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Primitive Law and Order.¹

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SAVAGERY to most people is still synonymous with absurd, cruel, and eccentric customs, with quaint superstitions and revolting practices. Sexual licence, infanticide, head-hunting, couvade, cannibalism and what not, have made anthropology attractive reading to many, a subject of curiosity rather than of serious scholarship to others. A fuller knowledge of the so-called savages, however, has revealed "Ye beastly devices of Ye heathen" as the product of firm law and of strict tradition, due to biological, mental and social needs of human nature, rather than as the outcome of unbridled passion and unfettered excess. Law and order pervade the tribal usages of primitive races, they govern all the humdrum course of daily existence, as well as the leading acts of public life, whether these be quaint and sensational or merely important and venerable.

THE AUTOMATIC SUBMISSION TO CUSTOM AND THE REAL PROBLEM.

When 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 so 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 casting for new bearings veered round to the opposite point: the savage was made not only into a model of the law-abiding citizen, but it also 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 (Sidney Hartland); or again through a "pervading group-sentiment if not group-instinct" (Rivers). I have already in a previous article stated the views of such contemporary writers as Hobhouse, Rivers, Sidney Hartland and Lowie, and I have submitted them to a searching criticism and have arrived at the conclusion that neither the way in which the problem has been set forth, nor the solutions given, can be regarded as adequate.² I have also tried to make it clear 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

¹ The present article contains the substance, expanded and recast, of a discourse delivered before the Royal Institution on Friday, February 13, 1925. I wish to express my indebtedness to the Laura Spelman Rockefeller Memorial for the assistance given me in carrying out this investigation.

² See NATURE, August 15, 1925, p. 230, review entitled "Primitive Law."

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 organisation 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' and 'clan-solidarity,' of 'spontaneous obedience' and what not, 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.

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 intercommunication 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 organisation 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 the 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 Organisation," 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 generalisations. 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,' 'joint-stock company,' or what not, borrowed from present-day economic conditions or political controversy, cannot be but 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 with reference to 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 manœuvres 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 realisation of self-interest, privileges, and benefits. Ownership, therefore, can be defined neither by such words as 'communism' or '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.

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 fisherman 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 fisher-

man 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.

What is the motive force behind these obligations? The coastal and inland villages respectively have to rely 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 penalised. 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 stringent by being part and parcel of a whole system of mutualities.

RECIPROCITY AND DUAL ORGANISATION.

I have found only one writer who fully appreciates the importance of reciprocity in primitive social organisation. The leading German anthropologist, Prof. Thurnwald of Berlin, clearly recognises "*die Symmetrie des Gesellschaftsbaus*" and the corresponding "*Symmetrie von Handlungen*." "*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 Bánaro*," Stuttgart, 1921, p. 16). Throughout his monograph, which by the way is perhaps the best account of the social organisation 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 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 organisation" 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" or "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 organisation 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 subclans. So that the exchange establishes a system of sociological ties of 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 to each rule. There is in every act as well as at the basis of every status 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.

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 fascination 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. Any one who knows how extremely difficult, if not impossible, it is to organise 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 realise 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 civilised 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 re-creation 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 organisation. 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 criminal law alone 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.³ The rules here described are essentially elastic, adjustable, and they leave 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 to be sooner or later 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 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.

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 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

³ Examples of scientific opinions, which ascribe to primitive law in general such a semi-religious character, are given in the review entitled "Primitive Law," referred to above.

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 lifelong chain of reciprocities between husband and wife and between their respective families.

THE LAW OF MARRIAGE.

This 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 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 he has 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 *chassé-croisé* 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, criticise, 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 yamhouse 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 trans-

action 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 penalise 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 periodic 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-emphasising any one link in the chain of reciprocal duties.

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 honourable citizen is bound to carry out his duties, though his submission 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 exist-

ence, and in each concrete case he can foresee the consequences.

THE RULES OF CUSTOM DEFINED AND CLASSIFIED.

If we designate the sum total of rules, conventions, and patterns of behaviour as the body of custom, there is no doubt that the native feels a strong respect for all of them, has a tendency to do what others do, what every one approves of, and, if not drawn or driven in another direction by his appetites or interests, will follow the biddings of custom rather than any other course. The force of habit, the awe of traditional command and a sentimental attachment to it, the desire to satisfy public opinion—all combine to make custom be obeyed for its own sake. In this the 'savages' do not differ from the members of any self-contained community with a limited horizon, whether this be an Eastern European ghetto, an Oxford college, or a Fundamentalist Middle West community. But love of tradition, conformism, and the sway of custom account but to a very partial extent for obedience to rules among dons, savages, peasants, or Junkers.

Limiting ourselves strictly to savages once more, there are among the Trobrianders a number of traditional rules instructing the craftsman how to ply his trade. The inert and uncritical way in which these rules are obeyed is due to the general 'conformism of savages' as we might call it. But in the main these rules are followed because their practical utility is recognised by reason and testified by experience. Again, other injunctions of how to behave in associating with one's friends, relatives, superiors, equals, and so on, are obeyed because any deviation from them makes a man feel and look, in the eyes of others, ridiculous, clumsy, socially uncouth. These are the precepts of good manners, very developed in Melanesia and most strictly adhered to. There are further rules laying down the proceedings at games, sports, entertainments and festivities, rules which are the soul and substance of the amusement or pursuit and are kept because it is felt and recognised that any failure to 'play the game' spoils it—that is, when the game is really a game! In all this, it will be noted, there are no mental forces of inclination or of self-interest, or even inertia, which would run counter to any rule and make its fulfilment a burden. It is quite as easy to follow the rule as not, and once you embark upon a sporting or pleasurable pursuit, you really can enjoy it only if you obey all its rules whether of art, manner, or game.

There are also norms pertaining to things sacred and important, the rules of magical rite, funerary pomp, or what not. These are primarily backed up by supernatural sanctions and by the strong feeling that sacred matters must not be tampered with. By an equally

strong moral force are maintained certain rules of personal conduct towards near relatives, members of the household and others towards whom strong sentiments of friendship, loyalty, or devotion are felt, which back up the dictates of the social code.

This brief catalogue is not an attempt at a classification, but is mainly meant to indicate clearly that, besides the rules of law, there are several other types of norm and traditional commandment which are backed up by motives or forces, mainly psychological, in any case entirely different from those which are characteristic of law in that community. Thus, though in my survey attention has naturally been mainly focussed on the legal machinery, I was not intent on proving that all social rules are legal, but on the contrary, I wanted to show that the rules of law form but one well-defined category within the body of custom.

AN ANTHROPOLOGICAL DEFINITION OF LAW.

The rules of law stand out from the rest in that they are felt and regarded as the obligations of one person and the rightful claims of another. They are sanctioned not by a mere psychological motive, but by a definite social machinery of binding force, based, as we know, upon mutual dependence and realised in the equivalent arrangement of reciprocal services, as well as in the combination of such claims into strands of multiple relationship. The ceremonial manner in which most transactions are carried out, which entails public control and criticism, adds still more to their binding force.

We may therefore finally dismiss the view that 'group-sentiment' or 'collective responsibility' are the only or even the main force which ensures adhesion to custom and which makes it binding or legal. *Esprit de corps*, solidarity, pride in one's community and clan exist undoubtedly among the Melanesians—no social order could be maintained without them in any culture high or low. I only want to enter a caution against such exaggerated views as those of Rivers, Sidney Hartland, Durkheim, and others, which would make this unselfish, impersonal, unlimited group-loyalty the corner-stone of all social order in primitive cultures. The savage is neither an extreme 'collectivist' nor an intransigent 'individualist'—he is, like man in general, a mixture of both.

It results also from the account here given that primitive law does not consist exclusively or even mostly of negative injunctions, nor is all savage law criminal law.⁴ So far we have met with positive commandments only, the breach of which is penalised but not punished, and the machinery of which can by no procrustean methods be stretched beyond the line

⁴ Quotations of such opinions in modern anthropological literature and a criticism of them is given in the review entitled "Primitive Law," referred to above.

which separates *civil* from *criminal* law. If we have to provide the rules described in these articles with some modern, hence necessarily inappropriate, label, they must be called the body of 'civil law' of the Trobriand Islanders.

'Civil law,' the positive law governing all the phases of tribal life, consists then of a body of binding obligations, regarded as a right by one party and acknowledged as a duty by the other, kept in force by a specific mechanism of reciprocity and publicity, inherent in the structure of their society. These rules of civil law are elastic and possessing a certain latitude. They offer not only penalties for failure, but also premiums for an overdose of fulfilment. Their stringency is ensured through the rational appreciation of cause and effect by the natives, combined with a number of social and personal sentiments such as ambition, vanity, pride, desire of self-enhancement by display, and also attachment, friendship, devotion and loyalty to the kin.

It scarcely needs to be added that 'law' and 'legal phenomena,' as we have discovered, described, and defined them in a part of Melanesia, do not consist in any independent institutions. Law represents rather an aspect of their tribal life, one side of their structure, than any independent, self-contained social arrangements. Law dwells not in a special system of decrees, which foresee and define possible forms of non-fulfilment and provide appropriate barriers and remedies. Law is the specific result of the configuration of obligations, which makes it impossible for the native to shirk his responsibility without suffering for it in the future.

SPECIFIC LEGAL ARRANGEMENTS.

The rare quarrels which occur at times take the form of an exchange of public expostulation (*yakala*), in which the two parties assisted by friends and relatives meet, harangue one another, hurl and hurl back recriminations. Such litigation allows people to give vent to their feelings and shows the trend of public opinion, and thus it may be of assistance in settling disputes. Sometimes it seems, however, only to harden the litigants. In no case is there any definite sentence pronounced by a third party, and agreement is but seldom reached then and there. The *yakala* therefore is a special legal arrangement, but of small importance and not really touching the heart of legal constraint.

Some other specific legal mechanisms may also be mentioned here. One of them is the *kaytapaku*, the magical protection of property by means of conditional curses. When a man owns coco or areca palms in distant spots, where it is impossible to keep watch over them, he attaches a palm leaf to the trunk of the tree, an indication that a formula has been uttered, which

automatically would bring down ailment on the thief. Another institution which has a legal side is the *kaytubutabu*, a form of magic performed over all the coconut trees of a community to bring about their fertility, as a rule in view of an approaching feast. Such magic entails a strict prohibition to gather the nuts or to partake of coconut, even when imported. A similar institution is the *gwara*.⁵ A pole is planted on the reef, and this places a taboo on any export of certain valuable objects, exchanged ceremonially in the *kula*, while their importation on the contrary is encouraged. This is a sort of moratorium, stopping all payments, without any interference with the receipts, which also aims at an accumulation of valuable objects before a big ceremonial distribution. Another important legal feature is a sort of ceremonial contract, called *kayasa*.⁶ Here the leader of an expedition, the master of a feast, or the *entrepreneur* in an industrial venture, gives a big ceremonial distribution. Those who participate in it and benefit by the bounty are under an obligation to assist the leader throughout the enterprise.

All these institutions, *kayasa*, *kaytapaku*, and *kaytubutabu*, entail special binding ties. But even they are not exclusively *legal*. It would be above all a great mistake to deal with the subject of law by a simple enumeration of these few arrangements, each of which subserves a special end and fulfils a very partial function. The main province of law is in the social mechanism which is to be found at the bottom of all the real obligations and covers a very vast portion of their custom, though by no means all of it, as we know.

CONCLUSION AND FORECAST.

I have dealt here only with one province of Melanesia, and the conclusions arrived at have naturally a limited range. These conclusions, however, are based on facts observed by a new method and regarded from a new point of view, so that they might stimulate other observers to take up a similar line of study in other parts of the world. With a wider and more elastic 'minimum definition' of law, there is no doubt that new legal phenomena of the same type as those found in N.W. Melanesia will be discovered. There is no doubt that custom is not based only on a universal, undifferentiated, ubiquitous force, this mental inertia, though this unquestionably exists and adds its quota to other constraint. There must be in all societies a class of rules too practical to be backed up by religious sanctions, too burdensome to be left to mere goodwill, too personally vital to individuals to be enforced by any abstract agency. This is the domain of legal rules, and I venture to foretell that reciprocity, systematic incidence, publicity and ambition will be found to be the main factors in the binding machinery of primitive law.

⁵ Comp. the account of this institution in "Argonauts of the Western Pacific" (references in Index s.v. *Gwara*); also descriptions in Prof. Seligman's "Melanesians," and in the present writer's "The Natives of Mailu" (*Trans. R. Soc. of S. Australia*, vol. 39), of the *gola* or *gora* among the Western Papuo-Melanesians.

⁶ "Argonauts of the Western Pacific." See in Index s.v. *Kayasa*.