

## CHAPTER XI.

### THE ECONOMICS OF JUSTICE.

Before studying the detail of Chin justice it would perhaps be as well to consider one or two general questions\* respecting primitive justice which are still the subject of some misunderstanding. These questions are :—what is the motivation of obedience to custom, and to what degree do the norms of primitive conduct differ from our own? Opinion on the primitive attitude to law ranges from the conception of the lawless savage,† to whom only might is right, to belief in the figmentary “collective conscience” which imposes on primitives a natural obedience to their tribal customs. Both extremes ignore the balance of positive inducements to obedience and retributive penalties for disobedience in all societies, the very existence of which is proof that everywhere there is a recognised path of virtue, that the individual is apt to stray from it and must be brought back again by the lure of the one and the fear of the other. Our own jurists dwell too much on the penal aspect of justice and as a whole the civilised world prides itself on a grossly exaggerated gap between its standards and those of the primitive.

So far as the Chin is concerned the whole of the evidence in this paper underlines the fact that obedience to laws and customs owes at least as much to the positive inducements as to the penal sanctions. Whether it is a matter of kinship obligations, behaviour towards neighbours or respect of property, we find that an expectation of reciprocal returns, goodwill and good reputation play an important part in keeping the average man within the bounds of the law. As to the norms of behaviour—the Chins like ourselves grow up and marry, love and quarrel with their families, compete with each other for honour and position, condemn age for its stranglehold on political and social power and youth for its bumptious precocity. Though their wedding ceremony differs, and the blood of pig and fowl passes for certificate and ring, yet the marriage takes place for the same reasons as ours—to give legal sanction and protection to the cohabitation of man and wife, and to legitimise the off-spring of the union. Though many marriages are happy, divorce occurs, and for the same reasons as in our own society—breach of sexual restrictions, incompatibility of temperament, cruelty or desertion. Though habitual crooks are almost unknown, thefts occur and men are tempted by hunger and cupidity. Even kleptomania exists, though it passes under the less dignified title of incurable thieving.

In other words, in spite of a great number of superficial differences in the outward standards of behaviour, there is a very broad basis of

\* One of the clearest expositions of these is to be found in Professor Malinowski's introduction to Dr. Ian Hogbin's "Law and Order in Polynesia."

† See page 205 of Chin Hills Gazetteer by Carey and Tuck,



Chin elders are men of dignity. The Headman of LENTE and his assistant.

similarity between Chin norms and our own, and if we look for the similarities rather than the differences we can go much further towards understanding why their laws are obeyed and *vice versa*, because we shall inject into our estimations the sympathetic tolerance which we show to our own foibles, and the measure of reverence we give to our own principles of honour and propriety.

With this in mind, we can go on to consider what we mean by equity, for the local principles of fairness must be faced if we are to appreciate the significance of Chin jurisprudence. Do we mean by equity something which *we* have built up on the foundations of western civilisation—a compound of English Law and what *we* call fair play? Or do we visualise something that takes its colour from any cultural background, something that can and does vary with purely local considerations of what is right and wrong? This is no idle question. The charter\* of administrative control of customary law states specifically that that law shall be administered “having regard to justice, *equity*, and good conscience.” It is therefore pertinent to insist on clarification of this issue as a pre-requisite of our analysis of Chin justice. For the support or modification of the local laws is merely one facet of the main body of administrative responsibilities, and if, as I shall show in this chapter, law, religion and economics are inextricably interwoven it follows that amending the law will have far-reaching consequences in these other spheres. Thus our notion of what is equity is shown to be of prime importance; our efforts to guide the people towards progress depend largely on whether or not we gain their willing co-operation and this in turn depends on the extent to which our conception of what is fair coincides with theirs.

This chapter purposes to give the Chin a fair hearing: it is an objective examination of the Chin viewpoint, an account of what constitutes an offence in Chin eyes, of the social and economic consequences of offence, of the nature of punishment and the means of execution of orders, and of the results of punishment under tribal law. Throughout the whole, emphasis is laid on the economic aspect, which will be found to loom very large indeed.

It is often argued that there is a fundamental difference between the primitive and his civilised contemporary in the application of justice because there is no distinction in primitive eyes between what we call criminal offences and civil wrongs: because the former has no clearly defined Courts of Justice, codified law or police forces to implement legal decisions. This chapter will demonstrate that though executive and legal power are vested in the same persons—the chiefs and headmen—yet justice is done: though no one has yet written, thank goodness, a Code of Chin Law, the law is known: though there are no uniformed policeman at the corners of the village lanes, orders are implemented. It will be found, indeed, that Chin justice varies from ours only in the

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\* The Chin Hills Regulation.

degree that his culture differs from ours, and that in many respects it shows an enlightened congruity which will bear comparison with judicial practice in any land.

The central Chin divides his offences into three main groups\* :— Offences against the person, including physical and psychological injury ; offences against property, including theft, damage or destruction ; offences against the spirits or against spiritual values, including the breach of ritual restrictions, defilement of the spirit altars and so on. Each of these groups is in turn qualified by two standards of enormity—whether the offence is remediable by payment of compensation from the injurer to the injured or whether such an excess of violence or turpitude has been shown as to render necessary an additional village fine.

In the preceding chapters we have seen something of the local concepts of material and spiritual value, the nature of the work man must do to live, the form and ideology of his ceremonial occasions, and the effect of all these on his economic processes. Now it remains to study what happens in the economic sphere when any of these values, occupations and ritual occasions is thrown out of gear by the commission of an offence.

*Offences against the person.*—These include culpable or accidental homicide, permanent or temporary physical injury, wrongful confinement, rape and sodomy† : injury by sorcery and cursing, defamation of character, belittlement of temporal achievements and the divulging of secrets confidentially imparted or overheard.

The economic consequences of offences in this category vary from the loss of a worker through death or incapacity ; the loss of reputation, prestige, seniority and the economic advantages that go with them ; the loss of friendship or patronage through idle gossip, to the loss of health or sanity at the hands of a sorceror. In each case the condition arising out of the offence can be assessed in terms of economic goods—the expenditure on mortuary feasts and sacrifice for health, the diminution of *hausa sa* and the inferior beer at feasts resulting from loss of social position,‡ the cost of exorcising evil spirits, and so on.

\* Offences against the "State" are not recognised by the Chin as a separate category. For instance an offence against the Chief is treated as harm to an individual, not to the community, while an offence involving defilement of village altars is treated in exactly the same way as an offence against private altars and so on. In pre-annexation days the village was the "State", and individuals resident therein were closely bound by kinship ties to each other. Treason and kindred offences were therefore practically unknown.

† Of very rare occurrence, and then only in tribes which have had contact with the *mar* tribes of the Lushai Hills to the west, among whom this offence was at one time not uncommon.

‡ I have noted in Chapter V the offence of *sa kah hnawm* (belittling a hunting exploit) as a result of which a man might lose seniority in the Hunters' Club. In the same way questioning a man's achievements in the Feasts of Merit may reduce his seniority among the *hausa pawl*.

*Offences against property and property rights.*—These envisage all the offences which we class under theft, misappropriation and cheating, wilful and accidental damage or destruction of goods, land, houses and livestock ; adultery, which is an infringement of a man's property rights in his wife, and non-payment of the reciprocities noted in Chapter X. All these again are readily assessable in terms of goods or cash, even adultery \*.

*Offences against the Spirits or against spiritual values.*—We have noted that the local people sacrifice a considerable member of animals at altars in the house, at the *mual*, at the *hnar* resting-places, at the field altars and at the altars dedicated to the locality spirits. In all cases it is believed that the spirit will appear to partake of the *sa serh* spirit food and therefore any act such as the tying of a cloven hooved animal at or near the altar (which will make the spirit expect a sacrifice), burning of a cooking fire (which has the same effect), damage or destruction to the trees round the altar or the skulls or animals fixed thereto (which will annoy the spirit), must be atoned for by an immediate sacrifice of the customary offering to the spirit so enraged.

In the same way at most sacrifices there are certain restrictions called *zark ul* during which either the householder, his family or the whole community, as the case may be, must refrain from specific types of manual effort and must exclude strangers from the house or village. Forceful entry into a village or house on such occasions would entail repetition of the sacrifice, and is therefore punishable at least by the payment in compensation of the value of the animal offered.

Finally there are the restrictions on the use of another's head-comb (especially among the Shimhrin), the ban on taking *lac* into the houses of certain clans and on taking beeswax or gongs into others, the ban on sitting, sleeping and especially sexual intercourse on the *khunpi* (main bedstead) of another person's house, and so on. In all these cases also it is possible to arrive at an exact assessment of the economic damage done in terms of goods. The offences entail either repetition of a sacrifice defiled or the holding of a new one in atonement ; the offender must provide the animal offered† and thus the problem of punishment raises no difficulty.

In his punishments for crime the Chin can stand comparison with any race. In all cases in the central hills only fines or compensation are inflicted, bodily injury and death are not included in the list of

\* The fact that a marriage price is payable makes exact calculation of the consequences of adultery an easy matter.

† We must note that the cost of beer and food consumed at feasts which have been spoiled cannot be charged to the defiler. It is rightly held that the food has been consumed and enjoyed by the participants and therefore they have no 'grouse.' Only the spirit has been cheated or insulted and so only the sacrificial offering regarded as his perquisite is payable. This is a nice example of Chin equity.

traditional deterrents. This very important fact will be referred to later when summing up the relative advantages of customary law over the Penal Code. Only two cases are known in tribal history of the execution of a fellow villager. Both of these occurred in Tashon, the sentences being carried out by throwing the bound victim into the Manipur River. One of these two unfortunates escaped and lived afterwards in a Zanniat village. A custom known as *bawrh*, which sanctions the pummeling of any person becoming a public nuisance, would seem to contradict this suggestion of the absence of corporal punishment in the official Chin list. Actually *bawrh* is never ordered by a headman and is always the result of a spontaneous outburst against an unpopular person, usually at a beer-drink when people get together and tongues are loosed.

In pre-annexation days the most serious punishment ever inflicted was *ram* (also called *luangpi klak*—to bring down the ridge-pole) which entailed banishment and the confiscation of all property. Since in those days of internece strife every household was of great value for protective if for no other purposes, it will be realised that *ram* was not lightly ordered. After the annexation it fell into disrepute and is now obsolete.

Of the fines of today I give below, in diminishing order of severity, those current among the Zahau. In all other tribes one finds the same names for fines, but though the qualitative content remains similar, quantities differ from one tribe to another.

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| <i>Siapi.</i>              | A large cow mithan, in 1936* valued for legal purposes at Rs. 40.                              |
| <i>Siate.</i>              | A young mithan, valued at Rs.20.   |
| <i>Lungkhen or Khenpi.</i> | 1 four fist pig, 5 pots of beer, 1 <i>han</i> of grain and 1 packet of salt. Valued at Rs.15.  |
| <i>Khente.</i>             | 1 three fist pig, 5 pots of beer, 1 <i>han</i> of grain and 1 packet of salt. Valued at Rs.10. |
| <i>Zupi nga.</i>           | 5 pots of beer.  |
| † <i>Raw rel lawh.</i>     | 1 or more <i>rel</i> (small basket containing about 7 lbs.) of grain.                          |

When any case is heard the complainant will take a pot of beer to the headman's house to oil the wheels of discussion. This is the *thu dil nak* (word ask for).

Disposal of fines varies from tribe to tribe. In some all goes to the complainant as compensation, the trying elders being satisfied with the *thu dil nak* beer ; in others the greater part goes in compensation to the

\* These arbitrary valuations do not necessarily correspond with the market values at the time. For convenience sake cash values of traditional fines have been fixed from time to time by the Deputy Commissioner of the Chin Hills.

† *Raw rel lawh* is the fine usually inflicted for disobedience of council orders to turn out for communal labour. Lesser fines down to one small pot of beer valued at As. 8 are inflicted for minor offences, but these have no specific names.

offended party, and the lesser is retained by the council. In such cases valuable articles such as mithan and pigs will go as compensation, while the elders will retain the beer, grain and salt for use in communal entertainment. In some bad cases a double punishment is awarded covering both compensation to the injured and a large fine payable to the village council.

This problem of the disposal of fines has been much discussed in the past. Experienced officers have argued that allowing elders to participate in sharing the proceeds of their own judicial orders increases litigation because unscrupulous elders stir up trouble in order to raise fines. Some Chins agree, but many others argue in precisely the opposite direction, saying that if all the fines were paid as compensation to injured parties there would be a profit in litigation and a much greater incentive to sue. It is simply a matter of opinion at the moment, but quantitative evidence based on detailed enquiries in one or two villages would probably be worth collecting.

One thing is certain—if a headman and council want to wax fat they must keep as many villagers as possible, and to do this they must keep the peace and reduce quarrelsome litigation to a minimum. For this reason it will be found that in awarding punishment for an offence the elders rarely inflict the maximum applicable. Because they have to live with both parties to the case their main objective is restoration of harmony, the granting of just sufficient economic balm to assuage the wounded without permanently antagonising the wouneder. To this end they take into account not only the facts of the offence itself but also the age, sex, rank, wealth and kinship groupings of the contending parties, the likelihood of emigration of disaffected persons, and a hundred and one other factors known only to those having an intimate day to day contact with all concerned. Thus their orders are always placatory—the sublimation of that genius for compromise once believed the hallmark only of Perfide Albion.

In considering the economic consequences of punishment under tribal law the first obvious point is that the fines represent large enough a proportion of the average householder's capital to be a powerful deterrent. For it will take from him at least the surplus with which he hopes to build up his economic future, and if he has had a bad year may mean that he must appeal to his relatives for help. The result is that the patrilineal kindred who may be called upon to help are always anxious to keep a man away from trouble that will touch their resources, while both they and the relatives-in-law are equally concerned in preserving him from loss of the surplus which will produce feasts in which they can share.

In other words, the infliction of loss of goods added to a closely knit reciprocal aid system among kindred makes all of them partial sureties for the good behaviour of each individual in the group.

The second main point is that the proceeds of fines inflicted on recalcitrant individuals have a twofold effect—they compensate the injured party to the extent of any outlay in sacrifice or replacement value in goods, and they increase the resources for communal purposes in the hands of the elders. The first effect re-establishes calm and the second reduces to some extent the calls made on all householders in the form of the *khai* and *tha hlun* collections mentioned in Chapter X.

The third and last important point is that execution of sentences is cheap and effective and there is no expensive jail administration to pay for at the cost of higher taxes. Provision for refusal to pay fines imposed is made in the *lamkhang pal man* (road below go price) which consist of an addition of from 1 to 5 *seu* to any fine which the elders have to collect by force.

We can now consider the effect of the extension to the Chin Hills of the Indian Penal Code, which has been applicable since the annexation. On the one hand our system of imprisonment, corporal or capital punishment, entailing as it does reprisal against the offender rather than redress of the economic consequences of offence, cuts right across the basic principles of Chin justice and is therefore not properly understood by the people. On the other hand the mere threat of the horrors of corporal punishment or banishment to a jail in the sorceror-hunted plains does lend some measure of support to the tribal customs and very definitely encourages amicable settlement of disputes. *In other words the application of the penal law to actual cases is less effective than its mere existence as a potential alternative method of trial and punishment.* It can be argued that it is not necessary to whip or imprison offenders; that the Penal Code leaves it open to a trying magistrate to inflict a fine which can be paid as compensation, but I do not think anyone will maintain that this expensive and roundabout system is in any way preferable to direct punishment by the elders.

The crux of the matter is that the Penal Code envisages offences as infringements of a codified law, expressly torn out of their context by the Evidence Act, whereas the courts of the elders regard them principally as acts resulting in economic loss, often to a group of relatives unconnected with the actual commission of the offence, and in this sense little different in essence from an accident. Whereas we forgive and forget accidental killing or injury, the Chin does not, and in such cases either the funeral mithan and shroud (*ruakhnah* and *puanfun*) or the expenses of spiritual "treatment" such as *khla kawh* must be paid. The award of additional punishment for deliberate acts rests entirely on the turpitude evinced by the offender, and as I have already pointed out, reprisal against him always tends to take second place to finding a solution satisfactory to the village community as a whole.

The procedure in application of the Penal Code is even more foreign to the Chin than the punishments inflicted under it. The Chin village court is composed of men who have grown old with all the parties to

most cases, of elders who know a thousand things about the contestants, things which to them are essential factors in an equitable settlement but which the Evidence Act would rule out as irrelevant. All witnesses are examined in each others' presence and there is little or no attempt to evade punishment by trickery, and the spectacle of an offender getting off scot-free because of some technical fault in presentation of the case is as unknown as it would be ridiculous.

Contrast this scene with that in an official court. The presiding officer is one whose cultural setting is completely alien to that of the persons coming before him, who may not even know the local dialects, and who, in these days of rapid transfer, can have but little general and almost certainly no personal knowledge of the facts and persons forming the background to the dispute. It is inevitable that the decisions reached will rarely if ever satisfy the canons of Chin justice, which we have seen owe so much to an intimate knowledge of the local culture and the village personnel.

Of course there are the rare instances where inter-tribal cases, or cases concerning persons who are not Chins occur.\* But even these, involving as they do two different cultural backgrounds, are more easily settled under customary law than the harsher Penal Code. I have often felt that the main reason for the very high percentage of convictions in hill murder cases is due almost entirely to the fact that all witnesses know they are not being asked to condemn a man to a horrible death. They are therefore more willing to testify. Similarly in all except the very rare premeditated cases (Blessed is a narrow gap between Haves and Have-nots !) the offender rarely attempts to escape the consequences of his crime.

We can sum up the situation in the central hills by saying that customary law is enforced almost entirely through the medium of economic exchange, that it is preferable to the Penal Code because it aims at re-establishing the economic balance disturbed by offences in a manner likely to satisfy the community as a whole, that in procedure it is cheap because it is executed on the basis of village autonomy and through the heredity officials and the traditional councils, and last not least, it is successful in attaining the result desired, for *there is very much less crime in these hills than in most other areas in Burma.*

We can see clearly that local economics are inextricably bound up with local justice, and *vice versa*, and underline the main contention in this book—that from an administrative point of view a detailed knowledge of the local economy is an essential pre-requisite to understanding any other sphere of local life.

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\* There are very few non-Chin residents of the Chin Hills District, and their immigration is not encouraged for many reasons.