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Law and Authority

Pëtr Kropotkin

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who is called “criminal” is simply unfortunate; that the remedy is not to flog him, to chain him up, or to kill him on the scaffold or in prison, but to relieve him by the most brotherly care, by treatment based on equality, by the usages of life amongst honest men. In the next revolution we hope that this cry will go forth:

“Burn the guillotine; demolish the prisons; drive away the judges, policemen and informers — the impurest race upon the face of the earth; treat as a brother the man who has been led by passion to do ill to his fellow; above all take from the ignoble products of middle-class idleness the possibility of displaying their vices in attractive colours; and be sure that but few crimes will mar our society.”

The main supports of crime are idleness, law and authority; laws about property, about government, laws about penalties and misdemeanours; and authority, which takes upon itself to manufacture these laws and to apply them.

No more laws! No more judges! Liberty, equality, and practical human sympathy are the only effectual barriers we can oppose to the anti-social instincts of certain amongst us.

contrary, diminished by all those cases which are due at present to habitual criminals, who have been brutalised in prison.

We are continually being told of the benefits conferred by law, and the beneficial effect of penalties, but have the speakers ever attempted to strike a balance between the benefits attributed to laws and penalties, and the degrading effect of these penalties upon humanity? Only calculate all the evil passions awakened in mankind by the atrocious punishments formerly inflicted in our streets! Man is the cruelest animal upon earth; and who has pampered and developed the cruel instincts unknown, even amongst monkeys; is it not the king, the judge, and the priests, armed with law, who caused flesh to be torn off in strips, boiling pitch to be poured into wounds, limbs to be dislocated, bones to be crushed, men to be sawn asunder to maintain their authority? Only estimate the torrent of depravity let loose in human society by the “informing” which is countenanced by judges, and paid in hard cash by governments, under pretext of assisting in the discovery of “crime.” Only go into the gaols and study what man becomes when he is deprived of freedom and shut up with other depraved beings, steeped in the vice and corruption which oozes from the very walls of our existing prisons. Only remember that the more these prisons are reformed, the more detestable they become; our model modern penitentiaries are a hundred-fold more abominable than the dungeons of the middle ages. Finally, consider what corruption, depravity of mind, is kept up amongst men by the idea of obedience, the very essence of law; of chastisement; of authority having the right to punish, to judge irrespective of our conscience and the esteem of our friends; of the necessity for executioners, gaolers and informers — in a word, by all the attributes of law and authority. Consider all this, and you will assuredly agree with us in saying that a law inflicting penalties is an abomination which should cease to exist.

Peoples without political organisation, and therefore less depraved than ourselves, have perfectly understood that the man

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who will attempt the lives of their fellow citizens, who will lay their hands to a knife in every quarrel, and revenge the slightest offence by murder, if there are not laws to restrain and punishments to withhold them.” This refrain is repeated every time the right of society *to punish* is called in question.

Yet there is one fact upon this head which at the present time, is thoroughly established; the severity of punishment does not diminish the amount of crime. Hang, and, if you like, quarter murderers, and the number of murders will not decrease by one. On the other hand, abolish the penalty of death, and there will not be one murder more; there will be fewer. Statistics prove it. But if the harvest is good, and bread cheap, and the weather fine, the number of murders immediately decreases. This again is proved by statistics. The amount of crime always augments and diminishes in proportion to the price of provisions and the states of the weather. Not that all murders are actuated by hunger. That is not the case. But when the harvest is good and provisions are at an obtainable price, and when the sun shines, men, lighter hearted and less miserable than usual, do not give way to gloomy passions, do not from trivial motives, plunge a knife into the bosom of a fellow creature.

Moreover, it is also a well-known fact that the fear of punishment has never stopped a single murderer. He who kills his neighbour from revenge or misery does not reason much about consequence; and there have been few murderers who were not firmly convinced that they should escape prosecution.

Without speaking of a society in which a man will receive a better education, in which the development of all his faculties, and the possibility of exercising them, will procure him so many enjoyments, that he will not seek to poison them by remorse — without speaking of the society of the future — even in our society, even with those sad products of misery, whom we see to-day in the public-houses of great cities — on the day when no punishment is inflicted upon murderers, the number of murders will not augment by a single case; and it is extremely probable that it will be, on the

other end than to maintain, patch up, and develop the administrative machine. And this machine in its turn serves almost entirely to protect the privileges of the possessing classes. Analyse all these laws, observe them in action day by day, and you will discover that not one is worth preserving.

About such laws there can be no two opinions. Not only Anarchists, but more or less revolutionary radicals also, are agreed that the only use to be made of laws concerning the organisation of government is to fling them into the fire.

The third category of law still remains to be considered, that relating to the protection of the person and the detection and prevention of "crime." This is the most important, because most prejudices attach to it; because, if law enjoys a certain amount of consideration, it is in consequence of the belief that this species of law is absolutely indispensable to the maintenance of security in our societies. These are laws developed from the nucleus of customs useful to human communities, which have been turned to account by rulers to sanctify their own domination. The authority of the chiefs of tribes, of rich families in towns, and of the king, depended upon their judicial functions, and even down to the present day, whenever the necessity of government is spoken of, its function as supreme judge is the thing implied. "Without a government men would tear one another to pieces," argues the village orator. "The ultimate end of all government is to secure twelve honest jurymen to every accused person," said Burke.

Well, in spite of all the prejudices existing on this subject, it is quite time that anarchists should boldly declare this category of laws as useless and injurious as the preceding ones.

First of all, as to so-called "crimes" — assaults upon persons — it is well-known that two-thirds, and often as many as three-fourths, of such "crimes" are instigated by the desire to obtain possession of someone's wealth. This immense class of so-called "crimes and misdemeanours" will disappear on the day on which private property ceases to exist. "But," it will be said, "there will always be brutes

I

"When ignorance reigns in society and disorder in the minds of men, laws are multiplied, legislation is expected to do everything, and each fresh law being a fresh miscalculation, men are continually led to demand from it what can proceed only from themselves, from their own education and their own morality." It is no revolutionist who says this, nor even a reformer. It is the jurist, [Joseph] Dallois, author of the Collection of French law known as "Repertoire de la Legislation." And yet, though these lines were written by a man who was himself a maker and admirer of law, they perfectly represent the abnormal condition of our society.

In existing States a fresh law is looked upon as a remedy for evil. Instead of themselves altering what is bad, people begin by demanding a law to alter it. If the road between two villages is impassable, the peasant says: — "There should be a law about parish roads." If a park-keeper takes advantage of the want of spirit in those who follow him with servile observance and insults one of them, the insulted man says: — "There should be a law to enjoin more politeness upon park-keepers." If there is stagnation in agriculture or commerce, the husbandman, cattle-breeder, or corn speculator argues, "It is protective legislation that we require." Down to the old clothesman there is not one who does not demand a law to protect his own little trade. If the employer lowers wages or increases the hours of labour, the politician in embryo exclaims, "We must have a law to put all that to rights," instead of telling the workers that there are other, and much more effectual means of settling these things straight; namely, recovering from the employer the wealth of which he has been despoiling the workmen for generations. In short, a law everywhere and for everything! A law about fashions, a law about mad dogs, a law about virtue, a law to put a stop to all the vices and all the evils which result from human indolence and cowardice.

We are so perverted by an education which from infancy seeks to kill in us the spirit of revolt, and to develop that of submission to authority; we are so perverted by this existence under the rule of a law, which regulates every event in life — our birth, our education, our development, our love, our friendship — that, if this state of things continues, we shall lose all initiative, all habit of thinking for ourselves. Our society seems no longer able to understand that it is possible to exist otherwise than under the reign of Law, elaborated by a representative government and administered by a handful of rulers; and even when it has gone so far as to emancipate itself from the thralldom, its first care had been to reconstitute it immediately. “The Year I. of Liberty” has never lasted more than a day, for after proclaiming it men put themselves the very next morning under the yoke of Law and Authority.

Indeed, for some thousands of years, those who govern us have done nothing but ring the changes upon “Respect for law, obedience to authority.” This is the moral atmosphere in which parents bring up their children, and school only serves to confirm the impression. Cleverly assorted scraps of spurious science are inculcated upon the children to prove necessity of law; obedience to the law is made a religion; moral goodness and the law of the masters are fused into one and the same divinity. The historical hero of the schoolroom is the man who obeys the law, and defends it against rebels.

Later, when we enter upon public life, society and literature, impressing us day by day and hour by hour, as the water-drop hollows the stone, continue to inculcate the same prejudice. Books of history, of political science, of social economy, are stuffed with this respect for law; even the physical sciences have been pressed into the service by introducing artificial modes of expression, borrowed from theology and arbitrary power, into knowledge which is purely the result of observation. Thus our intelligence is successfully befogged, and always to maintain our respect for law. The same work is done by newspapers. They have not an article which

brigandage, sword in hand, is no feature of our age. Neither does one workman ever come and dispute the produce of his labour with another. If they have a misunderstanding they settle it by calling in a third person, without having recourse to law. The only person who exacts from another what the other has produced, is the proprietor, who comes in and deducts the lion’s share. As for humanity in general, it everywhere respects the right of each to what he has created, without the interposition of any special laws.

As all the laws about property, which make up thick volumes of codes, and are the delight of our lawyers, have no other object than to protect the unjust appropriating of human labour by certain monopolists, there is no reason for their existence, and, on the day of the Revolution, social revolutionists are thoroughly determined to put an end to them. Indeed, a bonfire might be made with perfect justice of all laws bearing upon the so-called “rights of property,” all title-deeds, all registers, in a word, of all that is in any way connected with an institution which will soon be looked upon as a blot in the history of humanity, as humiliating as the slavery and serfdom of past ages.

The remarks just made upon laws concerning property are quite as applicable to the second category of laws; those for the maintenance of government, i.e., Constitutional Law.

It again is a complete arsenal of laws, decrees, ordinances, orders in council, and what not, all serving to protect the diverse forms of representative government, delegated or usurped, beneath which humanity is writhing. We know very well — Anarchists have often enough pointed out in their perpetual criticism of the various forms of government — that the mission of all governments, monarchical, constitutional, or republican, is to protect and maintain by force the privileges of the classes in possession, the aristocracy, clergy and traders. A good third of our laws — and each century possesses some tens of thousands of them — the fundamental laws on taxes, excise duties, the organisation of ministerial departments and their offices, of the army, the police, the Church, etc., have no

the help of some of his friends. In that case no one would have disputed his right. On the contrary, the law is establishing his right to a house which is *not* the product of his labour; first of all, because he has had it built for him by others to whom he has not paid the full value of their work; and next because that house represents a social value, which he could not have produced for himself. The law is establishing his right to what belongs to everybody in general to nobody in particular. The same house built in the midst of Siberia would not have the value it possesses in a large town, and, as we know, that value arises from the labour of something like fifty generations of men who have built the town, beautified it, supplied it with water and gas, fine promenades, colleges, theatres, shops, railways and roads leading in all directions. Thus, by recognising the right of Mr. So-and-So to a particular house in Paris, London or Rouen, the law is unjustly appropriating to him a certain portion of the produce of the labour of mankind in general. And it is precisely because this appropriation and all other forms of property, bearing the same character, are a crying injustice, that a whole arsenal of laws, and a whole army of soldiers, policemen and judges are needed to maintain it against the good sense and just feeling inherent in humanity.

Well, half our laws, the civil code in each country, serves no other purpose than to maintain this appropriation, this monopoly for the benefit of certain individuals, against the whole of mankind. Three-fourths of the causes decided by the tribunals are nothing but quarrels between monopolists — two robbers disputing over their booty. And a great many of our criminal laws have the same object in view, their end being to keep the workman in a subordinate position towards his employer, and thus afford security for exploitation.

As for guaranteeing the product of his labour to the producer, there are no laws which even attempt such a thing. It is so simple and natural, so much a part of the manners and customs of mankind; that law has not given it so much as a thought. Open

does not preach respect for law, even where the third page proves every day to demonstrate the imbecility of that law, and shows how it is dragged through every variety of mud and filth by those charged with its administration. Servility before the law has become a virtue, and I doubt if there was ever even a revolutionist who did not begin in his youth as the defender of law against what are generally called “abuses,” although these last are inevitable consequences of the law itself.

Art pipes in unison with would-be science. The hero of the sculptor, the painter, the musician, shields Law beneath his buckler, and with flashing eyes and distended nostrils stands ever ready to strike down the man who would lay hands upon her. Temples are raised to her; revolutionists themselves hesitate to touch the high priests consecrated to her service, and when revolution is about to sweep away some ancient institution, it is still by law that it endeavours to sanctify the deed.

The confused mass of rules of conduct called Law, which has been bequeathed to us by slavery, serfdom, feudalism, and royalty, has taken the place of those stone monsters before whom human victims used to be immolated, and whom slavish savages dared not even touch lest they should be slain by the thunderbolts of heaven.

This new worship has been established with especial success since the rise to supreme power of the middle class — since the great French Revolution. Under the *ancien regime*, men spoke little of laws; unless, indeed, it were, with Montesquieu, Rousseau and Voltaire, to oppose them to royal caprice; obedience to the good pleasure of the king and his lackeys was compulsory on pain of hanging or imprisonment. But during and after the revolutions when the lawyers rose to power, they did their best to strengthen the principle upon which their ascendancy depended. The middle class at once accepted as a dyke to dam up the popular torrent. The priestly crew hastened to sanctify it, to save their bark from foundering amid the breakers. Finally the people received it as an improvement upon the arbitrary authority and violence of the past.

To understand this, we must transport ourselves in imagination into the eighteenth century. Our hearts must have ached at the story of the atrocities committed by the all-powerful nobles of that time upon the men and women of the people, before we can understand what must have been the magic influence upon the peasant's mind of the words, "Equality before the law, obedience to the law without distinction of birth or fortune." He, who until then, had been treated more cruelly than a beast, he who had never had any rights, he who had never obtained justice against the most revolting actions on the part of a noble, unless in revenge he killed him and was hanged — he saw himself recognized by this maxim, at least in theory, at least with regard to his personal rights, as the equal of his lord. Whatever this law might be, it promised to affect lord and peasant alike; it proclaimed the equality of rich and poor before the judge. The promise was a lie, and to-day we know it; but at that period it was an advance, a homage to justice, as hypocrisy is a homage rendered to truth. This is the reason that when the saviours of the menaced middle class (the Robespierres and the Dantons) took their stand upon the writings of the Rousseaus and the Voltaires, and proclaimed "respect for law, the same for every man," the people accepted the compromise; for their revolutionary impetus had already spent its force in the contest with a foe whose ranks drew closer day by day, they bowed their neck beneath the yoke of law to save themselves from the arbitrary power of their lords.

The Middle Class has ever since continued to make the most of this maxim, which with another principle, that of representative government, sums up the whole philosophy of the bourgeois age, the XIX century. It has preached this doctrine in its schools, it has propagated it in its writings, it has moulded its art and science to the same purpose, it has thrust its beliefs into every hole and corner — like a pious Englishwoman, who slips tracts under the door — and it has done all this so successfully that to-day we behold the issue in the detestable fact, that, at the very moment when the spirit

and the substance of our modern codes, and the one function of our costly legislative machinery. But it is time we gave up being satisfied with mere phrases, and learned to appreciate their real signification. The law, which on its first appearance presented itself as a compendium of customs useful for the preservation of society, is now perceived to be nothing but an instrument for the maintenance of exploitation, and the domination of the toiling masses by rich idlers. At the present day its civilising mission is *nil*; it has but one object, to bolster up exploitation.

This is what is told us by history as to the development of law. Is it in virtue of this history that we are called upon to respect it? Certainly not. It has no more title to respect than capital; the fruit of pillage; and the first duty of the revolutionists of the nineteenth century will be to make a bonfire of all existing laws, as they will of all titles to property.

IV

The millions of laws which exist for the regulation of humanity, appear upon investigation to be divided into three principal categories — protection of property, protection of persons, protection of government. And by analysing each of these three categories, we arrive at the same logical and necessary conclusion: *the uselessness and hurtfulness of law.*

Socialists know what is meant by protection of property. Laws on property are not made to guarantee either to the individual or to society the enjoyment of the produce of their own labour. On the contrary, they are made to rob the producer of a part of what he has created, and to secure to certain other people that portion of the produce which they have stolen either from the producer or from society as a whole. When, for example, the law establishes Mr. So-and-So's right to a house, it is not establishing his right to a cottage he has built for himself, or to a house he has erected with

all serve one God — capital; all have but one object — to facilitate the exploitation of the worker by the capitalist. Analyse all the laws passed for the last eighty years and you will find nothing but this. The protection of the person, which is put forward as the true mission of law occupies an imperceptible space amongst them, for, existing society, assaults upon the person, directly dictated by hatred and brutality, tend to disappear. Nowadays, if anyone is murdered, it is generally for the sake of robbing him; rarely from personal vengeance. But if this class of crimes and misdemeanours is continually diminishing, we certainly do not owe the change to legislation. It is due to the growth of humanitarianism in our societies, to our increasingly social habits rather than to the prescriptions of our laws. Repeal to-morrow every law dealing with the protection of the person, and to-morrow stop all proceedings for assault, and the number of attempts, dictated by personal vengeance and by brutality, would not be augmented by one single instance.

It will, perhaps, be objected that, during the last fifty years, a good many liberal laws have been enacted. But, if these laws are analysed, it will be discovered that this liberal legislation consists in the repeal of the laws bequeathed to us by the barbarism of preceding centuries. Every liberal law, every radical programme, may be summed up in these words, abolition of laws grown irksome to the middle-class itself, and as an extension to all citizens of liberties enjoyed by the townships of the twelfth century. The abolition of capital punishment, trial by jury for all “crimes” (there was a more liberal jury in the twelfth century), the election of magistrates, the right of bringing public officials to trial, the abolition of standing armies, free instruction, etc., everything that is pointed out as an invention of modern liberalism, is but a return to the freedom which existed before Church and King had laid hands upon every manifestation of human life.

Thus the protection of exploitation directly by laws on property, and indirectly by the maintenance of the State, is both the spirit

of turbulent criticism is re-awakening, men who long for freedom begin the attempt to obtain it by entreating their masters to be kind enough to protect them by modifying the laws which these masters themselves have created!

But times and tempers are changed since a hundred years ago. Rebels are everywhere to be found, who no longer wish to obey the law without knowing whence it comes, what are its uses, and whither arises the obligation to submit to it, and the reverence with which it is encompassed. The rebels of our day are criticizing the very foundations of Society, which have hitherto been held sacred, and first and foremost amongst them that fetish, law. Just for this reason the upheaval which is at hand is no mere insurrection, it is a *Revolution*.

The critics analyse the sources of law, and find there either a god, product of the terrors of the savages, and stupid, paltry and malicious as the priests who vouch for its supernatural origin, or else, bloodshed, conquest by fire and sword. They study the characteristics of law, and instead of perpetual growth corresponding to that of the human race, they find its distinctive trait to be immobility, a tendency to crystallise what should be modified and developed day by day. They ask how law has been maintained, and in its service they see the atrocities of Byzantinism, the cruelties of the Inquisition, the tortures of the Middle Ages, living flesh torn by the lash of the executioner, chains, clubs, axes, the gloomy dungeons of prisons, agony, curses and tears. In our own days they see, as before, the axe, the cord, the rifle, the prison; on the one hand, the brutalised prisoner, reduced to the condition of a caged beast by the debasement of his whole moral being, and on the other hand, the judge, stripped of every feeling which does honour to human nature, living like a visionary in a world of legal fictions, reveling in the infliction of imprisonment and death, without even suspecting, in the cold malignity of his madness, the abyss of degradation into which he has himself fallen before the eyes of those whom he condemns.

They see a race of law-makers legislating without knowing what their laws are about; to-day voting a law on the sanitation of towns, without the faintest notion of hygiene, to-morrow making regulations for the armament of troops, without so much as understanding a gun; making laws about teaching and education without ever having given a lesson of any sort, or even an honest education to their own children; legislating in all directions, but never forgetting the penalties to be meted out to ragamuffins, the prison and the galleys, which are to be the portion of men a thousand times less immoral than these legislators themselves.

Finally, they see the gaoler on the way to lose all human feeling, the detective trained as a blood-hound, the police spy despising himself; "informing," metamorphosed into a virtue; corruption, erected into a system; all the vices, all the evil qualities of mankind countenanced and cultivated to insure the triumph of law.

All this we see, and, therefore, instead of inanely repeating the old formula, "Respect the law," we say, "Despise law and all its attributes!" In place of the cowardly phrase, "Obey the law," our cry is "Revolt against all laws!"

Only compare the misdeeds accomplished in the name of each law, with the good it has been able to effect, and weigh carefully both good and evil, and you will see if we are right.

II

Relatively speaking, law is a product of modern times. For ages and ages mankind lived without any written law, even that graven in symbols upon the entrance stones of a temple. During that period, human relations were simply regulated by customs, habits and usages, made sacred by constant repetition, and acquired by each person in childhood, exactly as he learned how to obtain his food by hunting, cattle-rearing, or agriculture.

only to sanction the taxes demanded by the King. Parliament summoned at intervals of two centuries, according to the good pleasure or caprice of the Court, "Councils Extraordinary," Assemblies of Notables, Ministers, scarce heeding the "grievances of the King's subjects" — these are the legislators of France. Later still, when all power is concentrated in a single man, who can say "I am the State," edicts are concocted in the "secret counsels of the Prince," according to the whim of a minister, or of an imbecile King; and subjects must obey on pain of death. All judicial guarantees are abolished; the nation is the serf of royalty, and of a handful of courtiers. And at this period the most horrible penalties startle our gaze — the wheel, the stake, flaying alive, tortures of every description, invented by the sick fancy of monks and madmen, seeking delight in the sufferings of executed criminals.

The great Revolution began the demolition of this framework of law, bequeathed to us by feudalism and royalty. But after having demolished some portions of the ancient edifice, the Revolution delivered over the power of law-making to the bourgeoisie, who, in their turn, began to raise a fresh framework of laws, intended to maintain and perpetuate middle-class domination amongst the masses. Their Parliament makes laws right and left, and mountains of law accumulate with frightful rapidity. But what *are* all these laws at bottom?

The major portion have but one object — to protect private property, i.e., wealth acquired by the exploitation of man by man. Their aim is to open out to capital fresh fields for exploitation, and to sanction the new forms which that exploitation continually assumes, as capital swallows up another branch of human activity, railways, telegraphs, electric light, chemical industries, the expression of man's thought in literature and science, etc. The object of the rest of these laws is fundamentally the same. They exist to keep up the machinery of government, which serves to secure to capital the exploitation and monopoly of the wealth produced. Magistrature, police, army, public instruction, finance,

Later on, these laws collected and classified by jurists, formed the foundation of our modern codes. And are we to talk about respecting these codes, the legacy of baron and priest?

The first revolution, the revolt of the townships, was successful in abolishing a portion only of these laws, the charters of enfranchised towns are, for the most part, a mere compromise between baronial and episcopal legislation, and the new relations created within the free borough itself. Yet what a difference between these laws, and the laws we have now! The town did not take upon itself to imprison and execute citizens for reasons of State: it was content to expel anyone who plotted with the enemies of the city, and to raze his house to the ground. It confined itself to imposing fines for so-called “crimes and misdemeanours” and in the townships of the twelfth century may even be discerned the just principle to-day forgotten, which holds the whole community responsible for the misdoing of each of its members. The societies of that time looked upon crime as an accident or misfortune; a conception common amongst the Russian peasantry at this moment. Therefore, they did not admit of the principle of personal vengeance as preached by the Bible, but considered that the blame for each misdeed reverted to the whole society. It needed all the influence of the Byzantine Church, which imported into the West the refined cruelties of Eastern despotism, to introduce into the manners of Gauls and Germans the penalty of death, and the horrible fortunes afterwards inflicted on those regarded as criminals. Just in the same way, it needed all the influence of the Roman code, the product of the corruption of Imperial Rome, to introduce the notions as to absolute property in land, which have overthrown the communistic customs of primitive people.

As we know, the free townships were not able to hold their own. Torn by intestine dissensions between rich and poor, burgher and serf, they fell an easy prey to royalty. And as royalty acquired fresh strength, the right of legislation passed more and more into the hands of a clique of courtiers. Appeal to the nation, was made

All human societies have passed through this primitive phase, and to this day a large proportion of mankind have no written law. Every tribe has its own manners and customs; customary law, as the jurists say. It has social habits, and that suffices to maintain cordial relations between the inhabitants of the village, the members of the tribe or community. Even amongst ourselves — the “civilized” nations — when we leave large towns, and go into the country, we see that there the mutual relations of the inhabitants are still regulated according to ancient and generally accepted customs, and not according to the written law of the legislators. The peasants of Russia, Italy and Spain, and even of a large part of France and England, have no conception of written law. It only meddles with their lives to regulate their relations with the State. As to relations between themselves, though these are sometimes very complex, they are simply regulated according to ancient custom. Formerly, this was the case with mankind in general.

Two distinctly marked currents of custom are revealed by analysis of the usages of primitive people.

As man does not live in a solitary state, habits and feelings develop within him which are useful for the preservation of society and the propagation of the race. Without social feelings and usages, life in common would have been absolutely impossible. It is not law which has established them; they are anterior to all law. Neither is it religion which has ordained them; they are anterior to all religions. They are found amongst all animals living in society. They are spontaneously developed by the very nature of things, like those habits in animals which men call instinct. They spring from a process of evolution, which is useful, and, indeed, necessary, to keep society together in the struggle it is forced to maintain for existence. Savages end by no longer eating one another, because they find it in the long run more advantageous to devote themselves to some sort of cultivation, than to enjoy the pleasure of feasting upon the flesh of an aged relative once a year. Many travelers have depicted the manners of absolutely independent tribes,

where laws and chiefs are unknown, but where the members of the tribe have given up stabbing one another in every dispute, because the habit of living in society has ended by developing certain feelings of fraternity and oneness of interest, and they prefer appealing to a third person to settle their differences. The hospitality of primitive peoples, respect for human life, the sense of reciprocal obligation, compassion for the weak, courage, extending even to the sacrifice of self for others, which is first learnt for the sake of children and friends, and later, for that of members of the same community — all these qualities are developed in man anterior to all law, independently of all religion, as in the case of the social animals. Such feelings and practices are the inevitable results of social life. Without being, as say priests and metaphysicians, inherent in man, such qualities are the consequence of life in common.

But side by side with these customs, necessary to the life of societies and the preservation of the race, other desires, other passions, and therefore other habits and customs, are evolved in human association. The desire to dominate others and impose one's own will upon them; the desire to seize upon the products of the labour of a neighbouring tribe; the desire to surround oneself with comforts without producing anything, whilst slaves provide their master with the means of procuring every sort of pleasure and luxury — these selfish, personal desires give rise to another current of habits and customs. The priest and the warrior, the charlatan who makes a profit out of superstition, and after freeing himself from the fear of the devil, cultivates it in others; and the bully, who procures the invasion and pillage of his neighbours, that he may return laden with booty, and followed by slaves; these two, hand in hand, have succeeded in imposing upon primitive society customs advantageous to both of them, but tending to perpetuate their domination of the masses. Profiting by the indolence, the fears, the inertia of the crowd, and thanks to the continual repetition of the same acts, they have permanently established customs which have become a solid basis for their own domination.

ations effected by the interference of centralising and middle-class civilisation.

It is true that this contract was not always freely accepted. Even in those early days the rich and strong were imposing their will upon the rest. But at all events they encountered an obstacle to their encroachments in the mass of the people, who often made them feel their power in return.

But as the Church on one side and the nobles on the other, succeeded in enthralling the people, the right of law-making escaped from the hands of the nation and passed into those of the privileged orders. Fortified by the wealth accumulating in her coffers, the Church extended her authority; she tampered more and more with private life, and under pretext of saving souls, she seized upon the labour of her serfs, she gathered taxes from every class, she increased her jurisdiction, she multiplied penalties, and enriched herself in proportion to the number of offences committed, for the produce of every *fine* poured into her coffers. Laws had no longer any connection with the interest of the nation. "They might have been supposed to emanate rather from a council of religious fanatics than from legislators," observes an historian of French Law.

At the same time, as the baron likewise extended his authority over labourers in the fields and artisans in the towns, he, too, became legislator and judge. The few relics of national law dating from the tenth century are merely agreements regulating service, statute labour, and tribute due from serf and vassals to their lord. The legislators of that period were a handful of brigands organised for the plunder of a people daily becoming more peaceful, as they applied themselves to agricultural pursuits. These robbers exploited the feelings for justice inherent in the people, they posed as the administrators of that justice, made a source of revenue for themselves out of its fundamental principles and concocted laws to maintain their own dominations.

Henry] Buckle, “were those which repealed the preceding ones.” But what terrible efforts have been needed, what rivers of blood have been spilt, every time there has been a question of the repeal of one of these fundamental enactments serving to hold the people in fetters. Before she could abolish the vestiges of serfdom and feudal rights, and break up the power of the royal court, France was forced to pass through four years of revolution and twenty years of war. Decades of conflict are needful to repeal the least of the iniquitous laws, bequeathed us by the past, and even then they scarcely disappear except in periods of revolution.

The history of the genesis of capital has already been told by Socialists many times. They have described how it was born of war and pillage, of slavery and serfdom, of modern fraud and exploitation. They have shown how it is nourished by the blood of the worker, and how little by little it has conquered the whole world. The same story, concerning the genesis and development of law has yet to be told. As usual, the popular intelligence has stolen a march upon men of books. It has already put together the philosophy of this history, and is busy laying down its essential landmarks.

Law, in its quality of guarantee of the results of pillage, slavery and exploitation, has followed the same phrases of development as capital; twin brother and sister, they have advanced hand in hand, sustaining one another with the suffering of mankind. In every country in Europe their history is approximately the same. It has differed only in detail; the main facts are alike; and to glance at the development of law in France or Germany is to know its essential traits, its phases of development, in most of the European nations.

In the first instance, law was a national part of contract. Such a contract was agreed upon between the legions and people at the Champs de Mars,¹ a relic of the same period is preserved even yet in the Field of May of the primitive Swiss cantons despite the alter-

¹ The annual assembly of the early Franks, originally held in March, there the first month of the year.

For this purpose, they would have made use, in the first place, of that tendency to run in a groove, so highly developed in mankind. In children and all savages it attains striking proportions, and it may also be observed in animals. Man, when he is at all superstitious, is always afraid to introduce any sort of change into existing conditions; he generally venerates what is ancient. “Our fathers did so and so; they got on pretty well; they brought you up; they were not unhappy; do the same!” the old say to the young, every time the latter wish to alter things. The unknown frightens them, they prefer to cling to the past, even when that past represents poverty, oppression and slavery. It may even be said that the more miserable a man is, the more he dreads every sort of change, lest it may make him more wretched still. Some ray of hope, a few scraps of comfort, must penetrate his gloomy abode before he can begin to desire better things, to criticise the old ways of living, and prepare to imperil them for the sake of bringing about a change. So long as he is not imbued with hope, so long as he is not freed from the tutelage of those who utilise his superstition and his fears, he prefers remaining in his former position. If the young desire any change, the old raise a cry of alarm against the innovators. Some savages would rather die than transgress the customs of their country, because they have been told from childhood that the least infraction of established routine would bring ill-luck, and ruin the whole tribe. Even in the present day, what numbers of politicians, economists, and would-be revolutionists act under the same impression, and cling to a vanishing past. How many care only to seek for precedents. How many fiery innovators are mere copyists of bygone revolutions.

The spirit of routine, originating in superstition, indolence, and cowardice, has in all times been the mainstay of oppression. In primitive human societies, it was cleverly turned to account by priests and military chiefs. They perpetuated customs useful only to themselves, and succeeded in imposing them on the whole tribe. So long as this conservative spirit could be exploited so as to assure

the chief in his encroachments upon individual liberty, so long as the only inequalities between men were the work of nature, and these were not increased a hundred-fold by the concentration of power and wealth, there was no need for law, and the formidable paraphernalia of tribunals and ever-augmenting penalties to enforce it.

But as society became more and more divided into two hostile classes, one seeking to establish its domination, the other struggling to escape, the strife began. Now the conqueror was in a hurry to secure the results of his actions in a permanent form, he tried to place them beyond question, to make them holy and venerable by every means in his power. Law made its appearance under the sanction of the priest, and the warrior's club was placed at its service. Its office was to render immutable such customs as were to the advantage of the dominant minority. Military authority undertook to ensure obedience. This new function was a fresh guarantee to the power of the warrior; now he had not only mere brute force at his service; he was the defender of law.

If law, however, presented nothing but a collection of prescriptions serviceable to rulers, it would find some difficulty in insuring acceptance and obedience. Well, the legislators confounded in one code the two currents of custom, of which we have just been speaking, the maxims which represent principles of morality and social union wrought out as a result of life in common, and the mandates, which are meant to ensure external existence to inequality. Customs, absolutely essential to the very being of society, are, in the code, cleverly intermingled with usages imposed by the ruling caste, and both claim equal respect from the word. "Do not kill," says the code, and hastens to add, "And pay tithes to the priest." "Do not steal," says the code, and immediately after, "He who refuses to pay taxes, shall have his hand struck off."

Such was law; and it has maintained its two-fold character to this day. Its origin is the desire of the ruling class to give permanence to customs imposed by themselves for their own advantage. Its

character is the skilful commingling of customs useful to society, customs which have no need of law to insure respect, with other customs useful only to rulers, injurious to the mass of the people, and maintained only by the fear of punishment.

Like individual capital, which was born of fraud and violence, and developed under the auspices of authority, law has no title to the respect of men. Born of violence and superstition, and established in the interests of consumer, priest and rich exploiter, it must be utterly destroyed on the day when the people desire to break their chains.

We shall be still better convinced of this when, in the next chapter, we have analysed the ulterior development of laws under the auspices of religion, authority and the existing parliamentary system.

III

We have seen in the previous chapter how law originated in established usage and custom, and how, from the beginning it has represented a skilful mixture of social habits, necessary to the preservation of the human race, with other customs, imposed by those who used popular superstition, as well as the right of the strongest for their own advantage. This double character of law has determined its own later development during the growth of political organisation. Whilst in the course of ages the nucleus of social custom inscribed in law has been subjected to but slight and gradual modifications, the other portion has been largely developed in deflections indicated by the interests of the dominant classes, and to the injury of the classes they oppress. From time to time these dominant classes have allowed a law to be extorted from them which presented, or appeared to present, some guarantee for the disinherited. But then such laws have but repealed a previous law, made for the advantage of the ruling caste. "The best laws," says [Thomas