

# AN INTRODUCTION TO THE STUDY OF ETHNOLOGICAL JURISPRUDENCE.<sup>1</sup>

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[CONCLUDED.]

WE NOW COME to the task of analysing the jural order of society, as that was indicated in our last article (*The Open Court*, for November). It is obvious that in the first place the jural customs and jural notions of all the nations of the earth must be carefully collated and accurately described. For only the aggregate of all the expressions of the jural sense of mankind can afford material warranting inferences as to the nature of the human jural sense in general.

And since the mass of jural customs and jural notions necessary to this task lies scattered among very many different peoples, it follows that the natural classification of the material will be according to the nationalities in which the notions in question prevail.

Such a collection of the jural customs and notions of all mankind arranged according to nations, would afford a highly useful basis for juridical research. It would be possible to carry out, within this framework, a uniform and systematic arrangement of the material. There are numerous customs and conceptions which repeat themselves among different peoples, and these would serve as the leading divisions of the systematised arrangement we have in mind. The following, for instance, might properly be regarded as divisions: the relations of kinship as derived from mother-right, father-right, and parental rights generally, with the stages of transition between the same, the subsequent development of the bonds of consanguinity (clan-fraternity, milk-tie, foster-tie, etc.), endogamy and exogamy, wedlock in its various phases (restrained and

<sup>1</sup> Translated from the German by Thomas J. McCormack.

unrestrained promiscuity, wedlock by groups, polyandrous, polygynous and monogamous wedlock, leviratical marriages) the capture of wives, the acquisition of the bride by service, the purchase of brides, betrothal-rights, obligation of abstinence before and after marriage, suitors, disqualifications to wedlock, forms of marrying, divorce, second marriage, mourning-time, the status of women and children, age of arming, age of majority, child-bed of the husband, the status of the old and the sick, forbiddance of intercourse between persons near of kin, guardianship, federal and monarchic forms of organisation, community of house and farms, systems of joint responsibility and solidarity, blood-feud, rights of refuge, ordeals, forms of oaths, *et cetera*. This list might be continued for pages. In this material are to be found legal conceptions and customs of the most widely different nations of the earth which partly agree and partly vary. We could arrange all customs and conceptions under these headings, and the classification so reached would be a preparatory work of great value for the causal analysis of legal customs and conceptions generally. It would then appear in how far given legal customs and conceptions varied among themselves and among different peoples.

One foundation for such a causal analysis is afforded by the historical connexion between the legal customs and conceptions of different periods within the same social organisation. But this analysis is only possible where traditions are at hand relating to corresponding legal customs and conceptions taken from the different periods of the same people's development. As a rule this is only the case with peoples having a history. With peoples having no history these traditions are wanting, unless perchance observations relating to their law be made during different epochs by travellers from civilised nations.

The historical method, therefore, in so far as it presents the history of the development of a given legal custom or conception in a given society, is restricted to provinces comparatively limited. So far, we only know of a history of Roman and Germanic law with the beginnings of the history of Slavonic, Celtic, Indian, Mosaic, and Islamitic law. The history of all the other systems of the earth has not been treated, or at least what has been accomplished is confined to the beginnings. Here and there historical treatment would be possible. But with the majority of the peoples of the earth material for such a treatment is wanting altogether, and will, in all probability, never be accessible.

The question arises now whether a really causal analysis of le-

gal customs and conceptions is still everywhere possible. The only aid at the disposal of science here is, as with every such analysis, the method of comparison. But this is possible only when there is an external similarity between legal customs and conceptions. The use of a chronological connexion is here altogether out of the question. Can such a comparison yield scientific results of any value whatever, or are we here at the end of our science? That is the question, the answer to which will determine whether Ethnological Jurisprudence is a science at all, or whether it is a will-o'-the-wisp the pursuit of which is to be given up as soon as possible.

The question cannot be answered *a priori*: it depends entirely upon our successfulness in arriving at definite results. If we are successful, the method is warranted; if not, the attempt goes for naught. The scientific possibility of a purely comparative method depends upon facts, the existence or non-existence of which can only be determined by the application of the method itself. The question is whether in the development of human law definite legal customs and conceptions exist and regularly occur even among unrelated peoples, or whether the law of every people, at least of every kindred group of peoples, is an isolated product standing in no relation whatever to the law of other peoples. If there be rules of legal conduct which recur everywhere on the globe and which pass through a stated course of development, the method by comparison is applicable: to explain a given legal custom of one nation we may avail ourselves of the corresponding legal customs of another. If such be not the case, a purely comparative method is a scientific chimera.

For instance, if a table of the legal customs of all the nations of the earth were to present such a picture as the languages of all the nations of the earth (e. g. in Franz Müller's *Grundriss der Sprachwissenschaft*), a purely comparative method such as I have employed in my works upon ethnological jurisprudence, would be out of the question. A comparison of non-cognate tongues is impossible, for these are isolated formations. It may be that certain results for the general evolution of human thought could be obtained only from a conspectus of all the languages of the earth; but generally languages are isolated products of certain ethnic groups. With other creations of social life this is not the case. The evolution of the religious sense affords phenomena of manifold similarities, which extend far beyond the boundaries of philological races; and so the jural life of mankind affords a succession of phenomena which are not the especial creations of certain peoples or

of a certain congeries of peoples, but which recur on the contrary in wide domains, among unrelated nations, and extend over such broad fields that they may be regarded as the common and universal property of the whole race.

When such analogous legal customs and conceptions are discovered among unrelated peoples of the earth, it then becomes a question whether they owe their origin to analogous causes; for phenomena of jural life which are outwardly alike may rest upon quite dissimilar causes. Yet we may attempt to explain one by the other, and whether this is possible, we shall soon discover. When we meet with the same or a similar legal custom among many peoples, we usually find a sphere of ideas which readily explains it. Whilst certain legal customs and conceptions occur only within extremely limited domains, and do not lend themselves at all to the comparative method, on the other hand we meet with such as recur among all possible peoples and races in infinite variations, and the divergences are such that we are often unavoidably led to assume that these isolated customs represent different stages in the development of a jural institution which in its fundamental features is everywhere uniform. This can be shown only by illustrations, and it remains for me to explain what I mean by a definite example.

Thus under the rubric of *leviratical marriages* we may include a group of phenomena regarding which we possess accounts from the most diverse peoples of the earth, varying greatly in compass and credibility. Such accounts are for instance the following :

### 1. *North American Indians.*

Among the Kolushes the brother or sister's son receives the widow of the deceased in marriage. Among the Ojibways and the Omahas the widow became the wife of her brother-in-law after the mourning period was over, and the latter had to care for the children of his deceased brother.

### 2. *Aztec and Toltec Nations.*

In the States of Anahuac a man was only allowed to marry the widow of his deceased brother when children were still living whose education had to be cared for.

### 3. *South American Indians.*

Among the Arawaks a second marriage is not left to the will of the widow, for the nearest relative of the deceased husband has

the right to marry her, and the latter may thereby often become the second or third wife unless sold to a third party. If she marry any one without the consent of the lawful heir, the deadliest feuds may result. Among the Calchaquis in the interior of Brazil, the brother marries the widow of his brother, to beget descendants for the deceased. According to Von Martius, it is a custom rigorously practised among all Brazilian Indians, that upon the death of a husband the eldest brother, or in case there be none, the nearest male relative of the deceased marries the widow, and the widow's brother marries her daughter; which is the case with the Mundrucús, Uainumas, Juris, Mauhés, Passés, and Coërunas.

#### 4. *Oceanic Peoples.*

In Australia when the husband or affianced dies, his brother on his mother's side inherits his wife and children; the widow repairs to him with her children after the interval of three days. In Western Australia the brother of the deceased has a right to the widow, and, if he choose, may take her for himself. On the Flinders Islands, near Australia, if the husband die his brother marries his wife.

Among the Polynesians the brother of the deceased is regarded as the husband of the widow and the father of the deceased's children.

#### 5. *Semitic and Cognate Peoples.*

Among the Bedouins, if a young husband leave a widow, his brother as a rule offers to marry her; but it is not in his power to force her to marry him. With the Beni Amer, if the brothers of a deceased husband do not wish to marry his widow, she can, after the expiration of the mourning period, marry at her own will, and she may not be forced into marriage by the brother of her deceased husband. With the Barea and Kunama, if a man die, his widow is married without further ado by his brother of the same mother, or ultimately by the son of the deceased's man's sister. With several Berber tribes of the Atlas region, the male relative who after the death of her first spouse first throws his shawl (Haik) over the widow, becomes her husband and has to care for her children and manage her property. Among the Bogos, when a married man dies, his sons by a previous marriage, his brothers or next of kin, succeed to his wife, that is, marry her, without further consultation with her father. Among the Hebrews leviratical marriages occur in the following form: If brethren live together and one of them

die and have no child, the wife of the deceased shall not marry without unto a stranger: her husband's brother shall go in unto her and take her to him to wife. And it shall be that the first born which she beareth shall succeed in the name of his brother which is dead, that his name shall be not put out of Israel. With the Galla, the brother must marry the widow of his deceased brother. With the Somali, the widow may marry again only with one of her husband's nearest relatives, who has to pay her half of her first dowry; if the latter die too, his wife is married to one of the same family for a compensation of one-fourth of the first sum. If the wife die, the husband has the right to demand in marriage an unmarried sister of his dead wife for one-half of the marriage dowry.

#### 6. *Negro and Congo Peoples.*

In the interior of western equatorial Africa, the nephew marries the relicts of his maternal uncle, and with the Bakalai the son marries the widows of his father, with the exception of his own mother. With the Bechuana the son succeeds to all his father's wives, and if an older brother die, the younger brother comes by his wives.

#### 7. *Indo-Germanic Peoples.*

With the Afghans the brother is bound to marry the widow of a deceased brother if she wish it. In the laws of Manu, leviratical marriage occurs only in case a virgin widow be left. In the latter case, the same custom prevails among the Ideyars in South India, among the Jat families in the Punjab, and with some of the Rajput classes of Central India. It occurred in the old German law, that the heir to whom the guardianship of the widow came with the inheritance, particularly the brother of the deceased or indeed her own stepson, took the widow to himself as though part of the inheritance.

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From such a collection of ethnological facts, embracing the whole earth and including the customs of nations in no ways related, no one, unless starting from a prejudiced point of view, could entertain the supposition that it were possible for such strange phenomena, agreeing in so many particulars, to rest everywhere upon causes different in character and place. There can be no doubt that broader foundations to these exist; they must repose upon universal forms of social organisation,—forms which in individual instances find diversified expression only.

These universal forms of organisation are not to be discovered directly from the facts themselves: to determine them a person must possess a knowledge of the general jural status of the nations in question, and this knowledge can be obtained only from accounts of the legal customs of the said peoples. With the aid of information thus obtained, no doubt can be entertained that all the above mentioned customs belong to a form of organisation which extends over the whole earth, and which is exhibited exclusively among peoples living in a state of nature—viz., the clan. Thence arises characteristic conceptions of law which are repeated in all the customs above mentioned. It is a universal principle of the clan-system that women are not independent subjects of jural relations, that they are, so to speak, pieces of property belonging to the clan. They stand under the guardianship of the clan, which disposes of them at will, but which likewise provides for their maintenance. These rights and duties of guardianship are lodged by preference in the hands of a definite person, the head of the family, and after the latter's decease fall to the person who succeeds him. And so the women of the family chief pass to the new family-chief by way of inheritance, and the same rights and duties that the former chief possessed, arise in the person of his successor. With the gradual disintegration of the clan-system women acquire more and more recognised legal status, while the right and duty of guardianship becomes more and more invalidated.

This is the fundamental principle upon which all the above-mentioned customs rest. If the guardian of a woman die, the latter passes by inheritance to the person to whom the guardianship now falls. According to the strict interpretation of tribal institutions, there lies in the idea of guardianship the right of absolute disposal on the one hand, and on the other the obligation to provide for the woman in question.

A great number of other conceptions of clan-law might be adduced in explanation of the customs mentioned.

1. First, two systems of relationship exist in the clan: the system of mother-right, agreeably to which relationship is determined solely through the female line, and the system of father-right agreeably to which relationship is determined solely through the male line. Descent and guardianship conform to these systems. The third system that occurs, the system of parent-right generally whereby the relationship is determined through the male as well as the female line, first appears after the dissolution of the clan-system.

It appears from the instances cited, that leviratical marriages and inheritance of women occur as well under the system of mother-right as under that of father-right. Under mother-right, women are transferred among the North American Indians, Australians, Barea, Kunama, and among the tribes of equatorial Africa, according to the systems respectively prevailing among these peoples. Under father-right, women are transferred among the peoples of the Malay peninsula, the Himalaya and Caucasus districts, among the Mongolic-Tartaric, most of the Semitic, most of the Negro, Congo, and Indo-Germanic peoples, according to the systems respectively prevailing among them. Here and there the accounts fail in establishing whether inheritance takes place according to mother-right or father-right, and since both systems often exist side by side, these instances demand more detailed investigation. With the Brazilian tribes mentioned a complication of father and mother-right is found. The widow is married by the nearest relative according to the patriarchal system, while the daughter is married by her mother's brother on the maternal side according to the matriarchal system.

With the Dyaks, who live according to parent-right, leviratical marriages are in a state of total decadence. The widow may be freed from marriage with the nearest relative of her husband by surrendering her property to the family of such relative.

2. In strict conformity to clan-law, the nearest male-relation of the deceased husband is empowered and obligated to take the widow in marriage, while the consent of the widow is not asked. After the dissolution of the clan the heir generally continues to enjoy the right of marrying the widow, although no longer obliged to do so; on the other hand, he is still obliged to provide for her, although he may become absolved from this duty by giving her in marriage to another person—a procedure empowered by his guardian-right of disposition. The widow acquires the privilege of no longer being forced to marry without her consent the person that inherits her; but on the other hand she is not allowed to enter into another marriage without his approval. If a third person should marry her without the consent of the heir, he would be guilty of an infraction of the heir's guardian rights, and according to clan-law this leads to blood-feud.

Here belong the customs of the Arawaks, the Australians, the Malayans, and most of the others mentioned.

3. All male relatives are entitled to such inheritance who, according to the system of kinship prevailing, are next of kin.



Thus the sister's son or mother's brother, according to mother-right, and according to father-right the son or the brother on the father's side, inherit the wives as well as the property and enter into marriage with the former by inheritance. The brothers of the deceased figure in almost all the customs mentioned. The sister's son figures as heir, for example, among the Kolushes, the Barea, and Kunamas, in equatorial Africa; the son, among the Tunguses, the Bakalai, the Bechuana, the Kaffirs. The only exception to the inheritance of the son is his natural mother, who falls to a brother of the father.

In accordance with the notion that the right of guardianship resides in the whole clan, all members thereof are in a mediate way supposed to be entitled to the inheritance, as is the case among the Alfurs.

4. A legal custom prevailing among all clan-organisations is the purchase of the bride. The family of the female, or its clan-head, sells the future wife for a certain sum to the family of the future husband, or to the latter in person. By this sale the family of the female either renounces all claims to the wife, or certain defined rights still remain with them. When the wife is transferred by marriage to the family of her husband, she remains there even after his death. The family of her husband has to dispose of and care for her: she stands under the guardianship of her husband's family. Without the consent of the latter she is not allowed to enter into marriage with a third person, and in case of such a marriage her deceased husband's family receives the amount paid for her as bride.

If a kinsman of the deceased husband marry the widow, no bridal price is paid the family of the female, provided all rights have passed to the family of the husband through the original bridal purchase. Otherwise, a smaller payment is made at remarriage.

If the guardian-rights of the female's family are not totally abolished by the bridal purchase, the relations between the family of the female and the family of the husband may take various shapes.

Thus among the Benget-Igorrots the wife belongs to the family of the deceased husband, and among the Papuas of Geelvink Bay and on the Aru islands the family of the husband gets the bridal sum for the widow who enters into an alien marriage. No bridal sum is paid among the Alfures of Buru and on the Aru

islands in case of leviratical marriages. The law of the Somali is also to be compared here.

The rights of the wife's family still appear in the custom of pre-emption, which is mentioned among the Usbeks, in the law of Timor, where the next of kin to the deceased can absolve himself from the obligation of providing for the widow by the payment of a certain sum to her family.

5. To the clan-guardianship already noticed, belongs the custom of the Karo-Karo according to which, if there be no near relative of the deceased to take the widow, the family chief assigns the latter a spouse from the Marga of the deceased husband. And similarly among the Circassians, the widow and her children pass to another member of the clan. The provision here is quite characteristic that the clan has no obligations in this line if the widow be too old for marriage. With the Bechuana also the whole kindred determines which among the kinsmen has to marry the widow.

6. The provisions of the Batak-law of Angola and Sipirong are to be taken into consideration here according to which the widow of the elder brother always falls to the younger brother, while the marriage of the elder brother with the widow of the younger is regarded as incest. On the other hand, with the Alfures of Buru the eldest brother of the deceased inherits the widow of the deceased, whereas a brother younger than the deceased husband may not marry the latter's widow. This last provision appears to owe its existence to entirely specific causes. With the Malagasy the brother next succeeding marries the widow. With the Khatties the widow of the elder brother falls to the younger, while the widow of the younger brother may do as she pleases. It thus appears that also in this instance the elder brother can make no claim to the widow of the younger. With the Chassaks the women pass from one brother to another in the line of succession, apparently thus: the widow of the elder brother, always to the next younger. With the Bechuana also the younger brother succeeds to the widow of the elder. And so it appears to be the rule in general, that the next younger brother is in every case authorised and obligated to contract leviratical marriages.

7. A peculiar group is formed by the leviratical marriages of the Calchaquis in the interior of Brazil, of the Malagasy, and of the Hebrews. In these instances the object of leviratical marriage is to perpetuate the family of the deceased—an object which is aimed at by many other features of the clan system. Children begotten in leviratical marriage are considered the children of the de-

ceased husband. The law of the Malagasy recognise all children as such; that of the Hebrews only the first son. With the Ossetes the same thing reappears as with the Malagasy: only in this instance the widow's children which are subsequently born out of wedlock, also pass for the children of the deceased husband, just as among the Kaffirs natural children of widows pass as the children of the deceased husband and consequently fall to the latter's heirs.

8. To the decadence of the clan-system belong those customs according to which the obligation to marry the widow is only a duty of propriety, and according to which the woman must consent to the marriage; in the first place, however, the provision of the law of Anahuac whereby a leviratical marriage is permissible only when the education of the deceased brother's children has to be provided for.

9. To an entirely different group belongs the custom of Ponapi, according to which, upon the death of a wife, the widower marries her sister. This custom is also found among the North American Indians, the Knistineaux and the Selish, and in many other districts besides. It is found among the Somali together with the customs above noticed. There may be a close relation between this and the legal principle so widely diffused that the wife's family stands security to the man in bridal purchase that he shall keep his wife, and that if she die, a new one shall be substituted. Yet the matter might be considered from other points of view, and more thorough investigation is demanded for an adequate explanation of this phenomenon.

Numerous groups of facts similar to those just discussed may be discovered in the jural life of the peoples of the earth, and this being the case, it will no longer be possible to deny that the purely comparative method is allowable in the province of jurisprudence; and this holds true, whatever individual opinions may be as to the value of the facts reported and the inferences drawn from them.

That the inferences are unsafe, is at once evident. This comes from the fact that sufficient material is not yet at hand and has not yet been properly assorted. But it is just as perfectly evident that inferences have to be drawn and will have to be drawn still. The material would never be procured, if it could not be shown from such inferences that a collection of facts in the direction indicated would lead to solid scientific results. Furthermore it is only through inferences of this sort that points of view can be won from

which further work may be directed with intelligence. For all material is certainly not of equal value to science, and the tendency to delve into irrelevant details is widely prevalent in learned circles, and especially in Germany. On the other hand, one must be on one's guard against pronouncing a discovered fact irrelevant because we do not happen to know at the time of any analogous phenomenon. It is impossible to prescribe a detailed method of procedure for the field of ethnological jurisprudence. Such a method must first result from the very material to which it is applied.

At present we can offer but a few general points for consideration :

1. Although the collection of material must take place with separate races and nations (and the most detailed observations are here of the highest value), nevertheless in the causal analysis of the jural customs of a single nation, it is highly expedient always to adduce the corresponding jural facts of cognate as well as of non-cognate peoples : for we may thus avoid such false conclusions as easily arise from insufficient material in treating of a definite custom of a given people. This is but the extension of a view which has already asserted itself in the investigation of the history of law.

An exposition of what is stipulated in the law of a single European municipality would be much more exhaustive if expounded from other sources beside its own and if the laws of kindred municipalities were adduced in explanation. In wider fields, the recent study of Indian Law has aided considerably in perfecting the expositions of Germanic, Roman, Grecian, and Celtic customary law. If legal customs exist which are more universal and which prevail throughout extended ethnic fields, it is certain that an understanding of these is of proportionately more value if the explanation of such a custom in a single nation is under consideration. We do not wish to say by this that no attempt should be made to expound the legal custom first from the more limited sphere in which it appears. On the contrary, this endeavor should be aided as much as possible, and historical investigation in particular should be pushed as far as practicable in the separate provinces. But in any single province of law, historical investigation will always reach a point where original material no longer warrants conclusions of demonstrable certainty. Vagrant hypotheses necessarily arise, where the admission of facts from more extended regions might lead to safe conclusions. It is quite obvious that in considering the laws of peoples having no history, a comprehensive

understanding of the laws of all other peoples of the earth possesses incomparably higher value than in the case of peoples that do possess a history; indeed it is indispensable in the first instance if false conclusions are to be avoided. It must therefore be recommended to those who intend to labor scientifically in the field of ethnological jurisprudence, first to acquire at least a tolerable knowledge of every existing legal system before entering upon more limited fields of research: otherwise they will always be liable to partial judgments. Even for the mere collection of legal customs, this will be expedient, for an investigator with European opinions of law might very easily receive a wrong impression from a legal custom discovered among a people living in a state of nature. The causal analysis will be the more correct, in proportion as the investigator's knowledge of all existing systems of law is the more comprehensive.

2. The history of law deals with historical data in their chronological succession. Ethnology in so far as it treats of peoples having no history does not recognise such a connexion; it has no chronology. Ethnology takes no cognizance of decades or centuries: it has to do with periods and strata only, somewhat like geology. In any epoch you choose ethnology meets with all manner of legal customs, from the lowest and crudest to those of the highest development, existing near each other and among all nations of the earth. The materials whereon it can found its conclusions are like or analogous data, and such data among the different peoples of the earth are separated from one another not by decades but by hundreds and thousands of years. Legal customs which are practised to-day among one people, belong to the most primitive periods of another. The chronology of ethnological jurisprudence is not a computation of years from a point of time arbitrarily adopted. It is the graduated scale of development which any characteristic legal custom or conception has passed through among the different peoples with whom it is found.

This idea can be transferred to historic nations also and with important results. Every living historic nation still rests in its undermost strata upon the primitive society whence it has arisen, and upon this foundation strata upon strata of culture and civilisation are piled. All these strata still lie one above the other in the positive law of a people of any period. Even in the most recent of modern codifications there is an abundance of heirlooms from primitive times, and we may trace in the current law of to-day the history of its development as easily as we can trace in the structure

of the human body the history of the human race. This point, too, may often become of great importance in explaining any single legal custom; for it is often impossible to explain such customs from the times in which they occur, it being necessary to recur to periods long since past.

3. Hitherto, the science of jurisprudence has believed that it possessed the most valuable material for research in the laws of nations which had reached the highest plane of civilisation, and that it could dispense altogether with the study of civil life among the ruder and more uncivilised peoples. It is exactly upon this point that ethnological jurisprudence must lay the greatest emphasis, for only in the laws of uncivilised peoples are the germinal conditions of law to be discovered, and for a universal history of the development of law a knowledge of the latter conditions is indispensable. As the science of physiology is based upon the physiology of the cell, so will the future science of jurisprudence be founded upon the germinal element of civil society—the primitive gens. And this primitive gens as an elementary form is to be found at present only among purely aboriginal peoples.

4. Social customs and conceptions, as we find them among the nations of the earth, are regarded by the ethnologist as organic products. The fact of their existence can no more be subjected to criticism than the fact of the existence of individual plant or animal species, than the fact of the existence of a solar system or of the universe at large. They are regarded as natural growths, and merely the causes that have produced them are made the subject of ethnological research. In the same manner the *legal* customs and conceptions of the various nations of the earth, are regarded by ethnological jurisprudence as irreversible facts. They too are not to be subjected to æsthetical or ethical criticism from the individual standpoint. They are to be investigated objectively in reference to their causes, just as we examine a plant or an animal in search of the laws of its growth and the conditions of its life.

In ethnology, therefore, and particularly in ethnological jurisprudence, the question never arises as to whether a thing be good or bad, right or wrong, true or untrue, beautiful or ugly. The sole question is whether a certain custom or conception really exists in the life of the nations; and if it exist, why? and if not, why? No importance can be attached here to the judgments of individuals regarding such a custom or conception; and if ethnology and ethnological jurisprudence are to acquire a strictly scientific character, this purely objective standpoint is to be rigorously adhered to.

Individual estimation is an extremely inconstant factor, and its recognition would utterly invalidate a strict and scientific treatment of ethnological subjects. An exhibition of indignation on the part of an ethnologist at relatively immoral practices, adds nothing to the solution of ethnological problems. It matters not whether a people live without the institution of marriage, practice cannibalism, offer human sacrifices, impale its wrong-doers or burn its witches and sorcerers; for the sentimental disapproval of such practices, in investigation, tends to disarrange that equipoise of judgment which is requisite to determining the causal relation existing between ethnological phenomena. The ethnologist is called upon to seek this causal relation with the cold indifference of the anatomist. A person who speaks of senseless customs and senseless institutions, is not fitted to engage in ethnological research.

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The above are the principal points of view which at present admit of establishment for ethnological jurisprudence. Others may suggest themselves as the science is further developed.