,' in *Tenth Census of the United States*, pp. 155, 158.

[5] Steller, *Beschreibung von dem Lande Kamtschatka*, p. 353. *Cf.* Georgi, *op. cit.* iii. 158.

[6] Im Thurn, *Among the Indians of Guiana*, p. 213. Schwaner, *Borneo*, i. 162 (Malays of the Barito River in Borneo). Worcester, *Philippine Islands*, p. 481. Lewin, *Hill Tracts of Chittagong*, p. 102 (Kukis). Vámbéry, *Türkenvolk*, p. 268 (Kara-Kirghiz). Macpherson, *Memorials of Service in India*, p. 67; Hunter, *Annals of Rural Bengal*, iii. 72 (Kandhs). Granville and Roth, in *Jour. Anthr. Inst.* xxviii. 109 (Jekris of the Warri District of the Niger Coast Protectorate). Stuhlmann, *Mit Emin Pascha ins Herz von Afrika*, p. 801 (Latuka).

[7] Hall, *Arctic Researches*, p. 568. Boas, 'Central Eskimo,' in *Ann. Rep. Bur. Ethn.* vi. 566. Murdoch, 'Ethnol. Results of the Point Barrow Expedition,' *ibid.* ix. 417. Turner, 'Ethnology of the Ungava District,' *ibid.* xi. 191 (Koksoagmyut).

[8] Turner, in *Ann. Rep. Bur. Ethn.* xi. 269 (Hudson Bay Indians). Heriot, *Travels through the Canadas*, p. 530. Harmon, *Journal of Voyages*, p. 347 (Indians on the east side of the Rocky Mountains).

[9] Parry, *Journal of a Second Voyage for the Discovery of a North-West Passage*, p. 530.

[10] Keating, *Expedition to the Source of St. Peter's River*, i. 127.

[11] Mariner, *Natives of the Tonga Islands*, ii. 179.

[12] Batchelor, *Ainu and their Folk-Lore*, p. 254.

[13] Vámbéry, *op. cit.* p. 226.

Ossetes "the authority of the head of the family, whether grandfather, father, stepfather, uncle, or elder brother, is submitted to unconditionally; the young men never sit in his presence, nor speak with a loud voice, nor contradict him."[1] Among the Barea and Kunáma "a father and a mother are respected to the utmost degree. A son never dares to contradict his parents nor oppose their commands, however unjust they be. The mother particularly is much beloved and tenderly cared for at her old age."[2] Among the Mandingoes children "have a great veneration for their parents," and "would feel extreme reluctance to disobey their father."[3] Of the Bachapins, a Bechuana tribe, it is said that filial obedience is strenuously enforced."[4] Among the Kafirs "any one who should fail in respect for his father, or show any neglect of him, would draw on himself the contempt of the whole horde; there have been even instances in which want of filial duty has been punished with infamy and banishment."[5]

The period during which the paternal authority lasts varies. The daughter is in her father's power till she marries, and as a rule no longer;[6] but in some instances his authority over her continues even after her marriage.[7] This, we have reason to believe, is particularly the case when the husband, on marrying, does not take his wife to his own home, but goes himself to live with her in the house or community of her father.[8] A father's authority over his son frequently comes to an end as the young man

[1] von Haxthausen, *Transcaucasia*, p. 414 *sq.*

[2] Munzinger, *Ostafrikanische Studien*, p. 474.

[3] Caillié, *Travels through Central Africa*, i. 352 *sq.*

[4] Burchell, *Travels in the Interior of Southern Africa*, ii. 557.

[5] Lichtenstein, *Travels in Southern Africa*, i. 265. Alberti, *De Kaffers aan de Zuidkust van Afrika*, p. 116 *sqq.* Shooter, *Kafirs of Natal*, p. 98.

[6] See, *e.g.*, Leuschner, in Steinmetz, *Rechtsverhältnisse*, p. 17 (Bakwiri); Fama Mademba, *ibid.* p. 65 (natives of the Sansanding States); Nicole, *ibid.* p. 100 (Diakité); Lang, *ibid.* p. 224 (Washambala); Kraft, *ibid.* p. 286 (Wapokomo); Marx, *ibid.* p. 349 (Amahlubi); Sorge, *ibid.* p. 404 (Nissan Islanders of the Bismarck Archipelago).

[7] See, *e.g.*, Beverley, in Steinmetz, *Rechtsverhaltnisse*, p. 206. What is said, *ibid.* p. 31, concerning the Banaka and Bapuku does not seem to agree with the statement p. 30, that the husband is the head of his household and the possessor of his wives.

[8] *Cf.* Mazzarella, *La condizione giuridica del marito nella famiglia matriarcale, passim; infra*, on the Subjection of Wives. The point in question, like the whole subject of the father'sauthority among the lower races, requires much further investigation.

grows up. Among the Fuegians a son becomes independent of his parents at a very early age, being allowed to leave their wigwam if he pleases.[1] Among the Togiagamutes, an Eskimo tribe, "the youth, as soon as he is able to build a kaiak and to support himself, no longer observes any family ties but goes where his fancy takes him."[2] Of the Australian natives it is said that sons become independent when they have gone through the ceremonies by which they attain to the *status* of manhood;[3] among the Bangerang tribe of Victoria "after his twelfth year or so the boy was very little subject to the father, though parental affection always endured."[4] Among the Bedouins "the young man, as soon as it is in his power, emancipates himself from the father's authority, still paying him some deference as long as he continues in his tent; but whenever he can become master of a tent himself (to obtain which is his constant endeavour), he listens to no advice, nor obeys any earthly command but that of his own will."[5] That a son is emancipated from the father's power by getting full-grown or by leaving the household is probably the rule among the great majority of the lower races.[6] But here again instances to the contrary are not wanting.[7] In Flores the sons even of rich families are dressed like slaves at public feasts, so long as the father lives, as also at his funeral. This, our authority adds, is apparently the external sign of a strict *patria potestas*, which remains in force till the funeral; until then the son is the father's slave.[8]

[1] Bove, *Patagonia, Terra del Fuoco*, p. 133.

[2] Petroff, *loc. cit.* p. 135.

[3] Curr, *The Australian Race*, i. 61.

[4] *Idem*, *Recollections of Squatting in Victoria*, p. 248.

[5] Burckhardt, *Notes on the Bedouins and Wahábys*, p. 201.

[6] For other instances, see Munzinger, *Die Sitten und das Recht der Bogos*, p. 36; Post, *Afrikanische Jurisprudenz*, i. 51 (Somals); Leuschner, in Steinmetz, *Rechtsverhältnisse*, p. 17 (Bakwiri); Nicole, *ibid.* p. 100 (Diakité); Beverley, *ibid.* p. 206 (Wagogo); Marx, *ibid.* p. 349 (Amahlubi); Sorge, *ibid.* p. 404 (Nissan Islanders).

[7] Sarbah, *Fanti Customary Laws*, p. 5. Stuhlmann, *op. cit.* p. 801 (Latuka). Steinmetz, *Rechtsverhaltnisse*, p. 31 (Banaka and Bapuku). Fama Mademba, *ibid.* p. 65 (natives of the Sansanding States). Kraft, *ibid.* p. 286 (Wapokomo). Abercromby, *Pre- and Protohistoric Finns*, i. 181 (Mordvins).

[8] von Martens, quoted by Nieboer, *Slavery as an Industrial System*, p. 26, n. 2.

However, the expiration of the paternal power, in the proper sense of the term, does not necessarily imply the loss of all authority over the children. The father, at all events, retains the rights incident to his superior age, and among many uncivilised peoples these are great. Old age commands respect and gives authority.

Among the Fuegians "in each family the word of an old man is accepted as law by the young people; they never dispute his authority."[1] The Patagonians "pay respect to old people, taking great care of them."[2] The Caribs "portent un grand respect aus vieillards."[3] The same is the case among many of the North American Indians.[4] Among the Naudowessies, whilst the advice of a father will seldom meet with any extraordinary attention from the young Indians, "they will tremble before a grandfather, and submit to his injunctions with the utmost alacrity. The words of the ancient part of their community are esteemed by the young as oracles."[5] Among the Eskimo about Behring Strait the old men are listened to with respect;[6] and among the Point Barrow Eskimo "respect for the opinions of elders is so great that the people may be said to be practically under what is called 'simple elder rule.'"[7] Among the Veddahs of Ceylon the oldest man "is regarded with a sort of patriarchal respect when accident or occasion has brought together any others than the members of one family."[8] Among the Jakuts an old man is implicitly obeyed as a father of a family; "a young man ever gives his opinion with the greatest respect and caution; and even when asked, he submits his ideas to the judgment of the old."[9] Regard for the aged is found among the Ainos,[10] Kurilians,[11] Mongols,[12] Ossetes,[13]

[1] King and Fitzroy, *Voyages of the "Adventure" and "Beagle,"* ii. 179.

[2] *Ibid.* ii. 172.

[3] de Poircy-de Rochefort, *Histoire des Isles Antilles*, p. 461.

[4] Buchanan, *North American Indians*, p. 7. Prescott, in Schoolcraft, *Indian Tribes of the United States*, ii. 196.

[5] Carver, *Travels through the Interior Parts of North America*, p. 243.

[6] Nelson, 'Eskimo about Bering Strait,' in *Ann. Rep. Bur. Ethn.* xviii. 304.

[7] Murdoch, in *Ann. Rep. Bur. Ethn.* ix. 427.

[8] Hartshorne, 'Weddas,' in *Indian Antiquary*, viii. 320. *Cf.* Deschamps, *Carnet d'un voyageur*, p. 395.

[9] Sauer, *Billings' Expedition to the Northern Parts of Russia*, p. 124.

[10] Batchelor, *Ainu and their Folk-Lore*, p. 254. von Siebold, *Ethnol. Studien über die Aino auf der Insel Yesso*, p. 25.

[11] Krasheninnikoff, *History of Kamschatka*, p. 236.

[12] Prejevalsky, *Mongolia*, i. 71.

[13] von Haxthausen, *Transcaucasia*, p. 414. Strabo (xi. 4. 8) reports the same of the Albanians of the Eastern Caucasus.

Kukis,[1] Nicobarese,[2] Negritos of the Philippine Islands,[3] Papuans of New Guinea,[4] New Caledonians,[5] Caroline Islanders,[6] Tonga Islanders,[7] and, in a remarkable degree, among the Australian aborigines.[8] "Among the Kurnai," says Mr. Howitt, "age meets with great reverence. . . . It may be stated as a general rule that authority attaches to age. It follows from this that there is no hereditary authority and no hereditary chieftain. The authority which is inherent in age attaches not alone to the man, but also to the woman." And he justly adds that this principle regulating authority seems to be, not peculiar to the Kurnai, but general to the whole Australian race.[9]

Turning to African peoples: among the Danakil the aged of both sexes, but especially the males, are held in great veneration, and the old men are consulted on every occasion of any importance.[10] "The real religion of the Barea and Kunáma," says Munzinger, "consists in an extraordinary reverence for old age. Among these peoples only the old, the weak, or the blind command respect."[11] The Ewe-speaking peoples on the Slave Coast have a proverb, "Respect the elders, they are our fathers."[12] Winterbottom doubts whether the ancient Lacedæmonians paid greater regard to old age than do the natives of Sierra Leone.[13] Mr. Leighton Wilson says of the Mpongwe:—"There is no part of the world where respect and veneration for age is carried to a greater length than among this people. . . . All the younger members of society are early trained to show the utmost deference to age. They must never come into the presence of aged persons or pass by their dwellings without taking off their hats and assuming a crouching gait. When seated in their presence

[1] Lewin, *Hill Tracts of Chittagong*, p. 102.

[2] Kloss, *In the Andamans and Nicobars*, p. 243.

[3] Schadenberg, in *Zeitschr. f. Ethnol.* xii. 135. Earl, *Papuans*, p. 133. Foreman, *Philippine Islands*, p. 209.

[4] Earl, *op. cit.* p. 81.

[5] Atkinson, in *Folk-Lore*, xiv. 248.

[6] Christian, *Caroline Islands*, p. 72. Angas, *Polynesia*, p. 382.

[7] Mariner, *op. cit.* ii. 155.

[8] Roth, *North-West-Central Queensland Aborigines*, p. 141. Fraser, *Aborigines of New South Wales*, p. 5. Schuermann, 'Aboriginal Tribes of Port Lincoln,' in Woods, *Native Tribes of South Australia*, p. 226. Hale *U.S. Exploring Expedition. Vol. VI. Ethnography and Philology*, p. 113. Mitchell, *Expeditions into the Interior of Eastern Australia*, ii. 346. Brough Smyth, *Aborigines of Victoria*, i. 137 *sq.* See also Steinmetz, *Ethnol. Studien zur Entwicklungsgeschichte der Strafe*, ii. 26 *sqq.*

[9] Fison and Howitt, *Kamilaroi and Kurnai*, p. 211 *sq.*

[10] Scaramucci and Giglioli, 'Notizie sui *Danakil*,' in *Archivio per l'antropologia e la etnologia*, xiv. 36.

[11] Munzinger, *Ostafrikanische Studien*, p. 474.

[12] Ellis, *Ewe-speaking Peoples*, p. 268.

[13] Winterbottom, *Native Africans in the Neighbourhood of Sierra Leone*, i. 211.

it must always be at a 'respectful distance'—a distance proportioned to the difference in their ages and position in society. If they come near enough to hand an aged man a lighted pipe or a glass of water, the bearer must always fall upon one knee. Aged persons must always be addressed as 'father' (*rera*), or 'mother' (*ngwe*). Any disrespectful deportment or reproachful language toward such persons is regarded as a misdemeanour of no ordinary aggravation. A youthful person carefully avoids communicating any disagreeable intelligence to such persons, and almost always addresses them in terms of flattery and adulation."[1] Among the For tribe of Central Africa "great consideration is shown towards women when they are old, as well as towards aged men."[2] Regard for old age is, in fact, a very general trait of the African character.[3]

Not only old age, but superiority of age, gives a certain amount of power.

The Australian natives have a well-regulated order of precedence and authority. "When the individual reaches the full development of puberty, he or she undergoes a ceremony which entitles him or her on its successful completion to a certain social rank or *status* in the community. As life progresses, other and higher ranks are progressively attainable for each sex, until the highest and most honourable grade, that enjoyed by an old man, or an old woman, is reached."[4] All North American Indians "hold that superior age gives authority; and every person is taught from childhood to obey his superiors and to rule over his inferiors. The superiors are those of greater age; the inferiors, those who are younger."[5] The same influence of age makes itself felt in the relations between elder

[1] Wilson, *Western Africa*, p. 392 *sq.*

[2] Felkin, 'Notes on the For Tribe of Central Africa,' in *Proceed. Roy. Soc. Edinburgh*, xiii. 224 *sq.*

[3] Monrad, *Bidrag til en Skildring af Guinea-Kysten*, p. 37 (Negroes of Accra). Granville and Roth, in *Jour. Anthr. Inst.* xxviii. 109 (Jekris). Kingsley, *Travels in West Africa*, p. 460 (Calabar tribes). Caillié, *op. cit.* i. 352 (Mandingoes). Stuhlmann, *op. cit.* pp. 789, 801 (Latuka). Casati, *Ten Years in Equatoria*, i. 186. Chanler, *Through Jungle and Desert*, p. 246 (Embe). New, *Life, Wanderings, and Labours in Eastern Africa*, p. 101 (Wanika). Johnston, *Kilima-njaro Expedition*, p. 419 (Masai). Arnot, *Garenganze*, p. 78, note. Lichtenstein, *op. cit.* i. 265; Alberti, *op. cit.* p. 118; Shooter, *op. cit.* p. 98 (Kafirs). Schinz, *Deutsch-Sudwest-Afrika*, p. 82 (Hottentots).

[4] Roth, *op. cit.* p. 169. *Cf. ibid.* p. 65 *sq.*; Eyre, *Journals of Expeditions of Discovery into Central Australia*, ii. 315.

[5] Powell, 'Sociology,' in *American Anthropologist*, N. S. i. 700. *Cf. Idem*, in *Ann. Rep. Bur. Ethn.* iii. p. lviii.

and younger brothers and sisters.[1] Navaho myths indicate that "even among twins, the younger must defer to the elder."[2] The eldest brother comes next to the father in authority, and, in case of his death, succeeds him as the head of the family. The Aleuts described by Father Veniaminof maintained that "if one had no father he should respect his oldest brother and serve him as he would a father."[3] Among the Kalmucks "the elder brother is the despot of the younger ones, and is even allowed to punish them."[4] In Madagascar so great respect is paid to seniority "that if two slaves who are brothers are going a journey, any burden must be carried by the younger one, so far at least as his strength will allow."[5] In Tonga custom decrees "that all persons shall be in the service of their older and superior relations, if those relations think proper to employ them"; and every chief shows the greatest regard for his eldest sister.[6] Among the Hottentots "the highest oath a man could take and still takes, was to swear by his eldest sister, and if he should abuse this name, the sister will walk into his flock and take his finest cows and sheep, and no law could prevent her from doing so."[7] Among the Point Barrow Eskimo, again, "seniority gives precedence when there are several women in one hut, and the sway of the elder in the direction of everything connected with her duties seems never disputed."[8]

It must be added, however, that the reverence for old age may cease when the grey-head gets so old as to be an incumbrance to those around him;[9] and imbecility may put an end to the father's authority over his family.[10] We have previously noticed that parents worn out with age

[1] Nachtigal, *Sahara und Sudan*, i. 450 (Tedâ). Chavanne, *Die Sahara*, p. 396 (Arabs of the Sahara). Paulitschke, *op. cit.* p. 192 (Gallas). von Haxthausen, *Transcaucasia*, p. 415 (Ossetes). Buch, 'Die Wotjáken,' in *Acta Societatis Scientiarum Fennicæ*, xii. 489 (Votyaks). Sumner, in *Jour. Anthr. Inst.* xxxi. 75 (Jakuts). Batchelor, *Ainu and their Folk-Lore*, p. 254.

[2] Matthews, 'Study of Ethics among the Lower Races,' in *Journal of American Folk-Lore*, xii. 9.

[3] Veniaminof, quoted by Petroff, *loc. cit.* p. 155.

[4] Bergmann, *Nomadische Streifereien unter den Kalmüken*, ii. 305.

[5] Sibree, *op. cit.* p. 182.

[6] Mariner, *op. cit.* i. 226; ii. 155.

[7] Hahn, *The Supreme Being of the Khoi-Khoi*, p. 21.

[8] Simpson, quoted by Murdoch, in *Ann. Rep. Bur. Ethn.* ix. 427.

[9] Curr, *Squatting in Victoria*, pp. 245, 265 *sqq.*; Eyre, *op. cit.* ii. 316 (Australian aborigines). Sumner, in *Jour. Anthr. Inst.* xxxi. 76 (Jakuts). Nansen, *Eskimo Life*, p. 177 *sq.* (Greenlanders). *Supra*, p. 534.

[10] Steinmetz, *Rechtsverhältnisse*, p. 31 (Banaka and Bapuku).

and disease are among some peoples killed or abandoned by their own children.[1]

When passing from the savage and barbarous races of men to those next above them in civilisation, we find paternal, or parental, authority and filial reverence at their height. In ancient Mexico "necessitous parents were allowed to dispose of any one of their children, in order to relieve their poverty," whereas a master could not sell a well-behaved slave without his consent.[2] A youth was seldom permitted to choose a wife for himself, but was expected to abide by the selection of his parents;[3] and "children were bred to stand so much in awe of their parents that even when grown up and married they hardly durst speak before them."[4] So, too, in Nicaragua a father might sell his children as slaves in cases of great necessity,[5] and matches were in the larger part of the country arranged by the parents.[6] In ancient Peru disobedient children were publicly chastised by their own parents;[7] and Inca Pachacutec confirmed the law that sons should obey and serve their fathers until they reached the age of twenty-five, and that none should marry without the consent of the parents and of the parents of the girl.[8]

In China a house-father reigns almost supreme in his family, and, according to ancient Chinese ideas, not even marriage withdraws the son from his power.[9] The law, it is true, prohibits him from killing[10] or selling[11] his children; but it is only in supreme cases that the State interferes between the head of a household and his family belongings, and the sale of children is practically allowed.[12] No person, of whatever age, can act for himself in matri-

[1] *Supra*, p. 386 *sq.*

[2] Clavigero, *History of Mexico*, i. 360.

[3] Westermarck, *op. cit.* p. 226.

[4] Clavigero, *op. cit.* i. 331.

[5] Squier, *Nicaragua*, p. 345.

[6] Bancroft, *Native Races of the Pacific States*, ii. 667.

[7] Herrera, *General History of the West Indies*, iv. 339.

[8] Garcilasso de la Vega, *First Part of the Royal Commentaries of the Yncas*, ii. 207.

[9] de Groot, *Religious System of China* (vol. ii. book) i. 507.

[10] *Supra*, p. 393.

[11] *Ta Tsing Leu Lee*, sec. cclxxv. p. 292.

[12] Douglas, *Society in China*, p. 78. Staunton, in his translation of *Ta Tsing Leu Lee*, p. 292 n.* Doolittle, *Social Life of the Chinese*, ii. 209.

monial matters during the lifetime or in the neighbourhood of his parents or near senior kinsfolk.[1] The law provides that disobedience to the instructions and commands of parents or paternal grandparents shall be punished with one hundred blows,[2] and that a still greater punishment shall be inflicted on a son accusing his father or mother and on a grandson accusing his paternal grandparent, even though the accusation prove true.[3] Indeed, from earliest youth the Chinese lad is imbued with such respect for his parents that it becomes at last a religious sentiment, and forms, as he gets older, the basis of his only creed—the worship of ancestors.[4] Confucianism itself has been briefly described as "an expansion of the root idea of filial piety."[5] The Master said:—"Filial piety is the root of all virtue, and the stem out of which grows all moral teaching. . . . Filial piety is the constant method of Heaven, the righteousness of Earth, and the practical duty of Man. . . . Of all the actions of man there is none greater than filial piety. In filial piety there is nothing greater than the reverential awe of one's father. In the reverential awe shown to one's father there is nothing greater than the making him the correlate of Heaven."[6] But the idea that filial piety is the fundamental duty of man was not originated by Confucius, it had obtained a firm hold of the national mind long before his time.[7] It also prevails in Corea[8] and Japan,[9] where the authority of a house-father is, or, in the case of Japan, until lately has been,[10] as great as in China. "The Japanese maiden, as pure as the purest Christian virgin, will at the command of her father enter the brothel to-morrow, and prostitute herself for life. Not a murmur escapes her lips

[1] Medhurst, 'Marriage, Affinity, and Inheritance in China,' in *Trans. Roy. Asiatic Soc. China Branch*, iv. 11.

[2] *Ta Tsing Leu Lee*, sec. cccxxxviii. p. 374.

[3] *Ibid.* sec. cccxxxvii. p. 371 *sq.*

[4] Wells Williams, *Middle Kingdom*, i. 646.

[5] Griffis, *Corea*, p. 328 *sq.*

[6] *Hsião King*, 1, 7, 9 (*Sacred Books of the East*, iii. 446, 473, 476).

[7] Douglas, *Confucianism and Taouism*, p. 118.

[8] Griffis, *Corea*, pp. 236, 259.

[9] Rein, *Japan*, p. 427. Griffis, *Religions of Japan*, p. 122 *sq.*

[10] Griffis, *Religions of Japan*, p. 148.

is she thus filially obeys."[1] In Corea, whilst the first thing nculcated in a child's mind is respect for his father, little respect is felt for the mother; the child soon learns that ı mother's authority is next to nothing.[2]

It is the general opinion of Assyriologists that in ıncient Chaldæa, at least in the early period of its history, he father had absolute authority over all the members of ıis household.[3] Anything undertaken by them without ıis consent was held invalid in the eyes of the law,[4] and a lisobedient son might be sold as a slave.[5] According to he Laws of Hammurabi, a man might give his son or laughter as a hostage for debts;[6] but he could not disown ıis children at discretion. It is said that if he wishes to ut off his son he must declare his intention to the judge, whereupon "the judge shall enquire into his reasons, and f the son has not committed a heavy crime which cuts off from sonship, the father shall not cut off his son from sonship."[7] Professor Hommel believes that the mother's ıuthority over her children was as great as the father's,[8] whereas Meissner concludes that it was less, from the fact hat her children are not seldom found to be at law with ıer in matters of succession.[9] Among the Hebrews a father night sell his child to relieve his own distress, or offer it to a reditor as a pledge.[10] He had not only unlimited power o marry his daughters, but even to sell them as maids nto concubinage, though not to a foreign people.[11] He ılso chose wives for his sons;[12] and there is no indication hat the subjection of sons ceased after a certain age.[13] How important were the duties of the child to the

[1] *Idem*, *Mikado's Empire*, p. 555. *Cf.* Rein, *Japan*, p. 427.
[2] Griffis, *Corea*, p. 259.
[3] Oppert, in *Gottingische gelehrte Anzeigen*, 1879, p. 1604 *sqq.* Hommel, *Die semitischen Völker und Sprachen*, . 416. Meissner, *Beitrage zum altbabylonischen Privatrecht*, p. 14 *sq.*
[4] Maspero, *Dawn of Civilization*, p. 734.
[5] Hommel, *op. cit.* i. 416. Meissner, *op. cit.* p. 1.
[6] *Laws of Hammurabi*, 117.
[7] *Ibid.* 168.
[8] Hommel, *op. cit.* i. 416.
[9] Meissner, *op. cit.* p. 15.
[10] Ewald, *Antiquities of Israel*, p. 190. Wellhausen, *Prolegomena to the History of Israel*, p. 465.
[11] *Exodus*, xxi. 7 *sq.*
[12] *Genesis*, xxiv. 4; xxviii. 1 *sq.* *Exodus*, xxxiv. 16. *Deuteronomy*, vii. 3.
[13] *Cf.* Michaelis, *Commentaries on the Laws of Moses*, i. 444.

parents is shown in the primitive typical relation of Isaac to Abraham, and may be at once learned from the placing of the law on the subject among the Ten Commandments, and from its position there in the immediate proximity to the commands relating to the duties of man towards God.[1] Philo Judæus observes that it occupies this position because parents are something between divine and human nature, partaking of both—of human nature inasmuch as it is plain that they have been born and that they will die, and of divine nature because they have engendered other beings, and have brought what did not exist into existence. What God is to the world, that parents are to their children; they are "the visible gods."[2] In Muhammedan countries parents have practically great authority over their children. Should a father exceed the bounds of moderation or justice in chastising his son, the idea of prosecuting him would hardly occur to anyone, the injured party being prevented by public opinion, if not by habit and feeling, from appealing against his own father.[3] Disobedience to parents is considered by Moslems as one of the greatest of sins, and is put, in point of heinousness, on a par with idolatry, murder, and desertion in an expedition against infidels. "An undutiful child," says Mr. Lane, "is very seldom heard of among the Egyptians or the Arabs in general. . . . Sons scarcely sit or eat or smoke in the presence of the father, unless bidden to do so."[4] In Morocco it is curious to see big, grown-up sons sneak away as soon as they hear their father's steps, or to notice their absolute reticence in his presence. Children's deference for their mothers is less formal, but almost equally great.[5]

Among the ancient Romans, in relation to the house-father, "all in the household were destitute of legal rights—the wife and the child no less than the bullock or the

[1] *Cf.* Ewald, *op. cit.* p. 188; Gans, *Das Erbrecht in weltgeschichtlicher Entwickelung*, i. 134.
[2] Philo Judæus, *Opera*, i. 759 *sqq.*
[3] Urquhart, *Spirit of the East*, ii. 440 *sq.*
[4] Lane, *Manners and Customs of the Modern Egyptians*, p. 70. *Cf.* Pool, *Studies in Mohammedanism*, p. 171.
[5] *Cf.* Urquhart, *op. cit.* ii. 265 *sq.*

slave."[1] The father not only had judicial authority over his children—implying the right of inflicting capital punishment on them[2]—but he could sell them at discretion.[3] Even the grown-up son and his children were subject to the house-father's authority,[4] and in marriage without *conventio in manum* a daughter remained in the power of her father or tutor even after marriage.[5] Filial piety, including reverence not only for the father but for the mother also, was regarded as a most sacred duty.[6] To the ancient Roman the parents were hardly less sacred beings than the gods.[7]

It has been suggested by Sir Henry Maine and others that the *patria potestas* of the Romans was a survival of the paternal authority which existed among the primitive Aryans.[8] But no clear evidence of the general prevalence of such unlimited authority among other so-called Aryan peoples has been adduced. The ancient jurist observed, "The power which we have over our children is peculiar to Roman citizens; for there are no other nations possessing the same power over their children as we have over ours."[9] That among the Greeks and Teutons the father had the right to expose his children in their infancy, to sell them, in case of urgency, as long as they remained in his power,[10] and to give away his daughters in marriage,[11] does not imply the possession of a sovereignty like that which the Roman house-father exercised over his descendants of all ages. In Greece[12] and among all the Teutonic

[1] Mommsen, *History of Rome*, i. 74.
[2] *Supra*, p. 393.
[3] Dionysius of Halicarnassus, *Antiquitates Romanæ*, ii. 27.
[4] *Institutiones*, i. 9. 3.
[5] Westermarck, *op. cit.* p. 230.
[6] Leist, *Græco-italische Rechtsgeschichte*, p. 11 *sqq.* *Idem*, *Alt-arisches Jus Gentium*, p. 185.
[7] Valerius Maximus, i. 1. 13: "Pari vindicta parentum ac deorum violatio expianda est." Servius, *In Virgilii Georgicon*, ii. 473: "Sacra deorum sancta apud illos sunt, sancti etiam parentes."
[8] Maine, *Ancient Law*, p. 138. Fustel de Coulanges, *La cité antique*, p. 96 *sqq.* Hearn, *Aryan Household*, p. 92.
[9] *Institutiones*, i. 9. 2.
[10] Leist, *Græco-italische Rechtsgeschichte*, p. 60 *sq.* Grimm, *Deutsche Rechtsalterthümer*, p. 461 *sq.* Brunner, *Deutsche Rechtsgeschichte*, i. 76. In France the parents' right of selling their children gradually disappeared under the kings of the third race (de Laurière, in Loysel, *Institutes coutumières*, i. 82).
[11] Westermarck, *op. cit.* p. 232 *sqq.*
[12] Leist, *Græco-italische Rechtsgeschichte*, p. 62 *sq.* Cauvet, 'De l'organisation de la famille à Athènes,' in *Revue de législation*, xxiv. 138.

nations[1] the father's authority over his sons came to an end when the son grew up and left his home. But here again we must distinguish between the legal rights of parents and the duties of children. There are numerous passages in the Greek writings which put filial piety on a par with the duties towards the gods.[2]

Nor is there any evidence that the *patria potestas* of the Roman type ever prevailed in full in India, great though the father's or parent's authority has been, and still is, among the Hindus.[3] Among the Vedic people the father seems to have been the head of the family only as long as he was able to be its protector and maintainer,[4] decrepit parents being even allowed to die of starvation.[5] According to some sacred books from a later age, the father and the mother have power to give, to sell, and to abandon their son, because "man formed of uterine blood and virile seed proceeds from his mother and his father as an effect from its cause"; however, an only son may not be given or received in adoption, nor is a woman allowed to give or receive a son except with her husband's permission.[6] In other books it is said that "the gift or acceptance of a child and the right to sell or buy a child are not recognised,"[7] and that he who casts off his son—unless the son be guilty of a crime causing loss of caste—shall be fined by the king six hundred *panas*.[8] But whatever be the legal rights of a parent, filial piety is a most stringent duty in the child.[9] A man has three Atigurus, or specially venerable superiors: his father, mother, and spiritual teacher. To them he must always pay obedience. He must do what is agreeable and serviceable to them. He must never do anything without their leave.[10] "By honouring these three all that ought to be done by man is ac-

[1] Grimm, *Deutsche Rechtsalterthumer*, p. 462. Brunner, *Deutsche Rechtsgeschichte*, i. 75 *sq.*

[2] Schmidt, *Ethik der alten Griechen*, ii. 141 *sq.*

[3] Westermarck, *op. cit.* p. 231 *sq.*

[4] *Rig-Veda*, i. 70. 5.

[5] Zimmer, *Altindisches Leben*, p. 328.

[6] *Vasishtha*, xv. 1 *sqq. Baudhâyana Parisishta*, vii. 5. 2 *sqq.*

[7] *Âpastamba*, ii. 6. 13. 11.

[8] *Laws of Manu*, viii. 389. *Cf. ibid.* xi. 60.

[9] *Âpastamba*, i. 4. 14. 6. *Laws of Manu*, ii. 225 *sqq.*; iv. 162; &c.

[10] *Institutes of Vishnu*, ch. 31.

complished; that is clearly the highest duty, every other act is a subordinate duty."[1] Similar feelings prevail among the modern Hindus.[2] Sir W. H. Sleeman observes, "There is no part of the world, I believe, where parents are so much reverenced by their sons as they are in India in all classes of society." The duty of daughters is from the day of their marriage transferred entirely to their husbands and their husbands' parents, but between the son and his parents the reciprocity of rights and duties which have bound together the parent and child from infancy follows them to the grave. The sons are often actually tyrannised over by their mothers.[3]

According to ancient Russian laws, fathers had great power over their children;[4] but it is not probable that a son could be sold as a slave.[5] Baron von Haxthausen, who wrote before the Emancipation in 1861, says that "the patriarchal government, feelings, and organisation are in full activity in the life, manners, and customs of the Great Russians. The same unlimited authority which the father exercises over all his children is possessed by the mother over her daughters."[6] It was a common custom for a father to marry his young sons to full-grown women; and in Poland also, according to Nestor, a father used to select a bride for his son.[7] According to Professor Bogišić, the power of the father is not so great among the Southern Slavs as among the Russians;[8] but a son is not permitted to make a proposal of marriage to a girl against the will of his parents, whilst a daughter, of course, enjoys still less freedom of disposing of her own hand.[9] According to a Slavonian maxim, "a father is like an earthly god to his son."[10]

[1] *Laws of Manu*, ii. 237.

[2] Nelson, *View of the Hindū Law*, p. 56 *sq.* Ghani, 'Social Life and Morality in India,' in *International Journal of Ethics*, vii. 312.

[3] Sleeman, *Rambles and Recollections of an Indian Official*, i. 330 *sqq.*

[4] Accurse, quoted by de Laurière, in Loysel, *op. cit.* i. 82.

[5] Maciejowski, *Slavische Rechtsgeschichte*, iv. 404.

[6] von Haxthausen, *Russian Empire*, ii. 229 *sq.*

[7] Westermarck, *op. cit.* p. 234. Maciejowski, *op. cit.* ii. 189.

[8] Maine, *Early Law and Custom*, p. 244, note.

[9] Krauss, *Sitte und Brauch der Südslaven*, pp. 314, 320.

[10] Maine, *Early Law and Custom*, p. 243.

Among this group of peoples, also, we meet with reverence for the elder brother, for persons of a superior age generally, and, especially, for the aged.

Obedience on the part of the younger to the elder brother is strongly inculcated by Confucianism and Taouism.[1] In ancient China the eldest son of the principal wife held so high a position that even his own father had to mourn for him at his death in the selfsame degree in which the son was bound to mourn for his father;[2] and in some provinces of Japan the elder brother or sister did not even go to the funeral of the younger.[3] In Babylonia the elder brother occupied a privileged position in the family in relation to the younger.[4] In one of the Mandæan writings it is said, "Honour your father and your mother and your elder brother as your father."[5] According to the sacred books of the Hindus, "the feet of elder brothers and sisters must be embraced, according to the order of their seniority";[6] "towards a sister of one's father and of one's mother, and towards one's own elder sister, one must behave as towards one's mother," though the mother is more venerable than they.[7]

Again, in ancient Mexico respect was paid not only by children to their parents but by the young to the old.[8] Among the Yucatans "the young reverenced much the aged."[9] In China persons of the lowest class who have attained to an unusual age have not infrequently been distinguished by the Emperor,[10] and even criminals with grey hairs are treated with regard.[11] "Respect for elders," says Mencius, "is the working of righteousness";[12] and it is said in Thâi Shang that the good man "will respect the old and cherish the young."[13] A Japanese proverb runs, "Regard an old man as thy father."[14] We read in Leviticus, "Thou shalt rise up before the hoary head, and honour the face of the old man, and fear thy God."[15] Venera-

[1] Douglas, *Confucianism and Taouism*, pp. 123, 124, 259. Griffis, *Religions of Japan*, p. 125 *sq.*

[2] de Groot, *op. cit.* (vol. ii. book) i. 509.

[3] Griffis, *Religions of Japan*, p. 127.

[4] Hommel, *op. cit.* i. 417 *sq.*

[5] Brandt, *Mandäische Schriften*, p. 64.

[6] *Âpastamba*, i. 4. 14. 9. *Cf. ibid.* i. 4. 14. 14; *Laws of Manu*, ii. 225.

[7] *Laws of Manu*, ii. 133.

[8] Clavigero, *op. cit.* i. 81. *Cf. ibid.* i. 332.

[9] Landa, *Relacion de las cosas de Yucatan*, p. 178.

[10] Davis, *China*, ii. 97.

[11] Wells Williams, *Middle Empire*, i. 805.

[12] Mencius, vii. 1. 15. 3.

[13] *Thâi Shang*, 3.

[14] Griffis, *Mikado's Empire*, p. 505.

[15] *Leviticus*, xix. 32. *Cf. Job*, xxxii. 1; *Proverbs*, xvi. 31, and xx. 29.

tion for the aged is emphatically inculcated by Islam.[1] In the sacred books of India it is represented as a virtue.[2] Herodotus states that the Egyptians resembled the Lacedæmonians in the reverence the young men paid to their elders.[3] Plato says in his 'Laws' that everybody ought to consider that the elder has the precedence of the younger in honour, both among the gods as also among men who would live in security and happiness; wherefore it is a foolish thing and hateful to the gods to see an elder man assaulted by a younger in the city. Everybody ought to regard a person who is twenty years older than himself, whether male or female, as his father or mother, and to abstain from laying hands on any such person "out of reverence to the gods who preside over birth."[4] Regard for old age lies behind such words as *presbyter* and the Anglo-Saxon *ealdormonn*; and all travellers among the Southern Slavs have noticed their extraordinary respect for old people.[5]

In Europe the paternal authority of the archaic type which we have just considered has gradually yielded to a system under which the father has been divested of the most essential rights he formerly possessed over his children—a system the inmost drift of which is expressed in the words of the French Encyclopedist, "Le pouvoir paternel est plutôt un devoir qu'un pouvoir."[6] Already in pagan times the Roman *patria potestas* became a shadow of what it had been. Under the Republic the abuses of paternal authority were checked by the censors, and in later times the Emperors reduced the father's power within comparatively narrow limits. Not only was the life of the child practically as sacred as that of the parent long before Christianity became the religion of Rome,[7] but Alexander Severus ordained that heavy punishments should be inflicted on members of a family by the magistrate only. Diocletian and Maximilian took away the power of selling freeborn children as slaves. The father's privilege of

[1] Ameer Ali, *Ethics of Islâm*, p. 27 *sq.*

[2] *Âpastamba*, i. 5. 15. *Laws of Manu*, ii. 121. *Dhammapada*, 109.

[3] Herodotus, ii. 80.

[4] Plato, *Leges*, ix. 879. *Cf. Idem*, *Respublica*, v. 465.

[5] Maine, *Early Law and Custom*, p. 243.

[6] *Encyclopédie méthodique*, Jurisprudence, vii. 77, art. Puissance paternelle.

[7] *Supra*, p. 393 *sq.*

dictating marriage for his sons declined into a conditional veto; and it seems that the daughters also, at length, gained a certain amount of freedom in the choice of a husband.[1]

The new religion was anything but unfavourable to this process of emancipation. The ethical precept of filial piety was changed by Christ. His church was a militant church. He had come not to send peace but a sword, "to set a man at variance against his father, and the daughter against her mother."[2] Being chiefly addressed to the young, the new teaching naturally caused much disorder in families. Fathers disinherited their converted sons,[3] and children thought that they owed no duty to their parents where such a duty was opposed to the interests of their souls. According to Gregory the Great, we ought to ignore our parents, hating them and flying from them when they are an obstacle to us in the way of the Lord;[4] and this became the accepted theory of the Church.[5] Nay, it was not only in similar cases of conflict that Christianity exercised a weakening influence on family ties which had previously been regarded with religious veneration. In all circumstances the relationship between child and parent was put in the shade by the relationship between man and God. "Call no man your father upon the earth: for one is your Father, which is in Heaven."[6] "If any man come to me, and hate not his father, and mother, and wife, and children, and brethren, and sisters, yea, and his own life also, he cannot be my disciple."[7] At the same time the fifth commandment, though modified by considerations which would never have occurred to the mind of an orthodox Jew, was left formally intact. Obedience to parents was, in fact, repeatedly enjoined by St. Paul as a Christian duty.[8] It was regarded as a pre-

[1] Westermarck, *op. cit.* p. 236.

[2] *St. Matthew*, x. 34 *sq.* *St. Luke*, xii. 51 *sqq.*

[3] Tertullian, *Apologeticus*, 3 (Migne, *Patrologiæ cursus*, i. 280 *sq.*).

[4] St. Gregory the Great, *Homiliæ in Evangelia*, xxxvii. 2 (Migne, *op. cit.* lxxvi. 1275).

[5] Thomas Aquinas, *Summa theologica*, ii.-ii. 101. 4.

[6] *St. Matthew*, xxiii. 9.

[7] *St. Luke*, xiv. 26.

[8] *Ephesians*, vi. 1 *sqq.* *Colossians*, iii. 20.

requisite for the veneration of God. "If we do not honour and reverence our parents, whom we ought to love next to God, and whom we have almost continually before our eyes, how can we honour or reverence God, the supreme and best of parents, whom we cannot see?"[1]

Ancient, deep-rooted ideas die slowly. Whilst among Teutonic peoples the grown-up child is recognised both by custom and law as independent of the parents, and the parental authority over minors is regarded merely in the light of guardianship,[2] the Roman notions of paternal rights and filial duties have to some extent survived in Latin countries, not only through the Middle Ages, but up to the present time. "Above the majesty of the feudal baron," says M. Bernard, "that of the paternal power was held still more sacred and inviolable. However powerful the son might be, he would not have dared to outrage his father, whose authority was in his eyes always confounded with the sovereignty of command."[3] Du Vair remarks, "Nous devons tenir nos pères comme des dieux en terre."[4] Bodin wrote, in the later part of the sixteenth century, that, though the monarch commands his subjects, the master his disciples, the captain his soldiers, there is none to whom nature has given any command except the father, "who is the true image of the great sovereign God, universal father of all things."[5] According to edicts of Henry III., Louis XIII., and Louis XIV., sons could not marry before the age of thirty, nor daughters before the age of twenty-five, without the consent of the father and mother, on pain of being disinherited.[6] And even now in France considerable power is accorded to parents, not only by custom and public sentiment, but by law. A child cannot quit the paternal residence without the permission of the father before the age of twenty-one, except for enrol-

[1] *Catechism of the Council of Trent*, iii. 5. 1.

[2] Starcke, *La famille dans les différentes sociétés*, p. 213 *sqq*.

[3] Bernard, quoted in Spencer's *Descriptive Sociology*, France, p. 38.

[4] Du Vair, quoted by de Ribbe, *Les familles et la société en France avant la Révolution*, p. 51.

[5] Bodin, *De republica*, i. 4, p. 31.

[6] Koenigswarter, *Histoire de l'organisation de la famille en France*, p. 231.

ment in the army.[1] For grave misconduct by his children the father has strong means of correction.[2] A son under twenty-five and a daughter under twenty-one could not until 1907 marry without parental consent;[3] and even when a man had attained his twenty-fifth year and a woman her twenty-first, both were still bound to ask for it, by a formal notification.[4]

The parental authority depends, in the first place, on the natural superiority of parents over their children when young, and on the helplessness of the latter; and for similar reasons the daughter, though grown-up, still remains in her father's power. Parents are, moreover, considered to possess in some measure proprietary rights over their offspring, being their originators and maintainers;[5] and in various cases, it seems, the father is also regarded as their owner because he is the owner of their mother. Filial duties and parental rights to some extent spring from the children's natural feeling of affection for their parents,[6] particularly for their mother,[7] and from the debt of gratitude which they are considered to owe to those who have brought them into existence and taken care of them whilst young.[8] The authority of parents is much enhanced and extended by the sentiment of filial reverence, as distinct from mere affection. From their infancy children are used to look up to their parents,

[1] *Code Civil*, art. 374.
[2] *Ibid.* art. 375 *sqq.*
[3] *Ibid.* art. 148.
[4] *Ibid.* art. 151.
[5] *Cf. Vasishtha*, xv. 1 *sq.*; *Bandhâyana Parisishta*, vii. 5. 2 *sq.*
[6] For instances of filial affection among savages, see Catlin, *North American Indians*, ii. 242; Powers, *Tribes of California*, p. 112 (Mattoal); Selenka, *Sonnige Welten*, p. 34 (Dyaks); Seemann, *Viti*, p. 193; Mathew, 'Australian Aborigines,' in *Jour. & Proceed. Roy. Soc. N.S. Wales*, xxiii. 388.
[7] For instances of great affection for the mother, see Munzinger, *Ostafrikanische Studien*, p. 474 (Barea and Kunáma); Winterbottom, *Native Africans in the Neighbourhood of Sierra Leone*, i. 211; Park, *Travels in the Interior of Africa*, p. 241; New, *op. cit.* p. 101 (Wanika); François, *Nama und Damara, Deutsch-Süd-West-Afrika*, p. 251 (Mountain Damaras); Rowley, *Africa Unveiled*, p. 164; Lane, *Manners and Customs of the Modern Egyptians*, p. 70 *sq.*; Urquhart, *op. cit.* ii. 265 *sq.* (Turks); Schmidt, *Ethik der alten Griechen*, ii. 146, 155. It is said in the Talmud that the child loves its mother more than its father, whilst it fears its father more than its mother (Deutsch, *Literary Remains*, p. 55).
[8] *Hsiâo King*, 9 (*Sacred Books of the East*, iii. 479). *Laws of Manu*, ii. 227. Plato, *Leges*, iv. 717.

especially the father, as to beings superior to themselves; and this feeling, which by itself has a tendency to persist, is all the more likely to last even when the parents get old, as it is based not only on superior strength and bodily skill, but on superior knowledge, which remains though the physical power be on the wane. Among savages, in particular, filial regard is largely regard for one's elders or the aged. The old men represent the wisdom of the tribe. "Long life and wisdom," say the Iroquois, "are always connected together."[1] Throughout all West Africa the aged are "the knowing ones."[2] In his work on the Algerian natives M. Villot observes:—"Les vieillards, au milieu des sociétés barbares, représentent la tradition qui tient lieu de patrie; la science des coutumes et usages qui remplacent la loi; la connaissance des généalogies qui fixe les degrés de parenté et sert de base à la détermination des titres de propriété. Pour ces causes, aussi bien qu'en raison de leur faiblesse et de leurs cheveux blancs, le respect pour les vieillards est de règle au milieu des indigènes."[3] Among people who possess no literature the old men are the sole authorities on religion, as well as on custom. In Australia the deference shown to them is partly due to the superstitious awe of certain mysterious rites which are known to them alone, and to the knowledge of which young persons are only very gradually admitted.[4] Moreover, old age itself inspires a feeling of mysterious awe. The Moors say that, when getting old, a man becomes a saint, and a woman a *jinnia*, or evil spirit—there is something supernatural in both. Among the East African Embe "it is only by means of the rankest superstition that the old men are able to maintain their supremacy over the hot-blooded youths"; they convince the warriors, by presenting them

[1] Loskiel, *History of the Mission of the United Brethren among the Indians in North America*, i. 15.

[2] Kingsley, *West African Studies*, p. 142.

[3] Villot, *Mœurs, coutumes et institutions des indigènes de l'Algérie*, p. 47.

[4] Schuermann, 'Aboriginal Tribes of Port Lincoln,' in Woods, *Native Tribes of South Australia*, p. 226. *Cf.* Nelson, 'Eskimo about Bering Strait,' in *Ann. Rep. Bur. Ethn.* xviii. 304.

with some magic emblem, that in the hands of the sages alone rest the fate and fortune of those who fight in a battle. And old women, also, are often believed to possess supernatural power, in which case their influence, in spite of the subservient position of their sex in general, is almost as great as that of a medicine-man.[1] According to the beliefs of the natives of Western Victoria, witches always appear in the form of an old woman.[2] Among the Maoris some of the aged women exercise the greatest influence over their tribes, being supposed to possess the power of witchcraft and sorcery.[3] Among the Abipones, says Charlevoix, "the old women take upon them to be great witches; and it would be no easy matter to convert them."[4] In Arabia, as well as in Morocco, old women are always believed to be skilled in sorcery.[5]

The beliefs held regarding the dead also influence the treatment of the aged whose lives are drawing to an end. Certain African tribes treat their old people with every kindness in order to secure their goodwill after death.[6] A missionary in East Africa heard a negro say with reference to an old man, "We will do what he says, because he is soon going to die."[7] The Omahas "were afraid to abandon their aged on the prairie when away from their permanent villages lest Wakanda should punish them";[8] and in this case it seems that Wakanda, at least originally meant the ghost of the dead. The Niase is an egoist even in his respect for the old, because he hopes that they will protect and assist him when they are dead.[9] In China the doctrine that ghosts may interfere at any moment with human business and fate, either favourably or unfavourably, "enforces respect for human life and a charitable

[1] Chanler, *op. cit.* pp. 247, 252.
[2] Dawson, *Australian Aborigines*, p. 52.
[3] Angas, *Savage Life and Scenes in Australia and New Zealand*, i. 317.
[4] Charlevoix, *History of Paraguay*, i. 406.
[5] Niebuhr, *Travels in Arabia*, ii. 216.
[6] Arnot, *op. cit.* p. 78, note.
[7] Lippert, *Kulturgeschichte der Menschheit*, i. 229.
[8] Dorsey, 'Omaha Sociology,' in *Ann. Rep. Bur. Ethn.* iii. 369. *Cf. ibid.* p. 275.
[9] Modigliani, *Viaggio a Nias*, p. 467.

treatment of the infirm, the aged, and the sick, especially if they stand on the brink of the grave."[1] The regard for the aged and the worship of the dead are often mentioned together in a way which suggests that there exists an intrinsic connection between them. Of the Dacotahs Prescott observes, "Veneration is very great in some Indians for old age, and they all feel it for the dead."[2] The worship of ancestors is a distinguishing characteristic of the religious system of Southern Guinea; the "profound respect for aged persons, by a very natural operation of the mind, is turned into idolatrous regard for them when dead."[3] "The Barotse chiefly worship the souls of their ancestors. . . . Cognate to this worship of ancestors is the great respect displayed for parents and the old—especially the eldest of a family or tribe."[4] Among the Herero "the tomb of a father is the most important of all holy places, the soul of a father the oracle most often consulted."[5] The Aetas of the Philippine Islands "have a profound respect for old-age and for their dead."[6] The Ossetes "show the greatest love and veneration to their parents, to old age generally, and especially to the memory of their ancestors."[7] In cases like these, however, it is impossible accurately to distinguish between cause and effect. Whilst the worship of the dead is, in the first place, due to the mystery of death, it is evident that the regard in which a person is held during his lifetime also influences the veneration which is bestowed on his disembodied soul.

There are thus obvious reasons for the connection between filial submissiveness and religious beliefs; but the chief cause of this connection seems to be the extreme importance frequently attached to the curses and blessings of parents. Among the Nandi in Central Africa, "if a

[1] de Groot, *op. cit.* (vol. iv. book) ii. 450.
[2] Prescott, in Schoolcraft, *Indian Tribes of the United States*, ii. 196.
[3] Wilson, *Western Africa*, p. 392 *sq.*
[4] Decle, *Three Years in Savage Africa*, p. 74 *sq.*
[5] François, *op. cit.* p. 192.
[6] Foreman, *op. cit.* p. 209.
[7] von Haxthausen, *Transcaucasia*, p 414.

son refuses to obey his father in any serious matter, the father solemnly strikes the son with his fur mantle. This is equivalent to a most serious curse, and is supposed to be fatal to the son unless he obtains forgiveness, which he can only do by sacrificing a goat before his father."[1] Among the Mpongwe "there is nothing which a young person so much deprecates as the curse of an aged person, and especially that of a revered father."[2] The Barea and Kunáma are convinced that any undertaking which has not the blessing of the old people will fail, that every curse uttered by them must be destructive.[3] Among the Bogos nobody takes an employment or gives it up, nobody engages in a business or contracts a marriage, before he has received the blessing of his father or his master.[4] Among the Herero, "when a chief feels his dissolution approaching, he calls his sons to the bedside, and gives them his benediction."[5] The Moors have a proverb that "if the saints curse you the parents will cure you, but if the parents curse you the saints will not cure you." The ancient Hebrews believed that parents, and especially a father, could by their blessings or curses determine the fate of their children ;[6] indeed, we have reason to assume that the reward which in the fifth commandment is held out to respectful children was originally a result of parental blessings. We still meet with the original idea in Ecclesiasticus, where it is said : "Honour thy father and mother both in word and deed, that a blessing may come upon thee from them. For the blessing of the father establisheth the houses of children ; but the curse of the mother rooteth out foundations."[7] The same notion that the parents' blessings beget prosperity, and that their curses bring ruin, prevailed in ancient Greece. Plato says

[1] Johnston, *Uganda Protectorate*, ii. 879.
[2] Wilson, *Western Africa*, p. 393.
[3] Munzinger, *Ostafrikanische Studien*, p. 475.
[4] *Idem*, *Sitten der Bogos*, p. 90 *sq.*
[5] Andersson, *Lake Ngami*, p. 228.
[6] *Genesis*, ix. 25 *sqq.* ; xxvii. 4, 19, 23, 25, 27 *sqq.* ; xlviii. 9, 14 *sqq.* ; xlix. 4, 7 *sqq.* *Judges*, xvii. 2. *Cf.* Cheyne, 'Blessings and Cursings,' in *Encyclopædia Biblica*, i. 592 ; Nowack, 'Blessing and Cursing,' in *Jewish Encyclopedia*, iii. 244.
[7] *Ecclesiasticus*, iii. 8 *sq.* *Cf. ibid.* iii. 16.

in his 'Laws':—"Neither God, nor a man who has understanding, will ever advise any one to neglect his parents. . . . If a man has a father or mother, or their fathers or mothers treasured up in his house stricken in years, let him consider that no statue can be more potent to grant his requests than they are, who are sitting at his hearth, if only he knows how to show true service to them. . . . Oedipus, as tradition says, when dishonoured by his sons, invoked on them curses which every one declares to have been heard and ratified by the gods, and Amyntor in his wrath invoked curses on his son Phoenix, and Theseus upon Hippolytus, and innumerable others have also called down wrath upon their children, whence it is clear that the gods listen to the imprecations of parents; for the curses of parents are, as they ought to be, mighty against their children as no others are. And shall we suppose that the prayers of a father or mother who is specially dishonoured by his or her children, are heard by the gods in accordance with nature; and that if a parent is honoured by them, and in the gladness of his heart earnestly entreats the gods in his prayers to do them good, he is not equally heard, and that they do not minister to his request? . . . Therefore, if a man makes a right use of his father and grandfather and other aged relations, he will have images which above all others will win him the favour of the gods."[1] Originally the efficacy of parents' curses and blessings were ascribed to a magic power immanent in the spoken word itself, and their Erinyes, who were no less terrible than the Erinyes of neglected guests,[2] were only personifications of their curses.[3] But in this, as in other similar cases already noticed, the fulfilment of the curse or the blessing came afterwards to be looked upon as an act of divine justice. According to Plato, "Nemesis, the messenger of justice," watches over unbecoming words uttered

[1] Plato, *Leges*, xi. 930 *sq.* *Cf. ibid.* iv. 717.

[2] Aeschylus, *Eumenides*, 545 *sqq.*

[3] See *Iliad*, xxi. 412 *sq.*; Sophocles, *Œdipus Coloneus*, 1299, 1434; von Lasaulx, *Der Fluch bei Griechen und Römern*, p. 8; Müller, *Dissertations on the Eumenides*, p. 155 *sqq.*; Rohde, 'Paralipomena,' in *Rheinisches Museum für Philologie*, 1895, p. 7.

to a parent;[1] and Hesiod says that if anybody reproaches an aged father or mother "Zeus himself is wroth, and at last, in requital for wrong deeds, lays on him a bitter penalty."[2] It also seems to be beyond all doubt that the *divi parentum* of the Romans, like their *dii hospitales*, were nothing but personified curses. For it is said, "If a son beat his parent and he cry out, the son shall be devoted to the parental gods for destruction."[3] In aristocratic families in Russia children used to stand in mortal fear of their fathers' curses;[4] and the country people still believe that a marriage without the parents' approval will call down the wrath of Heaven on the heads of the young couple.[5] Some of the Southern Slavs maintain that if a son does not fulfil the last will of his father, the soul of the father will curse him from the grave.[6] The Servians say, "Without reverence for old men, there is no salvation."[7]

In various instances the rewards or punishments attached to the behaviour of children seem to spring from the belief in parental blessings and curses, although the cause is not expressly mentioned. According to ancient Hindu ideas, a father, mother, and spiritual teacher are equal to the three Vedas, equal to the three gods, Brahman, Vishnu, and Siva.[8] A man who shows no regard for them derives no benefit from any religious observance; whereas, "by honouring his mother, he gains the present world; by honouring his father, the world of gods; and by paying strict obedience to his spiritual teacher, the world of Brahman."[9] As in Greece a person who had assaulted his parent was regarded as polluted by a curse,[10] so accord-

[1] Plato, *Leges*, iv. 717.

[2] Hesiod, *Opera et dies*, 331 *sqq.* (329 *sqq.*).

[3] Servius Tullius, in Bruns, *Fontes Juris Romani antiqui*, p. 14, and Festus, *De verborum significatione*, ver. *Plorare:* "Si parentem puer verberit, ast olle plorassit, puer divis parentum sacer esto." *Cf.* Leist, *Alt-arisches Jus Civile*, i. 184.

[4] I am indebted to Prince Kropotkin for this statement.

[5] Kovalewsky, *Modern Customs and Ancient Laws of Russia*, p. 37.

[6] Krauss, *op. cit.* p. 119.

[7] Maine, *Early Law and Custom*, p. 243.

[8] *Institutes of Vishnu*, xxxi. 7. *Laws of Manu*, ii. 230.

[9] *Institutes of Vishnu*, xxxi. 9 *sq.* *Cf. Laws of Manu*, ii. 233 *sq.*

[10] Plato, *Leges*, ix. 881.

ing to the sacred law of India, those who quarrel with their father, and those who have forsaken their father, mother, or spiritual teacher, defile a company and must not be entertained at a Srâddha offering.[1] Those who have struck any of these persons cannot be readmitted until they have been purified with water taken from a sacred lake or river.[2] The stain of disobedience towards mother and father is purged away with barley-corns, like food which has been licked at by dogs or pigs, or defiled by crows and impure men.[3] In the Dhammapada it is said that to him who always greets and constantly reveres the aged four things will increase, namely, life, beauty, happiness, and power.[4] The Coreans believe that "the richest rewards on earth and brightest heaven hereafter await the filial child," whereas "curses and disgrace in this life and the hottest hell in the world hereafter are the penalties of the disobedient or neglectful child."[5] It seems to have been a notion of the ancient Egyptians that a son who accepted the word of his father would attain old age on that account.[6] The following is an exhortation which an Aztec gave to his son:—"Guard against imitating the example of those wicked sons who, like brutes that are deprived of reason, neither reverence their parents, listen to their instruction, nor submit to their correction; because whoever follows their steps will have an unhappy end, will die in a desperate or sudden manner, or will be killed and devoured by wild beasts."[7] And if an Aztec married without the sanction of his parents, the belief was that he would be punished with some misfortune.[8] The Aleuts were of opinion that those who were attentive to feeble old men, expecting in exchange their good advice only, would be long-lived and fortunate in the chase and in war, and would not be neglected when growing old

[1] *Institutes of Vishnu*, lxxxii. 28 *sqq.*
[2] *Vasishtha*, xv. 19 *sq.*
[3] *Baudhâyana*, iii. 6. 5. *Institutes of Vishnu*, xlviii. 20.
[4] *Dhammapada*, 109.
[5] Griffis, *Corea*, p. 236.
[6] *Precepts of Ptah-Hotep*, 39.
[7] Clavigero, *op. cit.* i. 332. Torquemada, *Monarchia Indiana*, ii. 493.
[8] Torquemada, *op. cit.* ii. 415.

themselves.[1] In the Tonga Islands "disrespect to one's superior relations is little short of sacrilege to the gods," and to pay respect to chiefs is "a superior sacred duty, the non-fulfilment of which it is supposed the gods would punish almost as severely as disrespect to themselves."[2] In the same islands great efficacy is ascribed to curses which are uttered by a superior.[3]

Why are the blessings and curses of parents supposed to possess such an extraordinary power? One reason is no doubt the mystery of old age and the nearness of death. As appears from several of the cases already referred to, it is not parents only but old people generally that are held capable of giving due effect to their good and evil wishes, and this capacity is believed to increase when life is drawing to its close. The Herero "know really no blessing save that conferred by the father on his death-bed."[4] According to old Teutonic ideas, the curse of a dying person was the strongest of all curses.[5] A similar notion prevailed among the ancient Arabs;[6] and among the Hebrews the father's mystic privilege of determining the weal or woe of his children was particularly obvious when his days were manifestly numbered.[7] But, at the same time, parental benedictions and imprecations possess a potency of their own owing to the parents' superior position in the family and the respect in which they are naturally held. The influence which such a superiority has upon the efficacy of curses is well brought out by various facts. According to the Greek notion, the Erinyes avenged wrongs done by younger members of a family to elder ones, even brothers and sisters, but not *vice versâ*.[8] The Arabs of Morocco say that the curse of a husband is as potent as that of a father. The Tonga Islanders believe

[1] Veniaminof, quoted by Petroff, *loc. cit.* p. 155.

[2] Mariner, *op. cit.* ii. 237, 155.

[3] *Ibid.* ii. 238.

[4] Ratzel, *History of Mankind*, ii. 468.

[5] Grimm, *Teutonic Mythology*, iv. 1690.

[6] Wellhausen, *Reste arabischen Heidentums*, pp. 139, 191.

[7] Cheyne, in *Encyclopædia Biblica*, i. 592.

[8] *Iliad*, xv. 204: "Thou knowest how the Erinyes do always follow to aid the elder-born." *Cf.* Müller, *Dissertations on the Eumenides*, p. 155 *sq.*

that curses have no effect "if the party who curses is considerably lower in rank than the party cursed."[1] Moreover, where the father was invested with sacerdotal functions —as was the case among the ancient nations of culture— his blessings and curses would for that reason also be efficacious in an exceptional degree.[2]

However, the facts which we have hitherto considered are hardly sufficient to account for the extraordinary development of the paternal authority in the archaic State. Great though it be, the influence which magic and religious beliefs exercise upon the paternal authority is, as we have just seen, largely of a reactive character. A father's blessings would not be so eagerly sought for, nor would his curses be so greatly feared, if he were a less important personage in the family. So, too, as Sir Henry Maine aptly remarks, the father's power is older than the practice of worshipping him. "Why should the dead father be worshipped more than any other member of the household unless he was the most prominent—it may be said, the most awful—figure in it during his life?"[3] We must assume that there exists some connection between the organisation of the family and the political constitution of the society. At the lower stages of civilisation—though hardly at the very lowest—we frequently find that the clan has attained such an overwhelming importance that only a very limited amount of authority could be claimed by the head of each separate family. But, as will be shown in a following chapter, this was changed when clans and tribes were united into a State. The new State tended to weaken and destroy the clan-system, whereas at the same time the family-tie grew in strength. In early society there seems to be an antagonism between the family and the clan. Where the clan-bond is very strong it encroaches upon the family feeling, and where it is loosened the family gains. Hence Dr. Grosse is probably right in his

[1] Mariner, *op. cit.* ii. 238.
[2] *Cf.* Nowack, in *Jewish Encyclopedia*, iii. 243 *sq.*
[3] Maine, *Early Law and Custom*, p. 76.

assumption that the father became a patriarch, in the true sense of the word, only as the inheritor of the authority which formerly belonged to the clan.[1]

But whilst in its early days the State strengthened the family by weakening the clan, its later development had a different tendency. When national life grew more intense, when members of separate families drew nearer to one another in pursuit of a common goal, the family again lost in importance. It has been observed that in England and America, where political life is most highly developed, children's respect for their parents is at a particularly low ebb.[2] Other factors also, inherent in progressive civilisation, contributed to the downfall of the paternal power—the extinction of ancestor-worship, the decay of certain superstitious beliefs, the declining influence of religion, and last, but not least, the spread of a keener mutual sympathy throughout the State, which could not tolerate that the liberty of children should be sacrificed to the despotic rule of their fathers.

[1] Grosse, *Die Formen der Familie*, p. 219.

[2] Monier Williams, *Indian Wisdom*, p. 440, n. 1.

CHAPTER XXVI

THE SUBJECTION OF WIVES

Among the lower races, as a rule, a woman is always more or less in a state of dependence. When she is emancipated by marriage from the power of her father, she generally passes into the power of her husband. But the authority which the latter possesses over his wife varies extremely among different peoples.

Frequently the wife is said to be the property or slave of her husband. In Fiji "the women are kept in great subjection. . . . Like other property, wives may be sold at pleasure, and the usual price is a musket."[1] "The Carib woman is always in bondage to her male relations. To her father, brother, or husband she is ever a slave, and seldom has any power in the disposal of herself."[2] Many North American Indians are said to treat their wives much as they treat their dogs.[3] Among the Shoshones "the man is the sole proprietor of his wives and daughters, and can barter them away, or dispose of them in any manner he may think proper."[4] Among the East African Wanika a woman "is a toy, a tool, a slave in the very worst sense; indeed she is treated as though she were a

[1] Wilkes, *U.S. Exploring Expedition*, iii. 332.

[2] Brett, *Indian Tribes of Guiana*, p. 353.

[3] Harmon, *Journal of Voyages in the Interior of North America*, p. 344.

[4] Lewis and Clarke, *Travels to the Source of the Missouri River*, p. 307.

mere brute."[1] Many other statements to a similar effect are met with in ethnographical literature.[2]

Yet it seems that even in cases where the husband's power over his wife is described as absolute, custom has not left her entirely destitute of rights. Of the Australian aborigines in general it is said that "the husband is the absolute owner of his wife (or wives)";[3] of the natives of Central Australia, that "each father of a family rules absolutely over his own circle";[4] of certain tribes in West Australia, that the state of slavery in which the women are kept is truly deplorable, and that the mere presence of their husbands makes them tremble.[5] But we have reason to believe that there is some exaggeration in these statements, and they certainly do not hold good of the whole Australian race. We have noticed above that custom does not really allow the Australian husband full liberty to kill his wife.[6] For punishing or divorcing her he must sometimes have the consent of the tribe.[7] There are even cases in which a wife whose husband has been unfaithful to her may complain of his conduct to the elders of the tribe, and he may have to suffer for it.[8] In North-West-Central Queensland the women are on one special occasion

[1] New, *Life, Wanderings, and Labourings in Eastern Africa*, p. 119.

[2] Gibbs, 'Tribes of Western Washington and Northwestern Oregon,' in *Contributions to N. American Ethnology*, i. 198. von Martius, *Beiträge zur Ethnographie Amerika's*, i. 104 (Brazilian Indians). Reade, *Savage Africa*, p. 548 (Negroes of Equatorial Africa). Proyart, 'History of Loango,' in Pinkerton, *Collection of Voyages and Travels*, xvi. 570 (Negroes of Loango). Andersson, *Notes on Travel in South Africa*, p. 236 (Ovambo). Castrén, *Nordiska resor och forskningar*, i. 310; ii. 56 (Ostyaks). In all these cases women are said to be mere articles of commerce, or slaves, or kept in a state of dependence bordering on slavery. In other instances women are said to be oppressed by their husbands, or treated as inferior beings (Waitz [-Gerland], *Anthropologie der Naturvolker*, iii. 100 [North American Indians]; vi. 626 [Melanesians]. Bancroft, *Native Races of the Pacific States*, i. 121 [Hare and Sheep Indians]. Powers, *Tribes of California*, p. 133 [Yuki]. Tuckey, *Expedition to Explore the River Zaire*, p. 371 [Negroes]. Ling Roth, *Aborigines of Tasmania*, p. 54).

[3] Curr, *The Australian Race*, i. 109.

[4] Eyre, *Expeditions of Discovery into Central Australia*, ii. 317.

[5] Salvado, *Mémoires historiques sur l'Australie*, p. 279. For other similar statements referring to the Australian aborigines, see Nieboer, *Slavery as an Industrial System*, p. 11.

[6] *Supra*, p. 418.

[7] Nieboer, *op. cit.* p. 17.

[8] *Ibid.* p. 18.

allowed themselves to inflict punishments upon the men: at a certain stage of the initiation ceremony "each woman can exercise her right of punishing any man who may have ill-treated, abused, or 'hammered' her, and for whom she may have waited months or perhaps years to chastise."[1] Of the natives of Central Australia Messrs. Spencer and Gillen say that "the women are certainly not treated usually with anything which could be called excessive harshness";[2] and we hear from various authorities that in several Australian tribes married people are often much attached to each other, and continue to be so even when they grow old.[3] Among the aborigines of New South Wales, for instance, "the husbands are as a general rule fond of their wives, and the wives loyal and affectionate to their husbands."[4] Nay, white men who have lived among the blacks assure us that there are henpecked husbands even in the Australian desert.[5]

Other instances may be added to show that the so-called absolute authority of husbands over their wives is not to be taken too literally. Of the Guiana Indians Sir E. F. Im Thurn observes:—"The woman is held to be as completely the property of the man as his dog. He may even sell her if he chooses."[6] But in another place the same authority admits not only that the women in a quiet way may have a considerable influence with the men, but that, "even if the men were—though this is in fact quite contrary to their nature—inclined to treat them cruelly, public opinion would prevent this."[7] Of the Plains Indians of the United States Colonel Dodge writes:—"The husband owns his wife entirely. He may abuse her, beat her, even kill her without question. She is more absolutely a slave than any negro before the war of rebellion." But

[1] Roth, *Ethnol. Studies among the North-West-Central Queensland Aborigines*, pp. 141, 176.

[2] Spencer and Gillen, *Native Tribes of Central Australia*, p. 50.

[3] Westermarck, *History of Human Marriage*, p. 359. Stirling, *Report of the Horn Expedition to Central Australia*, Anthropology, p. 36.

[4] Hill and Thornton, *Aborigines of New South Wales*, p. 7.

[5] Calvert, *Aborigines of Western Australia*, p. 31.

[6] Im Thurn, *Indians of Guiana*, p. 223.

[7] *Ibid.* p. 215.

on the following page we are told that custom gives to every married woman of the tribes "the absolute right to leave her husband and become the wife of any other man, the sole condition being that the new husband must have the means to pay for her."[1] Among the Chippewyans the women are said to be "as much in the power of the men as any other articles of their property," although, at the same time, "they are always consulted, and possess a very considerable influence in the traffic with Europeans, and other important concerns."[2] Among the Mongols a woman is "entirely dependent on her husband"; yet "in the household the rights of the wife are nearly equal to those of the husband."[3] Dr. Paulitschke tells us that among the Somals, Danakil, and Gallas, a wife has no rights whatever in relation to her husband, being merely a piece of property; but subsequently we learn that she is his equal, and "a mistress of her own will."[4] We must certainly not, like Mr. Spencer, conclude that where women are exchangeable for oxen or other beasts they are "of course" regarded as equally without personal rights.[5] The bride-price is a compensation for the loss sustained in the giving up of the girl, and a remuneration for the expenses incurred in her maintenance till the time of her marriage;[6] it does not *eo ipso* confer on the husband absolute rights over her. With reference to certain tribes in South-Eastern Africa, the Rev. James Macdonald observes:—"A man obtains a wife by giving her father a certain number of cattle. This, though often called such, is not purchase in the usual sense of the word. The woman does not become a chattel. She cannot be resold or ill-treated beyond well-defined legal limits. She retains certain rights to property and an interest in the cattle paid for her. They are a guarantee for the husband's good

[1] Dodge, *Our Wild Indians*, p. 205 *sq.*

[2] Mackenzie, *Voyages to the Frozen and Pacific Oceans*, p. cxxii. *sq.* Schoolcraft, *Archives of Aboriginal Knowledge*, v. 176.

[3] Prejevalsky, *Mongolia*, i. 69 *sqq.*

[4] Paulitschke, *Ethnographie Nordost-Afrikas*, pp. 189, 190, 244.

[5] Spencer, *Principles of Sociology*, i. 750.

[6] Westermarck, *History of Human Marriage*, p. 402.

behaviour."[1] There are even peoples among whom the husband's authority hardly exists, although he has had to pay for his wife.[2]

Among many peoples the hardest drudgeries of life are said to be imposed on the women. Among the Kutchin "the women are literally beasts of burden to their lords and masters. All the heavy work is performed by them."[3] The Californian Karok, while on a journey, lays by far the greatest burdens on his wife, whom he regards as a drudge.[4] Among the Kenistenos the life of the women is an uninterrupted succession of toil and pain, hence "they are sometimes known to destroy their female children, to save them from the miseries which they themselves have suffered."[5] "The condition of the women among the Chaymas," says von Humboldt, "like that in all semi-barbarous nations, is a state of privation and suffering. The hardest labour is their share."[6] Among the Australian aborigines "wives have to undergo all the drudgery of the camp and the march, have the poorest food and the hardest work."[7] In Eastern Central Africa "the women hold an inferior position. They are viewed as beasts of burden, which do all the harder work."[8] Among the Kakhyens "the men are averse to labour, but the lot of all women, irrespective of rank, is one of drudgery";[9] and so forth.[10] But it seems that

[1] Macdonald, *Light in Africa*, p. 159.

[2] *E.g.*, the Navahos and Pelew Islanders (Westermarck, *op. cit.* pp. 392, 393. 398 *sq.* For the position of wives among these peoples, see *infra*, pp. 638, 643).

[3] Hardisty, 'Loucheux Indians,' in *Smithsonian Report*, 1866, p. 312.

[4] Powers, *op. cit.* p. 23 *sq.*

[5] Schoolcraft, *Archives of Aboriginal Knowledge*, v. 167.

[6] von Humboldt, *Personal Narrative of Travels*, iii. 238.

[7] Curr, *The Australian Race*, i. 110.

[8] Macdonald, *Africana*, i. 35.

[9] Anderson, *Mandalay to Momien*, p. 137.

[10] For other instances, see Mackenzie, *Voyages to the Frozen and Pacific Oceans*, p. 147 (Rocky Mountain Indians); Parker, in Schoolcraft, *Archives*, v. 684 (Comanches); Im Thurn, *op. cit.* p. 215 (Guiana Indians); Keane, 'Botocudos,' in *Jour. Anthr. Inst.* xiii. 206; Weddell, *Voyage towards the South Pole*, p. 156, Darwin, *Journal of Researches*, p. 216, and Bove, *Patagonia*, p. 131 (Fuegians); Nieboer, *op. cit.* p. 13 *sqq.* (Australian aborigines); Williams and Calvert, *Fiji*, p. 145; Forster, *Voyage round the World*, ii. 324 (natives of Tana, of the New Hebrides); Zimmermann, *Inseln des indischen und stillen Meeres*, ii. 17 (New Caledonians), 105 (New Irelanders); Lewin, *Wild Races of*

these and similar statements, however correct they be, hardly express the whole truth. In early society each sex has its own pursuits. The man is responsible for the protection of the family, and, ultimately, for its support. His occupations are such as require strength and agility—fighting, hunting, fishing, the construction of implements for the chase and war, and, frequently, the cutting of trees and the building of lodges.[1] The woman may accompany him as a helpmate on his expeditions, sometimes even participating in the battle,[2] and when they travel she generally carries the baggage. But her principal occupations are universally of a domestic kind: she procures wood and water, prepares the food, dresses skins, makes clothes, takes care of the children. She, moreover, supplies the household with vegetable food, gathers roots, berries, acorns, and so forth, and among agricultural peoples very frequently cultivates the soil. Whilst cattle-rearing, having developed out of the chase, is largely a masculine pursuit,[3] agriculture, having developed out of collecting seeds and plants, originally devolves on the women.[4]

South-Eastern India, pp. 192 (Toungtha), 254 *sq.* (Kukis); Rowney, *Wild Tribes of India*, p. 214 (most of the wild tribes of India); Reade, *op. cit.* pp. 51, 259, 545 (various African peoples); Waitz, *Anthropologie der Naturvolker*, ii. 117 (Negroes); Valdau, 'Om Ba-kwileh folket,' in *Ymer*, v. 167, 169.

[1] See Spencer, *Principles of Sociology*, i. 750 *sqq.*

[2] For women taking part in battles, see Schoolcraft, *Indian Tribes of the United States*, i. 236 (Comanches); Powers, *op. cit.* pp. 246 (Shastika Indians of California), 253 (Modok Indians of California); Waitz [-Gerland], *op. cit.* iii. 375 (Caribs), vi. 121 (Maoris); Wilkes, *op. cit.* v. 93 (Kingsmill Islanders); Kotzebue, *Voyage of Discovery into the South Sea*, iii. 171 (natives of Radack).

[3] Grosse, *Die Formen der Familie*, p. 92 *sqq.*

[4] *Ibid.* p. 159. Hildebrand, *Recht und Sitte auf den verschiedenen wirthschaftlichen Kulturstufen*, p. 44 *sqq.* Dargun, 'Ursprung und Entwicklungsgeschichte des Eigenthums,' in *Zeitschr. f. vergl. Rechtswiss.* v. 39, 110. Bücher, *Die Entstehung der Volkswirthschaft*, p. 36 *sqq.* Schurtz, *Das afrikanische Gewerbe*, p. 7. Ling Roth, 'Origin of Agriculture,' in *Jour. Anthr. Inst.* xvi. 119 *sq.* Mason, *Woman's Share in Primitive Culture*, pp. 15 *sqq.*, 146 *sqq.*, 277 *sq.* Havelock Ellis, *Man and Woman*, p. 5. von den Steinen, *Unter den Naturvölkern Zentral-Brasiliens*, p. 214. von Schuetz-Holzhausen, *Der Amazonas*, p. 67 (Peruvian Indians). Waitz, *op. cit.* iii. 376 (Caribs). Prescott, in Schoolcraft, *Indian Tribes of the United States*, i. 235 (Dacotahs). Colden, *ibid.* iii. 191; Seaver, *Narrative of the Life of Mrs. Mary Jemison*, p. 168 (Iroquois). 'Die Baluga-Negritos der Provinz Pampanga (Luzon),' in Globus, xli. 238. Zöller, *Kamerun*, iii. 58 (Banaka

The various occupations of life are thus divided between the sexes according to rules; and, though the formation of these rules no doubt has been more or less influenced by the egoism of the stronger sex, the essential principle from which they spring lies deeper. They are on the whole in conformity with the indications which nature herself has given. Take, for instance, the apparently cruel custom of using the women as beasts of burden. To the superficial observer, as M. Pinart remarks—with special reference to the Panama Indians,—it may indeed seem strange that the woman should be charged with a heavy load, while the man walking before her carries nothing but his weapons. But a little reflection will make it plain that the man has good reason for keeping himself free and mobile. The little caravan is surrounded with dangers: when traversing a savannah or a forest a hostile Indian may appear at any moment, or a tiger or a snake may lie in wait for the travellers. Hence the man must be on the alert, and ready in an instant to catch his arms to defend himself and his family against the aggressor.[1] Dobrizhoffer writes, "The luggage being all committed to the women, the Abipones travel armed

and Bapuku). Möller, Pagels, and Gleerup, *Tre år i Kongo*, i. 129, 137 (Kuilu Negroes), 270 (Bakongo). Valdau, in *Ymer*, v. 165 (Bakwileh). Burrows, 'Natives of the Upper Welle District,' in *Jour. Anthr. Inst.* xxviii. 41 (Niam-Niam). New, *op. cit.* pp. 114 (Wanika), 359 (Wataveta). Stuhlmann, *Mit Emin Pascha ins Herz von Afrika*, p. 182 (Waganda). Pogge, *Im Reiche des Muata Jamwo*, p. 243 (Kalunda of Mussumba). Decle, *Three Years in Savage Africa*, pp. 78, 79, 85 (Barotse), 160 (Matabele). von Weber, *Vier Jahre in Afrika*, ii. 195 (Zulus). There are, however, exceptions to the rule. Among the Creeks and Cherokee Indians not a third part as many women as men are seen at work in their plantations (Bartram, in *Trans. American Ethn. Soc.* iii. pt. i. 31). Among the Wakamba both sexes work in the fields, all heavy work, such as clearing and breaking new ground, being done by men (Decle, *op. cit.* p. 493). Among various peoples, indeed, such agricultural work as requires considerable strength devolves on the male sex (Hildebrand, *op. cit.* p. 44 *sqq.* Havelock Ellis, *Man and Woman*, p. 5). In the Malay Archipelago the men are chiefly engaged in the field-work (Ratzel, *History of Mankind*, i. 441). In the Kingsmill Islands (Wilkes, *op. cit.* v. 91), Tonga (Cook, *Voyage to the Pacific Ocean*, i. 390 *sqq.*), and the Caroline Group (Cantova, quoted *ibid.* i. 392, note) the soil is cultivated by the men. Among the Gallas, "whilst the women tend the sheep and oxen in the field, and manage the hives of bees, the men plough, sow, and reap" (Harris, *Highlands of Aethiopia*, iii. 47).

[1] Pinart, quoted by Nieboer, *op. cit.* p. 21.

with a spear alone, that they may be disengaged to fight or hunt, if occasion require." [1]

Moreover, whatever may have been the original reason for allotting a certain occupation to the one sex to the exclusion of the other, any such restriction has subsequently been much emphasised by custom, and in many cases by superstition as well.[2] In Africa it is a common belief that the cattle get ill if women have anything to do with them.[3] Hence among most Negro races milking is only permitted to men.[4] In South-Eastern Africa "a woman must not enter the cattle fold." [5] The Bechuanas never allow women to touch their cattle, hence the men have to plough themselves.[6] In North America Indian custom and superstition ordain that the wife must carefully keep away from all that belongs to her husband's sphere of action.[7] On the other hand, among the Dacotahs "the men do not often interfere with the work of the women; neither will they help them if they can avoid it, for fear of being laughed at and called a woman." [8] In Abyssinia "it is infamy for a man to go to market to buy anything. He cannot carry water or bake bread; but he must wash the clothes belonging to both sexes, and, in this function, the women cannot help him." [9] Among the Beni Ahsen tribe in Morocco the women of the village where I was staying were quite horrified when one of my native servants set out to fetch water; they would on no account allow him to do what they said was a woman's business. The Greenlander regards it as scandalous for a man to interfere with any occupation which belongs to the women. When he has brought his booty to land, he troubles himself no further about it; "for it would be a stigma on his character,

[1] Dobrizhoffer, *Account of the Abipones*, ii. 118. *Cf.* Wied-Neuwied *Reise nach Brasilien*, ii. 17, 37 (Botocudos); Giddings, *Principles of Sociology*, p. 266 *sq.*

[2] See Crawley, *Mystic Rose*, p. 49 *sq.*

[3] Schurtz, *Das afrikanische Gewerbe*, p. 10.

[4] Ratzel, *op. cit.* ii. 419.

[5] Macdonald, *Life in Africa*, p. 221.

[6] Holub, 'Central South African Tribes,' in *Jour. Anthr. Inst.* x. 11.

[7] Waitz, *op. cit.* iii. 100.

[8] Prescott, in Schoolcraft, *Indian Tribes of the United States*, iii. 235.

[9] Bruce, *Travels to Discover the Source of the Nile*, iv. 474.

if he so much as drew a seal out of the water."[1] Among the Bakongo a man would be much ridiculed by the women themselves, if he wanted to help them in their work in the field.[2] Sometimes agriculture is supposed to be dependent for success on a magic quality in woman, intimately connected with child-bearing.[3] Some Orinoco Indians said to Father Gumilla :—"When the women plant maize the stalk produces two or three ears ; when they set the manioc the plant produces two or three baskets of root; and thus everything is multiplied. Why ? Because women know how to produce children, and know how to plant the corn so as to ensure its germinating. Then, let them plant it ; we do not know so much as they do."[4]

It is obvious that this strict division of labour is apt to mislead the travelling stranger. He sees the women hard at work, and the men idly looking on ; and it escapes him that the latter will have to be busy in their turn, within their own sphere of action. What is largely due to the force of custom is taken to be sheer tyranny on the part of the men ; and the wife is pronounced to be an abject slave of her husband, destitute of all rights. And yet the strong differentiation of work, however burdensome it may be to the wife, is itself a source of rights, giving her authority within the circle which is exclusively her own. Among the Banaka and Bapuku the wife, though said to be her husband's property and slave, is nevertheless an autocrat in her own house, strong enough to bid defiance to her lord and master.[5] Among the North American Indians, Schoolcraft observes, "the lodge itself, with all its arrangements, is the precinct of the rule and government of the wife. . . . The husband has no voice in this matter."[6] Many other statements to a similar effect will be quoted below.

[1] Nansen, *First Crossing of Greenland*, ii. 313. Cranz, *History of Greenland*, i. 138, 154.

[2] Möller, Pagels, and Gleerup, *op. cit.* i. 270.

[3] See Payne, *History of the New World*, ii. 8.

[4] Gumilla, *El Orinoco ilustrado*, ii. 274 *sq.*

[5] Steinmetz, *Rechtsverhältnisse*, p. 29 *sq.*

[6] Schoolcraft, *Indian in his Wigwam*, p. 73.

We have reason, then, to believe that the authority which savage husbands possess over their wives is not always quite so great as it is said to be. And we must distinctly reject as erroneous the broad statement that the lower races in general hold their women in a state of almost complete subjection.[1] Among many of them the married woman, though in the power of her husband, is known to enjoy a remarkable degree of independence, to be treated by him with consideration, and to exercise no small influence upon him. In several cases she is stated to be his equal, and in a few his superior.

Among many of the South American Indians the women have been noticed to occupy a respected position in the family or community.[2] Thus, among the Goajiros of Colombia, "in a quarrel or drunken brawl, women often save bloodshed by stepping in and tearing the weapons out of their husband's or brother's hand. Travelling with women is consequently perfectly safe, and in case of danger, if one undertakes to protect a stranger, he may rely upon coming out all right."[3] Among the Tarahumares of Mexico—in spite of their saying that one man is as good as five women—the woman "occupies a comparatively high position in the family, and no bargain is ever concluded until the husband has consulted his wife in the matter."[4] Among the Navahos of New Mexico the women "exert a great deal of influence";[5] they "are very independent of menial duties, and leave their husbands upon the slightest pretext of dislike";[6] "by common consent the house and all the domestic gear belongs entirely to the wife."[7] In

[1] Thus Meiners says (*History of the Female Sex*, i. 2), "Among savage nations, the entrance into the married state is for the female the commencement of the most cruel and abject slavery; for which reason many women dread matrimony more than death." In a recent work on the primitive family an Italian writer regards it as perhaps the most fundamental fact in the family institution that the woman is always and everywhere "sottoposta al più gravoso *mundium* maritale" (Amadori-Virgilj, *L'istituto famigliare nelle società primordiali*, p. 138).

[2] Waitz, *Anthropologie der Naturvölker*, iii. 472 (Guaycurus), 530 (Morotocos). von den Steinen, *Unter den Naturvölkern Zentral-Brasiliens*, p. 332 (Bakairi).

[3] Simons, 'Exploration of the Goajira Peninsula,' in *Proceed. Roy. Geo. Soc.* N.S. vii. 792. See also Candelier, *Rio-Hacha*, p. 256.

[4] Lumholtz, *Unknown Mexico*, i. 265.

[5] Letherman, in *Ann. Rep. Smithsonian Inst.* 1855, p. 294.

[6] Eaton, in Schoolcraft, *Archives*, iv. 217.

[7] Stephen, in *American Anthropologist*, vi. 354.

his description of North American Indians Mr. Grinnell observes:—"The Indian woman, it is usually thought, is a mere drudge and slave, but, so far as my observations extend, this notion is wholly an erroneous one. It is true that the women were the labourers of the camp; that they did all the hard work, about which there was no excitement . . . . but they were not mere servants. On the contrary, their position was very respectable. They were consulted on many subjects, not only in connection with family affairs, but in more important and general matters. Sometimes women were even admitted to the councils and spoke there, giving their advice. . . . In ordinary family conversation women did not hesitate to interrupt and correct their husbands when the latter made statements with which they did not agree, and the men listened to them with respectful attention, though of course this depended on the standing of the woman, her intelligence, etc."[1] Another competent observer, Ten Kate, strongly protests against the statement that, among the North American Indians, women are treated as beasts of burden, and affirms that their condition, as compared with that of the women of the lower classes in civilised countries, is rather better than worse.[2] Among the Omahas the women had an equal standing in society with the men; both the husband and wife were at the head of the family and the joint owners of the lodge, robes, and so forth, so that the man could not give away anything if his wife was unwilling.[3] Among the Senecas, "usually, the female portion ruled the house, and were doubtless clannish enough about it. The stores were in common; but woe to the luckless husband or lover who was too shiftless to do his share of the providing. No matter how many children, or whatever goods he might have in the house, he might at any time be ordered to pick up his blanket and budge."[4] "From documentary references," says Mr. Mooney, "it is apparent that there existed among the Cherokee a custom analogous to that found among the Iroquois and probably other Eastern tribes, by which the decision of important questions relating to peace and war was left to a vote of the women."[5] Among the Salish, or Flatheads, "although the women are required to do much hard labour, they are

[1] Grinnell, *Story of the Indian*, p. 46 *Cf.* Waitz, *op. cit.* iii. 101 *sq.*

[2] Ten Kate, *Reizen en onderzoekingen Noord-Amerika*, p. 365. *Cf. ibid.* 9.

[3] Dorsey, 'Omaha Sociology,' in *Ann. Rep. Bur. Ethn.* iii. 266, 366.

[4] Morgan, *Houses and House-Life of the American Aborigines*, p. 65 *sq.* See also Dixon, *New America*, p. 46.

[5] Mooney, 'Myths of the Cherokee,' in *Ann. Rep. Bur. Ethn.* xix. 489.

by no means treated as slaves, but, on the contrary, have much consideration and authority."[1] Among the Nootkas "wives are consulted in matters of trade, and in fact seem to be nearly on terms of equality with their husbands, except that they are excluded from some public feasts and ceremonies."[2] Among the Indians about Puget Sound, also, women "are always consulted in matters of trade before a bargain is closed," and "acquire great influence in the tribe."[3] The Thlinket woman is not the slave of her husband; she has determinate rights, and her influence is considerable.[4] Among the natives of Cross Cape she even possesses "acknowledged superiority over the other sex."[5] Among the Western Tinneh "the women do only a fair share of the work and have a powerful voice in most affairs."[6] In Kadiak they were held in much respect, and enjoyed great liberties.[7] Among the Kamchadales they had the command of everything, and the husbands were their obedient slaves.[8] Nordenskiöld says of the Chukchi:—"The power of the woman appears to be very great. In making the more important bargains, even about weapons and hunting implements, she is, as a rule, consulted, and her advice is taken. A number of things which form women's tools she can barter away on her own responsibility, or in any other way employ as she pleases."[9] Mr. Bancroft's statement concerning the Western Eskimo, that "the lot of the women is but little better than slavery,"[10] must be understood as chiefly involving the fact that they have much hard work to do. According to Dr. Seemann they "are treated, although not as equals, at least with more consideration than is customary among barbarous nations"; nay, "it not infrequently happens that the woman is the chief authority of the house," and "the man

[1] Hale, *U.S. Exploring Expedition. Vol. VI. Ethnography and Philology*, p. 207.

[2] Bancroft, *op. cit.* i. 196. *Cf.* Sproat, *Scenes and Studies of Savage Life*, pp. 93, 95 (Ahts).

[3] Bancroft, *op. cit.* i. 218.

[4] Krause, *Tlinkit-Indianer*, p. 161.

[5] Meares, *Voyages to the North-West Coast of America*, p. 323.

[6] Dall, *Alaska*, p. 431.

[7] Holmberg, 'Ethnographische Skizzen über die Völker des russischen Amerika,' in *Acta Soc. Scient. Fennicæ*, iv. 399.

[8] Steller, *Beschreibung von dem Lande Kamtschatka*, p. 287.

[9] Nordenskiöld, *Vegas färd kring Asien och Europa*, ii. 144.

[10] Bancroft, *op. cit.* i. 65 *sq.* Mr. Bancroft's authority is probably Armstrong, who says that the women are, to all intents and purposes, the slaves of the men, and do the greater part of the outdoor work, except hunting and fishing; but he adds that they nevertheless enjoy a higher position and more consideration than is usual amongst savages (Armstrong, *Personal Narrative of the Discovery of the North-West Passage*, p. 195).

never makes a bargain without consulting his wife, and if she does not approve, it is rejected."[1] Among the Point Barrow Eskimo "the women appear to stand on a footing of perfect equality with the men both in the family and in the community. The wife is the constant and trusted companion of the man in everything except the hunt, and her opinion is sought in every bargain or other important undertaking."[2] In Greenland, also, though the woman is considered much inferior to the man, she is in no way oppressed,[3] and her husband consults with her on important matters.[4]

Among the nomadic Tangutans the women's rights in the household seemed to Prejevalsky to be equal to those of the men.[5] Of the Todas of India it is said that their women "hold a position in the family quite unlike what is ordinarily witnessed among Oriental nations. They are treated with respect, and are permitted a remarkable amount of freedom."[6] Among the Kandhs women "are uniformly treated with respect; the mothers of families generally with much honour. Nothing is done either in public or in private affairs without consulting them, and they generally exert upon the councils of their tribes a powerful influence." A wife may quit her husband at any time, except within a year of her marriage, or when she expects offspring, or within a year after the birth of a child, though, when she quits him, he has a right to reclaim immediately from her father the whole sum paid for her.[7] Among the peasants of the North-Western Provinces of India the wife is an influential personage in the household, not a mere drudge. Little is done without her knowledge and advice. If she is badly wronged the tribal council will protect her, and on the whole her position is, perhaps, not worse than that of her sisters in a similar grade of life in other parts of the world.[8] Among the Kátis the men are much under the authority of their wives.[9] Among the Bheels women "have much influence in the society," and married men have always had the credit of allowing their wives to domineer over them.[10] "A Kol or Ho," says Dr. Hayes, "makes a regular companion

[1] Seemann, *Narrative of the Voyage of "Herald,"* ii. 66.

[2] Murdoch, 'Ethnological Results of the Point Barrow Expedition,' in *Ann. Rep. Bur. Ethn.* ix. 413.

[3] Nansen, *First Crossing of Greenland*, ii. 312.

[4] Nordenskiöld, *Den andra Dickssonska expeditionen till Grönland*, p. 509.

[5] Prejevalsky, *Mongolia*, ii. 121.

[6] Marshall, *A Phrenologist amongst the Todas*, p. 43.

[7] Macpherson, *Memorials of Service in India*, pp. 69, 132 *sq.*

[8] Crooke, *North-Western Provinces of India*, p. 230 *sq.*

[9] Rowney, *Wild Tribes of India*, p. 47.

[10] Malcolm, *Memoir of Central India*, ii. 180. Rowney, *op. cit.* p. 38.

of his wife. She is consulted in all difficulties, and receives the fullest consideration due to her sex";[1] and Colonel Dalton adds, "As a rule, in no country in the world are wives better treated."[2] The Garos are "kind husbands, and their conduct generally towards the weaker sex is marked by consideration and respect."[3] The Bódo and Dhimáls "use their wives and daughters well, treating them with confidence and kindness."[4] The Santal "treats the female members of his family with respect."[5] Among the Kukis women are generally held in consideration; "their advice is taken, and they have much influence."[6] Mr. Colquhoun observes that among the Indo-Chinese races equality of the sexes prevails, and prevailed long before Buddhism took any hold upon the country.[7]

Among the Nicobarese "the position of women is, and always has been, in no way inferior to that of the other sex. They take their full share in the formation of public opinion, discuss publicly with the men matters of general interest to the village, and their opinions receive due attention before a decision is arrived at. In fact, they are consulted on every matter, and the henpecked husband is of no extraordinary rarity in the Nicobars."[8] Mr. Crawfurd thinks that in the Malay Archipelago "the lot of women may, on the whole, be considered as more fortunate than in any other country of the East"; they associate with the men "in all respects on terms of such equality as surprise us in such a condition of society."[9] In Bali they are on a perfect equality with the men.[10] The Dyak shows great respect for his wife, and always asks her opinion;[11] he regards her "not as a slave, but as a companion."[12] Among the Bataks the married women often have a great influence over their families.[13] In Serang they have in all matters equal rights with the men, and are, consequently, treated well.[14] The women of Sulu "have the reputation of ruling their

[1] Hayes, quoted by Dalton, *Descriptive Ethnology of Bengal*, p. 194. *Cf.* Bradley-Birt, *Chota-Nagpore*, p. 100 *sq.*

[2] Dalton, *op. cit.* p. 194.

[3] *Ibid.* p. 68.

[4] Hodgson, *Miscellaneous Essays*, i. 150.

[5] Hunter, *Annals of Rural Bengal*, i. 217. *Cf. Ymer*, v. p. xxiv.

[6] Lewin, *Wild Races of South-Eastern India*, p. 254.

[7] Colquhoun, *Amongst the Shans*, p. 234. *Cf.* Fytche, *Burma*, ii. 72.

[8] Kloss, *In the Andamans and Nicobars*, p. 242.

[9] Crawfurd, *History of the Indian Archipelago*, i. 73.

[10] Raffles, *History of Java*, ii. p. ccxxxi.

[11] Bock, *Head-Hunters of Borneo*, p. 210 *sq.*

[12] Selenka, *Sonnige Welten*, p. 33. *Cf.* Wilkes, *op. cit.* v. 363.

[13] Steinmetz, *Ethnol. Studien zur ersten Entwicklung der Strafe*, ii. 299.

[14] Riedel, *De sluik- en kroesharige rassen tusschen Selebes en Papua*, p. 97.

lords, and possess much weight in the government by the influence they exert over their husbands." [1]

In Melanesia the women generally have to work hard, supplying the place of slaves; [2] but at least in various islands their condition is otherwise fairly good. In the Western islands of Torres Straits "the women appear to have had a good deal to say on most questions and were by no means downtrodden or ill-used." [3] In some parts of New Guinea their position is described as one of high esteem. [4] "They have a large voice in domestic affairs, and occasionally lord it over their masters"; and their influence is felt not only in domestic matters, but also in affairs of state. [5] In Erromanga, of the New Hebrides, although the women did all of the hard plantation work, they were on the whole well treated by their husbands. [6] The same is said to be the case in the Solomon Islands; [7] in the eastern part of New Georgia they do not even seem to do much work. [8] In Micronesia the position of woman is decidedly good. In the Marianne Group "the wife is absolute mistress in her house, the husband not daring to dispose of anything without her consent"; nay, the men are said to be actually governed by their wives, "the women assuming those prerogatives which in most other countries are invested in the other sex." [9] In the Pelew Islands the women are in every respect the equals of the men; the oldest man, or Obokul, of a family can do nothing without taking advice with its oldest female members. [10] In the Caroline Group the weaker sex "enjoys a perfect equality in public estimation with the other." [11] Among the Mortlock Islanders the wife is quite independent of her husband. [12] In the Kingsmill Islands very great consideration is awarded to the women: "they seem to have exclusive control over the house," whilst all the hard labour is performed by the

[1] Wilkes, *op. cit.* v. 343.

[2] Nieboer, *op. cit.* p. 392 *sqq.* Waitz-Gerland, *op. cit.* vi. 626.

[3] Haddon, in *Reports of the Cambridge Anthropological Expedition to Torres Straits*, v. 229.

[4] Ratzel, *op. cit.* i. 274.

[5] Pitcairn, *Two Years among the Savages of New Guinea*, p. 61. *Cf.* Bink, in *Bulletin Soc. d'Anthrop. de Paris*, xi. 392; Hagen, *Unter den Papua's*, pp. 226, 243.

[6] Robertson, *Erromanga*, p. 397.

[7] Parkinson, *Zur Ethnographie der nordwestlichen Salomo Inseln*, p. 4.

[8] Somerville, 'Ethnogr. Notes in New Georgia,' in *Jour. Anthr. Inst.* xxvi. 405 *sq.*

[9] Moore, *Marriage Customs*, p. 187. Waitz, *op. cit.* v. pt. i. p. 107 *sq.*

[10] Kubary, *Die socialen Einrichtungen der Pelauer*, p. 38 *sq.* *Cf. Idem*, 'Die Palau-Inseln,' in *Journal des Museum Godeffroy*, iv. 43; Keate, *Account of the Pelew Islands*, p. 331.

[11] Hale, *op. cit.* p. 73.

[12] Kubary, 'Die Bewohner der Mortlock Inseln,' in *Mittheilungen der Geograph. Gesellsch. in Hamburg*, 1878–9, p. 261.

men.[1] Among the Line Islanders "no difference is made in the sexes; a woman can vote and speak as well as a man, and in general the women decide the question, unless it is one of war against another island."[2] In many Polynesian islands, also, their position is by no means bad.[3] In Tonga "women have considerable respect shown to them on account of their sex, independent of the rank they might otherwise hold as nobles"; they are not subjected to hard labour or any very menial work,[4] and their *status* in society is not inferior to that of men.[5] In Samoa they "are held in much consideration, . . . treated with great attention, and not suffered to do anything but what rightfully belongs to them."[6] In the valley of Typee, in the Marquesas Group, the women are allowed every possible indulgence, the religious restrictions of the taboo alone excepted; they are exempt from toil, and "nowhere are they more sensible of their power."[7] Rochon wrote of the Malagasy:—"Man here never commands as a despot; nor does the woman ever obey as a slave. The balance of power inclines even in favour of the women."[8] At the present day, in Madagascar, the woman "is not scorned as essentially inferior to man," but enters into her husband's cares and joys, and shares his life, much in the same way as a wife does amongst ourselves.[9]

Turning, finally, to the African continent, we find that among the Negro races the woman, though often heavily burdened and more or less subservient to her husband, is by no means without influence.[10] "When we become more closely acquainted with family conditions," Herr Büttner observes, "we notice that there, as elsewhere, husbands are under petticoat government, and those most of all who like to pose before the outer world as masters of their house. The women, including the aunts, have on all occasions, important and unimportant alike, a weighty

[1] Wilkes, *op. cit.* v. 91.

[2] Tutuila, in *Jour. Polynesian Soc.* i. 269.

[3] See Waitz-Gerland, *op. cit.* vi. 120 *sqq.*

[4] Mariner, *Natives of the Tonga Islands*, ii. 97.

[5] Erskine, *Cruise among the Islands of the Western Pacific*, p. 158.

[6] Wilkes, *op. cit.* ii. 148. *Cf.* Waitz-Gerland, *op. cit.* vi. 121.

[7] Melville, *Typee*, p. 299.

[8] Rochon, 'Voyage to Madagascar,' in Pinkerton, *Collection of Voyages and Travels*, xvi. 747. *Cf.* Waitz, *op. cit.* ii. 438.

[9] Little, *Madagascar*, p. 63.

[10] Waitz, *op. cit.* ii. 117. Ratzel, *op. cit.* ii. 332. Buchner, *Kamerun*, p. 32 *sq.* Möller, Pagels, and Gleerup, *op. cit.* i. 171 (Lukungu). Steinmetz, *Rechtsverhältnisse*, p. 29 (Banaka and Bapuku). Lang, *ibid.* p. 225 (Washambala). Burrows, *Land of the Pigmies*, p. 62 (Niam-Niam). Chanler, *Through Jungle and Desert*, p. 485 (Wakamba).

word to contribute."[1] The Monbuttu women, according to Dr. Schweinfurth, exhibit towards their husbands the highest degree of independence; "the position in the household occupied by the men was illustrated by the reply which would be made if they were solicited to sell anything as a curiosity, 'Oh, ask my wife: it is hers.'"[2] Among the Momvus "the women are on a footing of equality with the men, and go hunting with them, and accompany them to the wars, taking their part in the combat."[3] Among the Madi or Moru tribe of Central Africa "women are treated with respect and politeness by the men, who always show them preference, resigning to their use the best places, and paying them such like courtesies." The women associate with the men on equal terms, being consulted and honoured; and any insult to a woman is revenged, nay is frequently the cause of war.[4] In a Hottentot's house the woman is the supreme ruler, and the husband has nothing at all to say. "While in public the men take the prominent part, at home they have not so much power even as to take a mouthful of sour milk out of the tub, without the wife's permission. If a man ever should try to do it, his nearest female relations will put a fine on him, consisting in cows and sheep, which is to be added to the stock of the wife."[5] Among the peoples of Berber race the women exercise considerable influence over the men. Among the Guanches of the Canary Islands they were much respected.[6] Among the Touareg "la femme est l'égale de l'homme, si même, par certains côtés, elle n'est dans une condition meilleure."[7] Among the Beni Amer a husband undertakes nothing before consulting his wife, on whose goodwill he largely depends.[8] Of the Aulâd Solîmân, an Arab tribe in the Sahara, Dr. Nachtigal observes that it was curious to see how powerless those much feared robbers and cut-throats were in their own houses.[9] Both in the Sahara[10] and in the East[11] the Bedouin women

[1] Büttner, quoted by Ratzel, *op. cit.* ii. 334.

[2] Schweinfurth, *Heart of Africa*, ii. 91.

[3] Burrows, *op. cit.* p. 128.

[4] Felkin, 'Notes on the Madi or Moru Tribe,' in *Proceed. Roy. Soc. Edinburgh*, xii. 329.

[5] Hahn, *The Supreme Being of the Khoi-Khoi*, p. 19.

[6] Bory de St. Vincent, *Essais sur les Isles Fortunées*, p. 105. Mantegazza, *Rio de la Plata e Tenerife*, p. 630.

[7] Dyveyrier, *Exploration du Sahara*, p. 339. *Cf.* Chavanne, *Die Sahara*, p. 181; Hourst, *Sur le Niger et au pays des Touaregs*, p. 209.

[8] Munzinger, *Ostafrikanische Studien*, p. 325.

[9] Nachtigal, *Sahara und Sudan*, ii. 93.

[10] Chavanne, *op. cit.* p. 397.

[11] Wallin, *Reseanteckningar från Orienten*, iii. 151, 152, 269. Blunt, *Bedouin Tribes of the Euphrates*, ii. 214, 226, 228.

enjoy a considerable degree of freedom, and sometimes actually rule over their husbands.

All these statements certainly do not imply that the husband has no recognised power over his wife, but they prove that his power is by no means unlimited. It is true that many of our authorities speak rather of liberties that the woman takes herself than of privileges granted her by custom; but, as we have seen before, customary rights are always more or less influenced by habitual practice. It should be added that among many savage peoples the husband has a right to divorce his wife only under certain conditions;[1] and among a very considerable number custom or law permits the wife to separate either for some special cause or, simply, at will.[2] In certain parts of Eastern Central Africa divorce may be effected if the husband neglects to sew his wife's clothes, or if the partners do not please each other.[3] Among the Shans of Burma the woman has a right to turn adrift a husband who takes to drinking or otherwise misconducts himself, and to retain all the goods and money of the partnership.[4] Among the Irulas of the Neilgherries the option of remaining in union, or of separating, rests principally with the woman.[5] Among the Savaras, an aboriginal hill people of the Madras Presidency, "a woman may leave her husband *whenever she pleases*."[6] This is surely something very different from that absolute dominion which hasty generalisers have attributed to savage husbands in general.

It is often said that a people's civilisation may be measured by the position held by its women. But at least so far as the earlier stages of culture are concerned, this opinion is not supported by facts. Among several of the lowest races, including peoples like the Veddahs, Andaman Islanders, and Bushmans, the female sex is

[1] Westermarck. *op. cit.* p. 523 *sq.*
[2] *Ibid.* p. 526 *sqq.*
[3] Macdonald, *Africana*, i. 140.
[4] Colquhoun, *Amongst the Shans*, p. 295.
[5] Harkness, *Description of a Singular Aboriginal Race inhabiting the Neilgherry Hills*, p. 92.
[6] Fawcett, in *Jour. Anthrop. Soc. Bombay*, i. 28.

treated with far greater consideration than among many of the higher savages and barbarians. Travellers have not seldom noticed that of two neighbouring tribes the less cultured one sets in this respect an example to the other. "Among the Bushmans," says Dr. Fritsch, "the female sex makes life-companions, among the A-bantu beasts of burden."[1] Lewis and Clarke affirm that the *status* of woman in a savage tribe has no necessary relation even to its moral qualities in general. "The Indians," they say, "whose treatment of the females is mildest, and who pay most deference to their opinions, are by no means the most distinguished for their virtues. . . . On the other hand, the tribes among whom the women are very much debased, possess the loftiest sense of honour, the greatest liberality, and all the good qualities of which their situation demands the exercise."[2] That the condition of woman, or her relative independence, is no safe gauge of the general culture of a nation, also appears from a comparison between many of the lower races and the peoples of archaic civilisation.

In China the condition of woman has always been inferior to that of man, and no generous sentiment tending to the amelioration of her social position has ever come from the Chinese sages.[3] Her children must pay her respect, but she in her turn owes to her husband the subjection of a child;[4] a wife is an infinitely less important personage than a mother in the Chinese social scale.[5] The husband has certainly not absolute power over his wife: he may not kill her, nor sell her without her consent,[6] nor even divorce her, except for certain causes specified by law.[7] But these causes are very elastic;

[1] Fritsch, *Die Eingeborenen Süd-Afrika's*, p. 444.
[2] Lewis and Clarke, *op. cit.* p. 441.
[3] Legge, *Religions of China*, pp. 107, 108, 111.
[4] de Groot, *Religious System of China*, (vol. ii. book) i. 550.
[5] Giles, *Strange Stories from a Chinese Studio*, i. 315, n. 3.
[6] Doolittle, *Social Life of the Chinese*, ii. 209.
[7] Medhurst, 'Marriage, Affinity, and Inheritance in China,' in *Trans. Roy. As. Soc. China Branch*, iv. 25 *sq.* Gray, *China*, i. 219. Müller, *Reise der Fregatte Novara*, Ethnographie, p. 164.

it is said that "when a woman has any quality that is not good, it is but just and reasonable to turn her out of doors."[1] And in a book containing the cream of all the moral writings of the Chinese, and intended chiefly for children, we read:—"Brothers are like hands and feet. A wife is like one's clothes. When clothes are worn out, we can substitute those that are new. When hands and feet are cut off, it is difficult to obtain substitutes for them."[2] A woman, on the other hand, cannot obtain legal separation on any account.[3] Confucius says that "man is the representative of Heaven, and is supreme over all things. Woman yields obedience to the instructions of man, and helps to carry out his principles. On this account she can determine nothing of herself, and is subject to the rule of the three obediences. When young, she must obey her father and elder brother; when married, she must obey her husband; when her husband is dead, she must obey her son."[4] In Japan, also, a woman was formerly, in the eye of the law, a chattel rather than a person. "Having all her life under her father's roof reverenced her superiors, she is expected to bring reverence to her new domicile, but not love. She must always obey but never be jealous. She must not be angry, no matter whom her husband may introduce into his household. She must wait upon him at his meals and must walk behind him, but not with him. When she dies her children go to her funeral, but not her husband."[5] In Japan a man might repudiate his wife for the same reasons as in China,[6] and till the year 1873 a wife could not obtain separation according to law.[7] However, though the Japanese wife is "the first servant of the household," training and public opinion require that she should be treated with respect, if the marriage be blessed

[1] Navarette, 'Account of the Empire of China,' in Awnsham and Churchill, *Collection of Voyages and Travels*, i. 73.
[2] *Indo-Chinese Gleaner*, i. 164.
[3] Gray, *op. cit.* i. 219.
[4] Legge, *Chinese Classics*, i. 103 *sq.*
[5] Griffis, *Religions of Japan*, p 124 *sq.*
[6] Westermarck, *op. cit.* p. 525.
[7] Rein, *Japan*, p. 424 *sq.*

with children.[1] She is addressed as "the honourable lady of the house," and her position is said to be higher than in any other Oriental country.[2]

From various quarters of the ancient world we hear of the rule that the husband shall command and the wife obey. The Lord said to the woman, "Thy desire shall be to thy husband, and he shall rule over thee."[3] How great the husband's power was among the Hebrews we do not know exactly. He could divorce his wife if she did not please him because he had "found some uncleanness in her,"[4] whereas a wife could not legally separate from her husband.[5] In later times her condition evidently improved.[6] From the old Jewish point of view it is surely surprising to find Sirach putting the companionship of a wife not only above that of a friend, but even above children.[7] In the Talmud a husband is admonished to love his wife like himself and to honour her more than himself,[8] though he should take care not to be ruled by her;[9] and the wife also is authorised to demand a divorce under certain circumstances, namely, if the husband refuses to perform his conjugal duty, if he continues to lead a disorderly life after marriage, if he proves impotent during ten years, if he suffers from an insupportable disease, or if he leaves the country for ever.[10]

In the Zoroastrian Yasts a holy woman is defined as one who is "rich in good thoughts, good words, and good deeds, well-principled, and obedient to her husband," whereas the fiendish woman is "ill-principled and disobedient to her husband."[11] According to Brahmanic law, a woman must in childhood be subject to her father, in youth

[1] *Ibid.* p. 425.
[2] Norman, *The Real Japan*, p. 184. Griffis, *Religions of Japan*, p. 318.
[3] Genesis, iii. 16.
[4] *Deuteronomy*, xxiv. 1.
[5] Josephus, *Antiquitates Romanæ*, xv. 7. 10. Keil, *Manual of Biblical Archæology*, ii. 175.
[6] *Cf.* Klugmann, *Die Frau im Talmud*, p. 63 *sq.*
[7] *Ecclesiasticus*, xl. 19, 23. *Cf.* Montefiore, *Hibbert Lectures on the Religion of the Ancient Hebrews*, p. 491.
[8] Deutsch, *Literary Remains*, p. 56.
[9] *Beza*, fol. 32 B, quoted by Katz, *Der wahre Talmudjude*, p. 114.
[10] Glasson, *Le mariage civil et le divorce*, p. 149 *sq.*
[11] *Yasts*, xxii. 18, 36. *Cf. Dînâ-i Mainôg-i Khirad*, xxxix. 38 *sq.*

to her husband, when her lord is dead to her sons; "a woman must never be independent."[1] Not even in her own house is she allowed to do anything independently.[2] Him to whom her father may give her, or her brother with the father's permission, she shall obey as long as he lives.[3] She must never do anything that might displease him;[4] even though he be destitute of virtue, or unfaithful to her, "a husband must be constantly worshipped as a god by a faithful wife."[5] A wife who shows disrespect to a husband who is addicted to some evil passion, is a drunkard, or diseased, shall be deserted for three months, and be deprived of her ornaments and furniture.[6] If a wife obeys her husband, she will for that reason alone be exalted in heaven;[7] but by violating her duty towards him, she is disgraced in this world, and after death she enters the womb of a jackal, and is punished with disease for her sin.[8] There is no indication that a woman can obtain legal separation on any account, though she may with impunity "show aversion" towards a mad or outcast husband, a eunuch, one destitute of manly strength, or one afflicted with such diseases as punish crimes.[9] Again, if she is sold or repudiated by her husband, she can never become the legitimate wife of another who may have bought or received her after she was repudiated.[10] But the husband is not allowed to divorce her indiscriminately. A wife who drinks spirituous liquor, is of bad conduct, rebellious, quarrelsome, diseased, mischievous, or wasteful, may at any time be superseded by another wife; a barren one may be superseded in the eighth year; one whose children all die, in the tenth; one who bears daughters only, in the eleventh; whereas a sick wife who is kind to her husband and virtuous in her conduct, may be superseded only with her own consent, and must never be

[1] *Laws of Manu*, v. 148. *Cf. ibid.* ix. 2 *sq.*
[2] *Ibid.* v. 147.
[3] *Ibid.* v. 151.
[4] *Ibid.* v. 156.
[5] *Ibid.* v. 154.
[6] *Ibid.* ix. 78.
[7] *Ibid.* v. 155. *Cf. ibid.* ix. 29.
[8] *Ibid.* v. 164; ix. 30.
[9] *Ibid.* ix. 79.
[10] *Ibid.* ix. 46. See also the note in Bühler's translation, *Sacred Books of the East*, xxv. 335.

disgraced.[1] The rule, "Let mutual fidelity continue until death," may be considered the summary of the highest law for husband and wife;[2] women must be honoured and adorned by husbands who desire their own welfare.[3] Various passages in the Mahabharata and Ramayana indicate that women in India were subjected to less social restraints in former days than they are at present according to the rules of Brahmanism, and even enjoyed considerable liberty;[4] and the Vedic singers know no more tender relation than that between the husband and his willing, loving wife, who is praised as "his home, the darling abode and bliss in his house."[5] Yet it is noteworthy that goddesses play a very insignificant part in the Veda.[6] In this respect the Pantheon of the Vedic people essentially differs from that of the ancient Egyptians,[7] a difference which may be due to the remarkably high position which woman seems to have occupied in Egypt.[8]

In Greece, also, a wife appears to have been a more influential and independent personage in ancient times, in Homeric society, than she became afterwards.[9] In the historic age her position was simply that of the domestic drudge; her virtues were reduced to the maintenance of good order in her household and obedience to her husband; her greatest ornament was silence.[10] Aristotle, always a faithful exponent of the most enlightened opinion of his age, gives the following description of what he considers to be the ideal relation of a woman to her husband:—"A good and perfect wife ought to be mistress

[1] *Laws of Manu*, ix. 80 *sqq.*
[2] *Ibid.* ix. 101.
[3] *Ibid.* iii. 55 *sqq.*
[4] Zimmer, *Altindisches Leben*, p. 316 *sqq.* Monier Williams, *Indian Wisdom*, p. 437 *sq.*
[5] Kaegi, *Rigveda*, p. 15.
[6] Macdonell, *Vedic Mythology*, p. 124 *sq.*
[7] Maspero, *Dawn of Civilisation*, p. 101 *sq.*
[8] *Ibid.* p. 52. Maspero, *Life in Ancient Egypt and Assyria*, p. 11. Amélineau *L'évolution des idées morales dans l'Égypte Ancienne*, p. 68 *sqq.* Flinders Petrie, *Religion and Conscience in Ancient Egypt*, p. 131 *sq.* Brugsch, *Aegyptologie*, p. 61 *sq.*
[9] Hermann-Blümner, *Lehrbuch der griechischen Privatalterthümer*, p. 64 *sqq.* Mahaffy, *Social Life in Greece*, p. 53.
[10] Dickinson, *Greek View of Life*, p. 161. Döllinger, *The Gentile and the Jew*, ii. 234. 'State of Female Society in Greece,' in *Quarterly Review*, xxii. 172 *sqq.*

of everything within the house. . . . But the well-ordered wife will justly consider the behaviour of her husband as a model of her own life, and a law to herself, invested with a divine sanction by means of the marriage tie and the community of life. . . . The wife ought to show herself even more obedient to the rein than if she had entered the house as a purchased slave. For she has been bought at a high price, for the sake of sharing life and bearing children, than which no higher or holier tie can possibly exist."[1] So also, according to Plutarch, the husband ought to rule his wife, but by sympathy and goodwill, as the soul governs the body, not as a master does a chattel.[2] The law invalidated whatever a husband did by the counsel, or at the request, of his wife, whereas the wife, on her part, could transact no business of importance in her own favour, nor by will dispose of more than the value of a bushel of barley.[3] Yet whatever may have been the exact compass of the husband's power in Greece, it was not unlimited. At Athens a woman could demand divorce if she was ill-treated by her husband, in which case she merely had to announce her wishes before the archon.[4]

In Rome, in ancient times, the power which the father possessed over his daughter was generally, if not always,[5] by marriage transferred to the husband.[6] When marrying a woman passed in *manum viri*, as a wife she was *filiæ loco*, that is, in law she was her husband's daughter.[7] And since the Roman house-father originally had the *jus vitæ necisque* over his children, the husband naturally had the same power over his wife. But from her being destitute of all legal rights we must not conclude that she was

[1] Aristotle, *Œconomica*, i. 7. *Cf. Idem, De animalibus historia*, ix. 1. 2 *sqq.*

[2] Plutarch, *Conjugalia præcepta*, 33.

[3] Isaeus, *Oratio de Aristarchi hereditate*, 10, p. 259. Döllinger, *op. cit.* ii. 234.

[4] Glasson, *Le mariage civil et le divorce*, p. 152 *sq.* Meier and Schömann, *Der attische Process*, p. 512.

[5] Rossbach, *Römische Ehe*, p. 64. Maine, *Ancient Law*, p. 155.

[6] Or, properly speaking, to the husband's father, if he was still alive (Rossbach, *op. cit.* p. 11).

[7] Leist, *Alt-arisches Jus Civile*, i. 175. Maine, *op. cit.* p. 155.

treated with indignity. On the contrary, she generally had a respected and influential position in the family ;[1] and though the husband could repudiate her at will, it was said that for five hundred and twenty years *a condita urbe* there was no such thing as a divorce in Rome.[2] As Mr. Bryce points out, we cannot doubt that the wide power which the law gave to the husband "was in point of fact restrained within narrow limits, not only by affection, but also by the vigilant public opinion of a comparatively small community."[3] Gradually, however, marriage with *manus* fell into disuse, and was, under the Empire, generally superseded by marriage without *manus*, a form of wedlock which conferred on the husband hardly any authority at all over his wife. Instead of passing into his power, she remained in the power of her father ; and since the tendency of the later law, as we have seen, was to reduce the old *patria potestas* to a nullity, she became practically independent.[4]

This remarkable liberty granted to married women, however, was only a passing incident in the history of the family in Europe. From the very first Christianity tended to narrow it. Already the latest Roman law, so far as it is touched by the Constitutions of the Christian Emperors, bears some marks of a reaction against the liberal doctrines of the great Antonine jurisconsults, who assumed the equality of the sexes as a principle of their code of equity.[5] And this tendency was in a formidable degree supported by Teutonic custom and law. Among the Teutons a husband's authority over his wife was the same as a father's over his unmarried daughter.[6] This power, which under certain circumstances gave the husband a right to kill, sell, or repudiate his wife,[7] undoubtedly

[1] Rossbach, *op. cit.* pp. 36, 117.

[2] Valerius Maximus, ii 1 (*De matrimoniorum ritu*), 4. Aulus Gellius, *Noctes Atticæ*, iv. 3. 1.

[3] Bryce, *Studies in History and Jurisprudence*, ii. 389.

[4] Rossbach, *op. cit.* pp. 30, 42. Maine, *op. cit.* p. 155 *sq.* Friedlaender, *Darstellungen aus der Sittengeschichte Roms*, i. 252 *sqq.*

[5] Maine, *op. cit.* pp. 156, 154.

[6] Brunner, *Deutsche Rechtsgeschichte*, i. 75. Stemann, *Den danske Retshistorie indtil Christian V.'s Lov*, p. 323.

[7] Grimm, *Deutsche Rechtsalterthümer*, p. 450 *sq.* Brunner, *op. cit.* i. 75. Schröder, *Lehrbuch der deutschen Rechtsgeschichte*, p. 303.

contained much more than the Church could approve of, and so far she has helped to ameliorate the condition of married women in Teutonic countries. But at the same time the Church is largely responsible for those heavy disabilities with regard to personal liberty, as well as with regard to property, from which they have suffered up to recent times. The systems, says Sir Henry Maine, "which are least indulgent to married women are invariably those which have followed the Canon Law exclusively, or those which, from the lateness of their contact with European civilisation, have never had their archaisms weeded out."[1]

Christianity enjoins a husband to love his wife as his own body,[2] to do honour unto her as unto the weaker vessel.[3] However, "man is not of the woman; but the woman of the man. Neither was the man created for the woman; but the woman for the man. For this cause ought the woman to have power on her head."[4] The husband is the head of the wife, as Christ is the head of the church; hence, "as the church is subject unto Christ, so let the wives be to their own husbands in every thing."[5] It is difficult to exaggerate the influence exercised by a doctrine, so agreeable to the selfishness of men, and so readily lending itself to be used as a sacred weapon against almost any attempt to extend the rights of married women, as was this dictum of St. Paul's. In an essay on the position of women among the early Christians Principal Donaldson writes, "In the first three centuries I have not been able to see that Christianity had any favourable effect on the position of women, but, on the contrary, that it tended to lower their character and contract the range of their activity."[6] And in more modern times Christian orthodoxy has constantly been opposed to the doctrine which once sprang up in pagan

[1] Maine, *op. cit.* p. 159.
[2] *Ephesians*, v. 28.
[3] 1 *Peter*, iii. 7.
[4] 1 *Corinthians*, xi. 8 *sqq.* *Cf.* 1 *Timothy*, ii. 11 *sqq.*
[5] *Ephesians*, v. 23 *sq.*
[6] Donaldson, 'Position of Women among the Early Christians,' in *Contemporary Review*, lvi. 433.

Rome and is nowadays supported by a steadily growing number of enlightened men and women, that marriage should be a contract on the footing of perfect equality between husband and wife.

The position of married women among the various peoples on earth depends on such a variety of circumstances that it would be impossible to enumerate them all. We shall here consider only the most important.

A few words must first be said about the hypothesis that the social *status* of women is connected with the system of tracing descent. Dr. Steinmetz has tried to show that the husband's authority over his wife is, broadly speaking, greater among those peoples who reckon kinship through the father than among those who reckon kinship through the mother only.[1] The cases examined by Dr. Steinmetz, however, are too few to allow of any general conclusions, and the statements concerning the husband's rights are commonly so indefinite and so incomplete that I think the evidence would be difficult to produce, even if the investigation were based on a larger number of facts. Besides, the paternal and maternal systems of descent are often so interwoven with each other among one and the same people, that it may equally well be referred to the one class as to the other[2]—a difficulty which Dr. Steinmetz must surely have felt in his attempt to treat the subject statistically. There is, moreover, the weak point of the statistical method generally, the question of selecting ethnographical units, which I have discussed in another place.[3] How, for instance, are we to deal with the various tribes of Australia? They can certainly not, all in a lump, be counted as one single unit; among some of them the maternal system prevails, among others the paternal. But then, shall we reckon each tribe as one

[1] Steinmetz, *Ethnologische Studien zur ersten Entwicklung der Strafe*, ii. ch. 7.

[2] *Cf.* Westermarck, *op. cit.* p. 99 *sqq.*

[3] *Idem*, 'Méthode pour la recherche des institutions préhistoriques à propos d'un ouvrage du professeur Kohler,' in *Revue internationale de Sociologie*, v. 451.

unit by itself, or, if not, into how many groups shall we divide them? When I compare with each other peoples of the same race, at the same stage of culture, living in the same neighbourhood, under similar conditions of life, but differing from one another in their method of reckoning kinship, I do not find that the prevalence of the one or the other line of descent conspicuously affects the husband's authority. Nothing of the kind has been noticed in Australia, nor, so far as I know, in India, where the paternal system among many of the aboriginal tribes is combined with great, or even extraordinary, rights on the part of the wife. Among the West African Negroes the position of women is, to all appearance, no less honourable in tribes like the Ibos, among whom inheritance runs through males, than in tribes which admit inheritance through females only;[1] and of the Fulah, among whom succession goes from father to son,[2] Mr. Winwood Reade observes that their women are "the most tyrannical wives in Africa," knowing "how to make their husbands kneel before their charms, and how to place their little feet upon them."[3] But we have reason to believe that when the man, on marrying, quits his home and goes to live with his wife in the house or community of her father, his authority over his wife is commonly more or less impaired by the presence of her father or kinsfolk.[4] In Sumatra, in the mode of marriage called *ambel anak*, he lives with his father-in-law in a state between that of a son and that of a debtor.[5] But it should be noticed that neither his living with the family of his wife, nor even his dependence on her father, necessarily implies a total absence of marital power. Among the Californian Yokuts, though the husband takes up his abode in his

[1] Ratzel, *op. cit.* iii. 124.

[2] Waitz, *op. cit.* ii. 469.

[3] Reade, *Savage Africa*, p. 452.

[4] See Mazzarella, *La condizione giuridica del marito nella famiglia matriarcale, passim*; Grosse, *Die Formen der Familie*, p. 76; Wilkes, *U.S. Exploring Expedition*, iv. 447 (Spokane Indians). It seems, however, that Dr. Mazzarella in several cases infers the husband's complete subjection to his father-in-law from statements in which such a subjection is not really implied.

[5] Marsden, *History of Sumatra*, p. 262.

wife's or father-in-law's house, he is expressly stated to have the power of life and death over her.[1] So, also, in the Western islands of Torres Straits, though a man after marriage usually left his own people and went to live with those of his wife, he had complete control over her. "In spite of the wife having asked her husband to marry her, he could kill her should she cause trouble in the house, and that without any penal consequence to himself. The payment of a husband to his wife's father gave him all rights over her, and at the same time annulled those of her father or her family."[2]

In the first place, wives' subjection to their husbands is due to the men's instinctive desire to exert power and to the natural inferiority of women in such qualities of body and mind as are essential for personal independence. Generally speaking, the men are their superiors in strength and courage. They are therefore not only the protectors of their wives, but also their masters.

In the sexual impulse itself there are elements which lead to domination on the part of the man and to submission on the part of the woman. In courtship, animal and human alike, the male plays the more active, the female the more passive part. During the season of love the males even of the most timid animal species engage in desperate combats with each other for the possession of the female, and there can be no doubt that our primeval human ancestors had, in the same way, to fight for their wives; even now this kind of courtship is far from being unknown among savages.[3] Moreover, the male pursues and tries to capture the female, and she, after some resistance, finally surrenders herself to him. The sexual impulse of the male is thus connected with a desire to win the female, and the sexual impulse of the female with a desire to be pursued and won by the male. In the female sex there is consequently an instinctive appreciation of manly strength and courage; this is found in most

[1] Powers, *Tribes of California*, p. 382.

[2] Haddon, *Head-Hunters*, p. 160 *sq.*

[3] Westermarck, *op. cit.* p. 159 *sqq.*

women, and especially in the women of savage races, who, like the females of the lower Vertebrates, commonly give the preference to "the most vigorous, defiant, and mettlesome male."[1] And woman enjoys the display of manly force even when it turns against herself. It is said that among the Slavs of the lower class the wives feel hurt if they are not beaten by their husbands; that the peasant women in some parts of Hungary do not think they are loved by their husbands until they have received the first box on the ear; that among the Italian Camorrists a wife who is not beaten by her husband regards him as a fool.[2] Dr. Havelock Ellis believes that the majority of women would probably be prepared to echo the remark made by a woman in front of Rubens's 'Rape of the Sabines,' "I think the Sabine women enjoyed being carried off like that."[3] The same judicious student of the psychology of sex observes:—"While in men it is possible to trace a tendency to inflict pain, or the simulacrum of pain, on the women they love, it is still easier to trace in women a delight in experiencing physical pain when inflicted by a lover, and an eagerness to accept subjection to his will. Such a tendency is certainly normal. To abandon herself to her lover, to be able to rely on his physical strength and mental resourcefulness, to be swept out of herself and beyond the control of her own will, to drift idly in delicious submission to another and stronger will—this is one of the commonest aspirations in a young woman's intimate love-dreams."[4]

But although a certain degree of submissiveness comes within the normal limits of female love, though "a woman may desire to be forced, to be roughly forced, to be ravished away beyond her own will," she all the time only desires to be forced towards those things which are essentially agreeable to her.[5] If the man's domination is carried beyond those limits, it is no longer enjoyed by the

[1] Westermarck, *op. cit.* p. 255 *sq.*
[2] Havelock Ellis, *Studies in the Psychology of Sex*, 'Analysis of the Sexual Impulse,' &c. p. 66 *sq.*
[3] *Ibid.* p. 75.
[4] *Ibid.* p. 74.
[5] *Ibid.* p. 85.

woman, but is felt as a burden, and may call forth resistance. In extreme cases of oppression, at any rate, the community at large would sympathise with her, and the public resentment against the oppressor would gradually result in customs or laws limiting the husband's rights. Yet perfect impartiality is hardly to be expected from the community. The men are the leaders of public opinion, and they have a tendency to favour their own sex. On the other hand, the offended woman may count upon the support of her fellow-sisters, and thus the women combined may influence tribal habits and, ultimately, the rules of custom. Among the Papuans of Port Moresby, for instance, "it is a rare occurrence for a man to beat his wife, and he does not like to be reminded of the fact if hasty temper has led him into this mistake. The other women generally make a song about it, and sing it whenever he appears; and as no one is so sensitive of ridicule as a New Guinean savage, he will endure a great deal, even from a shrew wife, before he attempts to lift his hand."[1] Among the West African Fulah, if a man repudiates his wife, the women of the village attack him *en masse*; "like the members of a priesthood, they hate but protect each other."[2] We have, moreover, to consider that the children's affection and regard for their mother gives her a power which is no less real because it is not definitely expressed in custom or law. In Oriental countries, for example, the mother is always an important personage in the family. Children are afraid of their father but love their mother, and when grown-up would certainly be ready to protect her against a cruel husband.[3]

It has often been said that the position of women and the degree of their dependence among a certain people are largely influenced by economic conditions. Thus Mr.

[1] Nisbet, *A Colonial Tramp*, ii. 181 *sq.*

[2] Reade, *Savage Africa*, p. 452. See also Möller, Pagels, and Gleerup, *op. cit.* i. 171 (Lukungu); Munzinger, *Ostafrikanische Studien*, p. 324 (Beni Amer).

[3] *Cf.* Burton, *Sindh Revisited*, i. 293; Urquhart, *Spirit of the East*, ii. 265 *sq.*; Doughty, *Arabia Deserta*, i. 239; Westermarck, 'Position of Woman in Early Civilisation,' in *Sociological Papers*, [1.] p. 160.

Hale maintains that the condition of women is "a question of physical comfort, and mainly of the abundance or lack of food. . . . When men in their full strength suffer from lack of the necessaries of existence, and are themselves slaves to the rigours of the elements, their better feelings are benumbed or perverted, like those of shipwrecked people famishing on a raft. Under such circumstances the weaker members of the community—women, children, the old, the sick—are naturally the chief sufferers."[1] With reference to the North American Indians the observation has been made that, where the women can aid in procuring subsistence for the tribe, they are treated with more equality, and their importance is proportioned to the share which they take in that labour; whereas in places where subsistence is chiefly procured by the exertions of the men, the women are considered and treated as burdens. Thus, the position of women is exceptionally good in tribes living upon fish and roots, which the women procure with the same expertness as the men, whereas it is among tribes living by the chase, or by other means in which women can be of little service, that we find the sex most oppressed.[2] Dr. Grosse, again, emphasises the low *status* of women not only among hunters, but among pastoral tribes as well. "The women," he says, "not being permitted to take part in the rearing of cattle, and not being able to take part in war, possess nothing which could command respect with the rude shepherd and robber."[3] Among the lower agricultural tribes, on the other hand, Dr. Grosse adds, the position of the female sex is often higher. The cultivation of the ground mostly devolves on the woman, and among peoples who chiefly subsist by agriculture it is not an occupation which is looked down upon, as it is among nomadic tribes. This gives the woman a

[1] Hale, 'Language as a Test of Mental Capacity,' in *Jour. Anthr. Inst.* xxi. 427.

[2] Lewis and Clarke, *Travels to the Source of the Missouri River*, p. 441. Waitz, *op. cit.* iii. 343. Bancroft, *Native Races of the Pacific States*, i. 242 *sq.*

[3] Grosse, *op. cit.* pp. 48, 49, 74, 75, 109 *sqq.*

certain standing, owing to her importance as a food-provider.[1]

In these generalisations there is no doubt a great deal of truth; but they do not hold good universally or without modifications. Among several peoples who subsist chiefly by the chase or the rearing of cattle, the position of women is exceedingly good. To mention only one instance out of many, Professor Vámbéry observes that among the nomadic Kara-Kirghiz the female sex is treated with greater respect than among those Turks who lead a stationary life and practise agriculture.[2] Indeed, the general theory that women are more oppressed in proportion as they are less useful, is open to doubt. Commonly they are said to be oppressed by their savage husbands just by being compelled to work too hard; and that work does not necessarily give authority is obvious from the institution of slavery. But at the same time the notion, prevalent in early civilisation, that the one sex must not in any way interfere with the pursuits of the other sex, may certainly, especially when applied to an occupation of such importance as agriculture, increase the influence of those who are engaged in it. Considering further that the cultivated soil is not infrequently regarded as the property of the women who till it,[3] it is probable that, in certain cases at least, the agricultural habits of a people have had a favourable effect upon the general condition of the female sex, and at the same time on the wife's position in the family.

The *status* of wives is in various respects connected with the ideas held about the female sex in general. Woman is commonly looked upon as a slight, dainty, and relatively feeble creature, destitute of all nobler qualities.[4] Especially among nations more advanced in culture she is regarded as intellectually and morally vastly inferior to man. In Greece, in the historic age, the latter recognised

[1] *Ibid.* p. 182.
[2] Vámbéry, *Das Türkenvolk*, p. 268.
[3] Grosse, *op. cit.* p. 159 *sq.*
[4] Crawley, *The Mystic Rose*, p. 204 *sq.*

in her no other end than to minister to his pleasure or to become the mother of his children. There was also a general notion that she was naturally more vicious, more addicted to envy, discontent, evil-speaking, and wantonness, than the man.[1] Plato classes women together with children and servants,[2] and states generally that in all the pursuits of mankind the female sex is inferior to the male.[3] Euripides puts into the mouth of his Medea the remark that "women are impotent for good, but clever contrivers of all evil."[4] According to the Vedic singer, again, "woman's mind is hard to direct aright, and her judgment is small."[5] To the Buddhist, women are of all the snares which the tempter has spread for men the most dangerous; in women are embodied all the powers of infatuation which bind the mind of the world.[6] The Chinese have a saying to the effect that the best girls are not equal to the worst boys.[7] Islam pronounces the general depravity of women to be much greater than that of men.[8] According to Muhammedan tradition, the Prophet said:—"I have not left any calamity more hurtful to man than woman. . . . O assembly of women, give alms, although it be of your gold and silver ornaments; for verily ye are mostly of Hell on the Day of Resurrection."[9] The Hebrews represented woman as the source of evil and death on earth:—"Of the woman came the beginning of sin, and through her we all die."[10] This notion passed into Christianity. Says St. Paul, "Adam was not deceived, but the woman being deceived was in the transgression."[11] Tertullian maintains that a woman should go about in humble garb, mourning and repentant, in order to expiate that which she derives from Eve, the ignominy

[1] Dickinson, *op. cit.* p. 159. Döllinger, *op. cit.* ii. 234.
[2] Plato, *Respublica*, iv. 431.
[3] *Ibid.* v. 455.
[4] Euripides, *Medea*, 406 *sqq.*
[5] *Rig-Veda*, viii. 33. 17.
[6] Oldenburg, *Buddha*, p. 165. *Cf.* Kern, *Manual of Indian Buddhism*, p. 69.
[7] Smith, *Proverbs of the Chinese*, p. 265.
[8] Lane, *Arabian Society*, p. 219. *Cf.* Doughty, *Arabia Deserta*, i. 238.
[9] Lane-Poole, *Speeches of Mohammad*, pp. 161, 163.
[10] *Ecclesiasticus*, xxv. 24.
[11] 1 *Timothy*, ii. 14.

of the first sin, and the odium attaching to her as the cause of human perdition. "Do you not know," he exclaims, "that you are each an Eve? The sentence of God on this sex of yours lives in this age; the guilt must of necessity live too. You are the devil's gateway; you are the unsealer of that [forbidden] tree; you are the first deserter of the divine law; you are she who persuaded him whom the devil was not valiant enough to attack. You destroyed so easily God's image, man. On account of your desert—that is, death—even the Son of God had to die." [1] At the Council of Mâcon, towards the end of the sixth century, a bishop even raised the question whether woman really was a human being. He answered the question in the negative; but the majority of the assembly considered it to be proved by Scripture that woman, in spite of all her defects, yet was a member of the human race.[2] However, some of the Fathers of the Church were careful to emphasise that womanhood only belongs to this earthly existence, and that on the day of resurrection all women will appear in the shape of sexless beings.[3]

Progress in civilisation has exercised an unfavourable influence on the position of woman by widening the gulf between the sexes, as the higher culture was almost exclusively the prerogative of the men. Moreover, religion, and especially the great religions in the world, have contributed to the degradation of the female sex by regarding woman as unclean. During menstruation, or when with child, or at child-birth, she is considered to be polluted, to be charged with mysterious baneful energy, which is a danger to all around her.[4] The cause of this notion seems to lie in the

[1] Tertullian, *De cultu fœminarum*, i. 1 (Migne, *Patrologiæ cursus*, i. 1305). See also Laurent, *Études sur l'histoire de l'humanité*, iv. 113.

[2] Gregory of Tours, *Historia Francorum*, viii. 20.

[3] St. Hilar., *Commentarius in Matthæum*, xxiii. 4 (Migne, *op. cit.* ix. 1045 *sq.*). St. Basil, *Homilia in Psalmum cxiv.* 5 (Migne, *op. cit.* Ser. Graeca, xxix. 488).

[4] Ploss-Bartels, *Das Weib*, i. 420 *sqq.*; ii. 10 *sqq.*, 402 *sqq.* Frazer, *Golden Bough*, i. 325 *sqq.*; iii. 222 *sqq.* Crawley, *op. cit.* p. 165 *sqq.*; Mathew, *Eaglehawk and Crow*, p. 144 (Austra-

superstitious dread of those marvellous processes which then take place, and it reaches its height where there is appearance of blood.[1] On such occasions woman is shunned not only by men, but in an even higher degree by gods, for the obvious reason that contact with the unclean woman would injure or destroy their holiness. Indeed, the danger is considered so great, that many religions regard women as defiled not only temporarily, but permanently, and on that ground exclude them from religious worship.

In the Society Islands a woman was forbidden to touch whatever was presented as an offering to the gods, so as not to pollute it.[2] In Melanesia women are generally excluded from religious rites.[3] Among the Shamanists of Siberia women "are interdicted the worship of the deities, and dare not pass round the common hearth of their habitations, because fire is sacred to the gods."[4] The women of the Voguls are generally prohibited from approaching idols or holy places.[5] A Votyak woman may not be present at the sacrifices made to the *lud*, or evil spirit.[6] Among the Lapps a woman was not allowed to touch a *noaid's*, or wizard's, drum; nor, as a rule, to take part in sacrificial rites; nor even to look in the direction of a place where sacrifices were offered.[7] Among the Ainos of Japan, "though a woman may prepare a divine offering, she may not offer it. . . . Accordingly, women are never allowed to pray, or to take any part in any religious

lian aborigines). de Rochas, *Nouvelle Calédonie*, p. 283. Mooney, 'Myths of the Cherokee,' in *Ann. Rep. Bur. Ethn.* xix. 469. Sumner, in *Jour. Anthr. Inst.* xxxi. 96 (Jakuts). Georgi, *Russia*, iii. 25 *sq.* (Samoyedes), 245 *sq.* (Shamanists of Siberia generally); &c.

[1] Professor Durkheim maintains ('La prohibition de l'inceste et ses origines,' in *L'année sociologique*, i. especially p. 48 *sqq.*) that the origin of the occult powers attributed to the feminine organism is to be found in primitive ideas concerning blood, any kind of blood, not only menstrual, being the object of similar feelings among savages and barbarians. Mr. Crawley justly remarks (*op. cit.* p. 212) that there is no flux of blood during pregnancy, when woman is regularly taboo; that her hair, nail-parings, and occupations can hardly be avoided from a fear of her blood; and that there is also the female side of the question to be taken into account.

[2] Ellis, *Polynesian Researches*, i. 129. *Cf.* Wegener, *Geschichte der christlichen Kirche auf dem Gesellschafts-Archipel*, p. 181.

[3] Codrington, *Melanesians*, p. 127.

[4] Georgi, *op. cit.* iii. 245. *Cf. ibid.* iii. 25.

[5] Abercromby, *Pre- and Proto-historic Finns*, i. 181.

[6] Wichmann, *Tietoja Votjaakkien Mytologiiasta*, p. 17. See also *ibid.* p. 27.

[7] von Düben, *Lappland och Lapparne*, p. 276. Friis, *Lappisk Mythologi*, p. 147.

exercise."[1] In China women are not allowed to go and worship in the temples.[2]

In ancient Nicaragua women were held unworthy to perform any duty in connection with the temples, and were immolated outside the temple ground of the large sanctuaries, and even their flesh was unclean food for the high priest, who accordingly ate only the flesh of males.[3] In Mexico, although some women were employed in the immediate service of the temples, they were entirely excluded from the office of sacrificing, and the higher dignities of the priesthood.[4]

According to the sacred books of India, "women are considered to have no business with the sacred texts"; [5] and, being destitute of the knowledge of Vedic texts, they "are as impure as falsehood itself, that is a fixed rule."[6] Although, according to a Vedic ordinance mentioned in the Laws of Manu, husband and wife ought to perform religious rites together,[7] they have, among the present Hindus, no religious life in common; the women are not allowed to repeat the Veda, or to go through the morning and evening Sandhyā services.[8] If a woman, a dog, or a Sûdra, touch a consecrated image, its godship is destroyed; the ceremonies of deification must therefore be performed afresh, whilst a clay image, if thus defiled, must be thrown away. If women should worship before a consecrated image, they must keep at a respectful distance from the idol.[9]

Islam is chiefly a religion for men. Though Muhammed did not forbid women to attend public prayers in a mosque, he pronounced it better for them to pray in private, as the presence of females might inspire in the men a different kind of devotion from that which is requisite in a place dedicated to the worship of God.[10] Women are absolutely excluded from many Muhammedan places of worship, and are frowned upon if they venture to appear in others, at any rate while men are there.[11]

In Christian Europe, as ascetic ideas advanced, the women sat or stood in the church apart from the men, and entered by a separate door.[12] They were excluded from sacred functions.

[1] Howard, *op. cit.* p. 195.
[2] *Indo-Chinese Gleaner*, iii. 156.
[3] Bancroft, *op. cit.* iii. 494.
[4] Clavigero, *History of Mexico*, i. 274 *sq.*
[5] *Baudhâyana*, i. 5. 11. 7.
[6] *Laws of Manu*, ix. 18. *Cf. ibid.* ii. 66; iii. 121.
[7] *Ibid.* ix. 96.
[8] Monier Williams, *Brâhmanism and Hindûism*, p. 398.
[9] Ward, *View of the History, &c., of the Hindoos*, ii. 13, 36.
[10] Lane, *Manners and Customs of the Modern Egyptians*, p. 94.
[11] Pool, *Studies in Mohammedanism*, p. 39 *sq.*
[12] Donaldson, in *Contemporary Review*, lvi. 438.

In the early Church, it is true, there were "deaconesses" and clerical "widows," but their offices were merely to perform some inferior services of the church;[1] and even these very modest posts were open only to virgins or widows of a considerable age.[2] Whilst a layman could in case of necessity administer baptism, a woman could never, as it seems, perform such an act.[3] Nor was a woman allowed to preach publicly in the church, either by the Apostle's rules or those of succeeding ages;[4] and it was a serious complaint against certain heretics that they allowed such a practice. "The heretic women," Tertullian exclaims, "how wanton are they! they who dare to teach, to dispute, to practise exorcisms, to promise cures, perchance, also, to baptise!"[5] A Council held at Auxerre at the end of the sixth century forbade women to receive the Eucharist into their naked hands;[6] and in various Canons women were enjoined not to come near to the altar while mass was celebrating.[7] To such an extent was this opposition against women carried that the Church of the Middle Ages did not hesitate to provide itself with eunuchs in order to supply cathedral choirs with the soprano tones inhering by nature in women alone.[8]

But the notion that woman is either temporarily or permanently unclean, that she is a mysterious being charged with supernatural energy, is not only a cause of her degradation; it also gives her a secret power over her husband, which may be very considerable. During my stay among the country people of Morocco, Arabs and Berbers alike, I was often struck by the superstitious fear with which the women imbued the men. They are supposed to be much better versed in magic, and have also splendid opportunities to practise it to the detriment

[1] Zscharnack, *Der Dienst der Frau in den ersten Jahrhunderten der christlichen Kirche*, p. 99 *sqq.* Robinson, *Ministry of Deaconesses, passim.*

[2] *Ibid.* pp. 113, 114, 125.

[3] Bingham, *Works*, iv. 45. Zscharnack, *op. cit.* p. 93.

[4] Bingham, *op. cit.* v. 107 *sqq.* Zscharnack, *op. cit.* p. 73 *sqq.*

[5] Tertullian, *De præscriptionibus adversus hæreticos*, 41 (Migne, *op. cit.* ii. 56). *Cf.* Tertullian, *De baptismo*, 17 (Migne, *op. cit.* i. 1219).

[6] *Concilium Autisiodorense*, A.D. 578, can. 36 (Labbe-Mansi, *Sacrorum Conciliorum collectio*, ix. 915).

[7] *Canones Concilii Laodiceni*, 44 (Labbe-Mansi, *op. cit.* ii. 581, 589). 'Epitome canonum, quam Hadrianus I. Carolo Magno obtulit, A.D. DCCLXXIII.,' in Labbe-Mansi, *op. cit.* xii. 868. *Canons enacted under King Edgar*, 44 (*Ancient Laws and Institutes of England*, p. 399).

[8] *Cf.* Gage, *Woman, Church and State*, p. 57.

of their husbands, as they may easily bewitch the food they prepare for them. For instance, the wife only needs to cut off a little piece of a donkey's ear and put it into the husband's food. What happens? By eating that little piece the husband will, in his relations to his wife, become just like a donkey; he will always listen to what she says, and the wife will become the ruler of the house. I also believe that the men on purpose abstain from teaching the women prayers, so as not to increase their supernatural power.[1] In the Arabian Desert men are likewise afraid of their women "with their sly philters and maleficent drinks."[2] In Dahomey "the husband may not chastise or interfere with his wife whilst the fetish is 'upon' her, and even at other times the use of the rod might be dangerous."[3] Women, and especially old ones, are very frequently regarded as experts in magic.[4] Among the ancient Arabs,[5] Babylonians,[6] and Peruvians,[7] as in Europe during the Middle Ages and later, the witch appeared more frequently than the male sorcerer. So, also, in the Government of Tomsk in Southern Siberia, native sorceresses are much more numerous than wizards;[8] and among the Californian Shastika all, or nearly all, of the

[1] We are told that among the Ainos of Japan women are forbidden to pray, not only in conformity with ancestral custom, but because the men are afraid of the prayers of the women in general, and of their wives in particular. An old man said to Mr. Batchelor:—"The women as well as the men used to be allowed to worship the gods and take part in all religious exercises; but our wise honoured ancestors forbade them to do so, because it was thought they might use their prayers against the men, and more particularly against their husbands. We therefore think with our ancestors that it is wiser to keep them from praying" (Batchelor, *Ainu and their Folk-Lore*, p. 550 *sq.* Howard, *op. cit.* p. 195). Among the Santals the men are careful not to divulge the names of their household gods to their wives, for fear lest the latter should acquire undue influence with the gods, become witches, and "eat up the family with impunity when the protection of its gods has been withdrawn" (Risley, *Tribes and Castes of Bengal, Ethnographic Glossary*, ii. 232).

[2] Doughty, *Arabia Deserta*, ii. 384.

[3] Burton, *Mission to Gelele*, ii. 155.

[4] Ploss-Bartels, *op. cit.* ii. 664, 666 *sqq.* Mason, *op. cit.* p. 255 *sqq.* Landtman, *Origin of Priesthood*, p. 198 *sq.* Angas, *Savage Life and Scenes in Australia and New Zealand*, i. 317 (Maoris). Connolly, 'Social Life in Fanti-land,' in *Jour. Anthr. Inst.* xxvi. 150.

[5] Wellhausen, *Reste arabischen Heidentums*, p. 159.

[6] Jastrow, *Religion of Babylonia*, pp. 267, 342.

[7] Garcilasso de la Vega, *First Part of the Royal Commentaries of the Yncas*, i. 60.

[8] Kostroff, quoted by Landtman, *op. cit.* p. 199.

shamans are women.[1] The curses of women are greatly feared. In Morocco it is considered even a greater calamity to be cursed by a Shereefa, or female descendant of the Prophet, than to be cursed by a Shereef. According to the Talmud, the anger of a wife destroys the house;[2] but, on the other hand, it is also through woman that God's blessings are vouchsafed to it.[3] We read in the Laws of Manu :—"Women must be honoured and adorned by their fathers, brothers, husbands, and brothers-in-law, who desire their own welfare. Where women are honoured, there the gods are pleased ; but where they are not honoured, no sacred rite yields rewards. Where the female relations live in grief, the family soon wholly perishes ; but that family where they are not unhappy ever prospers. The houses on which female relations, not being duly honoured, pronounce a curse, perish completely as if destroyed by magic. Hence men who seek their own welfare should always honour women on holidays and festivals with gifts of ornaments, clothes, and dainty food."[4] A Gaelic proverb says, "A wicked woman will get her wish, though her soul may not see salvation."[5] Closely connected with the belief in the magic power of women, and especially, I think, in the great efficacy of their curses, is the custom according to which a woman may serve as an asylum.[6] In various tribes of Morocco, especially among the Berbers and Jbâla, a person who takes refuge with a woman by touching her is safe from his persecutor. Among the Arabs of the plains this custom is dying out, probably owing to their subjection under the Sultan's government ; but amongst certain Asiatic Bedouins, the tribe of Shammar, "a woman can protect any number of persons, or even of tents."[7]

[1] Powers, *Tribes of California*, p. 246.

[2] *Sota*, fol. 3 B, quoted by Katz, *Der wahre Talmudjude*, p. 110 *sq.*

[3] *Baba Mezia*, fol. 59 A, quoted *ibid.* p. 112. Deutsch, *Literary Remains*, p. 56.

[4] *Laws of Manu*, iii. 55 *sqq.*

[5] Carmichael, *Carmina Gadelica*, ii. 317.

[6] For some instances of this custom see Andree, 'Die Asyle,' in *Globus*, xxxviii. 302; Bachofen, *Das Mutterrecht*, p. 420 (Basques).

[7] Layard, *Discoveries in the Ruins of Nineveh and Babylon*, p. 318.

Among the Circassians "a stranger who intrusts himself to the patronage of a woman, or is able to touch with his mouth the breast of a wife, is spared and protected as a relation of the blood, though he were the enemy, nay even the murderer of a similar relative" [1] The inhabitants of Barèges in Bigorre have, up to recent times, preserved the old custom of pardoning a criminal who has sought refuge with a woman.[2]

Yet another factor remains to be mentioned as a cause of the subjection in which married women are held by many peoples of culture. We have noticed that in archaic civilisation the father's power over his children is extreme, that the State whilst weakening or destroying the clan-tie strengthened the family-tie, and that the father was invested with some part of the power which formerly belonged to the clan.[3] This process must also have affected the *status* of married women. The husband's power over his wife is closely connected with the father's power over his daughter; for, by giving her in marriage, he generally transfers to the husband the authority which he himself previously possessed over her as a paternal right.

In modern civilisation, on the other hand, we find, hand in hand with the decrease of the father's power, a decrease of the husband's authority over his wife. But the causes of the gradual emancipation of married women are manifold. Life has become more complicated; the occupations of women have become much more extensive; their influence has expanded correspondingly, from the home and household to public life. Their widened interests have interfered with that submissiveness which is an original characteristic of their sex. Their greater education has made them more respected, and has increased their independence. Finally, the decline of the influence exercised by antiquated religious ideas is removing what has probably been the most persistent cause of the wife's subjection to her husband's rule.

[1] Pallas, *Travels through the Southern Provinces of the Russian Empire*, i. 404.

[2] Fischer, *Bergreisen*, i. 60.

[3] *Supra*, ch. xxv. especially p. 627 *sq.*

CHAPTER XXVII

SLAVERY

SLAVERY is essentially an industrial institution, which implies compulsory labour beyond the limits of family relations. The master has a right to avail himself of the working power of his slave, without previous agreement on the part of the latter. This I take to be the essence of slavery; but connected with such a right there are others which hardly admit of a strict definition, or which belong to the master in some cases though not in all. He is entitled to claim obedience and to enforce this claim with more or less severity, but his authority is not necessarily absolute, and the restrictions imposed on it are not everywhere the same. According to a common definition of slavery, the slave is the property of his master,[1] but this definition is hardly accurate. It is true that even in the case of inanimate property the notion of ownership does not involve that the owner of a thing is always entitled to do with it whatever he likes; a person may own a thing and yet be prohibited by law from destroying it. But it seems that the owner's right over his property, even when not absolute, is at all events exclusive, that is, that nobody but the owner has a right to the disposal of it. Now the master's right of disposing of his slave is not necessarily

[1] Nieboer, *Slavery as an Industrial System*, p. 4 *sqq.* Dr. Nieboer himself defines slavery as "the fact, that one man is the property or possession of another beyond the limits of the family proper" (*ibid.* p. 29).

exclusive; custom or law may grant the latter a certain amount of liberty, and in such a case his condition differs essentially from that of a piece of property. The chief characteristic of slavery is the compulsory nature of the slave's relation to his master. Voluntary slavery, as when a person sells himself as a slave, is only an imitation of slavery true and proper; the person who gives up his liberty confers upon another, by contract, either for a limited period or for ever, the same rights over himself as a master possesses over his slave. If slavery proper could be based upon a contract between the parties concerned, I fail to see how to distinguish between a servant and a slave.

Dr. Nieboer has recently with much minuteness examined the distribution of slavery and its causes among savage races. It appears from his work that slavery is unknown in Australia, and in Oceania restricted to certain islands. In the Malay Archipelago, on the other hand, it prevails very extensively. Among the aboriginal tribes of India and the Indo-Chinese Peninsula it is fairly common, whereas no certain traces of it are found among the lower races of Central Asia and Siberia, with the exception of the Kamchadales. In North America it exists along the Pacific Coast from Behring Strait to the northern boundary of California, but beyond this district it seems to be unknown. In Central and South America there are at any rate several scattered cases of it, and if our knowledge of the South American Indians were less fragmentary, many other instances might perhaps be added. In savage Africa there are only one or two districts where no certain cases of slavery are encountered, whilst large agglomerations of slave-keeping tribes occur on the Coast of Guinea and in the district formed by Lower Guinea and the territories bordering the Congo.[1]

Slaves are kept only where there is employment for them, and where the circumstances are otherwise favourable to the growth of slavery. Its existence or non-existence

[1] Nieboer, *op. cit.* p. 47 *sqq.*

in a tribe largely depends on the manner in which that tribe lives. Among hunters it hardly occurs at all. Mr. Spencer justly observes that, "in the absence of industrial activity, slaves are almost useless; and, indeed, where game is scarce, are not worth their food."[1] Moreover, they would have to be procured from foreign tribes, and to prevent such slaves from running away would be almost impossible for hunters who roam over vast tracts of land in pursuit of game, especially if the slaves also were engaged in hunting. For a small community of hunters —and their communities generally are small[2]—it might even be dangerous to keep foreign slaves in their midst.[3] Among fishing tribes, on the other hand, slavery is much more common, attaining a special importance among those who live on or near the Pacific Coast of North-Western America. These tribes have an abundance of food, they have fixed habitations, they live in comparatively large groups, and trade and industry, property and wealth, are well developed among them. In consequence, they find the services of slaves useful, and, at the same time, the slaves have little chance of making their escape.[4]

Of the pastoral tribes referred to in Dr. Nieboer's list only one half keep slaves, and among some of these slave-keeping is said to be a mere luxury. To pastoral peoples, as such, slave labour is of little moment. Among them subsistence depends much more on capital than on labour, and for the small amount of work which is required free labourers are easily procured. As Dr. Nieboer observes, "among people who live upon the produce of their cattle, a man who owns no cattle, *i.e.* no capital, has no means of subsistence. Accordingly, among pastoral tribes we find rich and poor men; and the poor often offer themselves as labourers to the rich."[5] Pastoral peoples have thus no strong motives for making slaves, but at the same

[1] Spencer, *Principles of Sociology*, iii. 459.

[2] Westermarck, *History of Human Marriage*, p. 43 *sqq.* Hildebrand, *Recht und Sitte*, p. 1 *sqq.*

[3] Nieboer, *op. cit.* p. 191 *sqq.*

[4] *Ibid.* p. 199 *sqq.*

[5] See also Hildebrand, *op. cit.* p. 38 *sq.*

time "there are no causes preventing them from keeping slaves. These tribes are, so to speak, in a state of equilibrium; a small additional cause on either side turns the balance. One such additional cause is the slave-trade; another is the neighbourhood of inferior races." All those pastoral peoples who keep slaves live in districts where an extensive slave-trade has for a long time been carried on. The slaves are often purchased from slave-traders, and in several cases they belong to an inferior race.[1]

Among agricultural peoples slavery prevails more extensively; further, it is more common among such tribes as subsist chiefly by agriculture than among incipient agriculturists, who still depend on hunting or fishing for a large portion of their food. In primitive agricultural communities nobody voluntarily serves another, because subsistence is independent of capital and easy to procure. "All freemen in new countries," says Mr. Bagehot, "must be pretty equal; every one has labour, and every one has land; capital, at least in agricultural countries (for pastoral countries are very different), is of little use; it cannot hire labour; the labourers go and work for themselves."[2] Hence in such countries, if a man wants another to work for him, he must compel him to do it—that is, he must make him his slave. This holds true of most savage countries, namely, of all those in which there is much more fertile land than is required to be cultivated for the support of the actual population; but it does not hold true of all. Where every piece of land fit for cultivation has been appropriated, a man who owns no land cannot earn his subsistence independently of a landlord; hence free labourers are available, slaves are not wanted, and slavery is not likely to exist. And even where there are no poor persons, but everybody has a share in the resources of the country, the use of slaves cannot be great, since a man who owns a limited capital, or a limited quantity of land, can only employ a limited number of labourers.

[1] Nieboer, *op. cit.* p. 261 *sqq.*

[2] Bagehot, *Physics and Politics*, p. 72.

For instance, the absence of slavery in many Oceanic islands may be accounted for by the fact that all land had been appropriated, which led to a state of things inconsistent with slavery as a social system.[1]

These are the main conclusions at which Dr. Nieboer has arrived by means of much admirable and painstaking research. Most of them, I think, are undoubtedly correct; yet it seems to me that the influence of economic conditions upon the institution of slavery has perhaps been emphasised too much at the cost of other factors. The prevalence of slavery in a savage tribe and the extent to which it is practised must also depend upon the ability of the tribe to procure slaves from foreign communities and upon its willingness to allow its own members to be kept as slaves within the tribe. It may be very useful for a group of savages to have a certain number of slaves, and yet they may not have them, for the reason that no slaves are to be had. It is only in extraordinary cases that a person is allowed to enslave a member of his own community. Intra-tribal slavery is a question not only of economic but of moral concern, whilst extra-tribal slavery originally depends upon success in war.

We have reason to believe that the earliest source of slavery was war or conquest, and that slavery in many cases was a substitution for putting prisoners of war to death.[2] Savages, who have little mercy on their enemies, naturally make no scruple in reducing them to slavery whenever they find their advantage in doing so. Among existing savages, in fact, prisoners of war are very frequently enslaved.[3] They and their descendants, together

[1] Nieboer, *op. cit.* pp. 294–347, 420 *sq.*

[2] *Cf.* Millar, *Origin of the Distinction of Ranks*, p. 245; Jacob, *Historical Inquiry into the Production and Consumption of the Precious Metals*, i. 136; Buckle, *Miscellaneous and Posthumous Works*, iii. 413; Comte, *Cours de philosophie positive*, v. 186 *sqq.*; Cibrario, *Della schiavitù e del servaggio*, i. 16.

[3] Rink, *Eskimo Tribes*, p. 28 (Western Eskimo). Petroff, 'Report on Alaska,' in *Tenth Census of the United States*, pp. 152 (Aleuts), 165 (Thlinkets). Richardson, *Arctic Searching Expedition*, i. 412 (Kutchin). Gibbs, 'Tribes of Western Washington and Northwestern Oregon,' in *Contributions to North American Ethnology*, i. 188. von Martius *Beiträge zur Ethnographie Amerika's*, i. 232 (Guaycurus), 298 (Carajás). Azara, *Voyages dans l'Amérique méridionale*,

with persons kidnapped or purchased from foreign tribes, seem generally to form by far the majority of the slave population in uncivilised countries.

Whilst little regard is paid to the liberty of strangers, custom everywhere, as a rule, forbids the enslaving of tribesmen. Yet sometimes a father's power over his children,[1] as also a husband's power over his wife,[2] involves the right of selling them as slaves; and among various peoples a person may be reduced to slavery for committing a crime,[3] or for insolvency.[4] Among the tribes of Western

ii. 109 *sq.* (Mbayas). Lewin, *Hill Tracts of Chittagong*, p. 35. *Idem*, *Wild Races of South-Eastern India*, p. 194 (Toungtha). Modigliani *Viaggio a Nias*, p. 521. Kohler, 'Recht der Papuas auf Neu-Guinea,' in *Zeitschr. f. vergl. Rechtswiss.* vii. 370. Williams and Calvert, *Fiji*, p. 25. Polack, *Manners and Customs of the New Zealanders*, ii. 52; Hale, *U.S. Exploring Expedition. Vol. VI. —Ethnography and Philology*, p. 33 (New Zealanders). Ellis, *History of Madagascar*, i. 192. Andersson, *Lake Ngami*, p. 231; Kohler, in *Zeitschr. f. vergl. Rechtswiss.* xiv. 311 (Herero). Velten, *Sitten und Gebräuche der Suaheli*, p. 305. Baumann, *Usambara*, p. 141 (Wabondei). Felkin, 'Notes on the Waganda Tribe,' in *Proceed. Roy. Soc. Edinburgh*, xiii. 746. Mungo Park, *Travels in the Interior of Africa*, p. 19 (Mandingoes). Rowley, *Africa Unveiled*, p. 176. Tuckey, *Expedition to Explore the River Zaire*, p. 367 (Negroes of Congo). Sarbah, *Fanti Customary Laws*, p. 6. Burton, *Abeokuta*, i. 301. Ellis, *Tshi-speaking Peoples of the Gold Coast*, p. 289. Munzinger, *Ostafrikanische Studien*, p. 309 *sq.* (Beni Amer). Mademba, in Steinmetz, *Rechtsverhältnisse von eingeborenen Völkern in Afrika und Oceanien*, p. 83 (natives of the Sansanding States). Nicole, *ibid.* p. 118 *sq.* (Diakité-Sarracolese). Tellier, *ibid.* pp. 168, 171 (Kreis Kita of the French Soudan). Beverley, *ibid.* p. 213 (Wagogo). Lang, *ibid.* p. 241 (Washambala). Desoignies, *ibid.* p. 278 (Msalala). Nieboer, *op. cit.* pp. 49, 52, 73–76, 78, 100.

[1] *Supra*, p. 599.

[2] *Supra*, p. 629 *sq.*

[3] Butler, *Travels and Adventures in Assam*, p. 94 (Kukis). Mason, 'Dwellings, &c., of the Karens,' in *Jour. Asiatic Soc. Bengal*, xxxvii. pt. ii. p. 146 *sq.*; Smeaton, *Loyal Karens of Burma*, p. 86. Wilken, 'Het strafrecht bij de volken van het maleische ras,' in *Bijdragen tot de taal- land- en volkenkunde van Nederlandsch-Indie*, 1883, Land- en volkenkunde, p. 108 *sq.* Junghuhn, *Die Battaländer auf Sumatra*, ii. 145 *sq.* (Bataks). Raffles, *History of Java*, ii. p. ccxxxv. (people of Bali). Forbes, *A Naturalist's Wanderings in the Eastern Archipelago*, p. 320 (people of Timor-laut). von Rosenberg, *Der malayische Archipel*, p. 166 (Niase). Hickson, *A Naturalist in North Celebes*, p. 194 (Sangirese). Post, *Afrikanische Jurisprudenz*, ii. 87. Paulitschke, *Ethnographie Nordost-Afrikas*, p. 261. Munzinger, *Ostafrikanische Studien*, p. 244 *sq.* (Marea). Petherick, *Travels in Central Africa*, ii. 3 (Shilluk of the White Nile). Bowdich, *Mission to Ashantee*, p. 258 n.* (Fantis). Hübbe-Schleiden, *Ethiopien*, p. 152 (Mpongwe). Burton, *Abeokuta*, i. 301. Tuckey, *op. cit.* p. 367 (Negroes of Congo). Mungo Park, *op. cit.* p. 19 (Mandingoes). Tellier, in Steinmetz, *Rechtsverhältnisse*, p. 171 (Kreis Kita of the French Soudan). Lang, *ibid.* p. 241 (Washambala). Dale, 'Customs of the Natives inhabiting the Bondei Country,' in *Jour. Anthr. Inst.* xxv. 230. Ellis, *History of Madagascar*, i. 193. Velten, *op. cit.* p. 305 *sq.* (Waswahili).

[4] Gibbs, *loc. cit.* p. 188 (Indians of Western Washington and Northwestern Oregon). Lewin, *Hill Tracts of Chittagong*, p. 34. *Idem*, *Wild*

Washington and North-Western Oregon, if an Indian has wronged another and failed to make compensation, he may be taken as a slave.[1] The Papuans of Dorey had a law according to which an incendiary with his family became the slave of the late proprietor of the burned house.[2] Among the Line Islanders of Micronesia, if a man of low class stole some food from a person belonging to the "gentry," he became the slave of the latter and lost all his property.[3] Sometimes a man is induced by great poverty to sell himself as a slave.[4] But most intra-tribal slaves are born unfree, being the offspring of parents one or both of whom are slaves.[5]

In descriptions of slave-holding savages it is often said that a master has absolute power over his slave. But even in such instances, when details are scrutinised, it frequently appears that custom or public opinion does not allow a person to treat his slave just as he pleases. We have noticed above that in many cases the master is expressly denied the right of killing him at his own discretion.[6] More commonly than one would imagine the master has not

Races of South-Eastern India, pp. 194 (Khyoungtha), 235 (Mrús). Mason, 'Religion, &c., of the Karens,' in *Jour. Asiatic Soc. Bengal*, xxxiv. pt. ii. 216. Blumentritt, 'Die Sitten und Bräuche der alten Tagalen,' in *Zeitschr. f. Ethnol.* xxv. 13 *sqq.* Lala, *Philippine Islands*, p. 111 (natives of Sulu). Low, *Sarawak*, p. 301. Bock, *Head-Hunters of Borneo*, p. 210 (Dyak tribes). Junghuhn, *op. cit.* ii. 151 *sq.* Raffles, *op. cit.* i. 353 n. (Javanese); ii. p. ccxxxv. (people of Bali). Nieboer, *op. cit.* pp. 110, 111, 114, 119 *sq.* (various peoples in the Malay Archipelago). Munzinger, *Ostafrikanische Studien*, pp. 207 (Takue), 245 (Marea). Kingsley, *West African Studies*, p. 370. Hübbe-Schleiden, *op. cit.* p. 152 (Mpongwe). Burton, *Abeokuta*, i. 301. Mungo Park, *op. cit.* p. 19 (Mandingoes). Dale, in *Jour. Anthr. Inst.* xxv. 230 (Wabondei). Baskerville, in Steinmetz, *Rechtsverhältnisse*, p. 193 *sq.* (Waganda). Lang, *ibid.* p. 249 (Washambala). Walter, *ibid.* p. 381 (Natives of Nossi-Bé and Mayotte, Madagascar). Post, *Afrikanische Jurisprudenz*, i. 90 *sq.* *Idem*, *Grundriss der ethnologischen Jurisprudenz*, i. 363 *sqq.*; ii. 564 *sqq.* Kohler, *Shakespeare vor dem Forum der Jurisprudenz*, p. 14 *sq.*

[1] Gibbs, *loc. cit.* p. 188.

[2] Earl, *Papuans*, p. 83.

[3] Tutuila, in *Jour. Polynesian Soc.* i. 268 *sq.*

[4] Azara, *op. cit.* ii. 109 (Mbayas). Hale, *op. cit.* p. 96 (Kingsmill Islanders). Burton, *Abeokuta*, i. 301. Andersson, *Lake Ngami*, p. 231 (Herero). Ellis, *History of Madagascar*, i. 192 *sq.*

[5] *Cf.* Post, *Afrikanische Jurisprudenz*, i. 89 *sq.*; Mademba, in Steinmetz, *Rechtsverhältnisse*, p. 83 (natives of the Sansanding States); Nicole, *ibid.* p. 119 (Diakité-Sarracolese); Baskerville, *ibid.* p. 194 (Waganda); Desoignies, *ibid.* p. 278 (Msalala); Dale, in *Jour. Anthr. Inst.* xxv. 230 (Wabondei); Ellis, *History of Madagascar*, i. 193.

[6] *Supra*, p. 422 *sq.*

even an unlimited right to sell his slave. Among some peoples he may sell at will such slaves only as have been captured in war or purchased, not such as have been born in the house.[1] In several instances a slave, and especially a domestic slave, cannot be sold unless he has been guilty of some crime or misdemeanour.[2] Among the Banaka and Bapuku in the Cameroons the master may chastise or send away a slave who has behaved badly, but is not allowed to sell him.[3] There are, moreover, instances in which the master is entitled not to all the services of his slave, but only to a limited portion of them. In some parts of Africa the slave is obliged to work for his master on certain days of the week or a certain number of hours, but has the rest of his time free.[4] In the highlands of Palembang, Sumatra, a slave may carry on trade and hire himself out as a day labourer on his own behalf, and when he works in the field one-half of his harvesting belongs to him and the other half to his master.[5] Where the slave is allowed to possess property of his own he may in some cases,[6] though not in all,[7] buy his freedom; and debtor-slaves are as a rule entitled to regain their liberty by paying off the debt.[8] Many peoples even permit a dissatisfied slave to change his master. Among the Washambala, if a person does not fulfil his duties towards any of his slaves, the latter has a right to complain of him to the chief, and should the accusation prove true the chief buys the slave of his master for an ox and two cows, and keeps

[1] Post, *Afrikanische Jurisprudenz*, i. 95 *sqq.*

[2] *Ibid.* i. 96 *sq.* Tellier, in Steinmetz, *Rechtsverhältnisse*, p. 169 (Kreis Kita). Lang, *ibid.* p. 241 (Washambala).

[3] Steinmetz, *Rechtsverhältnisse*, p. 43.

[4] Post, *Afrikanische Jurisprudenz*, i. 101. Mademba, in Steinmetz, *Rechtsverhältnisse*, p. 83 (natives of the Sansanding States). Nicole, *ibid.* p. 118 (Diakité-Sarracolese). Tellier, *ibid.* p. 169 *sqq.* (Kreis Kita).

[5] *Glimpses of the Eastern Archipelago*, p. 106.

[6] Post, *Afrikanische Jurisprudenz*, i. 111 *sq.*

[7] *Ibid.* i. 111 *sq.* Tellier, in Steinmetz, *Rechtsverhältnisse*, p. 170 (Kreis Kita). Senfft, *ibid.* p. 442 (Marshall Islanders).

[8] Post, *Grundriss der ethnologischen Jurisprudenz*, i. 366. Nieboer, *op. cit.* pp. 38, 432. Nicole, in Steinmetz, *Rechtsverhältnisse*, p. 118 (Diakité-Sarracolese). Baskerville, *ibid.* p. 194 (Waganda). Lang, *ibid.* p. 240 *sqq.* (Washambala).

him for himself.[1] Among other peoples a slave, in order to get a new master, has only to cause a slight damage to somebody's property, or to commit some other trifling offence, in which case he must be given up to the person he "injured."[2] It is astonishing to notice how readily, in many African countries, slaves are allowed by custom to rid themselves of tyrannical or neglectful masters.[3] The Barea and Bazes have a law according to which a slave becomes free by simply leaving his lord.[4] Among the Manipuris, in Further India, if a slave flies from one master and selects for himself another, it is presumed that he has been badly treated by the first one, and the fugitive can consequently not be reclaimed.[5]

A slave among the lower races can thus by no means be described as a being destitute of all rights. As a rule, it seems, he is treated kindly, very commonly as an inferior member of the family.[6] Among the Aleuts a slave suffering want would bring dishonour upon his master.[7] The South American Mbayás, says Azara,

[1] Lang, in Steinmetz, *Rechtsverhältnisse*, p. 242.

[2] Post, *Afrikanische Jurisprudenz*, i. 102 *sqq.* *Idem*, *Grundriss der ethnologischen Jurisprudenz*, i. 377. Steinmetz, *Rechtsverhältnisse*, p. 168. Pechuel-Loesche, 'Aus dem Leben der Loango-Neger,' in *Globus*, xxxii. 238.

[3] See also Post, *Afrikanische Jurisprudenz*, i. 102 *sqq.*; Munzinger, *Ostafrikanische Studien*, p. 309 (Beni Amer); *Idem*, *Die Sitten und das Recht der Bogos*, p. 43.

[4] Munzinger, *Ostafrikanische Studien*, p. 484.

[5] Dalton, *Descriptive Ethnology of Bengal*, p. 51.

[6] *Ibid.* pp. 51 (Manipuris), 58 (Garos). Lewin, *Hill Tracts of Chittagong*, p. 34 *sq.* *Idem*, *Wild Races of South-Eastern India*, p. 90 (Chittagong Hill tribes). Colquhoun, *Amongst the Shans*, p. 267. Mouhot, *Travels in the Central Parts of Indo-China*, i. 250 (Stiêns). Riedel, *De sluik- en kroesharige rassen tusschen Selebes en Papua*, pp. 194 (Watubela Islanders), 293 (people of Tenimber and Timor-laut), 434 (people of Wetter). Earl, *op. cit.* p. 81 (Papuans of Dorey). New, *Life, Wanderings, and Labours in Eastern Africa*, p. 128 (Wanika). Chanler, *Through Jungle and Desert*, p. 404 (Eastern Africans). Baumann, *Usambara*, p. 141 (Wabondei). Felkin, in *Proceed. Roy. Soc. Edinburgh*, xiii. 746; Baskerville, in Steinmetz, *Rechtsverhältnisse*, p. 194 (Waganda). *Ibid.* p. 43 (Banaka and Bapuku). Mademba, *ibid.* p. 84 (natives of the Sansanding States). Nicole, *ibid.* p. 118 (Diakité-Sarracolese). Lang, *ibid.* p. 242 (Washambala). Desoignies, *ibid.* p. 278 (Msalala). Kraft, *ibid.* p. 291 (Wapokomo). Reade, *Savage Africa*, p. 582. Rowley, *Africa Unveiled*, pp. 174, 176. Steinmetz, *Ethnologische Studien zur ersten Entwicklung der Strafe*, i. 313. Nieboer, *op. cit.* pp. 52, 78, 79, 81, 141–143, 305, 439 *sq.*

[7] Veniaminof, quoted by Petroff, *loc. cit.* p. 152.

"aiment extraordinairement tous leurs esclaves; jamais ils ne leur commandent d'un ton impérieux; jamais ils ne les réprimandent, ni ne les châtient, ni ne les vendent, quand même ce seraient des prisonniers de guerre. . . . Quel contraste avec le traitement que les européens font éprouver aux africains!"[1] In West Africa "the condition of slavery is not regarded as degrading, and a slave is not considered an inferior being."[2] On the Gold Coast, with the exception of the unpleasant liability of being sent at any moment to serve his master in the other world, the lot of a slave is not generally one of hardship, but is on the whole far better than that of the agricultural labourer in England. The slave is generally considered a member of the family, and if native-born succeeds in some cases in default of an heir to the property of his master.[3] In the Yoruba country it was quite common for a slave to be named by his master in his last will to be the factor or general manager of the estate, and to be left to take care of the entire establishment.[4] Among the Kreis Kita, of the French Soudan, the master calls his domestic slaves his sons, and they call him their father; nay, the natural guardian of an heir who is not yet of age is not his mother, but the eldest domestic slave of the household.[5] Speaking of the natives in the region of Lake Nyassa, Mr. Macdonald remarks that most Africans like to see their slaves become rich; "Are they not," they say, "our own children?"[6] Among the Wabondei, "if a man buys a slave, he calls his own children and says, 'Behold your brother.' The slave is treated as a son, and is neither beaten nor tied."[7] In Madagascar the slaves "are kindly treated by their masters, they are considered as a kind of inferior members of the family to whom they belong, and many of the slaves have a

[1] Azara, *op. cit.* ii. 110.

[2] Ellis, *Ewe-speaking Peoples of the Slave Coast*, p. 219. See also Wilson, *Western Africa*, pp. 179, 180, 271 *sq.*

[3] Ellis, *Tshi-speaking Peoples of the Gold Coast*, p. 290.

[4] MacGregor, Lagos, Abeokuta, and the Alake,' in *Jour. African Soc.* 1904, p. 473.

[5] Tellier, in Steinmetz, *Rechtsverhältnisse*, p. 169.

[6] Macdonald, in *Jour. Anthr. Inst.* xxii. 102.

[7] Dale, *ibid.* xxv. 230.

practical freedom of action to which the free population are quite strangers."[1] The slavery prevalent among the native races of the Malay Archipelago is generally mild. In Borneo, says Mr. Boyle, "we always found a difficulty in distinguishing the servile portion of a household from the freeborn population, and the honours and distinctions open to the latter class are likewise accessible to the former."[2] The slave-debtors of the Dyaks are "just as happy in this state—living in their creditors' houses and working on their farms—as if perfectly free, enjoying all the liberty of their masters."[3] Among the Chittagong Hill tribes the debtor-slaves were treated as members of the creditor's family, and were never exposed to harsh usage.[4] Among the Káfirs of the Hindu-Kush slaves are sometimes chosen among the annually elected magistracy, and Sir Scott Robertson knew of a case in which a master and his slave went through the ceremony of brotherhood together.[5]

It appears that intra-tribal slaves, especially such as are born in the house, are generally treated better than extra-tribal or purchased slaves,[6] and that slaves are most oppressed by their masters when they belong to a different race.[7] We are told that among the South American Guaycurus the two causes of slavery, captivity and birth, imply a certain difference of caste, which is maintained

[1] Sibree, *The Great African Island*, p. 181. See also Little, *Madagascar*, p. 77; Ellis, *History of Madagascar*, i. 196.

[2] Boyle, *Adventures among the Dyaks of Borneo*, p. 284.

[3] Low, *Sarawak*, p. 302. See also St. John, *Life in the Forests of the Far East*, i. 83; Bock, *Head-Hunters of Borneo*, p. 210; Kükenthal, *Ergebnisse einer zoologischen Forschungsreise in den Molukken und Borneo*, i. 276 (Kyans); Crawfurd, *History of the Indian Archipelago*, i. 52; Raffles, *op. cit.* i. 352; Marsden, *History of Sumatra*, p. 253; Junghuhn, *op. cit.* ii. 150 (Bataks).

[4] Lewin, *Hill Tracts of Chittagong*, p. 34.

[5] Scott Robertson, *Káfirs of the Hindu-Kush*, p. 100 *sq.*

[6] Munzinger, *Ostafrikanische Studien*, p. 484 *sq.* (Barea and Kunáma). New, *op. cit.* p. 56 (Waswahili). Baumann, *Usambara*, p. 61 (natives of the Tanga Coast). Sarbah, *op. cit.* p. 6 *sq.* (Fantis). Nicole, in Steinmetz, *Rechtsverhältnisse*, p. 118 *sq.* (Diakité-Sarracolese). Tellier, *ibid.* p. 169 (Kreis Kita). Beverley, *ibid.* p. 213 (Wagogo). Sibree, *op. cit.* p. 256 *sq.* (natives of Madagascar). Post, *Afrikanische Jurisprudenz*, i. 88 *sq.*

[7] Mademba, in Steinmetz, *Rechtsverhältnisse*, p. 84 (natives of the Sansanding States). Sibree, *op. cit.* p. 181 (natives of Madagascar).

with great rigour.[1] Mungo Park observes that in Africa the domestic slaves or such as are born in their master's house are treated more leniently than those who are purchased.[2] "I was told," he says, "that the Mandingo master can neither deprive his slave of life, nor sell him to a stranger, without first calling a palaver on his conduct, or, in other words, bringing him to a public trial; but this degree of protection is extended only to the native or domestic slave."[3] Tuckey makes exactly the same observation as regards the natives of Congo.[4] On the Gold Coast slaves are of three kinds—native-born, imported, and prisoners of war; and "a distinction is always made between the first and the two latter, who are treated with far less consideration."[5] Speaking of the Central African tribes generally, Mr. Rowley states that slavery assumes a much severer character among the pastoral than among the agricultural tribes, because the slaves of the former are for the most part captives of war, whereas those of the latter have rarely been acquired by conquest but mostly by inheritance. Among the agricultural tribes, he adds, persons who are in bondage are not called slaves but children, and those to whom they are in bondage are not called masters but fathers.[6] Among the Káfirs of the Hindu-Kush all slaves "are not of the same social position, for the house slave is said to be much higher in grade than the artisan slave. . . . The domestic slaves live with their masters."[7]

Among the nations of archaic civilisation slavery presents essentially the same characteristics as among the lower races. In ancient Mexico there were various classes of slaves—prisoners of war, criminals condemned to lose their freedom, children sold by their parents, and persons who had sold themselves. The relations between master and slave are represented as friendly.[8] "Slavery.

[1] von Spix and von Martius, *Travels in Brazil*, ii. 74.
[2] Mungo Park, *op. cit.* p. 262.
[3] *Ibid.* p. 19.
[4] Tuckey, *op. cit.* p. 367.
[5] Ellis, *Tshi-speaking Peoples*, p. 289.
[6] Rowley, *Africa Unveiled*, p. 174 *sqq.*
[7] Scott Robertson, *op. cit.* p. 99 *sq.*
[8] Bancroft, *Native Races of the Pacific States*, ii. 217, 221.

in Mexico," says Mr. Bancroft, "was, according to all accounts, a moderate subjection, consisting merely of an obligation to render personal service, nor could that be exacted without allowing the slave a certain amount of time to labour for his own advantage."[1] Masters could not sell their slaves without their consent, unless they were slaves with a collar, that is, runaway, rebellious, or vicious slaves, who in spite of two or three warnings did not mend their behaviour.[2] Their children were invariably born free;[3] and when their masters died they generally became free themselves.[4]

In China the slave class is composed of prisoners of war, of persons who sell themselves or are sold by others, and of the children of slaves;[5] and in former days public slavery was a punishment for crime.[6] It is true that the penal code forbids the sale of free persons; according to the letter of the text even the father of a family must not sell his children,[7] and persons who voluntarily submit themselves to be sold are punished by law.[8] But these regulations are frequently transgressed; in times of distress children are often sold by their parents, and the kidnapping of children is an even more common source from which the supply of slaves is kept up.[9] The master's power over his slave is not quite absolute,[10] but it seems to be fully as great as the father's power over his child.[11] A master who falsely accuses his slave suffers no punishment for it; on the other hand, a slave cannot complain in a court of justice of ill-treatment from his master.[12] Yet the condition of slaves in China is generally easy enough.[13] "In all Chinese families of 'the upper ten

[1] Bancroft, *Native Races of the Pacific States*, ii. 220 *sq.*
[2] Clavigero, *History of Mexico*, i. 360.
[3] Bancroft, *op. cit.* ii. 221.
[4] Clavigero, *op. cit.* i. 360.
[5] Biot, 'Mémoire sur la condition des esclaves et des serviteurs gagés en Chine,' in *Journal Asiatique*, ser. iii. vol. iii. 257 *sqq.*
[6] *Ibid.* p. 249 *sqq.*
[7] *Supra*, p. 607.
[8] *Ta Tsing Leu Lee*, sec. cclxxv. p. 201.
[9] Biot, *loc. cit.* p. 260. Giles, *Strange Stories from a Chinese Studio*, p. 211, n. 8. Gray, *China*, i. 241, 242, 246.
[10] *Supra*, p. 424.
[11] Gray, *op. cit.* i. 243 *sqq.*
[12] Biot, *op. cit.* p. 292. *Ta Tsing Leu Lee*, sec. cccxxxvii. p. 373.
[13] Biot, *loc. cit.* p. 296 *sq.* Giles, *op. cit.* i. 211 *sq.* n. 8. Gray, *op. cit.* i. 245. Wells Williams, *The Middle Kingdom*, i. 413. Douglas, *Society in China*, p. 240.

thousand,' an intimacy exists between masters and men-servants on the one hand, and mistresses and female servants on the other. Servants not unfrequently make suggestions in reference to the well-being of the family, and in many instances, domestic matters of a grave nature are discussed before them." [1] In Chinese novels the servant is the confidant of his master, and harsh behaviour towards slaves is only attributed to vicious persons; [2] according to the Divine Panorama, he who beats or injures his slave without estimating the punishment by the fault is tormented in hell.[3] Many travellers have pointed out the difference between the comparatively happy condition of slaves in China and the degraded position of the former negro slaves in European colonies and the United States of America.[4] "In China," it is observed, "the identity of blood, colour, race, and habit between master and servant, operates as a restraint on the avarice, vices, and cruelty of the former, which would not be the case if they were of different races as in America." [5]

It has been suggested that in ancient Egypt the aboriginal inhabitants of the country were made slaves by the conquering race. "Si nous consultons les monuments," says M. Amélineau, "nous remarquons dans les peintures qui ornent les parois des tombeaux de Saqqarah une certaine race d'hommes sur laquelle Mariette avait déjà appelé l'attention. . . . Je crois que ce sont là des esclaves, vieux restes des populations primitives soumises par les conquérants nouvellement arrivés dans la vallée du Nil, descendants des premières tribus humaines qui s'étaient installées en Égypt." [6] During the eighteenth and nineteenth dynasties, which form the chief period of Egypt's foreign conquests, mention is frequently made of the employment of prisoners of war as slaves. Every Pharao of these dynasties recounts how he filled the god Amon's storehouses with male and female slaves from his

[1] Gray, *op. cit.* i. 247.
[2] Biot, *loc. cit.* p. 296.
[3] Giles, *op. cit.* ii. 377.
[4] Biot, *loc. cit.* p. 297 *sq.*
[5] *Chinese Repository*, xviii. 362.
[6] Amélineau, *Essai sur l'évolution des idées morales dans l'Egypt Ancienne*, p. 78.

spoil. These slaves are occasionally represented in tombs; thus in the tomb of Rekhmere some slaves who are making bricks and building a wall are designated as "the spoil which his Majesty brought for the construction of the temple of Amon."[1] M. Amélineau believes that slavery was in Egypt milder than in Greece and Rome.[2] According to the Book of the Dead, the pity of the god extends to slaves; not only does he command that no one should ill-treat them himself, but he forbids that their masters should be led to ill-treat them.[3]

In ancient Chaldæa, beneath the free Semite and Sumerian population, there was a class of slaves largely consisting of captives from foreign races and their descendants, but continually reinforced by individuals of the native race, such as foundlings, women sold by their husbands, children sold by their fathers, and probably debtors whom their creditors had deprived of their liberty.[4] Their position was evidently not one of excessive hardship.[5] As a rule, they were permitted to marry and bring up a family; and it seems that masters, when selling their slaves, as much as possible avoided separating parents and children.[6] The master often apprenticed the children of his slaves, and as soon as they knew a trade he set them up in business in his own name, allowing them a share in the profits.[7] A slave could hire himself out for wages, and could himself acquire slaves to work for him.[8] He was even entitled to purchase his freedom.[9] "La loi babylonienne," says M. Oppert, "lassait aux esclaves sur quelques points

[1] For these statements I am indebted to my friend Dr. Alan Gardiner.

[2] Amélineau, *op. cit.* p. 349.

[3] *Book of the Dead*, ch. 125. *Cf.* Maspero, *Dawn of Civilization*, p. 191.

[4] Meissner, *Beiträge zur altbabylonischen Privatrecht*, p. 6. Oppert, 'La condition des esclaves à Babylone,' in *Académie des Inscriptions et Belles-Lettres—Comptes rendus des séances de l'année* 1888, ser. iv. vol. xvi. 122. Maspero, *op. cit.* p. 743.

[5] Meissner, *op. cit.* p. 7. Oppert, *loc. cit.* p. 121 *sqq.*

[6] Oppert, *loc. cit.* p. 125 *sqq.*

[7] Kohler and Peiser, *Aus dem babylonischen Rechtsleben*, ii. 52 *sqq.*

[8] Oppert, *loc. cit.* pp. 122, 128.

[9] Meissner, *op. cit.* p. 7. Oppert, *loc. cit.* p. 122. Oppert and Ménant, *Documents juridiques de l'Assyrie et de la Chaldée*, p. 14.

plus de prérogatives que le Code français n'en accorde à nos épouses."[1]

Among the Hebrews the slave class consisted of captives taken in war;[2] of persons bought with money from neighbouring nations or from foreign residents in the land;[3] of children of slaves born in the house;[4] of native Hebrews who had been sold by their fathers,[5] or who either alone or with their wives and children had fallen into slavery in consequence of poverty,[6] or who had been sold by the authorities as slaves on account of theft when unable to pay compensation for the stolen property.[7] To deprive an Israelite of his freedom for any other reason, to steal him, use him as a slave, or sell him, was a crime punishable with death.[8] And even the Israelite who lost his liberty because he had become poor on account of poverty was not to be treated in the same way as the slave of foreign origin. He could not be compelled to serve as a bondservant, only as a hired servant.[9] He should not be ruled over with rigour.[10] He might not only be redeemed at any time by his relatives, but if not redeemed he was bound to receive his freedom without payment in the seventh year, and then the master should not let him go away empty, but furnish him liberally out of his flock, his floor, and his wine-press.[11] Slaves of foreign extraction, on the other hand, were not to be emancipated, but should remain slaves for ever, descending to children and children's children.[12] But in no case had the master absolute power over his slave. Whether the latter was an Israelite or a foreigner, his life, and to some extent his body, were protected by law;[13] and if a slave escaped from a hard master, he

[1] Oppert, *loc. cit.* p. 121.
[2] *Deuteronomy*, xx. 14.
[3] *Leviticus*, xxv. 44 *sqq.*
[4] *Genesis*, xiv. 14.
[5] *Exodus*, xxi. 7.
[6] *Ibid.* xxi. 2 *sq.* *Leviticus*, xxv. 39, 47.
[7] *Exodus*, xxii. 3.
[8] *Ibid.* xxi. 16. *Deuteronomy*, xxiv. 7.
[9] *Leviticus*, xxv. 39, 40, 53.
[10] *Ibid.* xxv. 43, 46, 53.
[11] *Exodus*, xxi. 2. *Leviticus*, xxv. 40, 41, 48 *sqq.* *Deuteronomy*, xv. 12 *sqq.*
[12] *Leviticus*, xxv. 44 *sqq.*
[13] *Supra*, pp. 424, 516.

should not be given up, but be allowed to live unmolested in the place which he should choose in one of the cities of Israel.[1] From everything that we read about slaves among the Hebrews it appears that they were regarded as inferior members of the family, and that the house-father cared for their well-being hardly less than for that of his own children.[2] In the Talmud masters are repeatedly admonished to treat their slaves with kindness;[3] traffic in human beings is regarded as an occupation which incapacitates the dealer to sit as judge;[4] and emancipation of slaves is practically encouraged in various ways,[5] in spite of the dictum of certain rabbis that he who emancipates his slave transgresses the positive precept of Leviticus xxv. 46, "They shall be your bondmen for ever."[6]

According to Islam, a Muhammedan who is born free can never become a slave. "The slave," says Mr. Lane, "is either a person taken captive in war or carried off by force from a foreign country, and being at the time of capture an infidel; or the offspring of a female slave by another slave, or by any man who is not her owner, or by her owner if he do not acknowledge himself to be the father."[7] The slave should be treated with kindness; the Prophet said, "A man who behaves ill to his slave will not enter into Paradise."[8] The master should give to his slaves of the food which he eats himself, and of the clothes with which he clothes himself.[9] He should not

[1] *Deuteronomy*, xxiii. 15 *sq.*

[2] See Mielziner, *Die Verhältnisse der Sklaven bei den alten Hebräern*, p. 61 *sqq.*; André, *L'esclavage chez les anciens Hébreux*, p. 149 *sqq.*; Benzinger, 'Slavery,' in Cheyne and Black, *Encyclopædia Biblica*, iv. 4657 *sq.*

[3] Katz, *Der wahre Talmudjude*, p. 59 *sqq.* See also *Ecclesiasticus*, xxxiii. 31:—"If thou have a servant, entreat him as a brother: for thou hast need of him as of thine own soul."

[4] Benny, *Criminal Code of the Jews according to the Talmud Massecheth Synhedrin*, p. 36.

[5] Winter, *Die Stellung der Sklaven bei den Juden*, p. 41.

[6] *Berakhoth*, fol. 47 B, quoted by Hershon, *Treasures of the Talmud*, p. 81. *R. Samuel*, quoted by André, *op. cit.* p. 180 *sq.*

[7] Lane, *Manners and Customs of the Modern Egyptians*, p. 116. *Cf.* Munzinger, *Ostafrikanische Studien*, p. 245 *sq.*; Ameer Ali, *Life and Teachings of Mohammed*, p. 376 *sq.*

[8] Lane, *Arabian Society in the Middle Ages*, p. 255. Lane-Poole, *Speeches and Table-Talk of the Prophet Mohammad*, p. 163.

[9] Lane, *Arabian Society*, p. 254. Lane-Poole, *Speeches*, p. 163.

order them to do anything beyond their power, and in the hot season, during the hottest hours of the day, he should let them rest.[1] He may marry them to whom he will, but he may not separate them when married.[2] He may, generally, give them away or sell them as he pleases, but he must not separate a mother from her child. The Prophet said, "Whoever is the cause of separation between mother and child, by selling or giving, God will separate him from his friends on the day of resurrection."[3] Nor is a master allowed to alienate a female slave who has borne to him a child which he recognises as his own; and at his death the mother is entitled to emancipation.[4] To liberate a slave is regarded as an act highly acceptable to God, and as an expiation for certain sins.[5] These rules, it should be added, are not only recognised in theory, but derive additional support from general usage. In the Muhammedan world the slave generally lives on easy terms with his master. He is often treated as a member of the family, and occasionally exercises much influence upon its affairs.[6] In certain countries at least, it is held disreputable or disgraceful for a person to sell his slave, except perhaps in case of absolute necessity or in consequence of intolerable behaviour on the part of the slave.[7] In Persia custom demands that on certain festive occasions, such as the birth of a child or a wedding, one

[1] Lane, *Arabian Society*, p. 254. Lane-Poole, *Speeches*, p. 163. Sachau, *Muhammedanisches Recht*, pp. 18, 102.

[2] Lane, *Modern Egyptians*, p. 115.

[3] *Ibid.* p. 115. Lane, *Arabian Society*, p. 255. Ameer Ali, *Life of Mohammed*, p. 374 *sq.*

[4] Lane, *Modern Egyptians*, p. 116.

[5] *Koran*, xxiv. 33. Ameer Ali, *Life of Mohammed*, pp. 373, 377. Beltrame, *Il Sènnaar e lo Sciangàllah*, i. 46. Lane, *Modern Egyptians*, p. 119.

[6] Lane, *Arabian Society*, p. 253 *sqq.* Polak, *Persien*, i. 251, 255. Urquhart, *Spirit of the East*, ii. 403. Burton, *Pilgrimage to Al-Madinah & Mecca*, i. 61. Munzinger, *Ostafrikanische Studien*, p. 155. Beltrame, *Il Sènnaar*, i. 46 *sqq.* Loir, 'L'esclavage en Tunisie,' in *Revue scientifique*, ser. iv. vol. xii. 592 *sq.* Villot, *Mœurs, coutumes et institutions des indigènes de l'Algérie*, p. 250. Meakin, *Moors*, p. 133. Chavanne, *Die Sahara*, p. 389 (Arabs of the Sahara). Pommerol, *Among the Women of the Sahara*, p. 161 *sqq.* Dyveyrier, *Exploration du Sahara*, p. 339. Hourst, *Sur le Niger et au pays des Touaregs*, p. 206 (Touareg). Hanoteau and Letourneux, *La Kabylie*, ii. 143. Reade, *Savage Africa*, p. 582.

[7] Polak, *Persien*, i. 250. Beltrame, *Il Sènnaar*, i. 47, 248. Munzinger, *Ostafrikanische Studien*, p. 155.

or several of the slaves of the family should be set free;[1] and both there and in other Muhammedan countries testamentary manumissions are of frequent occurrence.[2] In Morocco a slave is sometimes allowed a certain amount of liberty that he may earn enough to buy his freedom;[3] whilst among the Bedouins of the Arabian Desert described by Burckhardt, slaves are always emancipated after a certain lapse of time.[4] No stigma attaches to the emancipated slave. It has been truly said that in Islam slavery is regarded as an accident, not as a "constitution of nature,"[5] hence the freedman is socially on an equal footing with a free-born citizen. He may without discredit marry his former master's daughter, and become the head of the family. Emancipated slaves have repeatedly risen to the highest offices, they have ruled kingdoms and founded dynasties.[6]

According to the Laws of Manu, the mythical legislator of ancient India, there are slaves of seven kinds, namely, "he who is made a captive under a standard, he who serves for his daily food, he who is born in the house, he who is bought and he who is given, he who is inherited from ancestors, and he who is enslaved by way of punishment."[7] The last mentioned class consists of persons who have lost their freedom because they have been unable to pay a debt or a fine, or because they have left a religious order.[8] The slave is not necessarily a Sûdra, or member of the lowest of the four Indian castes, but Kshatriyas may become the slaves of Brâhmanas and Vaisyas of Brâhmanas and Kshatriyas.[9] On the other hand, the Sûdras as such were not slaves, though it was their duty to serve the other castes; they chose the persons to whom they would offer service, and claimed adequate compensa-

[1] Polak, *op. cit.* i. 250.
[2] *Ibid.* i. 250. Meakin, *op. cit.* p. 139.
[3] Meakin, *op. cit.* p. 139.
[4] Burckhardt, *Notes on the Bedouins and Wahábys*, p. 202.
[5] Ameer Ali, *Life of Mohammed*, p. 375.
[6] *Ibid.* p. 375 *sq.* Bosworth Smith, *Mohammed and Mohammedanism*, pp. 206, 211 *sq.*
[7] *Laws of Manu*, viii. 415.
[8] Bühler, in his translation of the Laws of Manu, in *Sacred Books of the East*, xxv. 326, n. 415.
[9] *Ibid.* p. 326, n. 415.

tion.[1] The power which a house-holder in India possessed over his slaves is not exactly defined; but he is admonished not to have quarrels with them, and if offended by any of them, to bear it without resentment.[2] In Âpastamba's Aphorisms it is said that a person may at his pleasure stint himself, his wife, or his children, "but by no means a slave who does his work."[3] Elphinstone wrote in 1839 in his 'History of India':—"Domestic slaves are treated exactly like servants, except that they are more regarded as belonging to the family. I doubt if they are ever sold; and they attract little observation, as there is nothing apparent to distinguish them from freemen."[4] The priesthood of modern Buddhism teach that there are five ways in which a master ought to assist his slave:—"He must not appoint the work of children to men, or of men to children, but to each according to his strength; he must give each one his food and wages, according as they are required; when sick, he must free him from work, and provide him with proper medicine; when the master has any agreeable and savoury food, he must not consume the whole himself, but must impart a portion to others, even to his slaves; and if they work properly for a long period, or for a given period, they must be set free."[5]

In Greece, especially in earlier times, capture in war, piracy, and kidnapping were common causes of slavery,[6] and the condition was hereditary. Other legitimate sources were exposure of infants, except at Thebes,[7] and sale of children by their parents.[8] At Athens insolvent debtors became the slaves of their creditors up to the time of Solon;[9] and metics—that is, resident aliens—who did not discharge the obligations imposed on them by the State,

[1] Ingram, *History of Slavery and Serfdom*, p. 272.
[2] *Laws of Manu*, iv. 180, 185.
[3] *Âpastamba*, ii. 4. 9. 11.
[4] Elphinstone, *History of India*, p. 203.
[5] Hardy, *Manual of Budhism*, p. 500.
[6] Wallon, *Histoire de l'esclavage dans l'antiquité*, i. 161 *sqq.* Richter, *Die Sklaverei im griechischen Alterthume*, p. 39 *sqq.*
[7] Aelian, *Historia varia*, ii. 7.
[8] Wallon, *op. cit.* i. 159 *sq.*
[9] Plutarch, *Vita Solonis*, xiii. 4.

were sold as slaves, as were also foreigners who had fraudulently possessed themselves of the rights of citizens.[1] At least in a later age the majority of slaves seem to have been of barbarian origin ;[2] indeed, after the Peloponnesian war the principle that captives taken in wars between Greek states should be ransomed and not enslaved was commonly recognised, though not always followed in practice.[3] As we have seen, the master had not the power of life and death over his slave.[4] At sanctuaries the latter found a refuge from cruel oppression.[5] If maltreated he could demand to be sold ; and he could purchase his liberty with his *peculium* by agreement with his master.[6] But by manumission he only entered into an intermediate condition between slavery and complete freedom ; thus, at Athens the freedman was in relation to the State a metic and in relation to his master a client.[7] Domestic slaves often lived on terms of intimacy with their masters,[8] but as a class slaves were regarded with contempt even by men like Plato and Aristotle. The former, whilst warning his hearers against insolent and unjust behaviour towards slaves, observes that they should be treated with severity, not admonished as if they were freemen, but punished, and only addressed in words of command.[9] Aristotle compares the relation of the master to his slave with that of the soul to the body and of the craftsman to his tool, and adds that there can be friendship between them only in so far as the slave is regarded not as a slave but as a fellow human being.[10] But whilst the state of slavery always entailed disgrace, the question was raised whether the master's power over his slave was based on justice or

[1] Wallon, *op. cit.* i. 160 *sq.* Richter, *op. cit.* p. 46.

[2] Hermann-Blümner, *Lehrbuch der griechischen Privatalterthümer*, p. 86. Richter, *op. cit.* p. 48.

[3] Schmidt, *Ethik der alten Griechen*, ii. 204, 205, 283. Hermann-Blümner, *op. cit.* p. 86 *sq.*

[4] *Supra*, p. 425.

[5] Wallon, *op. cit.* i. 310 *sq.* Schmidt, *op. cit.* ii. 218 *sq.* Richter, *op. cit.* p. 140 *sq.*

[6] Ingram, *op. cit.* p. 27 *sq.* Wallon, *op. cit.* i. 335 *sq.* Richter, *op. cit.* p. 151.

[7] Richter, *op. cit.* p. 157. Wallon, *op. cit.* i. 346 *sqq.*

[8] Schmidt, *op. cit.* ii. 212. Richter, *op. cit.* p. 151.

[9] Plato, *Leges*, vi. 777 *sq.*

[10] Aristotle, *Ethica Nicomachea*, viii. 11. 6 *sq.* *Idem*, *Politica*, i. 5, p. 1254.

on force, and in Greece, for the first time, we meet with the opinion that the institution of slavery is contrary to Nature, and that it is the law which, unjustly, makes one man a slave and another free.[1] However, Aristotle was no doubt in general agreement with his age when he declared that the barbarians, on account of their inferiority, are intended by Nature to be the slaves of the Greeks.[2]

The Roman jurists held up slavery as a mitigation of the horrors of war: the capture and preservation of enemies, they said, was its sole and exclusive origin in the past.[3] But in Rome as elsewhere, when once established, it contained in itself the germ of extension; all the children of a female slave followed the condition of the mother, according to the principle applicable to the offspring of the lower animals—"Partus sequitur ventrem." And sooner or later, when these sources proved insufficient to maintain the supply, a regular commerce in slaves was established, which was based on the systematically prosecuted hunting of men in foreign lands.[4] To a much smaller extent the slave class was recruited by Roman citizens—by children sold by their fathers, by insolvent debtors, or by criminals condemned to servitude as a punishment for some heinous offence.[5] The idea of a Roman becoming the slave of a fellow-citizen was never quite agreeable to the Roman mind. According to an ancient law the debtor, after being made over to the creditor, should be sold abroad or *trans Tiberim*.[6] Subsequently, in 326 B.C., the creditor's lien was restricted to the goods of his debtor, if the latter was a Roman citizen;[7] and during the Pagan Empire the sale of free-

[1] *Idem*, *Politica*, i. 3, p. 1253 b.

[2] *Ibid.* i. 2, 6, pp. 1252 b, 1255 a. See Euripides, *Iphigenia in Aulide*, 1400 *sq.*

[3] Hunter, *Exposition of Roman Law*, p. 160 *sq.* *Institutiones*, i. 3. 3:—"Slaves are called *servi*, because generals are wont to sell their captives, and so to preserve (*servare*), and not to destroy them. They are also called *mancipia*, because they are taken from the enemy with the strong hand (*manu capiuntur*)."

[4] Mommsen, *History of Rome*, iii. 305 *sq.* Wallon, *op. cit.* ii. 46 *sqq.* Ingram, *op. cit.* p. 38.

[5] Wallon, *op. cit.* ii. 18 *sqq.* Ingram, *op. cit.* p. 39. *Institutiones*, i. 12. 3.

[6] Mackenzie, *Studies in Roman Law*, p. 94.

[7] Livy, *Historiæ Romanæ*, viii. 28. Wallon, *op. cit.* ii. 29, n. 1.

born children by their fathers was prohibited.[1] The power, originally unlimited, which the master had over his slave was also, in the course of time, subjected to limitations. We have seen that since the days of Claudius and Antoninus Pius legal check was put on the master's right of killing his slave.[2] The Lex Petronia, A.D. 61, forbade masters to compel their slaves to fight with wild beasts.[3] In the time of Nero an official was appointed to hear complaints of the wrongs done by masters to their slaves.[4] Antoninus Pius directed that slaves treated with excessive cruelty, who had taken refuge at an altar or imperial image, should be sold; and this provision was extended to cases in which the master had employed a slave in a way degrading to him or beneath his character.[5] In public auctions of slaves regard was paid to the claims of relationship,[6] and in the interpretation of testaments it was assumed that members of the same family were not to be separated by the division of the succession.[7] In those days when Roman slavery had lost its original patriarchal and, to speak with Mommsen,[8] "in some measure innocent" character, when the victories of Rome and the increasing slave trade had introduced into the city innumerable slaves, when those simpler habits of life which in early times somewhat mitigated the rigour of the law had changed—the lot of the Roman slave was often extremely hard, and numerous acts of shocking cruelty were committed.[9] But we also hear, from the early days of the Empire, that masters who had been cruel to their slaves were pointed at with disgust in all parts of the city, and were hated and loathed.[10] And with a fervour which can hardly be surpassed Seneca and other Stoics argued that the slave is a being with human dignity and human rights, born of the same race as ourselves, living the same life,

[1] *Supra*, p. 615.
[2] *Supra*, p. 425 *sq.*
[3] *Digesta*, xlviii. 8. 11. 2.
[4] Seneca, *De beneficiis*, iii. 22. 3.
[5] Wallon, *op. cit.* iii. 57 *sq.* Ingram, p. 63.
[6] Hunter, *Exposition of Roman Law*, p. 159.
[7] Wallon, *op. cit.* iii. 53.
[8] Mommsen, *History of Rome*, iii. 305.
[9] See Lecky, *History of European Morals*, i. 302 *sq.*
[10] Seneca, *De clementia*, i. 18. 3.

and dying the same death—in short, that our slaves "are also men, and friends, and our fellow-servants."[1] Epictetus even went so far as to condemn altogether the keeping of slaves, a radicalism explicable from the history of his own life. "What you avoid suffering yourself," he says, "seek not to impose on others. You avoid slavery, for instance; take care not to enslave. For if you can bear to exact slavery from others, you appear to have been yourself a slave."[2] These teachings could not fail to influence both legislation and public sentiment. Imbued with the Stoic philosophy, the jurists of the classical period declared that all men are originally free by the law of Nature, and that slavery is only "an institution of the Law of Nations, by which one man is made the property of another, in opposition to natural right."[3]

Considering that Christianity has commonly been represented as almost the sole cause of the mitigation and final abolishment of slavery in Europe, it deserves special notice that the chief improvement in the condition of slaves at Rome took place at so early a period that Christianity could have absolutely no share in it. Nay, for about two hundred years after it was made the official religion of the Empire there was an almost complete pause in the legislation on the subject.[4] Under Justinian certain reforms were introduced:—enfranchisement was facilitated in various ways;[5] the rights of Roman citizens were granted to emancipated slaves, who had previously occupied an intermediate position between slavery and perfect freedom;[6] and though the law still refused to recognise the marriages of slaves, Justinian gave them a legal value after emancipation in establishing rights of succession.[7] But the inferior position of the slave was asserted as sternly as ever. He belonged to the

[1] *Idem*, *Epistolæ*, 47. *Idem*, *De beneficiis*, iii. 28. Epictetus, *Dissertationes*, i. 13. See also the collection of statements referring to slavery made by Holland, *Reign of the Stoics*, p. 186 *sqq*.

[2] Epictetus, *Fragmenta*, 42.

[3] *Institutiones*, i. 3. 2.

[4] *Cf.* Lecky, *History of European Morals*, ii. 64.

[5] *Institutiones*, i. 5 *sqq*.

[6] *Ibid.* i. 5. 3; iii. 7. 4.

[7] *Ibid.* iii. 7 pr.

"corporeal" property of his master, he was reckoned among things which are tangible by their nature, like land, raiment, gold, and silver.[1] The constitution of Antoninus Pius restraining excessive severity on the part of masters was enforced, but the motive for this was not evangelic humanity.[2] It is said in the Institutes of Justinian, "This decision is a just one; for it greatly concerns the public weal, that no one be permitted to misuse even his own property."[3]

It is curious to note that the inconsistency of slavery with the tenet, "Do to others as you would be done by," though emphasised by a pagan philosopher, never seems to have occurred to any of the early Christian writers. Christianity recognised slavery from the beginning. The principle that all men are spiritually equal in Christ does not imply that they should be socially equal in the world. Slavery does not prevent anybody from performing the duties incumbent on a Christian, it does not bar the way to heaven, it is an external affair only, nothing but a name. He only is really a slave who commits sin.[4] Slavery is of course a burden, but a burden which has been laid upon the back of transgression. Man when created by God was free, and nobody was the slave of another until that just man Noah cursed Ham, his offending son; slavery, then, is a punishment sent by Him who best knows how to proportionate punishment to offence.[5] The slave himself ought not to desire to become free,[6] nay, if the master offers him freedom he ought not to accept it.[7] Not one of the Fathers even

[1] *Institutiones*, ii. 2. 1.

[2] *Cf.* Milman, *History of Latin Christianity*, ii. 14.

[3] *Institutiones*, i. 8. 2.

[4] Gregory Nazianzen, *Orationes*, xiv. 25 (Migne, *Patrologiæ cursus*, Ser. Graeca, xxxv. 891 *sq.*). *Idem*, *Carmina*, i. 2. 26. 29 (*ibid.* xxxvii. 853); i. 2. 33. 133 *sqq.* (*ibid.* xxxvii. 937 *sq.*). St. Chrysostom, *In cap. IX. Genes. Homilia XXIX.* 7 (*ibid.* liii. 270). *Idem*, *In Epist. I. ad Cor. Homilia XIX.* 5 (*ibid.* lxi. 158). St. Ambrose, *In Epistolam ad Colossenses*, 3 (Migne, *op. cit.* Ser. Lat. xvii. 439).

[5] St. Augustine, *De civitate Dei*, xix. 15 (Migne, *op. cit.* xli. 643 *sq.*).

[6] St. Ignatius, *Epistola ad Polycarpum*, 4 (Migne, *op. cit.* Ser. Graeca, v. 723 *sq.*). St. Augustine, *Ennaratio in Psalmum CXXIV.* 7 (Migne, *op. cit.* xxxvij. 1653).

[7] Laurent, *Études sur l'histoire de l'humanité*, iv. 117.

hints that slavery is unlawful or improper.[1] In the early age martyrs possessed slaves, and so did abbots, bishops, popes, monasteries, and churches;[2] Jews and pagans only were prohibited from acquiring Christian slaves.[3] So little was the abolition of slavery thought of that a Council at Orleans, in the middle of the sixth century, expressly decreed the perpetuity of servitude among the descendants of slaves.[4] On the other hand, the Church showed a zeal to prevent accessions to slavery from capture, but her exertions were restricted to Christian prisoners of war.[5] As late as the nineteenth century the right of enslaving captives was defended by Bishop Bouvier.[6]

The Apostles reminded slaves of their duties towards their masters and masters of their duties towards their slaves.[7] The same was done by Councils and Popes. The Council of Gangra, about the year 324, pronounced its anathema on anyone who should teach a slave to despise his master on pretence of religion;[8] and so much importance was attached to this decree that it was inserted in the epitome of canons which Hadrian I. in 773 presented to Charlemagne in Rome.[9] But there are also many instances in which masters are recommended to show humanity to their slaves.[10] According to Gregory IX.

[1] *Cf.* Babington, *Influence of Christianity in Promoting the Abolition of Slavery in Europe*, p. 29.

[2] *Ibid.* p. 22. Potgiesser, *Commentarii juris Germanici de statu servorum*, i. 4. 8, p. 176. Muratori, *Dissertazioni sopra le antichità italiane*, i. 244.

[3] *Concilium Toletanum IV.* A.D. 633, can. 66 (Labbe-Mansi, *Sacrorum Conciliorum collectio*, x. 635). Blakey, *Temporal Benefits of Christianity*, p. 397. Digby, *Mores Catholici*, ii. 341. Cibrario, *Della schiavitù e del servaggio*, i. 272. Rivière, *L'Église et l'esclavage*, p. 350.

[4] *Concilium Aurelianense IV.* about A.D. 545, can. 32 (Labbe-Mansi, *op. cit.* ix. 118 *sq.*).

[5] *Concilium Rhemense*, about A.D. 630, can. 22 (Labbe-Mansi, *op. cit.* x. 597). Gratian, *Decretum*, ii. 12. 2. 13 *sqq.* Baronius, *Annales Ecclesiastici*, A.D. 1263, ch. 74, vol. xxii. 124. Le Blant, *Inscriptions chrétiennes de la Gaule*, ii. 284 *sqq.* Babington, *op. cit.* pp. 51 *sqq.*, 94 *sq.* Nys, *Le droit de la guerre et les précurseurs de Grotius*, p. 114.

[6] Bouvier, *Institutiones philosophicæ*, p. 566.

[7] *Ephesians*, vi. 5 *sqq.* *Colossians*, iii. 22 *sqq.*; iv. 1.

[8] *Concilium Gangrense*, about A.D. 324, can. 3 (Labbe-Mansi, *op. cit.* ii. 1102, 1106, 1110).

[9] 'Epitome canonum, quam Hadrianus I. Carolo magno obtulit, A.D. DCCLXXIII.' in Labbe-Mansi, *op. cit.* xii. 863.

[10] Babington, *op. cit.* p. 58 *sqq.*

"the slaves who were washed in the fountain of holy baptism should be more liberally treated in consideration of their having received so great a benefit." [1] Slaves who had taken refuge from their masters in churches or monasteries were not to be given up until the master had sworn not to punish the fugitive ; [2] or they were never given up, but became slaves to the sanctuary.[3] The Church, as we have seen, protected the life of the slave by excommunicating for a couple of years masters who killed their slaves.[4] She prohibited the sale of Christian slaves to Jews and heathen nations.[5] The Council of Chalons, in the middle of the seventh century, ordered that no Christians should be sold outside the kingdom of Clovis, so that they might not get into captivity or become the slaves of Jewish masters ; [6] and some Anglo-Saxon laws similarly forbade the sale of Christians out of the country, and especially into bondage to heathen, "that those souls perish not that Christ bought with his own life." [7] The clergy sometimes remonstrated against slave markets ; but their indignation never reached the trade in heathen slaves,[8] nor was the master's right of selling any of his slaves whenever he pleased called in question at all. The assertion made by many writers that the Church exercised an extremely favourable influence upon slavery [9] surely involves a great exaggeration. As late as the thirteenth century the master practically had the power of life and death over his slave.[10] Throughout Christendom the purchase and

[1] Baronius, *Annales Ecclesiastici*, A.D. 1238, ch. 62, vol. xxi. 204.

[2] Milman, *op. cit.* ii. 51. Rivière, *op. cit.* p. 306. Du Boys, *Histoire du droit criminel des peuples modernes*, ii. 246, n. 1.

[3] 'Concilium Kingesburiense sub Bertu'pho,' in Wilkins. *Concilia Magnæ Britanniæ et Hiberniæ*, i. 181.

[4] *Supra*, p. 426.

[5] *Concilium Rhemense*, about A.D. 630, can. 11 (Labbe-Mansi, *op. cit.* x. 596). *Concilium Liptinense*, A.D. 743, can. 3 (*ibid.* xii. 371). Hefele, *Beiträge zur Kirchengeschichte*, i. 218. *Idem*, *History of the Councils of the Church*, v. 211.

[6] *Concilium Cabilonense*, about A.D. 650, can. 9 (Labbe-Mansi, *op. cit.* x. 1191).

[7] *Laws of Ethelred*, v. 2 ; vi. 9. *Laws of Cnut*, ii. 3.

[8] Hüllmann, *Städtewesen des Mittelalters*, i. 80 *sq.* Loring Brace, *Gesta Christi*, p. 229. Rivière, *op. cit.* p. 325.

[9] Yanoski, *De l'abolition de l'esclavage ancien au moyen age*, p. 74 *sq.* Allard, *Les esclaves chrétiens depuis les premiers temps de l'Église*, p. 487 ; &c.

[10] *Supra*, p. 427 *sq.*

the sale of men, as property transferred from vendor to buyer, was recognised as a legal transaction of the same validity with the sale of other merchandise, land or cattle.[1] Slaves had a title to nothing but subsistence and clothes from their masters, all the profits of their labour accruing to the latter; and if a master from indulgence gave his slaves any *peculium*, or fixed allowance for their subsistence, they had no right of property in what they saved out of that, but all that they accumulated belonged to their master.[2] A slave or a freedman was not allowed to bring a criminal charge against a free person, except in the case of a *crimen læsæ majestatis*,[3] and slaves were incapable of being received as witnesses against freemen.[4] The old distinction between the marriage of the freeman and the concubinage of the slave was long recognised by the Church: slaves could not marry, but had only a right of *contubernium*, and their unions did not receive the nuptial benediction of a priest.[5] Subsequently, when conjunction between slaves came to be considered a lawful marriage, they were not permitted to marry without the consent of their master, and such as transgressed this rule were punished very severely, sometimes even with death.[6]

The gradual disappearance of slavery in Europe during the latter part of the Middle Ages has also commonly been in the main attributed to the influence of the Church.[7] But this opinion is hardly supported by facts. It is true that the Church in some degree encouraged the manumission of slaves. Though slavery was considered a

[1] Potgiesser, *op. cit.* ii. 4. 5, p. 429. Milman, *op. cit.* ii. 16.

[2] Potgiesser, *op. cit.* ii. 10, p. 528 *sqq.* Du Cange, *Glossarium ad scriptores mediæ et infimæ Latinitatis*, vi. 451. Robertson, *History of the Reign of the Emperor Charles V.* i. 274.

[3] Potgiesser, *op. cit.* iii. 3. 2, p. 612.

[4] Beaumanoir, *Coutumes du Beauvoisis*, xxxix. 32, vol. ii. 103. Du Cange, *op. cit.* vi. 452. Potgiesser, *op. cit.* iii. 3. 1, p. 611.

[5] Potgiesser, *op. cit.* ii. 2. 10 *sq.*, p. 354 *sq.*

[6] *Ibid.* ii. 2. 12, p. 355 *sq.*

[7] Clarkson, *Essay on Slavery*, p. 19, *sq.* Biot, *De l'abolition de l'esclavage ancien en Occident*, p. xi. Thérou, *Le Christianisme et l'esclavage*, p. 147. Martin, *Histoire de France jusqu'en* 1789, iii. 11, n. 2. Balmes, *El Protestantismo comparado con el Catolicismo*, i. 285. Blakey, *op. cit.* p. 170. Yanoski, *op. cit.* p. 75. Cochin, *L'abolition de l'esclavage*, ii. 349, 458. Littré, *Études sur les Barbares et le Moyen Age*, p. 230 *sq.* Allard, *op. cit.* p. 490. Tedeschi, *La schiavitù*, p. 68. Lecky, *History of Rationalism in Europe*, ii. 216, 236 *sqq.* Maine, *International Law*, p. 160. Kidd, *Social Evolution*, p. 168.

perfectly lawful institution, the enfranchisement of a fellow-Christian was deemed a meritorious act, and was sometimes strongly recommended on Christian principles. At the close of the sixth century it was affirmed that, as Christ had come to break the chain of our servitude and restore our primitive liberty, so it was well for us to imitate Him by making free those whom the law of nations had reduced to slavery;[1] and the same doctrine was again proclaimed at various times down to the sixteenth century.[2] In the Carlovingian period the abbot Smaragdus expressed the opinion that among other good and salutary works each one ought to let slaves go free, considering that not nature but sin had subjected them to their masters.[3] In the latter part of the twelfth century the prelates of France, and in particular the Archbishop of Sens, pretended that it was an obligation of conscience to accord liberty to all Christians, relying on a decree of a Council held at Rome by Pope Alexander III.[4] And in one of the later compilations of German mediæval law it was said that the Lord Jesus, by his injunction to render unto Cæsar the things which are Cæsar's and unto God the things that are God's, indicated that no man is the property of another, but that every man belongs to God.[5] Slaves were liberated "for God's love," or "for the remedy" or "ransom of the soul."[6] In the formularies of manumission given by the monk Marculfus in the seventh century we read, for instance:—"He that releases his slave who is bound to him, may trust that God will recompense him in the next world";[7] "For the remission of my sins, I absolve thee";[8] "For the glory

[1] St. Gregory the Great, *Epistolæ*, vi. 12 (Migne, *Patrologiæ cursus*, lxxvii. 803 *sq.*). Gratian, *op. cit.* ii. 12. 2. 68. Potgiesser, *op. cit.* iv. 1. 3, p. 666 *sq.*

[2] Babington, *op. cit.* p. 180.

[3] Smaragdus, *Via Regia*, 30 (d'Achery, *Spicilegium*, i. 253).

[4] de Boulainvilliers, *Histoire de l'ancien gouvernement de la France*, i. 312.

[5] *Speculum Saxonum*, iii. 42 (Goldast, *Collectio consuetudinum et legum imperialium*, p. 158).

[6] Du Cange, *op. cit.* iv. 460 *sqq.* Potgiesser, *op. cit.* iv. 12. 5, p. 751 *sqq.* Muratori, *op. cit.* i. 249. Robertson, *op. cit.* i. 323. Milman, *op. cit.* ii. 51 *sq.*

[7] Marculfus, *Formulæ*, ii. 32 (Migne, *op. cit.* lxxxvii. 747).

[8] *Ibid.* ii. 33 (Migne, *op. cit.* lxxxvii. 748).

of God's name and for my eternal retribution," &c.[1] Too much importance, however, has often been attached to these phrases; the most trivial occurrences, such as giving a book to a monastery, are commonly accompanied by similar expressions,[2] and it appears from certain formulas that slaves were not only liberated, but also bought and sold, "in the name of God."[3] Nor can we suppose that it was from religious motives only that manumissions were encouraged by the clergy. It has been pointed out that, "as dying persons were frequently inclined to make considerable donations for pious uses, it was more immediately for the interest of churchmen, that people of inferior condition should be rendered capable of acquiring property, and should have the free disposal of what they had acquired." It also seems that those who obtained their liberty by the influence of the clergy had to reward their benefactors, and that the manumission should for this reason be confirmed by the Church.[4] And whilst the Church favoured liberation of the slaves of laymen, she took care to prevent liberation of her own slaves; like a physician she did not herself swallow the medicine which she prescribed to others. She allowed alienation of such slaves only as showed a disposition to run away.[5] The Council of Agatho, in 506, considered it unfair to enfranchise the slaves of monasteries, seeing that the monks themselves were daily compelled to labour;[6] and, as a matter of fact, the slaves of monasteries were everywhere among the last who were manumitted.[7] In the seventh century a Council at Toledo threatened with damnation any bishop who should liberate a slave belonging to the Church, without giving

[1] Marculfus, *Formulæ*, ii. 34 (Migne, *op. cit.* lxxxvii. 748).

[2] Babington, *op. cit.* p. 61, n. 6.

[3] *Formulæ Bignonianæ*, 2, 'Venditio de servo' (Baluze, *Capitularia regum Francorum*, ii. 497):—"Domino magnifico fratri illi emptori, ego in Dei nomine ille venditor."

[4] Millar, *Origin of the Distinction of Ranks*, p. 274 *sq.*

[5] Gratian, *op. cit.* ii. 12. 2. 54.

[6] *Concilium Agathense*, A.D. 506, can. 56 (Labbe-Mansi, *op. cit.* viii. 334).

[7] Hallam, *View of the State of Europe during the Middle Ages* (ed. 1837), i. 221.

due compensation from his own property, as it was thought impious to inflict a loss on the Church of Christ;[1] and according to several ecclesiastical regulations no bishop or priest was allowed to manumit a slave in the patrimony of the Church unless he put in his place two slaves of equal value.[2] Nay, the Church was anxious not only to prevent a reduction of her slaves, but to increase their number. She zealously encouraged people to give up themselves and their posterity to be the slaves of churches and monasteries, to enslave their bodies—as some of the charters put it—in order to procure the liberty of their souls.[3] And in the middle of the seventh century a Council decreed that the children of incontinent priests should become the slaves of the churches where their fathers officiated.[4]

The disappearance of mediæval slavery has further, to some extent, been attributed to the efforts of kings to weaken the power of the nobles.[5] Thus Louis X. and Philip the Long of France issued ordinances declaring that, as all men were by nature free, and as their kingdom was called the kingdom of the Franks, they would have the fact to correspond with the name, and emancipated all persons in the royal domains upon paying a just compensation, as an example for other lords to follow.[6] Muratori believes that in Italy the wars during the twelfth and following centuries contributed more than anything else to the decline of slavery, as there was a need of soldiers and soldiers must be freemen.[7] According to others the disappearance of slavery was largely effected by the great famines and epidemics with which Europe was visited during the tenth, eleventh, and twelfth

[1] *Concilium Toletanum IV.* A.D. 633, can. 67 (Labbe-Mansi, *op. cit.* x. 635).

[2] Gratian, *op. cit.* ii. 12. 2. 58. Potgiesser, *op. cit.* iv. 2. 4, p. 673.

[3] Du Cange, *op. cit.* iv. 1286. Potgiesser, *op. cit.* i. 1. 6 *sq.*, p. 5 *sqq.* Robertson, *op. cit.* i. 326.

[4] *Concilium Toletanum IX.* A.D. 655, can. 10 (Labbe-Mansi, *op. cit.* xi. 29).

[5] Robertson, *op. cit.* i. 47 *sq.* Millar, *op. cit.* p. 276 *sqq.*

[6] Decrusy, Isambert, and Jourdan, *Recueil général des anciennes lois françaises*, iii. 102 *sqq.*

[7] Muratori, *op. cit.* i. 234 *sq.* *Idem*, *Rerum Italicarum scriptores*, xviii. 268, 292.

centuries.[1] The number of slaves was also considerably reduced by the ancient usage of enslaving prisoners of war being replaced by the more humane practice of accepting ransom for them, which became the general rule in the later part of the Middle Ages, at least in the case of Christian captives.[2] But it seems that the chief cause of the extinction of slavery in Europe was its transformation into serfdom.

This transformation has been traced to the diminished supply of slaves, which made it the interest of each family to preserve indefinitely its own hereditary slaves, and to keep up their number by the method of propagation. The existence and physical well-being of the slave became consequently an object of greater value to his master, and the latter found it most profitable to attach his slaves to certain pieces of land.[3] Moreover, the cultivation of the ground required that the slaves should have a fixed residence in different parts of the master's estate, and when a slave had thus been for a long time engaged in a particular farm, he was so much the better qualified to continue in the management of it for the future. By degrees he therefore came to be regarded as belonging to the stock upon the ground, and was disposed of as a part of the estate which he had been accustomed to cultivate.[4]

But serfdom itself was merely a transitory condition destined to lead up to a state of entire liberty. As the proprietor of a large estate could not oversee the behaviour of his villeins, scattered over a wide area of land, the only means of exciting their industry would be to offer them a reward for the work which they performed. Thus, besides the ordinary maintenance allotted

[1] Biot, *op. cit.* p. 318 *sqq.* Saco, *Historia de la esclavitud*, iii. 241 *sqq.*

[2] Ward, *Enquiry into the Foundation and History of the Law of Nations in Europe*, i. 298 *sq.* Babington, *op. cit.* p. 147. Ayala, *De jure et officiis bellicis*, i. 5. 19. In the sixteenth century the statutes of some Italian towns make mention of the sale of slaves, who probably were Turkish captives (Nys, *Le droit de la guerre et les précurseurs de Grotius*, p. 140).

[3] Storch, *Cours d'économie politique*, iv. 260. Ingram, *op. cit.* p. 72.

[4] Millar, *op. cit.* p. 263 *sqq.*

to them, they frequently obtained a part of the profits, and became capable of having separate property.[1] In many cases this no doubt enabled the serf to purchase his liberty out of his earnings;[2] whilst in others the master would have an interest in allowing him to pay a fixed rent and to retain the surplus for himself. The landlord was then freed from the hazard of accidental losses, and obtained not only a certain, but frequently an additional, revenue from his land, owing to the greater exertions of cultivators who worked for their own benefit;[3] and at the same time the personal subjection of the peasants naturally came to an end, as it was of no consequence to the landlord how they conducted themselves provided that they punctually paid the rents. Nor was there any reason to insist that they should remain in the farm longer than they pleased; for the profits it afforded made them commonly not more willing to leave it than the proprietor was to put them away.[4] Another factor which led to the disappearance of serfdom was the encouragement which sovereigns, always jealous of the great lords, gave to the villeins to encroach upon their authority.[5] We have convincing proof that in England, before the end of Edward III.'s reign, the villeins found themselves sufficiently powerful to protect one another, and to withhold their ancient and accustomed services from their lord.[6] In Germany, again, the landlords sometimes furnished their villeins with arms to defend the cause of their master, and this undoubtedly tended to their enfranchisement, as persons who are taught to use and allowed to possess weapons will soon make

[1] Millar, *op. cit.* p. 264. Simonde de Sismondi, *Histoire des républiques italiennes du moyen âge*, xvi. 365 *sq.* Guérard, *Cartulaire de l'Abbaye de Saint-Père de Chartres*, i. p. xli. Dunham, *History of the Germanic Empire*, i. 230.

[2] See Vinogradoff, *Villainage in England*, p. 87; Pollock and Maitland, *History of English Law before the Time of Edward I.* i. 36, 427.

[3] Adam Smith, *Wealth of Nations*, p. 173. Millar, *op. cit.* p. 267 *sqq.* Mill, *Principles of Political Economy*, i. 309, 311. Dunham, *op. cit.* i. 228 *sq.* On the inefficiency of slave labour, see also Storch, *op. cit.* iv. 275 *sqq.*

[4] Millar, *op. cit.* p. 269 *sq.*

[5] Adam Smith, *Wealth of Nations*, p. 173.

[6] Eden, *State of the Poor*, i. 30.

themselves respected.[1] A great number of villeins also shook off the fetters of their servitude by fleeing for refuge to some chartered town,[2] where they became free at once,[3] or, more commonly, after a certain stipulated period—a year and a day,[4] or more;[5] and it seems, besides, that the rapid disappearance of serfdom in the prospering free towns indirectly, by way of example, promoted the enfranchisement of rural serfs.[6] There are, further, instances of lords liberating their villeins at the intercession of their spiritual confessors, the clergy availing themselves of every opportunity to lessen the formidable power of their great rivals, the temporal nobility.[7] But the influence which the Church exercised in favour of the enfranchisement of serfs was even less than her share in the abolition of slavery proper.[8] She represented serfdom as a divine institution,[9] as a school of humility, as a road to future glory.[10] She was herself the greatest

[1] Dunham, *op. cit.* i. 229.

[2] Guibertus de Novigento, 'De vita sua,' in Bouquet, *Rerum Gallicarum et Francicarum scriptores*, xii. 257. 'Fragmentum historicum vitam Ludovici VII. summatim complectens,' *ibid.* xii. 286. Beaumanoir, *op. cit.* xlv. 36, vol. ii. 237. Eden, *op. cit.* i. 30. Laurent, *op. cit.* vii. 531 *sq.* Saco, *op. cit.* iii. 252.

[3] Laurent, *op. cit.* vii. 532.

[4] Glanville, *Tractatus de Legibus et Consuetudinibus Regni Angliæ*, v. 5. Bracton, *De Legibus et Consuetudinibus Angliæ*, fol. 198 b, vol. iii. 292 *sq.* Beaumanoir, *op. cit.* xlv. 36, vol. ii. 237. Pollock and Maitland, *op. cit.* i. 429, 648 *sq.* Grimm, *Deutsche Rechtsalterthümer*, p. 337 *sq.* Laurent, *op. cit.* vii. 532.

[5] Laurent, *op. cit.* vii. 532.

[6] *Ibid.* vii. 533 *sq.*

[7] Thomas Smith, *Common-wealth of England*, p. 250. Eden, *op. cit.* i. 10. Sugenheim, *Geschichte der Aufhebung der Leibeigenschaft und Hörigkeit in Europa*, p. 109.

[8] *Cf.* Rivière, *op. cit.* p. 511. Babington says (*op. cit.* p. 148 *sq.*) that in the five-hundred pages of Wilkins' *Concilia*, which comprise the ecclesiastical documents of the British churches in the thirteenth century, we only find the following regulations concerning the unfree population:—that neither freemen nor villeins are to be impeded in making their wills when death approaches; that monks are not to alienate their less useful slaves (*famulos*); that Jews are not allowed to possess Christian slaves.—It was said that "he puts a disgrace on God who raises a villein above his station" (*ibid.* p. 150).

[9] Adalbero, *Carmen ad Rotbertum regem Francorum*, 291, 292, 297 *sqq.* (Bouquet, *op. cit.* x. 70):—"Thesaurus, vestis, cunctis sunt pascua servi. Nam valet ingenuus sine servis vivere nullus. . . . Triplex ergo Dei domus est, quæ creditur una. Nunc orant alii; pugnant; aliique laborant: Quæ tria sunt simul, et scissuram non patiuntur." St. Bonaventura, quoted by Laurent, *op. cit.* vii. 522:—"Non solum secundum humanam institutionem, sed etiam secundum divinam dispensationem, inter Christianos sunt domini et servi."

[10] Laurent, *op. cit.* vii. 523.

serf-holder;[1] and so strenuously did she persist in retaining her villeins, that after Voltaire had raised his powerful outcry in favour of liberty and Louis XVI. himself had been induced to abolish "the right of servitude" in consideration of "the love of humanity," the Church still refused to emancipate her serfs.[2] But whilst the cause of freedom owes little to the Christian Church, it owes so much the more to the feelings of humanity and justice in some of her opponents.

Not long after serfdom had begun to disappear in the most advanced communities of Christendom a new kind of slavery was established in the colonies of European states. It grew up under circumstances particularly favourable to the employment of slaves. Whether slave labour or free labour is more profitable to the employer depends on the wages of the free labourer, and these again depend on the numbers of the labouring population compared with the capital and the land. In the rich and underpeopled soil of the West Indies and in the Southern States of America the balance of the profits between free and slave labour was on the side of slavery. Hence slavery was introduced there, and flourished, and could be abolished only with the greatest difficulty.[3]

From a moral point of view negro slavery is interesting chiefly because it existed in the midst of a highly developed Christian civilisation, and nevertheless, at least in the British colonies and the United States, was the most brutal form of slavery ever known. It may be worth while to consider more closely some points of the legislation relating to it.

In America, as elsewhere, the state of slavery was hereditary. The child of a female slave was itself a slave and belonged to the owner of its mother even if its father was a freeman, whereas the child of a free woman was

[1] Laurent, *op. cit.* vii. 524.

[2] Hettner, *Geschichte der französischen Literatur im achtzehnten Jahrhundert*, p. 169. Babington, *op. cit.* p. 108. Sugenheim, *op. cit.* p. 156 *sqq.* Laurent, *op. cit.* vii. 537 *sq.*

[3] Mill, *Principles of Political Economy*, i. 311.

free even if its father was a slave.[1] When the slave-trade was prohibited, heredity remained the only legitimate source of slavery; but even then a freeborn negro was far from safe. In the British colonies and in all the Slave States except one, every negro was presumed to be a slave until he could prove the reverse.[2] A man who, within the limits of a slave-holding State, could exhibit a person of African extraction in his custody was exempted from all necessity of making proof how he had obtained him or by what authority he claimed him as a slave. Nay more, through the direct action of Congress it became law that persons known to be free should be sold as slaves in order to cover the costs of imprisonment which they had suffered on account of the false suspicion that they were runaway slaves. This law was repeatedly put into effect. "How many crowned despots," says Professor von Holst, "can be mentioned in the history of the old world who have done things which compare in accursedness with this law to which the democratic republic gave birth?"[3]

Slaves were defined as "chattels personal in the hands of their respective owners or possessors, and their executors, administrators, and assigns, to all intents and purposes whatsoever."[4] In the British colonies and the American Slave States they were at all times liable to be sold or otherwise alienated at the will of their masters, as absolutely as cattle, or any other personal effects. They were

[1] Stroud, *Laws relating to Slavery in the United States of America*, p. 16 *sqq.* Cobb, *Inquiry into the Law of Negro Slavery in the United States of America*, p. 68. Stephen, *Slavery of the British West India Colonies*, i. 122. *Code Noir*, Édit du mois de Mars 1685, art. 13, p. 35 *sq.*; Édit donné au mois de Mars 1724, art. 10, p. 288 *sq.* In Maryland, according to an early enactment, which obtained till the year 1699 or 1700, all the children born of a slave were slaves "as their fathers were" (Stroud, *op. cit.* p. 14 *sqq.*). In Cuba the nobler parent determined the rank of the offspring (Newman, *Anglo-Saxon Abolition of Negro Slavery*, p. 17).

[2] Stephen, *op. cit.* i. 369 *sq.* Stroud, *op. cit.* pp. 125, 126, 130. Cobb, *op. cit.* p. 67. Wheeler, *Treatise on the Law of Slavery*, p. 5.

[3] von Holst, *Constitutional and Political History of the United States*, i. 305.

[4] Brevard, *Digest of the Public Statute Law of South-Carolina*, p. 229. Prince, *Digest of the Laws of Georgia*, p. 777. In the French *Code Noir* (Édit du mois de Mars 1685, art. 44, p. 49; Édit donné au mois de Mars 1724, art. 40, p. 305) slaves are declared to be "meubles."

also liable to be sold by process of law for satisfaction of the debts of a living, or the debts or bequests of a deceased master, at the suit of creditors or legatees. They were transmitted by inheritance or by will to heirs at law or to legatees, and in the distribution of estates they were distributed like other property.[1] No regard was paid to family ties. Except in Louisiana, where children under ten years of age could not be sold separately from their mothers,[2] no law existed to prevent the violent separation of parents from their children or from each other.[3] And what the law did not prevent, the slave-owners did not omit doing; thus Virginia was known as a breeding place out of which the members of one household were sold into every part of the country.[4] All this, however, holds true of the British colonies and Slave States only. In the Spanish, Portuguese, and French colonies plantation slaves were real estate, attached to the soil they cultivated. They partook therewith of all the restraints upon voluntary alienation to which the possessor of the land was there liable, and they could not be seized or sold by creditors, for satisfaction of the debts of the owner.[5] As regards the sale of members of the same family the Code Noir expressly says, "Ne pourront être saisis et vendus séparément, le mari et la femme, et leurs enfans impubéres, s'ils sont tous sous la puissance du même Maître."[6] A slave could make no contract; he could not even contract marriage, in the juridical sense of the word. The association which took place among slaves and was called marriage was virtually the same as the Roman *contubernium*, a relation which had no sanctity and to which no civil rights were attached.[7] The master could when-

[1] Stephen, *op. cit.* i. 62. Stroud, *op. cit.* p. 84. Goodell, *American Slave Code in Theory and Practice*, p. 63 *sqq.*

[2] Peirce, Taylor, and King, *Consolidation and Revision of the Statutes of the State* [*Louisiana*], pp. 523, 550 *sq.*

[3] Stephen, *op. cit.* i. 62 *sq.* Stroud, *op. cit.* p. 82.

[4] Pearson, *National Life and Character*, p. 210.

[5] Stephen, *op. cit.* i. 69.

[6] *Code Noir*, Édit du mois de Mars 1685, art. 47, p. 51; Édit donné au mois de Mars 1724, art. 43, p. 306.

[7] Cobb, *op. cit.* p. 240 *sqq.* Stroud, *op. cit.* p. 99. Goodell, *American Slave Code*, p. 105 *sqq.* Wheeler, *op.*

ever he liked separate the "husband" and "wife"; he could, if he pleased, commit "adultery" with the "wife," and was the absolute owner of all the children born by her. A slave had "no more legal authority over his child than a cow has over her calf." On the other hand, the common rules of sexual morality were not enforced on the slaves. They were not admonished for incontinence, nor punished for adultery, nor prosecuted for bigamy. Incontinence was rather thought a matter of course in the slave. We are told that even in Puritan New England female slaves in ministers' and magistrates' families bore children, black or yellow, without marriage, that no one inquired who their fathers were, and that nothing more was thought of it than of the breeding of sheep or swine. And concerning the "slave-quarters" connected with the plantations the universal testimony was that the sexes were there "herded together promiscuously, like beasts."[1]

Yet though slaves were regarded as chattels, the master could not do with his slave exactly what he pleased. We have noticed that the life of the slave was in some degree, though very insufficiently, protected by law,[2] and that a master who mutilated his slave was subject to a slight penalty.[3] The law also took care to prohibit the master from doing things which were considered injurious to the community or the State. There was a great fear of teaching negroes to read and write. William Knox, in a tract addressed to "the venerable Society for propagation

cit. p. 199. According to the Civil Code of Louisiana, "slaves cannot marry without the consent of their masters, and their marriages do not produce any of the civil effects which result from such contract" (Morgan, *Civil Code of Louisiana*, art. 182, p. 29).

[1] Goodell, *American Slave Code*, p. 111. In 1835 the query was presented to a Baptist Association of ministers, "whether, in case of involuntary separation of such a character as to preclude all future intercourse, the parties may be allowed to marry again?" The answer was, "that such separation among persons situated as our slaves are, is civilly a separation by death, and they believe that, in the sight of God, it would be so viewed. To forbid second marriages in such cases would be to expose the parties not only to greater hardships and stronger temptations, but to church censure for acting *in obedience to their masters*." Incidentally here the fact leaks out that slave cohabitation is enforced by the authority of the masters for the increase of their human chattels (Goodell, *Slavery and Anti-Slavery*, p. 185).

[2] *Supra*, p. 428 *sq.*

[3] *Supra*, p. 517.

of the Gospel in foreign parts" in the year 1768, remarks that "instruction renders them less fit or less willing to labour," and that, if they were universally taught to read, there would undoubtedly be a general insurrection of the negroes leading to the massacre of their owners.[1] A similar fear underlies the laws on the subject which we meet with in the codes of some of the Slave States. According to the Negro Act of 1740 for South Carolina, any person who instructed a slave in writing was subject to a fine of one hundred pounds;[2] but this enactment was later on considered too liberal. A law of 1834 placed under the ban all efforts to teach the coloured race either reading or writing, and the punishment was no longer a pecuniary fine only, but, besides, imprisonment for six months or a shorter time or, if the offender was a free person of colour, whipping not exceeding fifty lashes.[3] In Georgia a law of 1770, which prohibited the instruction of slaves in reading and writing, was in 1833 followed by an act which extended the prohibition to free persons of colour.[4] In Louisiana the teaching of slaves was punished with imprisonment for not less than one month nor more than twelve months.[5] North Carolina allowed slaves to be made acquainted with arithmetical calculations, but sternly interdicted instruction in reading and writing;[6] whilst Alabama warred with the rudiments of reading, forbidding any coloured persons, bond or free, to be taught not only reading and writing, but spelling.[7] In all these States the prohibitions referred to the master of the slave as well as to other persons. In Virginia, on the other hand, the master might teach his slave whatever he liked, but others might not.[8]

[1] Knox, *Three Tracts respecting the Conversion and Instruction of the Free Indians and Negroe Slaves in the Colonies*, p. 15 *sq.*

[2] Brevard, *op. cit.* ii. 243.

[3] McCord, *Statutes at large of South Carolina*, vii. 468.

[4] Prince, *op. cit.* pp. 785, 658.

[5] Peirce, Taylor, and King, *op. cit.* p. 552.

[6] *Revised Statutes of North Carolina passed by the General Assembly at the Session of* 1836–7, xxxiv. 74, cxi. 27, vol. i. 209, 578.

[7] Clay, *Digest of the Laws of Alabama*, p. 543.

[8] *Code of Virginia*, cxcviii. 31 *sq.*, vol. ii. 747 *sq.* Stroud, *op. cit.* p. 142.

There is yet another point in which the master's power was restricted in a most unusual way: in many cases he was not allowed to liberate his slave, or formidable obstacles were put in the way of manumission. Thus, in North Carolina a slave could formerly not be enfranchised except for meritorious services;[1] but this enactment was altered by the Revised Statutes of 1836–1837, according to which any emancipation granted to any slave "shall be upon the express condition, that he, she or they will leave the State, within ninety days from the granting thereof, and never will return within the State afterwards."[2] The Civil Code of Louisiana required that a slave, to be emancipated, should have attained the age of thirty years and behaved well at least for four years preceding the emancipation, unless, indeed, the slave had saved the life of his master or of one of his children, in which case he might be set free at any age;[3] and, according to a statute of 1852, the emancipated slave should be sent out of the United States within twelve months after his emancipation.[4] In several other States manumission was likewise hampered by various regulations;[5] and throughout the British West Indies there were restraints on manumission prior to the Emancipation Act.[6] By an act passed in Saint Christopher in the year 1802, a tax of £1,000 was imposed on the manumission of any slave who was not a native of, or had not resided for two years within, the island, whilst natives or residents might be enfranchised at half that price. But the authors of this act went further still. They considered that a master, though unwilling to pay £500 or £1,000 for the legal enfranchisement of a slave, might, during his own life, make him or her practically free by not exercising his own rights as master. Hence

[1] Stroud, *op. cit.* p. 233.
[2] *Revised Statutes of North Carolina*, cxi. 58, vol. i. 585.
[3] Morgan, *Civil Code of Louisiana*, art. 185 *sq.*, p. 30 *sqq.*
[4] *Ibid.* Stat. 18th March, 1852, §1, p. 29.
[5] Brevard, *op. cit.* ii. 255 *sq.* (South Carolina). Prince, *op. cit.* p. 78 (Georgia). Stroud, *op. cit.* p. 231 (Alabama). Alden and van Hoesen *Digest of the Laws of Mississippi* p. 761. Haywood and Cobbs *Statute Laws of the State of Tennessee* i. 327 *sq.*
[6] Cobb, *op. cit.* p. 282.

they enacted "that if any proprietor of a slave should, by any contract in writing or otherwise, dispense with the slave's service, or should be proved before a justice of peace not to have exercised any right of ownership over such slave, and maintained him or her at his own expense, within a month, the slave should be publicly sold at vendue by the provost marshall; and should become the property of the purchaser, and the purchase-money should be paid into the colonial treasury."[1] In St. Vincents one hundred pounds sterling was required to be paid into the treasury for each slave sought to be manumitted,[2] whilst in Barbados a person minded to manumit a slave should pay £50 to the churchwarden of the parish in which he resided.[3] Very different were the Spanish laws on the subject of manumission. According to a law of 1528 a negro slave who had served a certain length of time was entitled to his liberty upon the payment of a certain sum, not less than twenty marks of gold, the exact amount to be settled by the royal authorities.[4] In 1540 a law was issued to the effect that "if any negro, or negress, or any other persons reputed slaves, should publicly demand their liberty, they should be heard, and justice be done to them, and care be taken that they should not on that account be maltreated by their masters."[5] Nay, a slave who wished to change his master and could prevail on any other person to buy him by appraisement, could demand and compel such a transfer,[6] and a master who treated his slaves inhumanly could be by the judge deprived of them.[7] In most of the British colonies and American Slave States, on the other hand, the slave had no legal right to obtain a change of master when cruel treatment made it necessary for his relief or preservation.[8]

[1] Stephen, *op. cit.* i. 401 *sq.*
[2] Cobb, *op. cit.* p. 282 *sq.*
[3] Moore, *Public Acts passed by the Legislature of Barbados*, p. 224 *sq.*
[4] Helps, *Spanish Conquest in America*, iv. 373.
[5] *Recopilacion de leyes de los reinos de las Indias*, vii. 5. 8, vol. ii. 321.
[6] Barre Saint Venant, quoted by Stephen, *op. cit.* i. 119 *sq.*
[7] Edwards, *History of the British West Indies*, iv. 451.
[8] Stephen, *op. cit.* i. 106. Stroud, *op. cit.* p. 93.

The exceptions to this rule [1] were few and of little practical value.

This system of slavery, which at least in the British colonies and the Slave States surpassed in cruelty the slavery of any pagan country ancient or modern, was not only recognised by Christian governments, but was supported by the large bulk of the clergy, Catholic [2] and Protestant alike. In the beginning of the abolitionist movement the Churches acknowledged slavery to be a great evil, but with the making of this acknowledgment they believed that they had done their share, and denied that there was any obligation on them, or even that they had any right, to proceed against the slave-holders. But things did not stop here. The lamentations of resignation were gradually changed into excuses, and the excuses into justifications.[3] The Bible, it was said, contains no prohibition of slavery; on the contrary, slavery is recognised both in the Old and New Testaments. Abraham, the father of the faithful and the friend of God, had slaves; the Hebrews were directed to make slaves of the surrounding nations; St. Paul and St. Peter approved of the

[1] Morgan, *Civil Code of Louisiana*, art. 192, p. 33. Morehead and Brown, *Digest of the Statute Laws of Kentucky*, ii. 1481. Edwards, *op. cit.* ii. 192 (Jamaica). Stephen, *op. cit.* i. 106 (some other British colonies). In the French islands a negro who had been cruelly treated, contrary to royal ordinances, was forfeited to the crown, and acquired, if not freedom, at least deliverance from a tyrannical master (*Code Noir*, Édit du mois de Mars 1685, art. 42, p. 48 *sq.*; Édit donné au mois de Mars 1724, art. 38, p. 303 *sq.*); but the Court which adjudged the offence might also decree the sufferer to be manumitted (Stephen, *op. cit.* i. 119).

[2] The attempts to represent the Roman Catholic clergy as ardent abolitionists (Cochin, *L'abolition de l'esclavage*, ii. 443; de Locqueneuille, *L'esclavage, ses promoteurs et ses adversaires*, p. 193) are certainly not justified by facts. Among the Catholics of the United States there were some advocates of emancipation, but their number was not large (Goodell, *Slavery and Anti-Slavery*, 195 *sq.*; Parker, *Collected Works*, vi. 127 *sq.*). Dr. England, the Catholic bishop of Charleston, South Carolina, undertook in public to prove that the Catholic Church had always been the uncompromising friend of slave-holding (Parker, *op. cit.* v. 57). In Brazil it was common for clergymen not only to possess slaves, but to buy and sell them with as little scruple as other merchandises (da Fonseca, *A esravidão, o clero e o abolicionismo*, pp. 28, 33). Bishop Bouvier wrote (*op. cit.* p. 568): —"Servi autem dominis suis obedire, sortem suam patienter tolerare et officia sibi imposita fideliter exsequi debent, quoadusque libertas ipsis concedatur. Meminerint præsentem vitam esse momentaneam, futuram vero æternam."

[3] von Holst, *op. cit* ii. 231 *sqq.*

relation of master and slave when they gave admonitions to both as to their reciprocal behaviour; the Saviour Himself said nothing in condemnation of slavery, although it existed in great aggravation while He was upon earth. If slavery were sinful, would it have been too much to expect that the Almighty had directed at least one little word against it in the last revelation of His will?[1] Nay, God not only permitted slavery, but absolutely provided for its perpetuity;[2] it is the very legislation of Heaven itself;[3] it is an institution which it is a religious duty to maintain,[4] and which cannot be abolished, because "God is pledged to sustain it."[5] According to some, slavery was founded on the judgment of God on a damned race, the descendants of Ham; according to others, it was only in this way that the African could be raised to a participation in the blessings of Christianity and civilisation.[6] With the name of "abolitionist" was thus associated the idea of infidelity, and the emancipation movement was branded as an attempt to spread the evils of scepticism through the land.[7] According to Governor Macduffie, of South Carolina, no human institution is more manifestly consistent with the will of God than slavery, and every community ought to punish the interference of abolitionists with death, without the benefit of clergy, "regarding the authors of it as enemies of the human race."[8] It is true that religious arguments were also adduced in favour of abolition. To hold men in bondage was said to be utterly inconsistent with the inalienable rights which the Creator had granted mankind, and still more obviously

[1] Barnes, *The Church and Slavery*, p. 15. Birney, *Letter to the Churches*, p. 3 *sq.* Bledsoe, *Essay on Liberty and Slavery*, p. 138 *sqq.* Gerrit Smith, *Letter to Rev. James Smylie*, p. 3. Cobb, *op. cit.* p. 54 *sqq.* Goodell, *Slavery and Anti-Slavery*, pp. 154–156, 167, 176, 181, 184, 186, &c. Parker, *Collected Works*, v. 157.

[2] Thornton, quoted by Goodell, *Slavery and Anti-Slavery*, p. 147. Fisk, quoted *ibid.* p. 147.

[3] Bledsoe, *op. cit.* p. 138.

[4] Smylie, quoted by Gerrit Smith, *op. cit.* p. 3.

[5] Quoted by Goodell, *Slavery and Anti-Slavery*, p. 347.

[6] Barnes, *op. cit.* p. 16.

[7] *Ibid.* p. 18. Newman, *Anglo-Saxon Abolition of Negro Slavery*, p. 56. Bledsoe, *op. cit.* p. 223.

[8] Newman, *op. cit.* p. 53. von Holst, *op. cit.* ii. 118, n. 1.

at variance with the dictates of Christian love.[1] Many clergymen also joined the abolitionists. But it seems that in the middle of the nineteenth century the Quakers and the United Brethren were the only religious bodies that regarded slave-holding and slave-dealing as ecclesiastical offences.[2] The American Churches were justly said to be "the bulwarks of American slavery."[3]

Nobody would suppose that this attitude towards slavery was due to religious zeal. It was one of those cases, only too frequent in the history of morals, in which religion is called in to lend its sanction to a social institution agreeable to the leaders of religious opinion. Many clergymen and missionaries were themselves slave-holders,[4] the chapel funds largely rested on slave property,[5] and the ministers naturally desired to be on friendly terms with the more important members of their respective congregations, who were commonly owners of slaves. Adam Smith observes that the resolution of the Quakers in Pennsylvania to set at liberty all their slaves, was due to the fact that the principal produce there was corn, the raising of which cannot afford the expense of slave cultivation; had the slaves "made any considerable part of their property, such a resolution could never have been agreed to."[6]

To explain the establishment of colonial slavery, the difficulties in the way of its abolition, and the laws relating to it, it is necessary to consider not only economic conditions and the motive of self-interest, but, as a factor of equal importance, the want of sympathy for, or positive antipathy to, the coloured race. The negro was looked upon almost as an animal, according to some he was a being without a soul.[7] Even when free he was a pariah, subject to special laws and regulations. In the Code of

[1] Gurney, *Views and Practices of the Society of Friends*, p. 390. 'Anti-Slavery Declaration of 1833,' quoted by Goodell, *Slavery and Anti-Slavery*, p. 398. Birney, *Second Letter*, p. 1.

[2] Parker, *op. cit.* v. 56.

[3] von Holst, *op. cit.* ii. 230

[4] Barnes, *op. cit.* p. 13. Goodell, *Slavery and Anti-Slavery*, pp. 151, 186 *sqq.*

[5] Newman, *op. cit.* p. 53.

[6] Adam Smith, *Wealth of Nations*, p. 172.

[7] von Holst, *op. cit.* i. 279. Malloch, 'How the Church dealt with Slavery,' in *The Month*, xxvii. 454.

Louisiana it is said:—"Free people of colour ought never to insult or strike white people, nor presume to conceive themselves equal to the whites; but, on the contrary, they ought to yield to them on every occasion, and never speak or answer them but with respect, under the penalty of imprisonment, according to the nature of the offence."[1] The Code Noir prohibited white men and women from marrying negroes, "à peine de punition et d'amende arbitraire";[2] and in the Revised Statutes of North Carolina we read:—"If any white man or woman, being free, shall intermarry with an Indian, negro, mustee or mulatto man or woman, or any person of mixed blood to the third generation, bond or free, he shall, by judgment of the county court, forfeit and pay the sum of one hundred dollars to the use of the county."[3] In Mississippi a free negro or mulatto was legally punished with thirty-nine lashes if he exercised the functions of a minister of the Gospel.[4] Coloured men in the North were excluded from colleges and high schools, from theological seminaries and from respectable churches, as also from the town hall, the ballot, and the cemetery where white people were interred.[5] The Anglo-Saxon aversion to the black race is thus expressed by an English writer:—"We hate slavery, but we hate the negroes still more."[6] Among the Spaniards and Portuguese racial antipathies were not so strong, and their slaves were consequently better treated.[7]

Thus we notice in the opinions regarding slavery throughout the same distinction as in the judgments on other matters of moral concern. A person is, as a rule, allowed to enslave or to keep as slaves only persons belonging to a different community or a different race from his own, or their descendants. To deprive anybody of his liberty is to inflict an injury on him, and is regarded as

[1] Quoted by Stroud, *op. cit.* p. 157.
[2] *Code Noir*, Edit donné au mois de Mars 1724, art. 6, p. 286.
[3] *Revised Statutes of North Carolina*, lxxi. 5, vol. i. 386 *sq.*
[4] Alden and van Hoesen, *op. cit.* p. 771.
[5] Parker, *op. cit.* v. 58. Goodell *Slavery and Anti-Slavery*, p. 200.
[6] Seward, quoted by Newman, *Abolition of Negro Slavery*, p. 54.
[7] Couty, *L'esclavage au Brésil*, p. 8 *sqq.*

wrong whenever the act gives rise to sympathetic resentment, whereas nothing is thought of it where no sympathy is felt for its victim. Thus, whilst slavery grows up only under economic conditions favourable to slave labour, it is always limited by feelings of an altruistic character, and where these feelings are sufficiently broad and powerful it is not tolerated at all. The same factor also influences the condition of the slaves where slavery exists. We have seen that native slaves are better treated than foreign ones and slaves born in the household better than those who have been captured or purchased. The advancement of a nation, again, is frequently attended with greater severity in the treatment of the slaves, because, whilst the simplicity of early ages admits of little distinction between the master and his servants in their employments and manner of living, the introduction of wealth and luxury gradually destroys the equality. Besides, the number of slaves maintained in a wealthy nation makes them formidable both to their owners and to the State, hence it is necessary that they should be strictly watched and kept in the utmost subjection.[1]

The condition of slaves is in various respects influenced by the selfish considerations of their masters. Stuart Mill observes:—"When, as among the ancients, the slave-market could only be supplied by captives either taken in war, or kidnapped from thinly scattered tribes on the remote confines of the human world, it was generally more profitable to keep up the number by breeding, which necessitates a far better treatment of them, and for this reason, joined with several others, the condition of slaves . . . was probably much less bad in the ancient world, than in the colonies of modern nations."[2] Among the Bedouins, says Burckhardt, "the slaves are treated with kindness, and seldom beaten, as severity might induce them to run away."[3] Superstition may also help to

[1] Millar, *op. cit.* p. 256 *sqq.*

[2] Mill, *Principles of Political Economy*, i. 307. *Cf. supra*, p. 701.

[3] Burckhardt, *Bedouins and Wahábys*, p. 103.

improve the lot of the slave. In West Africa "the authority which a master exercises over a slave is very much modified by his constitutional dread of witchcraft. If he treats his slave unkindly, or inflicts unmerited punishment upon him, he exposes himself to all the machinations of witchcraft which that slave may be able to command."[1] It is said in the Proverbs, "Accuse not a servant unto his master, lest he curse thee, and thou be found guilty."[2] The same danger threatens the cruel master. We read in the Apostolic Constitutions, "Thy man-servant or thy maid-servant who trust in the same God, thou shalt not command with bitterness of spirit; lest they groan against thee, and wrath be upon thee from God."[3]

[1] Wilson, *Western Africa*, p. 271. See also *ibid.* p. 179; Cruickshank, *Eighteen Years on the Gold Coast*, ii. 180 *sqq.*; Du Chaillu, *Explorations and Adventures in Equatorial Africa*, p. 331; Landtman, *Origin of Priesthood*, p. 198, n. 2.

[2] *Proverbs*, xxx. 10.

[3] *Constitutiones Apostolicæ*, vii. 13.

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