

Tribal Law

"MODERN Science claims to be proving, by the most careful and exhaustive study of man and his works, that our race began its existence on earth at the bottom of the scale, instead of at the top, and has been gradually working upward; that human powers have had a history of development; that all the elements of culture—as the arts of life, art, science, language, religion, philosophy—have been wrought out by slow and painful efforts, in the conflict between the soul and mind of man on the one hand, and external nature on the other."—Whitney's "Oriental and Linguistic Studies." P. 341.

Last issue of "The Indicator," contained Professor Jenk's description of the general features of Tribal Religion, in which, he showed that religion had its source in the mind of primitive man, according as it reflected and interpreted the environment surrounding him; and that the forms that religion took on, were such as tended to preserve and foster the Tribal form of organization. This issue we give the same author's account of Tribal Law, in which it will be noted how "materialistic" and "timely" are the sources of some present day institutional conceptions, by many people regarded as "divine" and "eternal," that is, metaphysical.

TRIBAL LAW

From Jenk's History of Politics

"Closely connected with Tribal Religion, in fact, originally part of it, was Tribal Law. One of the direct results of ancestor worship was a religious adherence to ancestral custom, that is, to the practices observed in life by the revered ancestors. And this was the main idea of Law, as conceived by patriarchal society. The notion of Law as the command of an absolute ruler, whether an individual or a body, was yet far in the future. Law was not a thing to be made, but a thing to be discovered. The old savage notion of taboo, which was purely negative, had been largely superseded by the positive notion of custom. What was customary was right, what was uncustomary was wrong. The desperate tenacity with which patriarchal society clung to a practice, merely because it was a practice, is illustrated, among hundreds of other examples, by the well known Roman custom of examining the entrails of victims to ascertain the prospects of an expedition. Originally, no doubt, it was a practical expedient adopted by the Nomad tribes from which the Romans were descended, in their wanderings through unknown country. To test the fitness for food of the new herbs with which they came into contact, they caused a few of their cattle and sheep to eat them, and then, by a sort of rude "post-mortem," judged of the result. The real origin of customs is often very hard, however to discover. Sometimes it seems to have been mere accident. In other cases, no doubt, an exceptionally able man deliberately made an innovation, which was afterwards copied by

others, as it was found to be useful. But such enterprise must have been very dangerous. The first man who drank the milk of his cow probably paid for his luxury with his life. In patriarchal society, innovation and crime were almost coincident. So little, indeed, is deliberate departure from custom anticipated, that there seems to be no regular punishment for it. The chiefs or elders will declare the custom; that is, or ought to be, sufficient. But if an offender persists in his impiety, the outraged community will banish him from its ranks. In the expressive language of the Welsh Laws, he will be a "kin-shattered man," an outlaw, in fact. If the tribes lives near the sea, he will probably be set adrift on an open raft; this was the method of the South Welsh. Other codes speak of turning the offender "into the forest." In either case, the result would be much the same.

The Blood Feud.

For injuries to individual fellow-tribesmen, the universal remedy was the "lex talionis," administered by the blood feud. Barbarous as such an institution seems to us, it is probably one of the most important steps ever taken towards civilization. A man is killed. Instead of the murder producing indiscriminate slaughter, it gives rise to an ordered scheme of vengeance, conducted by the immediate relatives. If there is any doubt about the facts, certain rough tests are applied, which to us would appear very unsatisfactory. The accused brings a certain number of his relatives to swear to his innocence, or some rude sort of ordeal is used. If the accused is deemed guilty the feud goes on, unhappily for a very long time. One of these ordeals probably survives, in backward countries, to the present day. Each of the mourners touches the body at a funeral. The ancient belief was that, if the touch was that of the murderer, the corpse would bleed afresh.

Blood Fines

A great step further is taken where, for the right of vengeance, is substituted the payment of compensation. The circumstances of pastoral society permit of this. The existence of cattle and sheep form a standard of value, by which the life of a man can be measured. Starting with the simple idea that a man is worth what he owns, and taking the ordinary free tribesman as the unit, the tribe sets up an elaborate scale of money fines (the "eric" of the Irish, the "galanas" of the Welsh, the "cro" of the Scotch, the "wer" of the Teutons) carefully graduated according to (1) the importance of the injured party, (2) the extent of the damage. Apparently, the proceedings begin as before. The marks on the dead man's body are examined, the bloody weapon is traced, the trail of the stolen cattle is followed until it leads to the thief's hut; and then, just as the feud is about to begin, the elders intervene, and urge the acceptance of a fine. At first, it would seem, the acquiescence of the injured party is voluntary. Until quite late in history, the ultimate battle can not be denied. But every effort is made by the elders to induce the parties to "swear the

LEWIS HENRY MORGAN—AN ACCOUNT AND APPRECIATION OF HIS LIFE WORK

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or a stranger, it was the duty of the women therein to get food before him. . . . This characteristic of barbarous society, wherein food was the principal concern of life, is a remarkable fact. The law of hospitality, as administered by the American aborigines, tended to the final equalization of subsistence. Hunger and destitution could not exist at one end of an Indian village or in one section of an encampment while plenty prevailed elsewhere in the same village or encampment."

We have now completed our survey of Morgan's scientific and literary achievements. His important and original work earned for him the name of "father of American Anthropology." In 1873 he had received the degree of Doctor of Laws from Union College, and in 1880 he was President of the American Association for the Advancement of Science.

At first sight it appears strange that although his vital discoveries were appropriated for their own use by the English anthropologists, to their great discredit they did their utmost to belittle Morgan, and as far as possible ignored, and were silent regarding, his meritorious achievements. No doubt this, in part, was due to the severe blow which Morgan had dealt to the prestige of the English School by causing the collapse of their pet theory—that of McLennan. But, worse still, Morgan had criticized the social power of property, and such criticism could not be tolerated by the intellectuals of the hot-house of industrial capitalism, the birth-place of Laissez-Faire "political economy."

Morgan's home was a rendezvous for the leading American scholars and scientists of the day. In his own library Morgan would often gather with a number of young students

peace." In the world-wide habit of shaking hands, we probably have a dim survival of a practice insisted upon by the early peace-makers, as a guarantee that the parties would not use weapons against one another, at least till all other remedies had been tried. For if the hand is clasped in another's it can hardly strike a blow.

No General Rules of Tribal Law

It is obvious from what has been said, that, while we may describe the general character of Tribal Law, no enumeration of its rules can be made. Each tribe has its own law, binding only upon members of its own tribe. General principles will, no doubt, be found running through it all; inheritance in the male line, prohibition of marriage outside the tribe (or inside, as the case may be), relationship of classes, rights in pasture land, and so on. But in details these will differ from tribe to tribe, and even in branches of the same tribe. The investigations of the British Settlement Officers show, for example, that there are at least several hundred different systems in force in the British Punjab alone, though the population of that country is a little less than the population of England. Long before there is a Law of the Land, there is a Law of the Tribe; and by his own law alone will a tribesman consent to rule his actions.

for the systematic study of ethnology and also of the works of Herbert Spencer, whom he greatly admired.

Morgan took a practical interest in political activity and in 1861 was elected to the New York Assembly, later, in 1868, becoming a Senator. He used all his influence in the endeavor to improve the conditions of life and the treatment meted out to his life-long friends, the Red-men—dying remnants of a splendid race, broken and bespoiled by the fateful finger that writes the story of economic evolution.

Morgan reached through his studies the very verge of the Socialist conception of society. Had his investigations carried him further into the epoch of civilization he would probably have realized more completely than he did the vast importance of the struggle of classes arising from these property developments the early stages of which he himself so ably described.

But if his sphere was too narrow to permit of this, it was less fitted to give Morgan an understanding of the present capitalistic stage of society. It required a man of equal intellect working, observing, analysing, generalizing at the very hub-centre of the capitalist world market—London, and this role was played by Marx, in whom Capitalism as well as Socialism found its Morgan.

The works of Marx and Morgan are in a very real sense interrelated and complementary. Together they laid secure foundations for a genuine natural science of social life. This Marx clearly recognized and intended to show in a work upon the evolution of society based upon his own researches and those of Morgan. Unfortunately this, which might possibly have been Marx's master work, was never accomplished—ill health and death intervened. But Marx's great co-worker, Frederick Engels, seeing urgent necessity of such a work, himself undertook the task and produced that classic of Marxian sociology, "The Origin of the Family, Private Property and the State," which first appeared in Germany in 1884.

This little book of Engels' was the first real appreciation, outside of America, of the pioneer work done by Morgan. Passing through several editions and translated into numerous languages, it has been the means of spreading a knowledge of Morgan's work amongst members of the working class the world over. To this day, in fact, "Ancient Society" is read and discussed wherever class conscious working-men gather together, while, on the other hand, the average bourgeois student is ignorant, often enough, of Morgan's very name and position in science, let alone being conversant with his writings.

In the estimation of the proletarian student, Lewis H. Morgan, by the originality and vast importance of his scientific achievements, occupies a place in that imperishable trinity of nineteenth century science—Marx, Darwin, Morgan.

R. W. HOUSLEY.

SEATTLE LEGIONS WANT TROOPS

WASHINGTON, Nov. 11:—Petitions from the American Legion post, Seattle, urging withdrawal of the A. E. F. in Siberia, were presented to the Senate today by Senator Jones, Washington.