

## Chapter 4

### MUTUAL AID AMONG THE BARBARIANS

The great migrations. — New organization rendered necessary. — The village community. - Communal work. - Judicial procedure. — Inter-tribal law. — Illustrations from the life of our contemporaries. - Buryates. - Kabyles. - Caucasian mountaineers. - African stems.

IT is not possible to study primitive mankind without being deeply impressed by the sociability it has displayed since its very first steps in life. Traces of human societies are found in the relics of both the oldest and the later stone age; and, when we come to observe the savages whose manners of life are still those of neolithic man, we find them closely bound together by an extremely ancient clan organization which enables them to combine their individually weak forces, to enjoy life in common, and to progress. Man is no exception in nature. He also is subject to the great principle of Mutual Aid which grants the best chances of survival to those who best support each other in the struggle for life. These were the conclusions arrived at in the previous chapters.

However, as soon as we come to a higher stage of civilization, and refer to history which already has something to say about that stage, we are bewildered by the struggles and conflicts which it reveals. The old bonds seem entirely to be broken. Stems are seen to fight against stems, tribes against tribes, individuals against individuals; and out of this chaotic contest of hostile forces, mankind issues divided into castes, enslaved to despots, separated into States always ready to wage war against each other. And, with this history of mankind in his hands, the pessimist philosopher triumphantly concludes that warfare and oppression are the very essence of human nature; that the warlike and predatory instincts of man can only be restrained within certain limits by a strong authority which enforces peace and thus gives an opportunity to the few and nobler ones to prepare a better life for humanity in times to come.

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And yet, as soon as the everyday life of man during the historical period is submitted to a closer analysis - and so it has been, of late, by many patient students of very early institutions — it appears at once under quite a different aspect. Leaving aside the preconceived ideas of most historians and their pronounced predilection for the dramatic aspects of history, we see that the very documents they habitually peruse are such as to exaggerate the part of human life given to struggles and to underrate its peaceful moods. The bright and sunny days are lost sight of in the gales and storms. Even in our own time, the cumbersome records which we prepare for the future historian, in our Press, our law courts, our Government offices and even in our fiction and poetry, suffer from the same one-sidedness. They hand down to posterity the most minute descriptions of every war, every battle and skirmish, every contest and act of violence, every kind of individual suffering; but they hardly bear any trace of the countless acts of mutual support and devotion which every one of us knows from his own experience; they hardly take notice of what makes the very essence of our daily life - our social instincts and manners. No wonder, then, if the records of the past were so imperfect. The annalists of old never failed to chronicle the petty wars and calamities which harassed their contemporaries; but they paid no attention whatever to the life of the masses, although the masses chiefly used to toil peacefully while the few indulged in fighting. The epic poems, the inscriptions on monuments, the treaties of peace - nearly all historical documents bear the same character; they deal with breaches of peace, not with peace itself. So that the best-intentioned historian unconsciously draws a distorted picture of the times he endeavours to depict; and, to restore the real proportion between conflict and union, we are now bound to enter into a minute analysis of thousands of small facts and faint indications accidentally preserved in the relics of the past; to interpret them with the aid of comparative ethnology; and, after having heard so much about what used to divide men, to reconstruct stone by stone the institutions which used to unite them.

Ere long history will have to be rewritten on new lines, so as to take into account these two currents of human life and to appreciate the part played by each of them in evolution. But in the meantime we may avail ourselves of the immense preparatory work recently

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done towards restoring the leading features of the second current, so much neglected. From the better-known periods of history we may take some illustrations of the life of the masses, in order to indicate the part played by mutual support during those periods; and, in so doing, we may dispense (for the sake of brevity) from going as far back as the Egyptian, or even the Greek and Roman antiquity. For, in fact, the evolution of mankind has not had the character of one unbroken series. Several times civilization came to an end in one given region, with one given race, and began anew elsewhere, among other races. But at each fresh start it began again with the same clan institutions which we have seen among the savages. So that if we take the last start of our own civilization, when it began afresh in the first centuries of our era, among those whom the Romans called the 'barbarians', we shall have the whole scale of evolution, beginning with the gentes and ending in the institutions of our own time. To these illustrations the following pages will be devoted.

Men of science have not yet settled upon the causes which some two thousand years ago drove whole nations from Asia into Europe and resulted in the great migrations of barbarians which put an end to the West Roman Empire. One cause, however, is naturally suggested to the geographer as he contemplates the ruins of populous cities in the deserts of Central Asia, or follows the old beds of rivers now disappeared and the wide outlines of lakes now reduced to the size of mere ponds. It is desiccation: a quite recent desiccation, continued still at a speed which we formerly were not prepared to admit.<sup>1</sup> Against it man was powerless. When the in-

1. Numberless traces of post-pliocene lakes, now disappeared, are found over Central, West, and North Asia. Shells of the same species as those now found in the Caspian Sea are scattered over the surface of the soil as far East as half-way to Lake Aral, and are found in recent deposits as far north as Kazan. Traces of Caspian Gulfs, formerly taken for old beds of the Amu, intersect the Turcoman territory. Deduction roust surely be made for temporary, periodical oscillations. But with all that, desiccation is evident, and it progresses at a formerly unexpected speed. Even in the relatively wet parts of South-West Siberia, the succession of reliable surveys, recently published by Yadrintseff, shows that villages have grown up on what was, eighty years ago, the bottom of one of the lakes of the Tchany group; while the other lakes of the same group, which covered hundreds of square miles some fifty years ago, are now

habitants of North-West Mongolia and East Turkestan saw that water was abandoning them, they had no course open to them but to move down the broad valleys leading to the lowlands, and to thrust westwards the inhabitants of the plains.<sup>2</sup> Stems after stems were thus thrown into Europe, compelling other stems to move and to remove for centuries in succession, westwards and eastwards, in search of new and more or less permanent abodes. Races were mixing with races during those migrations, aborigines with immigrants, Aryans with Ural-Altayans; and it would have been no wonder if the social institutions which had kept them together in their mother-countries had been totally wrecked during the stratification of races which took place in Europe and Asia. But they were *not* wrecked; they simply underwent the modification which was required by the new conditions of life.

The Teutons, the Celts, the Scandinavians, the Slavonians and others, when they first came in contact with the Romans, were in a transitional state of social organization. The clan unions, based upon a real or supposed common origin, had kept them together for many thousands of years in succession. But these unions could answer their purpose so long only as there were no separate families within the gens or clan itself. However, for causes already mentioned, the separate patriarchal family had slowly but steadily developed within the clans, and in the long run it evidently meant the individual accumulation of wealth and power, and the hereditary transmission of both. The frequent migrations of the barbarians and the ensuing wars only hastened the division of the gentes into separate families, while the dispersing of stems and their mingling with strangers offered singular facilities for the ultimate disintegration of those unions which were based upon kinship. The barbarians thus stood in a position of either seeing their clans dissolved into loose aggregations of families, of which the wealthiest, especially if combining sacerdotal functions or military repute with

mere ponds. In short, the desiccation of North-West Asia goes on at a rate which must be measured by centuries, instead of by the geological units of time of which we formerly used to speak.

2. Whole civilizations had thus disappeared, as is proved now by the remarkable discoveries in Mongolia on the Orkhon and in the Lukchun depression (by Dmitri Clements).

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wealth, would have succeeded in imposing their authority upon the others; or of finding out some new form of organization based upon some new principle.

Many stems had no force to resist disintegration: they broke up and were lost for history. But the more vigorous ones did not disintegrate. They came out of the ordeal with a new organization - the *village community* — which kept them together for the next fifteen centuries or more. The conception of a common *territory*, appropriated or protected by common efforts, was elaborated, and it took the place of the vanishing conceptions of common descent. The common gods gradually lost their character of ancestors and were endowed with a local territorial character. They became the gods or saints of a given locality; 'the land' was identified with its inhabitants. Territorial unions grew up instead of the consanguine unions of old, and this new organization evidently offered many advantages under the given circumstances. It recognized the independence of the family and even emphasized it, the village community disclaiming all rights of interference in what was going on within the family enclosure; it gave much more freedom to personal initiative; it was not hostile in principle to union between men of different descent, and it maintained at the same time the necessary cohesion of action and thought, while it was strong enough to oppose the dominative tendencies of the minorities of wizards, priests and professional or distinguished warriors. Consequently it became the primary cell of future organization, and with many nations the village community has retained this character until now.

It is now known, and scarcely contested, that the village community was not a specific feature of the Slavonians, nor even of the ancient Teutons. It prevailed in England during both the Saxon and Norman times, and partially survived till the last century;<sup>3</sup> it was at

3. If I follow the opinions of (to name modern specialists only) Nasse, Kovalevsky and Vinogradov, and not those of Mr Seebohm (Mr Denman Ross can only be named for the sake of completeness), it is not only because of the deep knowledge and concordance of views of these three writers, but also on account of their perfect knowledge of the village community altogether - a knowledge the want of which is much felt in the otherwise remarkable work of Mr Seebohm. The same remark applies, in a still higher degree, to the most elegant writings of Fustel de Coulanges, whose opinions and passionate interpretations of old texts are confined to himself.

the bottom of the social organization of old Scotland, old Ireland and old Wales. In France, the communal possession and the communal allotment of arable land by the village folk-mote persisted from the first centuries of our era till the times of Turgot, who found the folk-motes 'too noisy' and therefore abolished them. It survived Roman rule in Italy, and revived after the fall of the Roman Empire. It was the rule with the Scandinavians, the Slavonians, the Finns (in the *pittdyd*, as also, probably, the *kihla-kunta*), the Coures and the Lives. The village community in India - past and present, Aryan and non-Aryan - is well known through the epoch-making works of Sir Henry Maine; and Elphinstone has described it among the Afghans. We also find it in the Mongolian *oulous*, the Kabyle *thaddart*, the Javanese *desa*, the Malayan *kota* or *tofa*, and under a variety of names in Abyssinia, the Soudan, in the interior of Africa, with natives of both Americas, with all the small and large tribes of the Pacific archipelagoes. In short, we do not know one single human race or one single nation which has not had its period of village communities. This fact alone disposes of the theory according to which the village community in Europe would have been a servile growth. It is anterior to serfdom, and even servile submission was powerless to break it. It was a universal phase of evolution, a natural outcome of the clan organization, with all those stems, at least, which have played, or play still, some part in history.<sup>4</sup>

4. The literature of the village community is so vast that but a few works can be named. Those of Sir Henry Maine, Mr Seebohm and Walter's *Das alte Wallis* (Bonn, 1859), are well-known popular sources of information about Scotland, Ireland, and Wales. For France, P. Viollet, *Precis de l'histoire du droit français: Droit prive*, 1886, and several of his monographs in *Bibl. de l'Ecole des Charles*; Babeau, *Le Village sous l'ancien regime* (the *mir* in the eighteenth century), third edition, 1887; Bonnemere, Doniol, etc. For Italy and Scandinavia, the chief works are named in Laveleye's *Primitive Property*, German version by K. Biicher. For the Finns, Rein's *Forelasningar*, i, 16; Koskinen, *Finnische Geschichte*, 1874, and various monographs. For the Lives and Coures, Prof. Lutchitzky in *Severnyi Vestnik*, 1891. For the Teutons, besides the well-known works of Maurer, Sohm (*Altdeutsche Reichs- und Gerichts-Verfassung*), also Dahn (*Urzeit, Völkerwanderung, Langobardische Studien*), Janssen, Wilh. Arnold, etc. For India, besides H. Maine and the works he names, Sir John Phear's *Aryan Village*. For Russia and South Slavonians, see Kavelin, Posnikoff, Sokolovsky, Kovalevsky, Efimenko,

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It was a natural growth, and an absolute uniformity in its structure was therefore not possible. As a rule, it was a union between families considered as of common descent and owning a certain territory in common. But with some stems, and under certain circumstances, the families used to grow very numerous before they threw off new buds in the shape of new families; five, six, or seven generations continued to live under the same roof, or within the same enclosure, owning their joint household and cattle in common, and taking their meals at the common hearth. They kept in such case to what ethnology knows as the 'joint family', or the 'undivided household', which we still see all over China, in India, in the South Slavonian *zadruga*, and occasionally find in Africa, in America, in Denmark, in North Russia and West France.<sup>5</sup> With other stems, or in other circumstances, not yet well specified, the families did not attain the same proportions; the grandsons, and occasionally the sons, left the household as soon as they were married, and each of them started a new cell of his own. But, joint or not, clustered together or scattered in the woods, the families remained united into village communities; several villages were

Ivanisheff, Klaus, etc. (copious bibliographical index up to 1880 in the *Sbornik svedeniy oh obschinye* of the Russ. Geog. Soc). For general conclusions, besides Laveleye's *Propriété*, Morgan's *Ancient Society*, Lippert's *Kulturgeschichte*, Post, Dargun, etc., also the lectures of M. Kovalevsky (*Tableau des origines et de revolution de la famille et de la propriété*, Stockholm, 1890). Many special monographs ought to be mentioned; their titles may be found in the excellent lists given by P. Viollet in *Droit privé* and *Droit public*. For other races, see subsequent notes.

5. Several authorities are inclined to consider the joint household as an intermediate stage between the clan and the village community; and there is no doubt that in very many cases village communities have grown up out of undivided families. Nevertheless, I consider the joint household as a fact of a different order. We find it within the *gentes*; on the other hand, we cannot affirm that joint families have existed at any period without belonging either to a *gens* or to a village community, or to a *Gau*. I conceive the early village communities as slowly originating directly from the *gentes*, and consisting, according to racial and local circumstances, either of several joint families, or of both joint and simple families, or (especially in the case of new settlements) of simple families only. If this view be correct, we should not have the right of establishing the series: *gens*, compound family, village community — the second member of the series having not the same ethnological value as the two others. See Appendix 9.

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grouped into tribes; and the tribes joined into confederations. Such was the social organization which developed among the so-called 'barbarians', when they began to settle more or less permanently in Europe.

A very long evolution was required before the gentes, or clans, recognized the separate existence of a patriarchal family in a separate hut; but even after that had been recognized, the clan, as a rule, knew no personal inheritance of property. The few things which might have belonged personally to the individual were either destroyed on his grave or buried with him. The village community, on the contrary, fully recognized the private accumulation of wealth within the family and its hereditary transmission. But wealth was conceived exclusively in the shape of *movable* property, including cattle, implements, arms and the dwelling-house which - 'like all things that can be destroyed by fire' - belonged to the same category.<sup>6</sup> As to private property in land, the village community did not, and could not, recognize anything of the kind, and, as a rule, it does not recognize it now. The land was the common property of the tribe, or of the whole stem, and the village community itself owned its part of the tribal territory so long only as the tribe did not claim a redistribution of the village allotments. The clearing of the woods and the breaking of the prairies being mostly done by the communities or, at least, by the joint work of several families — always with the consent of the community — the cleared plots were held by each family for a term of four, twelve, or twenty years, after which term they were treated as parts of the arable land owned in common. Private property, or possession 'for ever', was as incompatible with the very principles and the religious conceptions of the village community as it was with the principles of the gens; so that a long influence of the Roman law and the Christian Church, which soon accepted the Roman principles, were required to accustom the barbarians to the idea of private property in land being possible.<sup>7</sup> And yet, even when such property, or possession

6. Stobbe, *Beitrage zur Geschichte des deutschen Rechtes*, p. 62.

7. The few traces of private property in land which are met with in the early barbarian period are found with such stems (the Batavians, the Franks in Gaul) as have been for a time under the influence of Imperial Rome. See Inama-Sternegg's *Die Aushildung der grossen Grundherrschaften in Deutschland*,

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for an unlimited time, was recognized, the owner of a separate estate remained a co-proprietor in the waste lands, forests and grazing-grounds. Moreover, we continually see, especially in the history of Russia, that when a few families, acting separately, had taken possession of some land belonging to tribes which were treated as strangers, they very soon united together, and constituted a village community which in the third or fourth generation began to profess a community of origin.

A whole series of institutions, partly inherited from the clan period, have developed from that basis of common ownership of land during the long succession of centuries which was required to bring the barbarians under the dominion of States organized upon the Roman or Byzantine pattern. The village community was not only a union for guaranteeing to each one his fair share in the common land, but also a union for common culture, for mutual support in all possible forms, for protection from violence, and for a further development of knowledge, national bonds, and moral conceptions; and every change in the judicial, military, educational, or economical manners had to be decided at the folk-motes of the village, the tribe, or the confederation. The community being a continuation of the gens, it inherited all its functions. It was the *universitas*, the *mir* — a world in itself.

Common hunting, common fishing, and common culture of the orchards or the plantations of fruit trees was the rule with the old gentes. Common agriculture became the rule in the barbarian village communities. True, that direct testimony to this effect is scarce, and in the literature of antiquity we only have the passages of Diodorus and Julius Caesar relating to the inhabitants of the Lipari Islands, one of the Celt-Iberian tribes, and the Sueves. But there is no lack of evidence to prove that common agriculture was practised among some Teuton tribes, the Franks, and the old Scotch, Irish, and Welsh.<sup>8</sup> As to the later survivals of the same

vol. i, 1878. Also, Bessler, *Neubrich nach dem alteren deutschen Recht*, pp. 11 - 12, quoted by Kovalevsky, *Modern Custom and Ancient Law*, Moscow, 1886, i, 134.

8. Maurer's *Markgenossenschaft*; Lamprecht's 'Wirtschaft und Recht der Franken zur Zeit der Volksrechte', in *Histor. Taschenbuch*, 1883; Seebohm's *The English Village Community*, chapters 6, 7 and 9.

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practice, they simply are countless. Even in perfectly Romanized France, common culture was habitual some five and twenty years ago in the Morbihan (Brittany).<sup>9</sup> The old Welsh *cyvar*, or joint team, as well as the common culture of the land allotted to the use of the village sanctuary are quite common among the tribes of Caucasus the least touched by civilization,<sup>10</sup> and like facts are of daily occurrence among the Russian peasants. Moreover, it is well known that many tribes of Brazil, Central America and Mexico used to cultivate their fields in common, and that the same habit is widely spread among some Malaysians, in New Caledonia, with several Negro stems, and so on.<sup>11</sup> In short, communal culture is so habitual with many Aryan, Ural-Altayan, Mongolian, Negro, Red Indian, Malayan and Melanesian stems that we must consider it as a universal - though not as the only possible - form of primitive agriculture.<sup>12</sup>

Communal cultivation does not, however, imply by necessity communal consumption. Already under the clan organization we often see that when the boats laden with fruits or fish return to the village, the food they bring in is divided among the huts and the 'long houses' inhabited by either several families or the youth, and is cooked separately at each separate hearth. The habit of taking meals in a narrower circle of relatives or associates thus prevails at an early period of clan life. It became the rule in the village community. Even the food grown in common was usually divided between the households after part of it had been laid in store for communal use. However, the tradition of communal meals was piously kept alive; every available opportunity, such as the com-

9. Letourneau, in *Bulletin de la Soc. d'Anthropologic*, 1888, vol. xi, p. 476.

10. Walter, *Das alte Wallis*, p. 323; Dm. Bakradze and N. Khoudadoff in Russian *Zapiski* of the Caucasian Geogr. Society, xiv, Part I.

11. Bancroft's *Native Races*; Waitz, *Anthropologic*, iii, 423; Montrozier, in *Bull. Soc. d'Anthropologic*, 1870; Post's *Studien*, etc.

12. A number of works, by Ory, Luro, Laudes, and Sylvestre, on the village community in Annam, proving that it has had there the same forms as in Germany or Russia, is mentioned in a review of these works by JobbÉ-Duval, in *Nouvelle Revue historique de droit français et étranger*, October and December, 1896. A good study of the village community of Peru, before the establishment of the power of the Incas, has been brought out by Heinrich Cunow, *Die Soziale Verfassung des Inka-Reichs*, Stuttgart, 1896. The communal possession of land and communal culture are described in that work.

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memoration of the ancestors, the religious festivals, the beginning and the end of field work, the births, the marriages, and the funerals, being seized upon to bring the community to a common meal. Even now this habit, well known in this country as the 'harvest supper', is the last to disappear. On the other hand, even when the fields had long since ceased to be tilled and sown in common, a variety of agricultural work continued, and continues still, to be performed by the community. Some part of the communal land is still cultivated in many cases in common, either for the use of the destitute, or for refilling the communal stores, or for using the produce at the religious festivals. The irrigation canals are digged and repaired in common. The communal meadows are mown by the community; and the sight of a Russian commune mowing a meadow — the men rivalling each other in their advance with the scythe, while the women turn the grass over and throw it up into heaps - is one of the most inspiring sights; it shows what human work might be and ought to be. The hay, in such case, is divided among the separate households, and it is evident that no one has the right of taking hay from a neighbour's stack without his permission; but the limitation of this last rule among the Caucasian Ossetes is most noteworthy. When the cuckoo cries and announces that spring is coming, and that the meadows will soon be clothed again with grass, every one in need has the right of taking from a neighbour's stack the hay he wants for his cattle.<sup>13</sup> The old communal rights are thus reasserted, as if to prove how contrary unbridled individualism is to human nature.

When the European traveller lands in some small island of the Pacific, and, seeing at a distance a grove of palm trees, walks in that direction, he is astonished to discover that the little villages are connected by roads paved with big stones, quite comfortable for the unshod natives, and very similar to the 'old roads' of the Swiss mountains. Such roads were traced by the 'barbarians' all over Europe, and one must have travelled in wild, thinly-peopled countries, far away from the chief lines of communication, to realize in full the immense work that must have been performed by the barbarian communities in order to conquer the woody and marshy wilderness which Europe was some two thousand years ago.

13. Kovalevsky, *Modern Custom and Ancient Law*, i, 115.

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Isolated families, having no tools, and weak as they were, could not have conquered it; the wilderness would have overpowered them. Village communities alone, working in common, could master the wild forests, the sinking marshes and the endless steppes. The rough roads, the ferries, the wooden bridges taken away in the winter and rebuilt after the spring flood was over, the fences and the palisaded walls of the villages, the earthen forts and the small towers with which the territory was dotted - all these were the work of the barbarian communities. And when a community grew numerous it used to throw off a new bud. A new community arose at a distance, thus step by step bringing the woods and the steppes under the dominion of man. The whole making of European nations was such a budding of the village communities. Even nowadays the Russian peasants, if they are not quite broken down by misery, migrate in communities, and they till the soil and build the houses in common when they settle on the banks of the Amur, or in Manitoba. And even the English, when they first began to colonize America, used to return to the old system; they grouped into village communities.<sup>14</sup>

The village community was the chief arm of the barbarians in their hard struggle against a hostile nature. It also was the bond they opposed to oppression by the cunningest and the strongest which so easily might have developed during those disturbed times. The imaginary barbarian - the man who fights and kills at his mere caprice - existed no more than the 'bloodthirsty' savage. The real barbarian was living, on the contrary, under a wide series of institutions, imbued with considerations as to what may be useful or noxious to his tribe or confederation, and these institutions were piously handed down from generation to generation in verses and songs, in proverbs or triads, in sentences and instructions. The more we study them the more we recognize the narrow bonds which united men in their villages. Every quarrel arising between two individuals was treated as a communal affair — even the offensive words that might have been uttered during a quarrel being considered as an offence to the community and its ancestors. They

14. Palfrey, *History of New England*, ii, 13; quoted in *Maine's Village Communities*, New York, 1876, p. 201.

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had to be repaired by amends made both to the individual and the community;<sup>15</sup> and if a quarrel ended in a fight and wounds, the man who stood by and did not interpose was treated as if he himself had inflicted the wounds.<sup>16</sup>

The judicial procedure was imbued with the same spirit. Every dispute was brought first before mediators or arbiters, and it mostly ended with them, the arbiters playing a very important part in barbarian society. But if the case was too grave to be settled in this way, it came before the folk-mote, which was bound 'to find the sentence', and pronounced it in a conditional form; that is, 'such compensation was due, if the wrong be proved', and the wrong had to be proved or disclaimed by six or twelve persons confirming or denying the fact by oath; ordeal being resorted to in case of contradiction between the two sets of jurors. Such procedure, which remained in force for more than two thousand years in succession, speaks volumes for itself; it shows how close were the bonds between all members of the community. Moreover, there was no other authority to enforce the decisions of the folk-mote besides its own moral authority. The only possible menace was that the community might declare the rebel an outlaw, but even this menace was reciprocal. A man discontented with the folk-mote could declare that he would abandon the tribe and go over to another tribe - a most dreadful menace, as it was sure to bring all kinds of misfortunes upon a tribe that might have been unfair to one of its members.<sup>17</sup> A rebellion against a right decision of the customary law was simply 'inconceivable', as Henry Maine has so well said, because 'law, morality and fact' could not be separated from each other in those times.<sup>18</sup> The moral authority of the commune was so great that even at a much later epoch, when the village communities fell into submission to the feudal lord, they maintained their judicial powers; they only permitted the lord, or his deputy, to 'find' the above conditional sentence in accordance with the custo-

15. Konigswarter, *Études sur le développement des sociétés humaines*, Paris, 1850.

16. This is, at least, the law of the Kalmucks, whose customary law bears the closest resemblance to the laws of the Teutons, the old Slavonians, etc.

17. The habit is in force still with many African and other tribes.

18. *Village Communities*, pp. 65—8 and 199.

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mary law he had sworn to follow, and to levy for himself the fine (the *fred*) due to the commune. But for a long time, the lord himself, if he remained a co-proprietor in the waste land of the commune, submitted in communal affairs to its decisions. Noble or ecclesiastic, he had to submit to the folkmote - *Wer daselbst Wasser und Weid genusst, muss gehorsam sein* - 'Who enjoys here the right of water and pasture must obey' - was the old saying. Even when the peasants became serfs under the lord, he was bound to appear before the folkmote when they summoned him.<sup>19</sup>

In their conceptions of justice the barbarians evidently did not much differ from the savages. They also maintained the idea that a murder must be followed by putting the murderer to death; that wounds had to be punished by equal wounds, and that the wronged family was bound to fulfil the sentence of the customary law. This was a holy duty, a duty towards the ancestors, which had to be accomplished in broad daylight, never in secrecy, and rendered widely known. Therefore the most inspired passages of the sagas and epic poetry altogether are those which glorify what was supposed to be justice. The gods themselves joined in aiding it. However, the predominant feature of barbarian justice is, on the one hand, to limit the numbers of persons who may be involved in a feud, and, on the other hand, to extirpate the brutal idea of blood for blood and wounds for wounds, by substituting for it the system of compensation. The barbarian codes - which were collections of common law rules written down for the use of judges — 'first permitted, then encouraged, and at last enforced', compensation instead of revenge.<sup>20</sup> The compensation has, however, been totally misunderstood by those who represented it as a fine, and as a sort of *carte blanche* given to the rich man to do whatever he liked. The compensation money (*wergeld*), which was quite different from the fine or *fred*,<sup>21</sup> was habitually so high for all kinds of active offences

19. Maurer (Gesch. der Markverfassung, § 29, 97) is quite decisive upon this subject. He maintains that 'All members of the community ... the laic and clerical lords as well, often also the partial co-possessors (Markierechtigte), and even strangers to the Mark, were submitted to its jurisdiction' (p. 312). This conception remained locally in force up to the fifteenth century.

20. Königswarter, op. cit., p. 50; J. Thrupp, Historical Law Tracts, London, 1843, p. 106.

21. Königswarter has shown that the *fred* originated from an offering which

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that it certainly was no encouragement for such offences. In case of a murder it usually exceeded all the possible fortune of the murderer. 'Eighteen times eighteen cows' is the compensation with the Ossetes who do not know how to reckon above eighteen, while with the African tribes it attains 800 cows or 100 camels with their young, or 416 sheep in the poorer tribes.<sup>22</sup> In the great majority of cases, the compensation money could not be paid at all, so that the murderer had no issue but to induce the wronged family, by repentance, to adopt him. Even now, in the Caucasus, when feuds come to an end, the offender touches with his lips the breast of the oldest woman of the tribe, and becomes a 'milk-brother' to all men of the wronged family.<sup>23</sup> With several African tribes he must give his daughter, or sister, in marriage to some one of the family; with other tribes he is bound to marry the woman whom he has made a widow; and in all cases he becomes a member of the family, whose opinion is taken in all important family matters.<sup>24</sup>

Far from acting with disregard to human life, the barbarians, moreover, knew nothing of the horrid punishments introduced at a later epoch by the laic and canonic laws under Roman and Byzantine influence. For, if the Saxon code admitted the death penalty rather freely, even in cases of incendiarism and armed robbery, the other barbarian codes pronounced it exclusively in cases of betrayal of one's kin, and sacrilege against the community's gods, as the only means to appease the gods.

All this, as seen, is very far from the supposed 'moral dissoluteness' of the barbarians. On the contrary, we cannot but admire the

had to be made to appease the ancestors. Later on, it was paid to the community, for the breach of peace; and still later to the judge, or king, or lord, when they had appropriated to themselves the rights of the community.

22. Post's *Bausteine and Afrikanische Jurisprudenz*, Oldenburg, 1887, vol. i, pp. 64 ff.; Kovalevsky, *op. cit.*, ii, 164-89.

23. O. Miller and M. Kovalevsky, 'In the Mountaineer Communities of Kabardia', in *Vestnik Evropy*, April 1884. With the Shakh-sevens of the Mugan Steppe, blood feuds always end by marriage between the two hostile sides (Markoff, in appendix to the *Zapiski of the Caucasian Geogr. Soc.*, xiv, 1, 21).

24. Post, in *Afrik. Jurisprudenz*, gives a series of facts illustrating the conceptions of equity inrooted among the African barbarians. The same may be said of all serious examinations into barbarian common law.

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deeply moral principles elaborated within the early village communities which found their expression in Welsh triads, in legends about King Arthur, in Brehon commentaries,<sup>25</sup> in old German legends and so on, or find still their expression in the sayings of the modern barbarians. In his introduction to *The Story of Burnt Njal*, George Dasent very justly sums up as follows the qualities of a Northman, as they appear in the sagas:

To do what lay before him openly and like a man, without fear of either foes, fiends, or fate; . . . to be free and daring in all his deeds; to be gentle and generous to his friends and kinsmen; to be stern and grim to his foes [those who are under the *lex talionis*], but even towards them to fulfil all bounden duties. . . . To be no truce-breaker, nor tale-bearer, nor backbiter. To utter nothing against any man that he would not dare to tell him to his face. To turn no man from his door who sought food or shelter, even though he were a foe.<sup>26</sup>

The same or still better principles permeate the Welsh epic poetry and triads. To act 'according to the nature of mildness and the principles of equity', without regard to the foes or to the friends, and 'to repair the wrong', are the highest duties of man; 'evil is death, good is life', exclaims the poet legislator.<sup>27</sup> 'The World would be fool, if agreements made on lips were not honourable' - the Brehon law says. And the humble Shamanist Mordovian, after having praised the same qualities, will add, moreover, in his principles of customary law, that 'among neighbours the cow and the milking-jar are in common'; that 'the cow must be milked for yourself and him who may ask milk'; that 'the body of a child reddens from the stroke, but the face of him who strikes reddens from shame';<sup>28</sup> and so on. Many pages might be filled with like principles expressed and followed by the 'barbarians'.

One feature more of the old village communities deserves a special mention. It is the gradual extension of the circle of men era-

25. See the excellent chapter, 'Le droit de la Vieille Irlande', (also 'Le Haut Nord') in *Études de droit international et de droit politique*, by Prof. E. Nys, Bruxelles, 1896.

26. Introduction, p. xxxv.

27. *Das alte Wallis*, pp. 343-50.

28. MaynofF, 'Sketches of the Judicial Practices of the Mordovians', in the *ethnographical Zapiski of the Russian Geographical Society*, 1885, pp. 236, 257.

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braced by the feelings of solidarity. Not only the tribes federated into stems, but the stems as well, even though of different origin, joined together in confederations. Some unions were so close that, for instance, the Vandals, after part of their confederation had left for the Rhine, and thence went over to Spain and Africa, respected for forty consecutive years the landmarks and the abandoned villages of their confederates, and did not take possession of them until they had ascertained through envoys that their confederates did not intend to return. With other barbarians, the soil was cultivated by one part of the stem, while the other part fought on or beyond the frontiers of the common territory. As to the leagues between several stems, they were quite habitual. The Sicambers united with the Cherusques and the Sueves, the Quades with the Sarmates; the Sarmates with the Alans, the Carpes and the Huns. Later on, we also see the conception of nations gradually developing in Europe, long before anything like a State had grown in any part of the continent occupied by the barbarians. These nations — for it is impossible to refuse the name of a nation to the Merovingian France, or to the Russia of the eleventh and twelfth century - were nevertheless kept together by nothing else but a community of language, and a tacit agreement of the small republics to take their dukes from none but one special family.

Wars were certainly unavoidable; migration means war; but Sir Henry Maine has already fully proved in his remarkable study of the tribal origin of International Law, that 'Man has never been so ferocious or so stupid as to submit to such an evil as war without some kind of effort to prevent it', and he has shown how exceedingly great is 'the number of ancient institutions which bear the marks of a design to stand in the way of war, or to provide an alternative to it'.<sup>29</sup> In reality, man is so far from the warlike being he is supposed to be, that when the barbarians had once settled they so rapidly lost the very habits of warfare that very soon they were compelled to keep special dukes followed by special *scholae* or bands of warriors, in order to protect them from possible intruders. They preferred peaceful toil to war, the very peacefulness of man being the cause of the specialization of the warrior's trade, which

29. Henry Maine, *International Law*, London, 1888, pp. 11-13. E. Nys, *Les origines du droit international*, Bruxelles, 1894.

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specialization resulted later on in serfdom and in all the wars of the 'States period' of human history.

History finds great difficulties in restoring to life the institutions of the barbarians. At every step the historian meets with some faint indication which he is unable to explain with the aid of his own documents only. But a broad light is thrown on the past as soon as we refer to the institutions of the very numerous tribes which are still living under a social organization almost identical with that of our barbarian ancestors. Here we simply have the difficulty of choice, because the islands of the Pacific, the steppes of Asia and the tablelands of Africa are real historical museums containing specimens of all possible intermediate stages which mankind has lived through, when passing from the savage gentes up to the States' organization. Let us, then, examine a few of those specimens.

If we take the village communities of the Mongol Buryates, especially those of the Kudinsk Steppe on the upper Lena which have better escaped Russian influence, we have fair representatives of barbarians in a transitional state, between cattle-breeding and agriculture.<sup>30</sup> These Buryates are still living in 'joint families'; that is, although each son, when he is married, goes to live in a separate hut, the huts of at least three generations remain within the same enclosure, and the joint family work in common in their fields, and own in common their joint households and their cattle, as well as their 'calves' grounds' (small fenced patches of soil kept under soft grass for the rearing of calves). As a rule, the meals are taken separately in each hut; but when meat is roasted, all the twenty to sixty members of the joint household feast together. Several joint households which live in a cluster, as well as several smaller families settled in the same village - mostly debris of joint households accidentally broken up — make the *oulous*, or the village community; several *oulouses* make a tribe; and the forty-six tribes, or clans, of the Kudinsk Steppe are united into one confederation. Smaller and closer confederations are entered into, as necessity arises for special wants, by several tribes. They know no private property in land -

30. A Russian historian, the Kazan Professor Schapoff, who was exiled in 1862 to Siberia, has given a good description of their institutions in the *Izvestia* of the East-Siberian Geographical Society, vol. v, 1874.

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the land being held in common by the *oulous*, or rather by the confederation, and if it becomes necessary, the territory is reallocated between the different *oulouses* at a folkmote of the tribe, and between the forty-six tribes at a folkmote of the confederation. It is worthy of note that the same organization prevails among all the 250,000 Buryates of East Siberia, although they have been for three centuries under Russian rule, and are well acquainted with Russian institutions.

With all that, inequalities of fortune rapidly develop among the Buryates, especially since the Russian Government is giving an exaggerated importance to their elected *taishas* (princes), whom it considers as responsible tax-collectors and representatives of the confederations in their administrative and even commercial relations with the Russians. The channels for the enrichment of the few are thus many, while the impoverishment of the great number goes hand in hand, through the appropriation of the Buryate lands by the Russians. But it is a habit with the Buryates, especially those of Kudinsk - and habit is more than law - that if a family has lost its cattle, the richer families give it some cows and horses that it may recover. As to the destitute man who has no family, he takes his meals in the huts of his congeners; he enters a hut, takes - by right, not for charity - his seat by the fire, and shares the meal which always is scrupulously divided into equal parts; he sleeps where he has taken his evening meal. Altogether, the Russian conquerors of Siberia were so much struck by the communistic practices of the Buryates, that they gave them the name of *Bratskiye* — 'the Brotherly Ones' - and reported to Moscow: 'With them everything is in common; whatever they have is shared in common.' Even now, when the Lena Buryates sell their wheat, or send some of their cattle to be sold to a Russian butcher, the families of the *oulous*, or the tribe, put their wheat and cattle together, and sell it as a whole. Each *oulous* has, moreover, its grain store for loans in case of need, its communal baking oven (the *four banal* of the old French communities), and its blacksmith, who, like the blacksmith of the Indian communities,<sup>31</sup> being a member of the community, is never paid for his work within the community. He must make it for nothing, and if he utilizes his spare time for fabricating the small

31. Sir Henry Maine's *Village Communities*, New York, 1876, pp. 193-6.

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plates of chiselled and silvered iron which are used in Buryate land for the decoration of dress, he may occasionally sell them to a woman from another clan, but to the women of his own clan the attire is presented as a gift. Selling and buying cannot take place within the community, and the rule is so severe that when a richer family hires a labourer the labourer must be taken from another clan or from among the Russians. This habit is evidently not specific to the Buryates; it is so widely spread among the modern barbarians, Aryan and Ural-Altayan, that it must have been universal among our ancestors.

The feeling of union within the confederation is kept alive by the common interests of the tribes, their folknotes, and the festivities which are usually kept in connection with the folknotes. The same feeling is, however, maintained by another institution, the *aba*, or common hunt, which is a reminiscence of a very remote past. Every autumn, the forty-six clans of Kudinsk come together for such a hunt, the produce of which is divided among all the families. Moreover, national *abas*, to assert the unity of the whole Buryate nation, are convoked from time to time. In such cases, all Buryate clans which are scattered for hundreds of miles west and east of Lake Baikal, are bound to send their delegate hunters. Thousands of men come together, each one bringing provisions for a whole month. Every one's share must be equal to all the others, and therefore, before being put together, they are weighed by an elected elder (always 'with the hand': scales would be a profanation of the old custom). After that the hunters divide into bands of twenty, and the parties go hunting according to a well-settled plan. In such *abas* the entire Buryate nation revives its epic traditions of a time when it was united in a powerful league. Let me add that such communal hunts are quite usual with the Red Indians and the Chinese on the banks of the Usuri (the *kada*)?<sup>32</sup>

With the Kabyles, whose manners of life have been so well described by two French explorers,<sup>33</sup> we have barbarians still more advanced in agriculture. Their fields, irrigated and manured, are well attended to, and in the hilly tracts every available plot of land

32. Nazaroff, The North Usuri Territory (Russian), St Petersburg, 1887, p. 65.

33. Hanoteau et Letourneux, La Kabylie, 3 vols., Paris, 1883.

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is cultivated by the spade. The Kabyles have known many vicissitudes in their history; they have followed for some time the Mussulman law of inheritance, but, being adverse to it, they have returned, 150 years ago, to the tribal customary law of old. Accordingly, their land-tenure is of a mixed character, and private property in land exists side by side with communal possession. Still, the basis of their present organization is the village community, the *thaddart*, which usually consists of several joint families (*kharoubas*), claiming a community of origin, as well as of smaller families of strangers. Several villages are grouped into clans or tribes (*arch*); several tribes make the confederation (*thak'ebih*); and several confederations may occasionally enter into a league, chiefly for purposes of armed defence.

The Kabyles know no authority whatever besides that of the *djemmâa*, or folk-mote of the village community. All men of age take part in it, in the open air, or in a special building provided with stone seats, and the decisions of the *djemmâa* are evidently taken at unanimity: that is, the discussions continue until all present agree to accept, or to submit to, some decision. There being no authority in a village community to impose a decision, this system has been practised by mankind wherever there have been village communities, and it is practised still wherever they continue to exist, i.e. by several hundred million men all over the world. The *djemmâa* nominates its executive - the elder, the scribe, and the treasurer; it assesses its own taxes; and it manages the repartition of the common lands, as well as all kinds of works of public utility. A great deal of work is done in common: the roads, the mosques, the fountains, the irrigation canals, the towers erected for protection from robbers, the fences, and so on, are built by the village community; while the high-roads, the larger mosques and the great market-places are the work of the tribe. Many traces of common culture continue to exist, and the houses continue to be built by, or with the aid of, all men and women of the village. Altogether, the 'aids' are of daily occurrence, and are continually called in for the cultivation of the fields, for harvesting, and so on. As to the skilled work, each community has its blacksmith, who enjoys his part of the communal land, and works for the community; when the tilling season approaches he visits every house, and repairs the tools and the ploughs,

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without expecting any pay, while the making of new ploughs is considered as a pious work which can by no means be recompensed in money, or by any other form of salary.

As the Kabyles already have private property, they evidently have both rich and poor among them. But like all people who closely live together, and know how poverty begins, they consider it as an accident which may visit every one. 'Don't say that you will never wear the beggar's bag, nor go to prison,' is a proverb of the Russian peasants; the Kabyles practise it, and no difference can be detected in the external behaviour between rich and poor; when the poor convokes an 'aid', the rich man works in his field, just as the poor man does it reciprocally in his turn.<sup>34</sup> Moreover, the *djemmâas* set aside certain gardens and fields, sometimes cultivated in common, for the use of the poorest members. Many like customs continue to exist. As the poorer families would not be able to buy meat, meat is regularly bought with the money of the fines, or the gifts to the *djemmâa*, or the payments for the use of the communal olive-oil basins, and it is distributed in equal parts among those who cannot afford buying meat themselves. And when a sheep or a bullock is killed by a family for its own use on a day which is not a market day, the fact is announced in the streets by the village crier, in order that sick people and pregnant women may take of it what they want. Mutual support permeates the life of the Kabyles, and if one of them, during a journey abroad, meets with another Kabyle in need, he is bound to come to his aid, even at the risk of his own fortune and life; if this has not been done, the *djemmâa* of the man who has suffered from such neglect may lodge a complaint, and the *djemmâa* of the selfish man will at once make good the loss. We thus come across a custom which is familiar to the students of the medieval merchant guilds. Every stranger who enters a Kabyle village has right to housing in the winter, and his horses can always graze on the communal lands for twenty-four hours.\* But in case of

34. To convoke an 'aid', or 'bee', some kind of meal must be offered to the community. I am told by a Caucasian friend that in Georgia, when the poor man wants an 'aid', he borrows from the rich man a sheep or two to prepare the meal, and the community bring, in addition to their work, so many provisions that he may repay the debt. A similar habit exists with the Mordovians.

\* The following note appears in the 1922 Russian edition: 'Such a custom persists to this day in England, where nomadic gypsies and travellers in general

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need he can reckon upon an almost unlimited support. Thus, during the famine of 1867-8 the Kabyles received and fed every one who sought refuge in their villages, without distinction of origin. In the district of Dellys, no less than 12,000 people who came from all parts of Algeria, and even from Morocco, were fed in this way. While people died from starvation all over Algeria, there was not one single case of death due to this cause on Kabylia soil. The *djemâas*, depriving themselves of necessaries, organized relief, without ever asking any aid from the Government, or uttering the slightest complaint; they considered it as a natural duty. And while among the European settlers all kind of police measures were taken to prevent thefts and disorder resulting from such an influx of strangers, nothing of the kind was required on the Kabyles' territory: the *djemâas* needed neither aid nor protection from without.<sup>35</sup>

I can only cursorily mention two other most interesting features of Kabyle life; namely, the *anaya*, or protection granted to wells, canals, mosques, market-places, some roads, and so on, in case of war, and the *çofs*. In the *anaya* we have a series of institutions both for diminishing the evils of war and for preventing conflicts. Thus the market-place is *anaya*, especially if it stands on a frontier and brings Kabyles and strangers together; no one dares disturb peace in the market, and if a disturbance arises, it is quelled at once by the strangers who have gathered in the market town. The road upon which the women go from the village to the fountain also is *anaya* in case of war; and so on. As to the *çof* it is a widely-spread form of association, having some characters of the medieval *Bürgschaften* or *Gegilden*, as well as of societies both for mutual protection and for various purposes — intellectual, political, and emotional — which cannot be satisfied by the territorial organization of the village, the clan, and the confederation. The *çof* knows no territorial limits; it recruits its members in various villages, even among strangers; and

take advantage of it. They may camp for twenty-four hours and pasture their horses by the side of the road.' - Ed.

35. Hanoteau et Letourneux, *La Kabylie*, ii, 58. The same respect to strangers is the rule with the Mongols. The Mongol who has refused his roof to a stranger pays the full blood-compensation if the stranger has suffered therefrom (Bastian, *Der Mensch in der Geschichte*, iii, 231).

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it protects them in all possible eventualities of life. Altogether, it is an attempt at supplementing the territorial grouping by an extra-territorial grouping intended to give an expression to mutual affinities of all kinds across the frontiers. The free international association of individual tastes and ideas, which we consider as one of the best features of our own life, has thus its origin in barbarian antiquity.

The mountaineers of Caucasia offer another extremely instructive field for illustrations of the same kind. In studying the present customs of the Ossetes — their joint families and communes and their judiciary conceptions — Professor Kovalevsky, in a remarkable work on *Modern Custom and Ancient Law* was enabled step by step to trace the similar dispositions of the old barbarian codes and even to study the origins of feudalism. With other Caucasian stems we occasionally catch a glimpse into the origin of the village community in those cases where it was not tribal but originated from a voluntary union between families of distinct origin. Such was recently the case with some Khevsoure villages, the inhabitants of which took the oath of 'community and fraternity'.<sup>36</sup> In another part of Caucasus, Daghestan, we see the growth of feudal relations between two tribes, both maintaining at the same time their village communities (and even traces of the gentile 'classes'), and thus giving a living illustration of the forms taken by the conquest of Italy and Gaul by the barbarians. The victorious race, the Lezghines, who have conquered several Georgian and Tartar villages in the Zakataly district, did not bring them under the dominion of separate families; they constituted a feudal clan which now includes 12,000 households in three villages, and owns in common no less than twenty Georgian and Tartar villages. The conquerors divided their own land among their clans, and the clans divided it in equal parts among the families; but they did not interfere with the *djemmâas* of their tributaries which still practise the habit mentioned by Julius Caesar; namely, the *djemmâa* decides each year which part of the communal territory must be cultivated, and this

36. N. Khoudadoff, 'Notes on the Khevsoures', in *Zapiski of the Caucasian Geogr. Society*, xiv, 1, Tiflis, 1890, p. 68. They also took the oath of not marrying girls from their own union, thus displaying a remarkable return to the old gentile rules.

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land is divided into as many parts as there are families, and the parts are distributed by lot. It is worthy of note that although proletarians are of common occurrence among the Lezghines (who live under a system of private property in land, and common ownership of serfs<sup>37</sup>) they are rare among their Georgian serfs, who continue to hold their land in common. As to the customary law of the Caucasian mountaineers, it is much the same as that of the Longobards or Salic Franks, and several of its dispositions explain a good deal the judicial procedure of the barbarians of old. Being of a very impressionable character, they do their best to prevent quarrels from taking a fatal issue; so, with the Khevsoures, the swords are very soon drawn when a quarrel breaks out; but if a woman rushes out and throws among them the piece of linen which she wears on her head, the swords are at once returned to their sheaths, and the quarrel is appeased. The head-dress of the women is *anaya*. If a quarrel has not been stopped in time and has ended in murder, the compensation money is so considerable that the aggressor is entirely ruined for his life, unless he is adopted by the wronged family; and if he has resorted to his sword in a trifling quarrel and has inflicted wounds, he loses for ever the consideration of his kin. In all disputes, mediators take the matter in hand; they select from among the members of the clan the judges — six in smaller affairs, and from ten to fifteen in more serious matters — and Russian observers testify to the absolute incorruptibility of the judges. An oath has such a significance that men enjoying general esteem are dispensed from taking it: a simple affirmation is quite sufficient, the more so as in grave affairs the Khevsoure never hesitates to recognize his guilt (I mean, of course, the Khevsoure untouched yet by civilization). The oath is chiefly reserved for such cases, like disputes about property, which require some sort of appreciation in addition to a simple statement of facts; and in such cases the men whose affirmation will decide in the dispute, act with the greatest circumspection. Altogether it is certainly not a want of honesty or of respect to the rights of the congeners which characterizes the barbarian societies of Caucasus.

37. Dm. Bakradze, 'Notes on the Zakataly District', in same *Zapiski*, xiv, 1, p. 264. The 'joint team' is as common among the Lezghines as it is among the Ossetes.

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The stems of Africa offer such an immense variety of extremely interesting societies standing at all intermediate stages from the early village community to the despotic barbarian monarchies that I must abandon the idea of giving here even the chief results of a comparative study of their institutions.<sup>38</sup> Suffice it to say, that, even under the most horrid despotism of kings, the folk-motes of the village communities and their customary law remain sovereign in a wide circle of affairs. The law of the State allows the king to take any one's life for a simple caprice, or even for simply satisfying his gluttony; but the customary law of the people continues to maintain the same network of institutions for mutual support which exist among other barbarians or have existed among our ancestors. And with some better-favoured stems (in Bornu, Uganda, Abyssinia), and especially the Bogos, some of the dispositions of the customary law are inspired with really graceful and delicate feelings.

The village communities of the natives of both Americas have the same character. The Tupi of Brazil were found living in 'long houses' occupied by whole clans which used to cultivate their corn and manioc fields in common. The Arani, much more advanced in civilization, used to cultivate their fields in common; so also the Oucagas, who had learned under their system of primitive communism and 'long houses' to build good roads and to carry on a variety of domestic industries,<sup>39</sup> not inferior to those of the early mediæval times in Europe. All of them were also living under the same customary law of which we have given specimens on the preceding pages. At another extremity of the world we find the Malayan feudalism, but this feudalism has been powerless to unroot the *negaria*, or village community, with its common ownership of at least part of the land, and the redistribution of land among the several *negarias* of the tribe.<sup>40</sup> With the Alfurus of Minahasa we find the communal rotation of the crops; with the Indian stem of the Wyandots we have the periodical redistribution of land within the

38. See Post, *Afrikanische Jurisprudenz*, Oldenburg, 1887; Münzinger, *Ueber das Recht und Sitten der Bogos*, Winterthur, 1859; Casalis, *Les Bassoutos*, Paris, 1859; Maclean, *Kafir Laws and Customs*, Mount Coke, 1858, etc.

39. Waitz, iii, 423 ff.

40. Post's *Studien zur Entwicklungsgeschichte des Familien-Rechts*, Oldenburg, 1889, pp. 270 ff.

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tribe, and the clan-culture of the soil; and in all those parts of Sumatra where Moslem institutions have not yet totally destroyed the old organization we find the joint family (*suka*) and the village community (*kota*) which maintains its right upon the land, even if part of it has been cleared without its authorization.<sup>41</sup> But to say this, is to say that all customs for mutual protection and prevention of feuds and wars, which have been briefly indicated in the preceding pages as characteristic of the village community, exist as well. More than that: the more fully the communal possession of land has been maintained, the better and the gentler are the habits. De Stuers positively affirms that wherever the institution of the village community has been less encroached upon by the conquerors, the inequalities of fortunes are smaller, and the very prescriptions of the *lex talionis* are less cruel; while, on the contrary, wherever the village community has been totally broken up, 'the inhabitants suffer the most unbearable oppression from their despotic rulers'.<sup>42</sup> This is quite natural. And when Waitz made the remark that those stems which have maintained their tribal confederations stand on a higher level of development and have a richer literature than those stems which have forfeited the old bonds of union, he only pointed out what might have been foretold in advance.

More illustrations would simply involve me in tedious repetitions — so strikingly similar are the barbarian societies under all climates and amidst all races. The same process of evolution has been going on in mankind with a wonderful similarity. When the clan organization, assailed as it was from within by the separate family, and from without by the dismemberment of the migrating clans and the necessity of taking in strangers of different descent - the village community, based upon a territorial conception, came into existence. This new institution, which had naturally grown out of the preceding one — the clan — permitted the barbarians to pass through a most disturbed period of history without being broken into isolated families which would have succumbed in the struggle for life. New forms of culture developed under the new organi-

41. Powell, Annual Report of the Bureau of Ethnography, Washington, 1881, quoted in Post's Studien, p. 290; Bastian's Inselgruppen in Oceanien, 1883, p. 88.

42. De Stuers, quoted by Waitz, v, 141.

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zation; agriculture attained the stage which it hardly has surpassed until now with the great number; the domestic industries reached a high degree of perfection. The wilderness was conquered, it was intersected by roads, dotted with swarms thrown off by the mother-communities. Markets and fortified centres, as well as places of public worship, were erected. The conceptions of a wider union, extended to whole stems and to several stems of various origin, were slowly elaborated. The old conceptions of justice which were conceptions of mere revenge, slowly underwent a deep modification — the idea of amends for the wrong done taking the place of revenge. The customary law which still makes the law of the daily life for two thirds or more of mankind, was elaborated under that organization, as well as a system of habits intended to prevent the oppression of the masses by the minorities whose powers grew in proportion to the growing facilities for private accumulation of wealth. This was the new form taken by the tendencies of the masses for mutual support. And the progress — economical, intellectual and moral — which mankind accomplished under this new popular form of organization, was so great that the States, when they were called later on into existence, simply took possession, in the interest of the minorities, of all the judicial, economical and administrative functions which the village community already had exercised in the interest of all.