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Crime and Custom
in Savage Society

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I

THE AUTOMATIC SUBMISSION TO CUSTOM
AND THE REAL PROBLEM

W H E N we come to inquire why rules of conduct, however hard, irksome, or unwelcome, are obeyed; what makes private life, economic co-operation, public events run so smoothly; of what, in short, consist the forces of law and order in **savagery**—the answer is not easy to give, and what anthropology has had to say about it is far from satisfactory. So long as it could be maintained that the 'savage' is really savage, that he follows what little law he has but fitfully and loosely, the problem did not exist. When the question became actual, when it became plain that hypertrophy of rules rather than lawlessness is characteristic of primitive life, scientific opinion veered round to the opposite point: the savage was made not only into a model of the law-abiding citizen, but it became an axiom that in submitting to all his tribal rules and fetters, he follows the natural trend of his spontaneous impulses; that in this way he glides, so to speak, along the line of least resistance.

The savage—so runs to-day's verdict of competent

anthropologists—has a deep reverence for tradition and custom, an automatic submission to their biddings. He obeys them 'slavishly', 'unwittingly', 'spontaneously', through 'mental inertia', combined with the fear of public opinion or of supernatural punishment; or again through a 'pervading group-sentiment if not group-instinct'. Thus we find the following in a recent book: "The savage is far from being the free and unfettered creature of Rousseau's imagination. On the contrary, he is hemmed in on every side by the customs of his people, he is bound in the chains of immemorial tradition not merely in his social relations, but in his religion, his medicine, in his industry, his art: in short, every aspect of his life" (E. Sidney Hartland in *Primitive Law*, p. 138). With all this we might agree, except that it seems doubtful whether the "chains of tradition" are identical or even similar in art and in social relations, in industry, and in religion. But when, immediately, we are told that "these fetters are accepted by him (the savage) as a matter of course; he never seeks to break forth"—we must enter a protest. Is it not contrary to human nature to accept any constraint as a matter of course, and does man, whether civilized or savage, ever carry out unpleasant, burdensome, cruel regulations and taboos without being compelled to? **And compelled** by some force or motive which he cannot resist?

Yet this automatic acquiescence, this instinctive submission of every member of the tribe to its laws, is the fundamental axiom laid at the basis of the inquiry into primitive order and adherence to rule. Thus another foremost authority on the subject, the late Dr. Rivers, speaks in the book already mentioned of an "unwitting or intuitive method of regulating social life", which is, according to him, "closely connected with primitive communism." And he proceeds to tell us: "Among such a people as the Melanesians there is a group sentiment which makes unnecessary any definite social machinery for the exertion of authority, in just the same manner as it makes possible the harmonious working of communal ownership, and insures the peaceful character of a communistic system of sexual relations" (*Social Organization*, p. 169).

Thus here again we are assured that 'unwitting' or 'intuitive methods', 'instinctive submission' and some mysterious 'group-sentiment' account for law, order, communism and sexual promiscuity alike! This sounds altogether like a Bolshevik paradise, but is certainly not correct in reference to Melanesian societies, which I know at first hand.

A similar idea is expressed by a third writer, a **sociologist**, who has contributed more towards our understanding of the organization of savages from the point of view of mental and social evolution than perhaps any one living anthropologist. Professor

Hobhouse, speaking of the tribes on a very low level of culture, **affirms** that "such societies, of course, have their customs, which are doubtless felt as binding by their members, but if we mean by law a body of rules enforced by an authority independent of personal ties of kinship and **friendship**, such an institution is not compatible with **their** social organization" (*Morals in Evolution*, 1915, p. 73). Here we have to question the phrase "felt as binding" and ask whether it does not cover and hide the real problem instead of solving it. Is there not, with regard to some rules at least, a binding mechanism, not perhaps enforced by any central authority, but backed up by real motives, interests and complex sentiments? Can severe prohibitions, onerous duties, very burdensome and galling liabilities, be made binding by a mere 'feeling'? We should like to know more about this invaluable mental attitude, but the author simply takes it for granted. Again, the minimum definition of law as the "body of rules enforced by an authority independent of personal ties", seems to me to be too narrow and not to lay the emphasis on the relevant elements. There are among the many norms of conduct in savage societies certain rules regarded as compulsory obligations of one individual or **group** towards another individual or group. The fulfilment of such obligations is usually rewarded according to the measure of its perfection, while non-compliance is

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visited **upon** the remiss agent. Taking our stand upon such a comprehensive view of law and inquiring into the nature of the forces which make it obligatory, we shall be able to arrive at much more satisfactory results **than** if we were to discuss questions of authority, government and punishment.

To take another representative opinion, that of one of the highest anthropological authorities in the United States, we find Dr. Lowie expressing a very similar view: "Generally speaking, the unwritten laws of customary usage are obeyed far more willingly than our written codes, or rather they are obeyed spontaneously."¹ To compare the 'willingness' in obedience to law of an Australian savage with a New Yorker, or of a Melanesian with a **nonconformist** citizen of **Glasgow**, is a perilous proceeding and its results have to be taken very 'generally' indeed, until they lose all meaning. The fact is that no society can work in an efficient manner unless laws are obeyed '**willingly**' and 'spontaneously'. The threat of coercion and the fear of punishment do not **touch** the average man, whether 'savage' or 'civilized', while, on the other hand, they are indispensable with regard to certain turbulent or criminal elements in either society. Again, there is a number of laws, taboos and obligations in every human culture **which** weigh heavily on every citizen, demand great self-sacrifice, and are

¹ *Primitive Society*, Chap. on "Justice", p. 387, English edition.

obeyed for moral, sentimental or matter-of-fact reasons, but without any 'spontaneity'.

It would be easy to multiply statements and to **show** that the **dogma** of the automatic submission to custom dominates the whole inquiry into primitive law. In all fairness, however, it must be stressed that any shortcomings in theory or observation are due to the real **difficulties** and pitfalls of which this subject is so full.

The extreme difficulty of the problem lies, I think, in the very complex and diffuse nature of the forces which constitute primitive law. Accustomed as we are to look for a definite machinery of enactment, administration, and enforcement of law, we cast round for something analogous in a savage community and, failing to find there any similar arrangements, we conclude that all law is obeyed by this mysterious propensity of the savage to obey it.

Anthropology seems here to be faced by a similar difficulty as the one overcome by Tylor in his "minimum definition of religion". By defining the forces of law in terms of central authority, codes, courts, and constables, we must come to the conclusion that law needs no enforcement in a primitive community and is followed spontaneously. That the savage does break the law sometimes, though rarely and occasionally, has been recorded by observers and taken into account **by** builders of anthropological theory, who

have always maintained that criminal law is the only law of savages. But that his observance of the rules of law under the normal conditions, **when** it is followed and not defied, is at best partial, conditional, and subject to evasions; that it is not enforced by any wholesale motive **like** fear of punishment, or a general submission to all tradition, but by very complex psychological and social **inducements**—all this is a state of affairs which modern anthropology has so far completely overlooked. In the following account I shall try to establish it for one ethnographic province, north-west Melanesia, and I shall show reasons why observations of similar nature to those carried out by myself should be extended to **other** societies in order to give us some idea about their legal conditions.

We shall approach our facts with a very elastic and wide conception of the problem before us. In looking for 'law' and legal forces, we shall try merely to discover and **analyse** all the rules conceived and acted upon as binding obligations, to find out the nature of the binding forces, and to classify the rules according to the manner in which they are made valid. We shall see that by an inductive examination of facts, carried out without any preconceived idea or ready-made definition, we shall be enabled to arrive at a satisfactory classification of the norms and rules of a primitive community, at a clear distinction of primitive law from other forms of custom, and at a new, dynamic

conception of the social organization of savages. Since the facts of primitive law described in this article have been recorded in Melanesia, the classical area of 'communism' and 'promiscuity', of 'group-sentiment', 'clan-solidarity', and 'spontaneous obedience', the conclusions we shall be able to draw—which will dispose of these catch-words and all they stand for—may be of special interest.

II

MELANESIAN ECONOMICS AND THE THEORY
OF PRIMITIVE COMMUNISM

THE Trobriand Archipelago, which is inhabited by the Melanesian community referred to, lies to the north-east of New Guinea and consists of a group of flat coral islands, surrounding a wide lagoon. The plains of the land are covered with fertile soil and the lagoon teems with fish, while both afford easy means of inter-communication to the inhabitants. Accordingly, the islands support a dense population mainly engaged in agriculture and fishing, but expert also in various arts and crafts and keen on trade and exchange.

Like all coral islanders, they spend a great deal of their time on the central lagoon. On a calm day it is alive with canoes carrying people or produce, or engaged in one of their manifold systems of fishing. A superficial acquaintance with these pursuits might leave one with an impression of arbitrary disorder, anarchy, complete lack of system. Patient and painstaking observations would soon reveal, however, not only that the natives have definite technical systems of catching fish and complex economic arrangements, but also that

they have a close organization in their working teams, and a fixed division of social functions.

Thus, within each canoe it would be found that there is one man who is its rightful owner, while the rest act as a crew. All these men, who as a rule belong to the same sub-clan, are bound to each other and to their fellow-villagers by mutual obligations; when the whole community go out fishing, the owner cannot refuse his canoe. He must go out himself or let some one else do it instead. The crew are equally under an obligation to him. For reasons which will presently become clear, each man must fill his place and stand by his task. Each man also receives his fair share in the distribution of the catch as an equivalent of his service. Thus the ownership and use of the canoe consist of a series of definite obligations and duties uniting a group of people into a working team.

What makes the conditions even more complex is that the owners and the members of the crew are entitled to surrender their privileges to any one of their relatives and friends. This is often done, but always for a consideration, for a repayment. To an observer who does not grasp all the details, and does not follow all the intricacies of each transaction, such a state of affairs looks very much like communism: the canoe appears to be owned jointly by a group and used indiscriminately by the whole community.

Dr. Rivers in fact tells us that "one of the objects of

Melanesian culture which is usually, if not always, the subject of common ownership is the canoe", and further on, in reference to this statement, he speaks about "the great extent to which communistic sentiments concerning property dominate the people of Melanesia" (*Social Organization*, pp. 106 and 107). In another work, the same writer speaks about "the socialistic or even communistic behaviour of such societies as those of Melanesia" (*Psychology and Politics*, pp. 86 and 87). Nothing could be more mistaken than such generalizations. There is a strict distinction and definition in the rights of every one and this makes ownership anything but communistic. We have in Melanesia a compound and complex system of holding property, which in no way partakes of the nature of 'socialism' or 'communism'. A modern joint-stock company might just as well be called a 'communistic enterprise'. As a matter of fact, any descriptions of a savage institution in terms such as 'communism', 'capitalism' or 'joint-stock company', borrowed from present-day economic conditions or political controversy, cannot but be misleading.

The only correct proceeding is to describe the legal state of affairs in terms of concrete fact. Thus, the ownership of a Trobriand fishing canoe is defined by the manner in which the object is made, used and regarded by the group of men who produced it and enjoy its possession. The master of the

canoe, who acts at the same time as the head of the team and as **the** fishing magician of the canoe, has first of all to finance the building of a new craft, when the old one is worn out, and he has to maintain it in good repair, helped in this by the rest of his crew. In this **they** remain under mutual obligations to one another to appear each at his post, while every canoe is bound to come when a communal fishing has been arranged.

In using the craft, every joint owner **has** a right to a certain place in it and to certain duties, privileges, and benefits associated with it. He has his post in the canoe, he has his task to perform, and enjoys the corresponding **title**, either of 'master' or 'steersman', or 'keeper of the nets', or 'watcher for fish'. His position and title are determined by the combined action of rank, age, and personal ability. Each canoe also has its place in the fleet and its part to play in the **manceuvres** of joint fishing. Thus on a close inquiry we discover in this pursuit a definite system of division of functions and a rigid system of mutual obligations, into which a sense of duty and the recognition of the need of co-operation **enter** side by side with a realization of self-interest, privileges and benefits. Ownership, therefore, can be defined neither by such words as 'communism' nor 'individualism', nor by reference to 'joint-stock company' system or 'personal enterprise', but by the concrete facts and conditions of use. It is the sum of duties, privileges and **mutualities**

which bind the joint owners to the object and to each other.

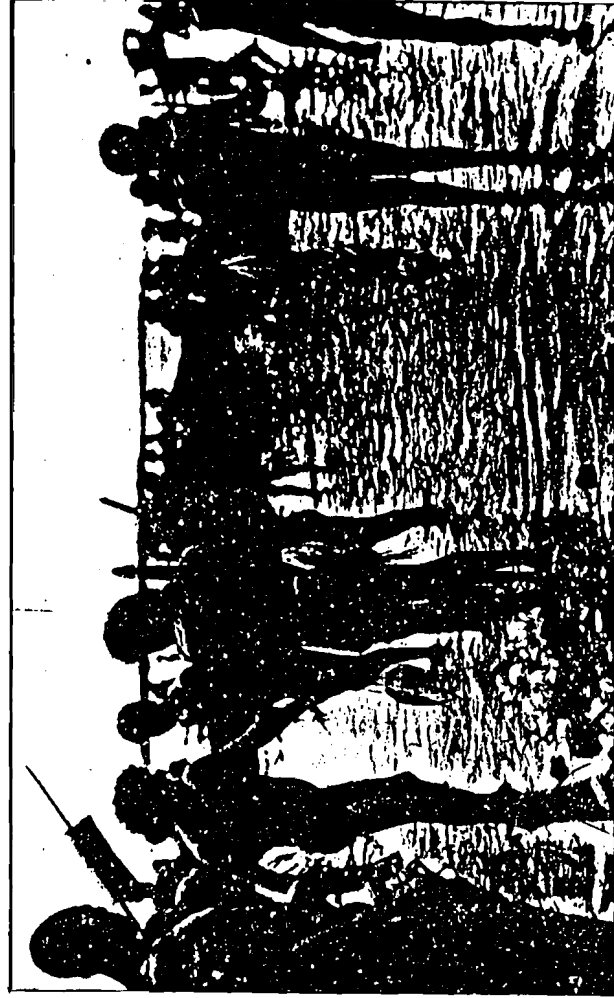
Thus, in connexion with the first object **which** attracted our attention—the native **canoe**—**we** are met by law, order, definite privileges and a well-developed system of obligations.

III

THE BINDING FORCE OF ECONOMIC
OBLIGATIONS

To enter more deeply into the nature of these binding obligations, let us follow the **fishermen** to the shore. Let us see what happens with the division of the catch. In most cases only a small proportion of it remains with the villagers. As a rule we should find a number of people from some **inland** community waiting on the shore. They receive **the** bundles of fish from the fishermen and carry them home, often many miles away, running so as to arrive while it is still fresh. Here again we should find a system of mutual services and obligations based on a standing arrangement between two **village communities**. The inland village supplies the **fishermen** with vegetables: the coastal community repays with fish. This arrangement is primarily an economic one. It has also a ceremonial aspect, for the exchange has to be done according to an elaborate ritual. But there is also **the** legal side, a system of mutual obligations which forces the fisherman to repay whenever he has received a gift from his inland partner, and vice versa. Neither partner can refuse, neither may stint in his return gift, neither **should** delay.

PLATE II.



Bundles of Fish taken over from the Fishermen by the Inland Natives.

What is the motive force behind these obligations ? The coastal and inland villages respectively have to reply upon each other for the supply of food. On the coast the natives never have enough vegetable food, while inland the people are always in need of fish. Moreover, custom will have it that on the coast all the big ceremonial displays and distributions of food, which form an extremely important aspect of the public life of these natives, must be made **with** certain specially large and fine varieties of vegetable food, which grow only on the fertile plains inland. There, on the other hand, the proper substance for a distribution and feast is fish. Thus to all other reasons of value of the respectively rarer food, there is added an artificially, culturally created dependence of the two districts upon one another. So **that** on the whole each community is very much in need of its partners. If at any time previously these have been guilty of neglect, however, they know that they **will** be in one way or another severely penalized. Each community has, therefore, a weapon for the enforcement of its rights : reciprocity.

This is not limited to the exchange of fish for vegetables. As a rule, two communities rely upon **each** other in other forms of trading and other mutual services as well. Thus every chain of reciprocity is made the more binding by being part and parcel of a whole system of mutualities.

IV

RECIPROCITY AND DUAL ORGANIZATION

I HAVE found only one writer who fully appreciates the importance of reciprocity in primitive social organization. The leading German anthropologist, Prof. Thurnwald of Berlin, clearly recognizes "die Symmetrie des Gesellschaftsbaus"¹ and the corresponding "Symmetrie von Handlungen". Throughout his monograph, which is perhaps the best account of the social organization of a savage tribe extant, Prof. Thurnwald shows how the symmetry of social structure and of actions pervades native life. Its importance as a legal binding form is not, however, explicitly stated by the **writer**, who seems to be aware of its psychological foundation 'in human feeling' rather than of its social function in safeguarding the continuity and adequacy of **mutual** services.

The old theories of tribal dichotomy, the discussions about the 'origins' of 'phratries' or 'moieties' and

¹ "Die Symmetrie von Handlungen aber nennen wir das Prinzip der Vergeltung. Dieses liegt tief verwurzelt im menschlichen Empfinden—als adäquate Reaktion—und ihm kam von jeher die grösste Bedeutung im sozialen Leben zu" (*Die Gemeinde der Bdnaro*, Stuttgart, 1921, p. 10).

of the duality in tribal subdivisions, never entered into the inner or differential foundations of the external phenomenon of halving. The recent treatment of the 'dual organization' by the late Dr. Rivers and his school suffers badly from the defect of **looking** for recondite causes instead of analysing the phenomenon itself. The dual principle is neither the result of 'fusion' nor 'splitting' nor of any other sociological cataclysm. It is the integral result of the inner symmetry of all social transactions, of the reciprocity of services, without which no primitive community could exist. A dual organization may appear clearly in the division of a tribe into two 'moieties' or be almost completely obliterated—but I venture to foretell that wherever careful inquiry be made, symmetry of structure will be found in every savage society, as the indispensable basis of reciprocal obligations.

The sociological manner in which the relations of reciprocity are arranged, makes them yet more stringent. Between the two communities the exchanges are not carried out **haphazard**, any two individuals trading with each other at random. On the contrary, every man has his permanent partner in the exchange, and the two have to deal with each other. **They** are often relatives-in-law, or else sworn friends, or partners in the important system of ceremonial exchange called **kula**. Within each community again the individual

partners are ranged into totemic sub-clans. So that the exchange establishes a **system** of sociological ties of an **economic** nature, often combined with **other** ties between individual and individual, kinship group and kinship group, village and village, district and district.

Going over the relations and transactions previously described, it is easy to see that the same principle of mutuality supplies the sanction for each rule. There is in every act a sociological dualism : two parties who exchange services and functions, each **watching** over the measure of fulfilment and the fairness of conduct of the other. **The** master of the canoe, whose interests and ambitions are bound up with his craft, looks after order in the internal transactions between the members of the crew and represents the latter externally. To him each member of the crew is bound at the time of construction and ever after, when co-operation is necessary. Reciprocally, the master has to **give** each man the ceremonial payment at the feast of construction ; the master cannot refuse any one his place in the boat ; and he has to see that each man receives his fair share of the catch. In this and in all the manifold activities of economic order, the social behaviour of the natives is based on a well-assessed give-and-take, always mentally ticked off and in the long run balanced. There is no wholesale discharge of duties or acceptance of privileges ; no ' communistic ' disregard of tally and ear-mark. The free and easy way in which all

transactions are done, the good manners which pervade all and cover any hitches or maladjustments, make it difficult for the **superficial** observer to see the keen self-interest and watchful reckoning which runs right through. To one who knows the natives intimately, nothing is more patent than this. The same control which the master assumes within his canoe, is taken within the community by the headman who is, as a rule, also the hereditary magician.

V

LAW, SELF-INTEREST, AND SOCIAL AMBITION

IT scarcely needs to be added that there are also other driving motives, besides the constraint of reciprocal obligations, which keep the fishermen to their task. The utility of the pursuit, the craving for the fresh, excellent diet, above all, perhaps, the attraction of what to the natives is an intensely fascinating sport—move them more obviously, more consciously even, and more effectively than what we have described as the legal obligation. **But** the social constraint, the regard for the effective rights and claims of others is always prominent in the mind of the natives as well as in their behaviour, once this is well understood. It is also indispensable to ensure the smooth working of their institutions. For in spite of all zest and attractions, there are on each occasion a few individuals, indisposed, moody, obsessed by some other interest—very often by an intrigue—who would like to escape from their obligation, if they could. Anyone who knows how extremely difficult, if not impossible, it is to organize a body of Melanesians for even a short and amusing pursuit requiring concerted action, and how well and

readily they set to work in their customary enterprises, will realize the function and the need of compulsion, due to the native's conviction that another man has a **claim** on his work.

There is yet another force **which** makes the obligations still more binding. I have mentioned already the ceremonial aspect of the transactions. **The** gifts of food in the system of exchange described above must be offered according to strict formalities, in specially made measures of wood, carried and presented in a prescribed manner, in a ceremonial procession and with a blast of conch-shells. Now nothing has a greater sway over the Melanesian's mind than ambition and vanity associated with a display of food and **wealth**. In the giving of gifts, in the distribution of their surplus, they feel a manifestation of power, and an enhancement of personality. **The Trobriander** keeps his food in houses better made and more highly ornamented than his dwelling huts. Generosity is the **highest** virtue to him, and wealth the essential element of influence and rank. The association of a **semi-commercial** transaction with definite public ceremonies supplies another binding force of fulfilment through a special **psychological** mechanism: the desire for display, the ambition to appear munificent, the extreme esteem for wealth and for the accumulation of food.

We have thus gained some insight into the nature of the mental and social forces which make certain rules

of conduct into binding law. Nor is the binding force superfluous. Whenever the native can evade his obligations without the loss of prestige, or without the prospective loss of gain, he does so, exactly as a civilized business man would do. When the 'automatic smoothness*' in the run of obligations so often attributed to the Melanesian is studied more closely, it becomes clear that there are constant hitches in the transactions, that there is much grumbling and recrimination **and** seldom is a man completely satisfied with his **partner**. But, on the whole, he continues in the partnership and, on the whole, every one tries to fulfil his obligations, for he is impelled to do so partly through enlightened self-interest, partly in obedience to his social ambitions and sentiments. Take the real savage, keen on evading his duties, swaggering and boastful when he has fulfilled them, and compare him with the anthropologist's dummy who slavishly follows custom and automatically obeys every regulation. There is not the remotest resemblance between the teachings of anthropology on this subject and the reality of native life. We begin to see how the dogma of mechanical obedience to law would prevent the field-worker from seeing the really relevant facts of primitive legal organization. We understand now that the rules of law, the rules with a definite binding obligation, stand out from the mere **rules** of custom. We can see also that civil law, consisting of positive

ordinances, is much more developed than the body of mere prohibitions, and that a study of purely criminal law among savages misses the most important phenomena of their legal life.

It is also obvious that the type of rules which we have been discussing, although they are unquestionably rules of binding law, have in no way the character of religious commandments, laid down absolutely, obeyed rigidly and integrally. The rules **here** described are essentially elastic and adjustable, leaving a considerable latitude within which **their** fulfilment is regarded as satisfactory. The bundles of **fish**, the measures of yams, or bunches of taro, can only be roughly assessed, and naturally the quantities exchanged vary according to whether the fishing season or the harvest is more abundant. All this is taken into account and only wilful stinginess, neglect, or laziness are regarded as a breach of contract. Since, again, largesse is a matter of honour and praise, the average native will strain all his resources to be **lavish** in his measure. He knows, moreover, that any excess in zeal and generosity is bound sooner or later to be rewarded.

We can see now that a narrow and rigid conception of the problem—a definition of 'law' as the machinery of carrying out justice in cases of trespass—**would** leave on one side all the phenomena to which we have referred. In all the facts described, the element or aspect

of law, that is of effective social constraint, consists in the complex arrangements which **make** people keep to **their** obligations. Among **them** the **most** important is the manner in which many transactions are linked into chains of mutual services, every one of them having to be repaid at some later date. The public and ceremonial manner in which **these** transactions are usually carried out, combined with the great ambition and vanity of the Melanesian adds also to the safeguarding forces of law.

VI

THE RULES OF LAW IN RELIGIOUS ACTS

I HAVE referred so far mainly to economic relations, for civil law is primarily concerned with ownership and wealth among savages as well as among ourselves. But we could find the legal aspect in any other domain of tribal life. Take for example the most characteristic acts of ceremonial life—the rites of mourning and sorrow for the dead. At first we perceive in them, naturally, their religious character: they are acts of piety towards the deceased, caused by fear or love or solicitude for the spirit of the departed. **As** the ritual and public display of emotion they are also part of the ceremonial life of the community.

Who, however, would suspect a legal side to such religious transactions? Yet in the Trobriands there is not one single mortuary act, not one ceremony, which is not **considered** to be an obligation of **the** performer towards some of the other survivors. The widow weeps and wails in ceremonial sorrow, in religious piety and fear—but **also** because the strength of her grief affords direct satisfaction to the deceased **man's** brothers and maternal relatives. It is the matrilineal group of

kindred who, according to the native theory of kinship and mourning, are the people really bereaved. The wife, though she lived with her husband, though she should grieve at his death, though often she really and sincerely does so, remains but a stranger by the rules of matrilineal kinship. It is her duty towards the surviving members of her husband's clan, accordingly, to display her grief, to keep a long period of mourning and to carry the jaw-bone of her husband for some years after his death. Nor is this obligation without reciprocity. At the first big ceremonial distribution, some three days after her husband's death, she will receive from his kinsmen a ritual payment, and a substantial one, for her tears ; and at later ceremonial feasts she is given more payments for the subsequent services of mourning. It should also be kept in mind that to the natives mourning is but a link in the life-long chain of reciprocities between husband and wife and between their respective families.

PLATE III.



Obligatory display of grief in Ritual Wailing.

VII

THE LAW OF MARRIAGE

T H I S brings us to the subject of marriage, extremely important for the understanding of native law. Marriage establishes not merely a bond between husband and wife, but it also imposes a standing relation of mutuality between the man and the wife's family, especially her brother. A woman and her brother are bound to each other by characteristic and highly important ties of kinship. In a **Trobriand** family a female must always remain under the special guardianship of one man--one of her brothers, or, if she has none, her nearest maternal kinsman. She has to obey him and to fulfil a number of duties, while he looks after her welfare and provides for her economically even after she is married.

The brother becomes the natural warden of her children, who therefore have to regard him and not their father as the legal head of the family. He in turn **has** to look after them, and to supply the household with a considerable proportion of its food. **This** is the more burdensome since marriage being

patrilocal, the girl has moved away to her husband's community, so that every time at harvest there is a general economic *chassk-croisk* all over the district.

After the crops are taken out, the yams are classified and the pick of the crop from each garden is put into a conical heap. The main heap in each garden plot is always for the sister's household. The sole purpose of all the skill and labour devoted to this display of food is the satisfaction of the gardener's ambition. The whole community, nay, the whole district, will see the garden produce, comment upon it, criticize, or praise. A big heap proclaims, in the words of my informant: "Look what I have done for my sister and her family. I am a good gardener and my nearest relatives, my sister and her children, will never suffer for want of food." After a few days the heap is dismantled, the yams carried in baskets to the sister's village, where they are put up into exactly the same shape in front of the yam-house of the sister's husband; there again the members of the community will see the heap and admire it. This whole ceremonial side of the transaction has a binding force which we know already. The display, the comparisons, the public assessment impose a definite psychological constraint upon the giver—they satisfy and reward him, when successful work enables him to give a generous gift, and they penalize and humiliate him for inefficiency, stinginess, or bad luck.

Besides ambition, reciprocity prevails in this transaction as everywhere else; at times, indeed, it steps in almost upon the heels of an act of fulfilment. First of all the husband has to repay by definite periodical gifts every annual harvest contribution. Later on, when the children grow up, they will come directly under the authority of their maternal uncle; the boys will have to help him, to assist him in everything, to contribute a definite quota to all the payments he has to make. His sister's daughters do but little for him directly, but indirectly, in a matrilineal society, they provide him with his heirs and descendants of two generations below.

Thus placing the harvest offerings within their sociological context, and taking a long view of the relationship, we see that every one of its transactions is justified as a link in the chain of mutualities. Yet taking it isolated, torn out of its setting, each transaction appears nonsensical, intolerably burdensome and sociologically meaningless, also no doubt 'communistic'! What could be more economically absurd than this oblique distribution of garden produce, where every man works for his sister and has to rely in turn on his wife's brother, where more time and energy is apparently wasted on display, on show, on the shifting of the goods, than on real work? Yet a closer analysis shows that some of these apparently unnecessary actions are powerful economic incentives,

that others supply the legal binding force, while others, again, are the direct result of native kinship ideas. It is also clear that we **can** understand the legal aspect of such relations only if we look upon them integrally without **over-emphasizing** any one link in the chain of reciprocal duties.

VIII

THE PRINCIPLE OF GIVE AND TAKE
PERVADING TRIBAL LIFE

IN the foregoing we have seen a series of pictures from native life, illustrating the legal aspect of the manage relationship, of co-operation in a fishing team, of food barter between inland and coastal villages, of certain ceremonial duties of mourning. These examples were adduced with some detail, in order to bring out clearly the concrete working of what appears to me to be the real mechanism of law, social and psychological constraint, the actual forces, motives, and reasons which make men keep to their obligations. If space permitted it would be easy to bring these isolated instances into a coherent picture and to show that in all social relations and in all the various domains of **tribal** life, exactly the same legal mechanism can be traced, that it places the *binding obligations* in a special category and sets them apart from other types of customary rules. A rapid though comprehensive survey will have to **suffice**.

To take the economic transactions first: barter of goods and services is **carried** on mostly within a

standing **partnership**, or is associated with **definite** social ties or coupled with a mutuality in non-economic matters. Most if not all economic acts are **found** to **belong** to some **chain** of reciprocal gifts and **counter-gifts**, which in the long run balance, benefiting both sides equally.

I have already given an account of the economic conditions in N.W. **Melanesia**, in "The Primitive Economics of the Trobriand Islanders" (*Economic Journal*, 1921) and in *Argonauts of the Western Pacific*, 1923. Chapter vi of that volume deals with matters here discussed, i.e. the forms of economic exchange. My ideas about primitive law were not mature at that time, and the facts are presented there without any reference to the present argument—their **testimony** only the more **telling** because of that. When, however, I describe a category of offerings as 'Pure Gifts' and place **under this** heading the gifts of husband to wife and of father to children, I am obviously **committing** a mistake. I have **fallen** then, in fact, into the error exposed above, of tearing the act out of its context, of not taking a sufficiently long view of the chain of transactions. In the same paragraph I have supplied, however, an implicit rectification of my mistake in stating that "a gift given by the father to his son is said [by the natives] to be a repayment for the man's relationship to the mother" (p. 179). I have also pointed out there that the 'free gifts' to the wife are

also based on the same idea. But the really correct account of the conditions—correct both from the legal and from the economic point of view—would have been to embrace the whole system of gifts, duties, and mutual benefits exchanged between the husband on one hand, wife, children, and wife's brother on the other. It would be found then in native ideas that the system is based on a very complex give and take, and that in the long run the mutual services balance.¹

The real reason why all these economic obligations are normally kept, and kept very scrupulously, is that failure to comply places a man in an intolerable position, while slackness in fulfilment covers him with opprobrium. The man who would persistently disobey the rulings of law in his economic dealings would soon find **himself** outside the social and economic **order**—and he is perfectly well aware of it. Test cases are supplied nowadays, when a number of natives through laziness, eccentricity, or a non-conforming spirit of enterprise, have chosen to ignore the obligations of

¹ Compare also the apposite criticism of my expression "pure gift" and of all it implies by M. Marcel Mauss, in *L'Année Sociologique*, Nouvelle Série, vol. i, pp. 171 sqq. I had written the above paragraph before I saw M. Mauss's strictures, which substantially agreed with my own. It is gratifying to a field-worker when his observations are sufficiently well presented to allow others to refute his conclusions out of his own material. It is even more pleasant for me to find that my maturer judgment has led me independently to the same results as those of my distinguished friend M. Mauss.

their status and have become automatically outcasts and hangers-on to some white man or other.

The lionourable citizen is bound to carry out his duties, though his subinission is not due to any instinct or intuitive impulse or mysterious 'group-sentiment', but to the detailed and elaborate working of a system, in which every act has its own place and must be performed without fail. Though no native, however intelligent, can formulate this state of affairs in a general abstract manner, or present it as a sociological theory, yet every one is well aware of its existence and in each concrete case he can foresee the consequences.

In magical and religious ceremonies almost every act, besides its primary purposes and effects, is also regarded as an obligation between groups and individuals, and here also there comes sooner or later an equivalent repayment or counter-service, stipulated by custom. Magic in its most important forms is a public institution in which the communal magician, who as a rule holds his office by inheritance, has to officiate on behalf of the whole group. Such is the case in the magic of gardens, fishing, war, weather, and canoe-building. As necessity arises, at the proper season, or in certain circumstances he is under an obligation to perform his magic, to keep the taboos, and at times also to control the whole enterprise. For this he is repaid by small offerings, immediately given, and often incorporated into the ritual proceedings. But the real reward lies

in the prestige, power, and privileges which his position confers upon him.¹ In cases of minor or occasional magic, such as love charms, curative rites, sorcery, magic of toothache and of pig-welfare, when it is performed on behalf of another, it has to be paid for substantially and the relation between client and professional is based on a contract defined by custom. From the point of view of our present argument, we have to register the fact that all the acts of communal magic are obligatory upon the performer, and that the obligation to carry them out goes with the status of communal magician, which is hereditary in most cases and always is a position of power and privilege. A man may relinquish his position and hand it over to the next in succession, but once he accepts it, he has to carry on the work incumbent, and the community has to give him in return all his dues.

As to the acts which usually would be regarded as religious rather than magical—ceremonies at birth or marriage, rites of death and mourning, the worship of ghosts, spirits, or mythical personages—they also have a legal side clearly exemplified in the case of mortuary performances, described above. Every

¹ For further data referring to the social and legal status of the hereditary magician, see Chap. xvii on "Magic", in *Argonauts of the Western Pacific*, as well as the descriptions of and sundry references to canoe magic, sailing magic, and *kaloma* magic. Compare also the short account of garden magic in "Primitive Economics" (*Economic Journ.*, 1921); of war magic, in *Man*, 1920 (No. 5 of article); and of fishing magic, in *Man*, 1918 (No. 53 of article).

important act of a religious nature is conceived as a moral obligation towards the object, the **ghost**, spirit, or power worshipped ; it also satisfies some emotional craving of the performer ; but besides all this it has also as a matter of fact its place in some social scheme, it is regarded by some third person or persons as due to them, **watched** and then repaid or returned in kind. When, for example, at the annual return of the departed ghosts to their village you give an offering to the spirit of a dead relative, you satisfy his feelings, and no doubt also his spiritual appetite, which feeds on **the** spiritual substance of the meal ; you probably also express your own sentiment towards the beloved dead. But **there** is also a social obligation involved : after the dishes have been exposed for some time and the spirit has finished with his spiritual share, the rest, none **the** worse it appears for ordinary **con-**sumption after its spiritual abstraction, is given to a friend or relation-in-law still alive, who then returns a similar gift later **on**.¹ I can recall **to** my mind not one single act of a religious nature without some such sociological by-play more or less directly associated with the main religious function of the act. Its importance lies in the fact that it makes the act a social obligation, besides its being a religious duty.

¹ Comp. the writer's account of the *Milamala*, the feast of the annual return of the spirits, in "Baloma ; the spirits of the dead in the Trobriand Islands" (*Journ. of the R. Anthropol. Institute*, 1916). The food offerings in question are described on p. 378.

I could still continue with **the** survey of some other phases of tribal life and discuss more fully the legal aspect of domestic relations, already exemplified above, or enter into the reciprocities of the big enterprises, and so on. But it must **have** become clear now **that** the detailed illustrations previously given are not exceptional isolated cases, but representative instances of what obtains in every walk of native life.

tolerated by custom, though in reality working against the law.

The two principles Mother-right and Father-love are focussed most sharply in the relation of a man to his sister's son and to his own son respectively. His matrilineal nephew is his nearest kinsman and the legal heir to all his dignities and offices. His own son on the other hand is not regarded as a kinsman; legally he is not related to his father, and the only bond is the sociological status of mamage with **the mother**.¹

Yet in the reality of actual life the father is much more attached to his own son than to his nephew. Between father and son there obtains invariably friendship and personal attachment; between uncle and nephew not infrequently the ideal of perfect solidarity is marred by the rivalries and suspicions inherent in any relationship of succession.

Thus the powerful legal system of Mother-right is associated with a rather weak sentiment, while Father-love, much less important in law, is backed by a strong personal feeling. In the case of a chief whose power is considerable, the personal influence outweighs the ruling of the law and the position of the son is as strong as that of the nephew.

That was the case in the capital **village** of Omarakana, the residence of the principal chief, whose

¹ Cf. *The Father in Primitive Psychology* (1926), originally published in *Psyche*, vol. iv, No. 2.

III

SYSTEMS OF LAW IN CONFLICT

PRIMITIVE law is not a homogeneous, perfectly unified body of rules, based upon one principle developed into a consistent system. So much we know already from our previous survey of legal facts in the Trobriand Islands. The law of these natives consists on the contrary of a number of more or less independent systems, only partially adjusted to one another. Each of **these—matriarchy**, father-right, the law of mamage, the prerogatives and duties of a chief and so on—has a certain field completely its own, but it can **also** trespass beyond its **legitimate** boundaries. This results in a state of tense equilibrium with an occasional outbreak. The study of the mechanism of **such** conflicts between legal principles, whether overt or masked, is extremely instructive and it reveals to us the very nature of the **social** fabric in a primitive tribe. I shall therefore proceed now to the description of one or two occurrences and then to their analysis.

I shall describe first a dramatic event which illustrates the **conflict** between the main principle of law, **Mother-right**, and one of the strongest sentiments, **paternal** love, round which there cluster many usages,

power extends over the **whole** district, **whose** influence **reaches** many archipelagoes, and whose fame is spread all over the eastern end of New Guinea. I **soon** found out that there was a standing feud between his sons and nephews, a feud which assumed a really acute form in the ever recurrent quarrels between his favourite son Namwana Guya'u and his second eldest nephew Mitakata.

The final outbreak came when **the** chief's son inflicted a serious injury on the nephew in a litigation before the resident government official of the district. Mitakata, the nephew, was in fact convicted and put to prison for a month or so.

When the news of this reached the village, **the** short exultation among the partisans of Namwana Guya'u was followed by a panic, for everyone felt that things had come to a crisis. The chief shut himself up in his personal hut, full of evil forebodings of the consequences for his favourite, who was felt to have acted rashly and in outrage of tribal law and feeling. The kinsmen of the imprisoned young **heir** to chieftainship were boiling with suppressed anger and indignation. **As night** fell, the subdued village settled down to a silent supper, each family over its solitary meal. There was nobody on the central place—Namwana Guya'u was not to be seen, the chief **To'uluwa** hid in his hut, most of his wives and their families also remained indoors. Suddenly a loud voice rang out across the silent **village**.

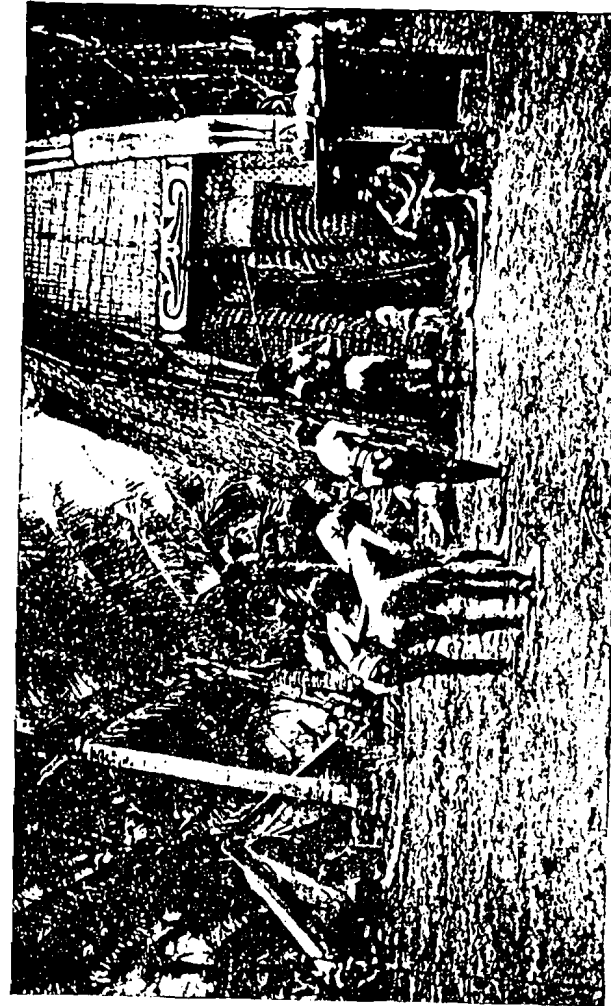
Bagido'u, the heir apparent, and eldest brother of **the imprisoned** man, standing before his hut, spoke out, addressing the offender of his family :—

" Namwana Guya'u, you are a cause of trouble. We, the Tabalu of Omarakana, allowed you to stay here, to live among us. You had plenty of food in Omarakana, you ate of our food, you partook of the pigs brought to us as a tribute and of the fish. You sailed in our canoe. You built a hut on our soil. Now you have done us harm. You have told lies. Mitakata is in prison. We do not want you to stay here. This is our village! You are a stranger here. Go away! We chase you away! We chase you out of Omarakana."

These words were uttered in a loud piercing voice, trembling with strong emotion, **each** short sentence spoken after a pause, each like an individual missile, hurled across the empty space to the hut where Namwana Guya'u sat brooding. After that the younger sister of Mitakata also arose and spoke, and then a young man, one of the maternal nephews. Their words were almost the same as in the first speech, the burden being the formula of chasing away, the yobu. The speeches were received in deep silence. Nothing stirred in the village. But, before the night **was** over, Namwana Guya'u had left Omarakana for ever. He had gone over and settled in his own **village**, in Osapola the village whence his mother came, a few miles distant. For weeks

his **mother** and sister wailed for him with the loud lamentations of **mourning** for the dead. The chief remained for three days in his hut, and when he came out looked older and broken up by grief. All his personal interest and affection were on the side of his favourite son, of course. Yet he could do **nothing** to help him. His kinsmen had acted in **complete** accordance with their rights and, according to tribal law, he could **not** possibly dissociate himself from **them**. No power could **change** the decree of exile. Once the 'Go away'—(*bukula*), 'we chase thee away'—(*kayabaint*), were pronounced, the man had to go. These words, very rarely uttered in dead earnest, have a binding force and almost ritual power when pronounced by **the** citizens of a place against a resident outsider. A man who would try to brave **the** dreadful insult involved in them and remain in spite of them, would be **dishonoured** for ever. In fact, anything but immediate compliance with a ritual request is unthinkable for a **Trobriand** Islander.

The chief's resentment against his kinsmen was deep and lasting. At first he would not even speak to them. For a year or so, not one of them dared to ask to be taken on overseas expeditions by him, although they were fully entitled to this privilege. Two years later in 1917, when I returned to the Trobriands, Namwana Guya'u was still resident in the other village and keeping aloof from his father's kinsmen, though he frequently



A Ceremonial Act of the Kula before the Chief's personal hut at Omarakana.
The Ethnographer's tent in the background. (See page 25.)

paid visits to **Omarakana** in order to be in attendance on his father, especially when To'uluwa went abroad. The mother had died within a year after the expulsion. As **the** natives described it: "She wailed and wailed, refused to eat, and died." The relations between the two main enemies were completely broken and Mitakata, the young chieftain who had been imprisoned, had sent away his wife who belonged to the same sub-clan as Namwana Guya'u. There was a deep rift in the whole social life of Kiriwina.

The incident was one of the most dramatic events which I have ever witnessed in the Trobriands. I have described it at length, as it contains a clear illustration of Mother-right, of the power of tribal law and of the passions which work in spite of it.

The case though exceptionally dramatic and telling is by no means anomalous. In every village where there is a chief of high rank, an influential notable or a powerful sorcerer, **he** favours **his** sons and allows them privileges, which are, strictly speaking, not **theirs**. Often this produces no antagonisms within the **community**—when both son and nephew are **moderate** and tactful. Kayla'i, the son of M'tabalu, the recently deceased chief of highest rank of Kasanai, lives on in his father's village, carries on most of the communal magic and is on excellent terms with his father's successor. In the cluster of villages of Sinaketa, where there reside several chiefs of high rank, some of the son-favourites

are good friends with the rightful heirs, some in open hostility to them.

In *Kavataria*, the village adjoining the Mission and the Government Station, the last chief's son, one Dayboya, has completely ousted the real masters, supported in this by European influence, which naturally worked for patrilineal claims. But the conflict, more acute nowadays and carried on with greater force by the paternal principle, because of the backing it inevitably receives from the white man, is as old as mythological tradition. It is expressed in the stories told for amusement, the *kukwanebu*, where *latula guya'u*, the chief's son, is a standard type, arrogant, pampered, pretentious, often the butt of practical jokes. In serious myths, he is sometimes the villain, sometimes the contending hero—but the opposition of the two principles is clearly marked. But most convincing as to the age and cultural depth of the conflict, is the fact that it is embedded in a number of institutions, with which we shall presently become acquainted. Among the people of low rank, the opposition between Mother-right and Father-love also exists, and it shows itself in the father's tendency to do all he can for his son, at the nephew's expense. And again after the father's death the son has to return to the heirs practically all the benefits and possessions received during the father's lifetime. This naturally leads to a good deal of

discontent, friction, and round-about methods of arriving at a satisfactory settlement.

We are, then, once more face to face with the discrepancy between the ideal of law and its realization, between the orthodox version and the practice of actual life. We have already met with it in exogamy, in the system of counter-magic, in the relation between sorcery and law, and, indeed, in the elasticity of all the rules of civil law. Here, however, we find the very foundations of the tribal constitution challenged, indeed systematically flouted by a tendency entirely incompatible with it. Mother-right as we know is the most important and the most comprehensive principle of law, underlying all their customs and institutions. It rules that kinship has to be counted through females only and that all social privileges follow the maternal line. Thus it excludes the legal validity of a direct bodily tie between father and child and of any filiation in virtue of this tie.¹ With all this, the father loves the

¹ The natives are ignorant of the fact of physiological fatherhood, and, as I have shown in op. cit., *The Father in Primitive Psychology*, 1926, have a supernatural theory of the causes of birth. There is no physical continuity between the male and the children of his wife. Yet the father loves his child even from birth—to the extent at least to which the normal European father does. Since this cannot be due to any ideas that they are his offspring, this must be due to the outcome of some innate tendency in the human species, on the part of the male to feel attached to the children born by a woman with whom he is mated, has been living permanently and has kept watch over during her pregnancy. This appears to me the only plausible explanation of the voice

child invariably and this sentiment finds a limited recognition in law ; the husband has the right and duty to act as a guardian to his wife's children till puberty. This, of course, is the only line which law can possibly take in a culture with patrilocal marriage. Since small children cannot be severed from the mother, since she has to be with her husband, often at a distance from her own people, since she and her children need a male guardian and protector on the spot—the husband necessarily fulfils this rôle and he does it by strict and orthodox law. The same law, however, orders **the boy**—not the girl, **who** remains with the parents till marriage—to leave **the** father's house at puberty and to move to his mother's community and pass into the tutelage of his maternal uncle. This, on the **whole**, runs counter to the wishes of the father, of the son and of the latter's uncle—the three men concerned, with the result that there has grown a number of usages, tending to prolong paternal authority and to establish an additional bond **between** father and son. The strict law declares that the son is citizen **of** the maternal village, that in his father's he is but a stranger (*tomakava*)—usage allows him to remain there and to enjoy most of the privileges of citizenship. For

of blood ' which speaks in societies ignorant of fatherhood as well as those that are emphatically patriarchal, which makes a father love his physiologically own child as well as one born through adultery—as long as he does not know of it. The tendency is of the greatest use to the species.

ceremonial purposes, in a funeral or mourning performance, in a feast and as a rule in fight, he will stand side by side with his maternal uncle. In daily execution of nine-tenths of all the pursuits and interests of life he is bound to his father.

The usage of keeping the son after puberty, often after marriage, is a regular **institution**: there exist definite arrangements to meet it, it is done according to strict rules and definite procedure, which make the usage anything but clandestine and irregular. There is first the accredited pretext **that** the son remains there to be able better to fill his father's yam-house, which he does in the name of his mother's brother and as his successor. In the case of a chief again there are certain **offices**, considered to be most appropriately filled by the chief's own son. **When** this latter marries he builds a house on his father's site, near the father's own dwelling.

The son naturally has to live and eat, he must therefore make gardens and carry on other pursuits. The father gives **him** a few *baleko* (garden plots) from his own lands, gives him a place in his canoe, grants him rights of fishing—hunting is of no importance in the **Trobriands**—equips him with tools, nets and other fishing tackle. As a rule, the father goes further. He allows his son certain privileges and gives **him** presents, **which** by right he should keep till he hands them on to his heirs. It is true that he will give such privileges and

presents to his heirs **during** his life-time, when they solicit it by a payment called *pokala*. He cannot even refuse **the** deal. But then his younger **brother** or his nephew has substantially to pay for land, magic, *Kula* rights, heirlooms, or 'mastership' in dances and **ceremonies**; even though they belong to him by **right** and he would inherit them in any case. Now established usage allows the man to give such valuables or privileges to the son *free of charge*. So that here the usage, established but non-legal, not only takes great liberties with the law, but adds insult to injury by granting **the** usurper considerable advantages over the rightful owner.

The most important arrangement by **which** a temporary father-line is smuggled into Mother-right is the institution of cross-cousin mamage. A man in the Trobriands who has a son and whose sister gives birth to a girl child has the right to ark that **this** infant be betrothed to his son. Thus his grandchildren will be of his own kin, and his son will become the **brother-in-law** of the heir to **chieftainship**. This latter will, **therefore**, be under an obligation to supply the son's **household** with food and in general to be a helpmate to his brother-in-law and protector of his sister's family. Thus the very man on whose interest the son is likely to encroach is prevented from resenting it and, indeed, made to regard it as his own privilege. Cross-cousin **marriage** in the Trobriands is an institution by

which a man can secure for his son a definite **though** roundabout right to remain for life in the father's community, **through** an exceptional matrilocal marriage, and enjoy almost all the privileges of full citizenship.

Thus round the sentiment of Father-love there crystallizes a number of established usages, sanctioned by tradition and regarded as the most natural course by **the** community. Yet they are contrary to strict law or involve exceptional and anomalous proceeding such as matrilocal **marriage**. If opposed and protested against in the name of **the** law, they must give way to it. Cases ~~are on record, when the son, even though married, to his father's niece, had to leave the community.~~ And not

infrequently the heirs put a stop to their uncle's illegal generosity. by demanding **with** *pokala* what he is about to give to **his** son. But any such opposition gives offence to the man in power, provokes **hostilities** and frictions, and is resorted to only in extreme cases.

IV

THE FACTORS OF SOCIAL COHESION IN A
PRIMITIVE TRIBE

IN analysing the clash between Mother-right and Father-love, we have focussed our attention on the personal relations between the man, his son and his nephew respectively. But the problem is also that of the unity of the clan. For the group of two formed by the man in power (whether chief, notable, village headman, or sorcerer) and his heir is the very core of the matrilineal clan. The unity, homogeneity, and solidarity of the clan can be no greater than that of its core, and since we find that this core is fissured, that there are normally tensions and antagonisms between the two men, we cannot accept the axiom that the clan is a perfectly welded unit. But the 'clan-dogma' or 'sib-dogma', to use Dr. Lowie's apposite expression, is not without its foundations, and though we have shown that in its very nucleus the clan is split, and also that it is not homogeneous as regards exogamy, it will be good to show exactly how much truth there is in the contention of clan unity.

It may be stated at once that here, again, Anthropology has taken over the orthodox native

doctrine or rather their legal fiction at its face value, and has been thus duped by mistaking the legal ideal for the sociological realities of tribal life. The position of native law in this matter is consistent and clear. Accepting Mother-right as the exclusive principle of kinship in legal matters, and applying it to its furthest consequences, the native divides all human beings into those connected with himself by the matrilineal tie whom he calls kinsmen (*veyola*), and those who are not thus related, and whom he calls strangers (*tomakava*). This doctrine then is combined with the 'classificatory principle of Kinship', which fully governs only the vocabulary, but to a limited extent also influences legal relations. Both Mother-right and the classificatory principle are further associated with the totemic system, by which all human beings fall into four clans, subdivided further into an irregular number of sub-clans. A man or woman is a Malasi, Lukuba, Lukwasisiga, or Lukulabuta, of such and such sub-clan, and this totemic identity is as fixed and definite as sex, colour of skin, or size of body; it does not cease with death, the spirit remaining what the man has been, and it existed before birth, the 'spirit-child' being already member of a clan and sub-clan. Membership in sub-clan means a common ancestress, unity of kinship, unity of citizenship in a local community, common title to lands and co-operation in many

economic and in all ceremonial activities. Legally it implies the fact of common clan and sub-clan name, common responsibilities in vendetta (*lugwa*), the rule of exogamy, and finally the fiction of an overweening interest in another's welfare, so that by a death the sub-clan first and to some extent the clan are considered bereft and the whole mourning ritual is tuned to this traditional view. The unity of the clan and still more of the sub-clan is, however, expressed most tangibly in the great festive distributions (*sagali*), in which the totemic groups play a game of ceremonially-economic give and take. Thus there is a multiple and a real unity of interests, activities and necessarily some feelings, uniting the members of a sub-clan and the component sub-clans into a clan and this fact is very strongly emphasized in many institutions, in mythology, in vocabulary and in the current sayings and traditional maxims.

But there is also the other side to the picture, of which we have had clear indications already, and this we must concisely formulate. First of all, though all ideas about kinship, totemic division, unity of substance, social duties, etc., tend to emphasize the 'clan dogma', not all the sentiments follow this lead. While in any contest of social, political, or ceremonial nature a man through ambition, pride, and patriotism invariably sides with his matrilineal kindred, softer feelings, loving friendship, attachments make him

often neglect clan for wife, children, and friends, in the ordinary situations of life. Linguistically, the term *veyogu* (my kinsman) has an emotional colouring of cold duty and pride, the term *lubaygu* (my friend and my sweetheart), on the other hand, possesses a distinctly warmer, more intimate tone. In their after death beliefs, too, the ties of love, conjugal attachment and friendship are made—in a less orthodox but more personal belief—to endure into the spirit world, even as totemic entity endures.

As to the definite duties of the clan, we have seen in detail, on the example of exogamy, how much elasticity, evasion, and breach there is. In economic matters as we know already, the exclusiveness of clan co-operation suffers a serious leakage through the father's tendency to give to his son and to take him into clan enterprises. *Lugwa* (the vendetta) is carried out but seldom: the payment of *lula* (peace-making price) is again a traditional form of compensation for, really of evasion of the sterner duty. In sentiment, the father or the widow is often far more keen on avenging the murdered one's death than his kinsmen are. On all occasions when the clan acts as one economic unit in ceremonial distributions, it remains homogeneous and with regard to other clans. Within, strict accounts are kept between the component sub-clans and within the sub-clan between individuals. Thus here again the unity exists on one side, but

it is combined on **the** other **with** a thorough-going differentiation, **with** strict watch over the particular self-interests, and last but not least with a **thoroughly** business-like spirit not devoid of suspicion, jealousy and mean practices.

If a concrete survey of the personal relations within the **sub-clan** were taken, the strained and distinctly unfriendly attitude between maternal uncle and nephew as we saw it in Omarakana, would be by no means infrequently found. Between brothers sometimes there exists real friendship, as was the case with Mitakata and his brothers, and with Namwana **Guya'u** and his. On the other hand, strong hatreds and acts of violence and hostility are on record **both** in legend and actual life. I shall give a concrete example of fatal disharmony within what should be the nucleus of a clan: a group of brothers.

In a village quite close to where I was camping at that time, there lived three brothers, the eldest of whom, **the headman** of **the** clan, was blind. The youngest brother used to take advantage of this infirmity and to gather the betel-nut from the palms even before it was properly ripe. The blind man was thus deprived of his share. One day when he discovered again that he was cheated of his due, he broke into a passion of fury, seized an axe, and entering his brother's house in **the** dark, he succeeded in wounding him. The wounded man escaped and took refuge in the

third brother's house. This one, indignant at the outrage done to the youngest brother, took a spear and killed the blind man. The tragedy had a prosaic ending, for the murderer was put into jail for one year by the magistrate. In the olden days--on this all my informants were **unanimous**--he would have committed suicide.

In this case we meet the two standard **criminal** acts, theft and murder, combined and it will be well to make a brief digression on them. Neither delict plays any considerable part in the life of the Trobriand natives. Theft is classified under two concepts: *kwapalu* (lit. to catch hold), which word is applied to unlawful appropriation of objects of personal use, implements, and valuables; and *vayla'u*, a special word, applied to theft of vegetable food either from gardens or yam-houses, also used when pigs or fowl are purloined. While the thieving of personal objects is felt to be a greater nuisance, stealing of food is more despicable. There is no greater disgrace to a Trobriander than to be without food, in need of it, to beg for it, and an admission by act that one has been in such straits as to steal it entails the greatest humiliation conceivable. Again, since the theft of valuables is almost out of question, because they are all **earmarked**,¹ thieving of personal objects cannot

¹ Cf. the writer's op. cit., *Argonauts of the Western Pacific*.

inflict any serious loss on the rightful owner. The penalties in **either** case would consist in the shame and ridicule which covers **the** culprit and, indeed, all cases of theft brought to my notice were perpetrated by feeble-minded people, social outcasts, or minors. Depriving the white man of his superfluous possessions, such as trade goods, tinned food or tobacco, which he keeps locked in a niggardly fashion without using, is in a class by itself, and is naturally not considered a breach of law, morality or gentlemanly manners.

A murder is an extremely rare occurrence. In fact, apart from the case just described, only one occurred during my residence: the spearing of a notorious sorcerer at night, while he was surreptitiously **approaching** the village. This was done in defence of the sick man, the victim of the sorcerer, by one of the armed guard who keep watch during the night on such occasions.

A few cases are told of killing as punishment for adultery caught in *flagranti*, insults to people of high rank, brawls and skirmishes. **Also**, of course, killing **during** regular **war**. In all cases when a man is killed by people of another sub-clan, there is the obligation of *talion*. This, in theory, is absolute, in practice it is regarded obligatory only in cases of a male adult of rank or importance; and even then it is considered superfluous when the deceased had met his fate for a fault clearly his own. In other cases, when vendetta

is obviously demanded by the honour of the sub-clan, it is still evaded by **the** substitution of blood-money (*lula*). **This** was a regular institution in **the** making of peace after war, when a compensation was given to **the** other side for every one killed and wounded. But also when murder or homicide were committed, a *lula* would relieve the survivors from the duty of **talion** (*lugwa*).

And that brings us back to the problem of **clan** unity. All the facts quoted above show that the unity of the clan is neither a mere fairy tale, invented by Anthropology, nor yet the one and only real principle of savage law, the key to all its riddles and difficulties. The actual state of affairs, fully seen and thoroughly understood, is very complex, full of apparent as well as of real contradictions and of conflicts due to the play of 'the Ideal and its actualization, to the imperfect adjustment between the spontaneous human tendencies and rigid law. The unity of the clan is a legal fiction in that it demands—in all native doctrine, that is in all their professions, and statements, sayings, overt rules and patterns of conduct—an absolute subordination of all other interests and ties to the claims of clan solidarity, while, in fact, this solidarity is almost constantly sinned against and practically non-existent in the daily run of ordinary life. On the other hand, at certain times, in the **ceremonial** phases of native life above all, the clan unity dominates everything and in

cas of overt clash and open challenge it will overrule personal considerations and failings which under ordinary conditions would certainly determine the individual's conduct. There are, therefore, two sides to the question, and most of the important events of native life, as well as of their institutions, customs, and tendencies cannot be properly understood without the realization of both sides and of their interaction.

It is not difficult to see also, why Anthropology fixed upon one side of the question, why it presented the rigid but fictitious doctrine of native law as the whole truth. For this doctrine represents the intellectual, overt, fully conventionalized aspect of the native attitude, the one set into clear statements, into definite legal formulæ. When the native is asked what he would do in such and such a case, he answers what he *should* do; he lays down the pattern of best possible conduct. When he acts as informant to a field-anthropologist, it costs him nothing to retail the Ideal of the law. His sentiments, his propensities, his bias, his self-indulgences as well as tolerance of others' lapses, he reserves for his behaviour in real life. And even then, though he acts thus, he would be unwilling to admit often even to himself, that he ever acts below the standard of law. The other side, the natural, impulsive code of conduct, the evasions, the compromises and non-legal usages are revealed only to the field-worker, who observes native life directly, registers

facts, lives at such close quarters with his 'material' as to understand not only their language and their statements, but also the hidden motives of behaviour, and the hardly even formulated spontaneous line of conduct. 'Hearsay Anthropology' is constantly exposed to the danger of ignoring the seamy side of savage law. This side, it can be said without exaggeration, exists and is tolerated as long as it is not squarely faced, put into words, openly stated and thus challenged. This accounts perhaps for the old theory of the 'untrammelled savage' whose customs are none and whose manners are beastly. For the authorities who gave us this version knew well the intricacies and irregularities of native behaviour which by no means conforms to strict law, while they ignored the structure of native legal doctrine. The modern field-worker constructs it without much trouble from his native informant's statements, but he remains ignorant of the blurs made by human nature on this theoretical outline. Hence he has re-shaped the savage into a model of legality. Truth is a combination of both versions and our knowledge of it reveals the old as well as the new figment as futile simplifications of a very complicated state of things.

This, like everything else in human cultural reality is not a consistent logical scheme, but rather a seething mixture of conflicting principles. Among these the clash of matriliney and paternal interest is probably the

most important. The discrepancy between the totemic clan solidarity on the one hand, and the bonds of family or dictates of self-interest comes next. The struggle of the hereditary principle of rank with the personal influences of prowess, economic success and magical craft is also of importance. Sorcery as a personal instrument of power deserves special mention, for the sorcerer is often a dreaded competitor of the chief or headman. If space permitted I could give examples of other conflicts of a more concrete, accidental nature; the historically ascertainable gradual spread of political power of the Tabalu sub-clan (of the Malasi clan), in which we can see the principle of rank override beyond its legitimate field the law of strictly local citizenship, based on mythological claims and matrilineal succession. Or else I might describe the secular contest between the same Tabalu and the Toliwaga sub-clan (of the Lukwasisiga clan), in which the former have on their side rank, prestige and established power and the latter a stronger military organization, war-like qualities and greater success in fighting.

The most important fact from our point of view in this struggle of social principles is that it forces us to re-cast **completely** the traditional conception of law and order in savage communities. We have to abandon now definitely the idea of an inert, solid 'crust' or 'cake' of custom rigidly pressing from outside upon the whole surface of tribal life. Law and order arise out of

the very processes which they govern. But they are not rigid, nor due to any inertia or permanent mould. They obtain on the contrary as the result of a constant struggle not merely of human passions against the law, but of legal principles with one another. The struggle, however, is not a free fight: it is subject to definite conditions, can take place only within certain limits and only on the condition that it remains under the surface of publicity. Once an open **challenge** has been entered, the precedence of strict law over legalized usage or over an encroaching principle of law is **established and the orthodox hierarchy** of legal systems controls the issue. ✓

For as we have seen the conflict takes place between strict law and legalized usage, and it is possible because **the former has the** strength of more **definite** tradition behind it, while the latter draws force from personal inclinations and actual power. There exist thus **within** the body of law not only different types such as **quasi-civil** and **quasi-criminal**, or **the law of economic** transactions, of political relations, etc., but there can be distinguished degrees of orthodoxy, stringency, and validity, placing the rules into a hierarchy from the main law of Mother-right, totemism, and rank down to the clandestine evasions and the traditional means of defying law and abetting crime.

Herewith our survey of law and legal institutions in the Trobriand Islands comes to an end. In its course

we **have** reached a number of conclusions about the existence of positive and elastic and yet binding obligations, which correspond to the civil law in more developed cultures ; about the influence of reciprocity, public enactment and the systematic incidence of such obligations, which supply their main binding forces ; about the negative rulings of law, the tribal prohibitions and taboos, which we have found as elastic and adaptable as the positive rules although fulfilling a different function. We were also able to suggest a new classification of the rules of custom and tradition ; a revised definition of law as a special class of customary rules and to indicate further sub-divisions within the body of law itself. In this, besides the main division between quasi-civil and quasi-criminal we found that a distinction must be made between the various grades of law which **can** be arranged into a hierarchy from the statutes of main legitimate law, through legally tolerated usages down to evasions and traditional methods of flouting the law. We also had to discriminate between a number of distinct systems which together form the body of tribal law such as **Mother-right** and Father-love, political organization and magical influence, systems which at times enter into conflict, arrive at compromises and re-adjustments. There is no need to go further into detail about **all** this, for our conclusions were both substantiated with evidence and discussed theoretically at length.

But it is worth while to realize once more that throughout our discussion we found the real problem not in bald enumeration of rules, but in the ways and means by which these are carried out. Most instructive we found the study of the life situations **which** call for a given rule, the manner in which this is handled by the people concerned, the reaction of the community at large, the consequences of fulfilment or neglect. **All** this, which could be called the cultural-context of a primitive system of rules is equally important, if not more so, than the mere recital of a fictitious native *corpus juris* codified into the ethnographer's note-book as **the** result of question and answer, in the hearsay method of field-work.

With this we are demanding a new line of anthropological field-work: the study by direct observation of the rules of custom as they function in actual life. Such study reveals that the commandments of law and custom are always organically connected and not isolated ; that their very nature **consists in the many** tentacles which they throw out into the context of social life ; that they only exist in the chain of social transactions in which they are but a link. I maintain that the staccato manner in which most accounts of tribal life are given is the result of imperfect information, and that it is in fact incompatible with the general character of human life and the exigencies of social organization. A native tribe bound by a code of

disconnected inorganic customs would fall to pieces under our very eyes.

We can only plead for the speedy and complete disappearance from the records of field-work of the piecemeal items of information, of customs, beliefs, and rules of conduct floating in the air, or rather leading a **flat** existence on paper with the third-dimension, that of life, completely lacking. With **this** the theoretical arguments of Anthropology will be able to drop the lengthy litanies of threaded statement, which make us anthropologists feel silly, and the savage look ridiculous. I mean by this the long enumerations of bald statement such as, for example, " Among **the Brobdignacians** when a man meets his mother-in-law, the two abuse each other and each retires with a black eye " ; " When a Brodiag encounters a Polar bear he runs away and sometimes **the bear follows** " ; " in old Caledonia when a native accidentally finds a whiskey bottle by the road-side he empties it at one gulp, after which he proceeds immediately to look for another "—and so forth. (I am quoting from memory so the statements may be only approximate, though they sound plausible.)

It is easy, however, to poke fun at the litany-method, but it is **the** field-worker who is really responsible. There is **hardly** any record in which the majority of statements are given as they occur in actuality and not as they should or are said to occur. Many of the earlier

accounts were written to startle, to amuse, to be facetious at the expense of the savage, till the tables were turned and it is more easy now to be facetious at the anthropologist's expense. To the old recorders what mattered really was the queerness of the custom, not its reality. The modern anthropologist, working **through** an interpreter by the question and answer method can again collect only opinions, generalizations, and bald statements. He gives us no reality, for he has never seen it. The touch of ridicule which **hangs** about most writings of anthropology is due to the artificial **flavour** of a statement torn out of its life-context. The true problem is not to study how **human** life submits to rules—it simply does not ; the real problem is how the rules become adapted to life.

As regards our theoretical gains the analysis of Trobriand law has given us a clear view of the forces of cohesion in a primitive society, based on solidarity within the group as well as on the appreciation of personal interest. The opposition of primitive ' group-sentiment ', ' joint personality ' and ' clan absorption ' to civilized individualism and pursuit of **selfish** ends appear to us altogether artificial and futile. No society, however primitive or civilized, can be based on a **figment** or on a pathological growth on human nature.

The results of this memoir point to one more moral. Although I have confined myself principally to descriptions and statements of fact, some of these led

naturally to a more general theoretical analysis which yielded certain explanations of the facts discussed. Yet in all this not once was it necessary to resort to any **hypotheses**, to any **evolutionary** or historical reconstructions. The explanations here given consisted in an analysis of certain facts into simpler elements and of tracing the relations between these elements. Or else it was possible to correlate one aspect of culture with another and to show which is the function fulfilled by either within the scheme of culture. The relation between Mother-right and the paternal principle and their partial conflict accounts, as we have seen, for a series of compromise formations such as cross-cousin marriage, types of inheritance and economic transactions, the typical constellation of father, son, and maternal uncle, and certain features of the clan system.¹ Several characteristics of their social life, the chains of reciprocal duties, the ceremonial enactment of obligations, the uniting of a number of disparate transactions into one relationship have been explained by the function which they fulfil in supplying the coercive forces of law. The relation between hereditary prestige, the power of sorcery, and the influence of personal achievement as we find them in the Trobriands could be accounted for by the cultural parts played by each principle respectively. While remaining on strictly

¹ The relation between Mother-right and Father-love is more fully discussed in *op. cit.*, *Sex and Repression in Savage Society*.

empirical ground we were able to account for all these facts and features, show their conditions as well as the ends which they fulfil, and thus to explain them in a scientific manner. This type of explanation by no means excludes further investigation as to the evolutionary level of such customs or as to their historical antecedents. There is room for the antiquarian interest as well as the scientific, but the former should not claim an exclusive or even predominant sway over Anthropology. It is high time that the student of Man should also be able to say "*hypotheses non fingo*".