

H. J. Nieboer, *Slavery: As an Industrial System* (Ethnological Researches), 2d edition, 1909.

PART I. DESCRIPTIVE.

CHAPTER I.

DEFINITION AND DISTINCTION FROM KINDRED PHENOMENA.

§ 1. Ordinary meaning of the term "slavery".

In most branches of knowledge the phenomena the man of science has to deal with have their technical names; and, when using a scientific term, he need not have regard to the meaning this term conveys in ordinary language; he knows he will not be misunderstood by his fellow-scientists. For instance, the Germans call a whale *Wallfisch*, and the English speak of shell-fish; but a zoologist, using the word fish, need not fear that any competent person will think he means whales or shell-fish.

In ethnology the state of things is quite different. There are a few scientific names bearing a definite meaning, such as the terms "animism" and "survival", happily introduced by Professor Tylor. But most phenomena belonging to our science have not yet been accurately investigated; so it is no wonder, that different writers (sometimes even the same writer on different pages) give different names to the same phenomenon, whereas on the other hand sometimes the same term (e.g. "matriarchy") is applied to widely different phenomena. As for the subject we are about to treat of, we shall presently see that several writers have given a definition of slavery; but no one has taken the trouble to inquire whether his definition can be of any practical use in social science. Therefore we shall try to give a good definition and justify it.

But we may not content ourselves with this; we must also pay attention to the meaning of the term "slavery" as commonly employed. There are two reasons for this. First, we [4] must always rely upon the statements of ethnographers. If an ethnographer states that some savage tribe carries on slavery without defining in what this "slavery" consists, we have ask: What may our informant have meant? And as he is likely to have used the word in the sense generally attached to it, we have to inquire: What is the ordinary meaning of the term "slavery"?

The second reason is this. Several theoretical writers speak of slavery, without defining what they mean by it; and we cannot avail ourselves of their remarks without knowing what meaning they attach to this term. And as they too may be supposed to have used it in the sense in which it is generally

used, we have again to inquire: What is the meaning of the term "slavery" in ordinary language?

The general use of the word, as is so often the case, is rather inaccurate. "Careless or rhetorical writers" says Ingram, use the words "slave" and "slavery" in a very lax way. Thus, when protesting against the so-called "Subjection of Women", they absurdly apply those terms to the condition of the wife in the modern society of the west -- designations which are inappropriate even in the case of the inmates of Indian zenanas; and they speak of the modern worker as a "wage-slave", even though he is backed by a powerful trade-union. Passion has a language of its own, and poets and orators must doubtless be permitted to denote by the word "slavery" the position of subjects of a state who labour under civil disabilities, or are excluded from the exercise of political power, but in sociological study things ought to have their right names, and those names should, as far as possible, be uniformly employed".[Ingram, p. 261.]

But this use of the word we may safely regard as a metaphor[In the second Chapter and in the continuation of this we shall meet with more instances of this metaphoric (sometimes rather dangerous) use of the term "slavery".]; nobody will assert that these labourers and women are really slaves. Whoever uses the term slavery in its ordinary sense attaches a fairly distinct idea to it.

What is this idea?

We can express it most generally thus: a slave is one who [5] is not free. There are never slaves without there being freemen too; and nobody can be at the same time a slave and a freeman. We must, however, be careful to remember that, man being a "social animal", no man is literally free; all members of a community are restricted in their behaviour towards each other by social rules and customs. [Bastian, *Bechtverhältnisse*, p. 14.] But freemen at any rate are relatively free; so a slave must be one who does not share in the common amount of liberty, compatible with the social connection.

The condition of the slave as opposed to that of the freeman presents itself to us under the three following aspects.

First, every slave has his master to whom he is subjected. And this subjection is of a peculiar kind. Unlike the authority one freeman sometimes has over another, the master's power over his slave is unlimited, at least in principle; any restriction put upon the master's free exercise of his power is a mitigation of slavery, not belonging to its nature, just as in Roman law the proprietor may do with his property whatever he is not by special laws forbidden to do. The relation between master and slave is therefore properly expressed by the slave being called the master's "possession" or "property", expressions we frequently meet with.

Secondly, slaves are in a lower condition as compared with freemen. The slave has no political rights; he does not choose his government, he does not attend the public councils. Socially he is despised.

In the third place, we always connect with slavery the idea of compulsory labour. The slave is compelled to work; the free labourer may leave off working if he likes, be it at the cost of starving. All compulsory labour, however, is not slave labour; the latter requires that peculiar kind of compulsion, that is expressed by the word "possession" or "property", as has been said before.

Recapitulating, we may define a slave in the ordinary sense of the word as a man who is the property of another, politically and socially at a lower level than the mass of the people performing compulsory labour.[6]

We shall inquire next, whether this notion is a practical one for the purpose of our investigation, or whether it requires any improvement. But it may be convenient first to examine, what our theoretical authors have to say on the subject.

§ 2. *Use of the term "slavery" in theoretical literature.*

Spencer remarks: "[The captives] fall into unqualified servitude They belong absolutely to their captors They become property, of which any use whatever may be made".[Spencer, Pol. Inst., p. 291.] Although this may not properly be called a definition of slavery, it appears that he uses "becoming property" and "falling into unqualified servitude" (or slavery) as synonymous expressions.

According to Ingram "the essential character of slavery may be regarded as lying in the fact that the master was owner of the person of the slave". [Ingram, p. 262.]

Lippert remarks: "The fact, that one man becomes an object of possession by another, characterizes the nature of slavery".[Lippert, II p. 534.]

Sohm calls a slave "a man who is not regarded as a person, but as a thing. The slave is left to the discretion of the master, who has over him the right of property".[Sohm, p. 106.]

Letourneau says: "The rights of the masters over their slaves were always excessive; they were those of a proprietor over his possession".[Letourneau, p. 492.]

According to Schmoller "the slave is the property of his master".[Schmoller, Grundriss I p. 339.]

In the same way, Meyer, speaking of slavery, says that ancient law recognised an unlimited right of property over men.[E. Mejer, Die Sklaverei im Aliertum, p. 11.]

Jhering also remarks that "the master's *potestas* may be called property".
[Jhering, II p. 167.]

In the first paragraph three principal features of slavery have been enumerated. We see that our theorists attach most importance to the first feature: "property" or "possession". [This view is also held by Wagner and Puchta, whose ample expositions we shall make use of in the next paragraph.] [7] Whether we can agree with them will be shown in the next paragraph.

§ 3. *Definition for scientific use.*

The present investigation is a sociological one; therefore our definition of slavery has to be sociologically relevant. We have to ask: What is the social value of slavery? Slavery is an organ in the social body performing a certain function, and we have to inquire: How is this organ developed, and how in the various stages of its development, does it perform its function? But then we must know first what this organ and its function are. Thus only can we exclude from our inquiry organs somewhat resembling slavery, but functionally quite different from it, and organs wholly different from slavery, but performing the same function or nearly the same. And this is necessary; for the inclusion of such organs would create a confusion fatal to a right understanding.

"What then is slavery and what is its function?"

The great function of slavery can be no other than a *division of labour*. [Warner remarks that this is the main function of bondage in general (*Unfreiheit*). pp. 374-370, 382.] Division of labour is taken here in the widest sense, as including not only a qualitative division, by which one man does one kind of work and another a different kind, but also a quantitative one, by which one man's wants are provided for not by his own work only, but by another's. A society without any division of labour would be one, in which each man worked for his own wants, and nobody for another's; in any case but this there is a division of labour in this wider sense of the word. Now this division can be brought about by two means. "There are two ways" says Puchta, "in which we can avail ourselves of the strength of other men which we are in need of. One is the way of free commerce, that does not interfere with the liberty of the person who serves us, the making of contracts by which we exchange the strength and skill of another, or their products, for other performances [8] on our part: hire of services, purchase of manufactures, etc. The other way is the subjection of such persons, which enables us. to dispose of their strength in our behalf, but at the same time injures the personality of the subjected. This subjection can be imagined as being restricted to certain purposes, for instance to the cultivation of the land, as with soil-tilling serfs; the result of which is that this subjection, for the very reason that it has a definite and limited aim, does not quite annul the liberty of the subjected. But the subjection can also be an unlimited one, as is the case when the subjected person, in the whole of his outward life, is treated as but a means to the purposes of the man of power, and so his

personality is entirely absorbed. This is the institution of slavery". [Fuchta, II pp. 82, 83. Wagner (pp, 382, 895) arrives at the same conclusion, but does not state it so clearly.] We have not much to add to this lucid description of slavery and its function. The function is a system of compulsory labour, and slavery is the absorption of the whole personality of the forced labourer to this end. As this absorption is properly expressed by the word "property" or "possession", we may define the slave as *a man who is the property or possession of another man, and forced to work for him.*

This definition, however, on further consideration will show itself capable of some simplification. For when one man is the property of another, this implies compulsory labour. The right of property in this case, the object of it being a man, is a power over that man's will too. The Romans recognised this: "The master has not only a right of property over the slave as over a lifeless thing, but also a power like that over his son, the *potestas dominica*, that is a power over the slave's will". [Sohm, p. 106.] The right of property, that is a legally unlimited power over a man, were useless, if the owner did not influence the man's will; and this influencing is equivalent to imposing labour upon him, labour being taken in the widest sense. A mere physical possession, such as the preserving of captives for cannibal purposes, which Letourneau and Spencer make so much of [Letourneau, *passim*; Spencer, *Pol. Inst.* p. 291.], is socially of little consequence. Possession of human beings, as a social institution, is that which gets hold [9] of the will of its object. Hence it follows, that *slavery is the fact that one man is the property or possession of another.*

This simplification of our formula has this advantage that, in inquiring whether in any country there are slaves, we need not ask whether there is labour imposed on subjected men. When this does not sufficiently appear, we need not say: We do not know whether slavery really exists here. When we are told that in such a country some men are the property of others (except of course the cases of mere physical possession we have hinted at, which are few and easy to recognise), we may be sure that they perform some kind of compulsory labour, and are justified in calling them slaves.

Further advantages of our definition are, that it is the definition given by many theorists, and that it lies within the limits of current speech.

In the following paragraphs we shall mark the distinction of slavery from some phenomena which somewhat resemble it. Of phenomena of this kind we shall consider only those that most frequently occur; other questionable cases will be examined in surveying the occurrence of slavery in the several parts of the globe.

§ 4. *Distinction of slavery from kindred phenomena.* I. *Wives in an abject condition.*

In the first paragraph it has already been noticed, that the advocates of women's rights make very great use of the term "slavery". We shall see that this equally applies to some ethnographers and theorists describing the state

of women, especially as wives, in some primitive societies. To give one instance of each of them: Bancroft says of the Northern Californians: "Although I find no description of an actual system of slavery existing among them, yet there is no doubt that they have slaves. We shall see . . . that women entitled by courtesy wives, are bought and sold". [Bancroft, p. 349.] The theorist we shall quote is Letourneau: "In all very primitive societies woman represents the domestic [10] animals, the beasts of burden which the more advanced societies possess: she is indeed treated as a slave, and this certainly is one of the reasons why slavery has been instituted so late in the course of social evolution". [Letourneau, p. 27.]

We may say that such authors use the word metaphorically (as Letourneau certainly does); but this does not exempt us from examining, whether the condition of wives in those cases, where according to them it so much resembles slavery, is really slavery. We must not, of course, inquire whether there are instances of female slaves being *the* wives of their owners, but whether in any case the wives as such are slaves. In doing this, we may confine ourselves to observing the condition of wives among the natives of Australia, as this condition is commonly described as a striking instance of an abject one. Letourneau remarks: "In the Australian clans slavery, in the sense in which we use the word, did not exist; but one half of the social group, the weaker half, was reduced to servitude; the Australian woman, an indispensable and despised helpmate, was during her whole life burdened with work, ill-used, and in reward often eaten by those whom her unavailing labour had fed". [Letourneau, p. 45.] Schurtz states that the treatment of the Australian wives is bad. [Schurtz, Katechismus, p. 139.] Ratzel expresses the same view: "The position of the wife in such circumstances is always a low one. That she is positively considered to be the property of her husband (hence in the Adelaide district "owner of a wife" means husband) is not peculiar to Australia. But to this a number of customs are added here, that, more than among other peoples to which the notion of the wife as a commodity is equally familiar, place her in the back-ground of public and even of family life". [Ratzel, Völkerkunde, II p. 66.] Now let us cite some particulars about this abject state of the Australian wives, as given by ethnographers. For the purpose of enabling the reader to take a comprehensive view of the matter, we shall arrange these particulars not according to the different tribes each applies to, but according to the several phenomena bearing on the object of our inquiry. This gives the following result: [11]

A. The wife is acquired by the husband without her consent being asked. So among the Dieri: "under no circumstances has a woman any say in the choice of a partner". Powell's Creek natives: "After being purchased or captured, the woman is generally taken away to a distance and kept more or less isolated with her husband for some months, until she contentedly settles down to the new order of things". Queenslanders on Herbert River: wives are acquired by betrothal as children, by exchange for a sister or daughter or by capture. N. W. Central Queenslanders: the marriage can be proposed by the male relatives of the woman, or a man can exchange his true blood-sister, i. e. by

the same mother, for another's blood-sister; in both cases the consent of the whole camp-council is required. Aborigines of N. S. Wales: girls are often betrothed in infancy, or else given away by their father or brother without their wishes being consulted; "the women are considered an article of property, and are sold or given away by the parents or relatives without the least regard to their own wishes". Natives of the Western District of Victoria: betrothal of children is very frequent. A girl when adult can be asked of her father, without any attention being paid to her wishes. When two young men have each a sister or cousin, they may exchange the young women and marry them; the women are obliged to obey. Southern Australians: the husband most often acquires his wife by means of a contract with her father. Southern Australians of Port Lincoln: girls are betrothed long before puberty; when adult they must follow their intended husbands whether they wish it or not. Tribes of Central Australia (described by Spencer and Gillen): the most usual method of obtaining a wife is that which is connected with the custom of *Tualcha mura*. i. e. an agreement between two men that the relationship shall be established between their two children, one a boy and the other a girl. S. W. Australians: "In no case is the girl asked for her consent". Natives of King George Sound (W. Australia): a girl is often promised to a man years before her birth, but generally she is acquired by capture. Northern Australians of Port Darwin and the W. Coast of the Gulf of Carpentaria: "Wives are obtained by gifts of parents; in the majority of cases female children when born are promised to [12] men of all ages Some men obtain women by stealing them, generally from other tribes, or get them in exchange for a sister". Tasmanians: the girls are betrothed as children; before marriage they are the property of their father or brother. When the match is broken off, the girl is again betrothed, without her wishes being consulted. Brough Smyth, speaking of the Australians in general, remarks: "Men obtain wives by a convenient system of exchange, by conquest sometimes, and sometimes a woman is stolen. By what mode soever a man procures a bride, it is very seldom an occasion of rejoicing for the female". And Thomas says: "The process of acquiring a bride differs in different tribes; she may be exchanged for a sister, the simplest and perhaps the commonest form; she may be betrothed at, or even, provisionally, before, birth, but this is usually part of a process of barter; she may be abducted, either from an already existing, or a prospective husband, or from her relatives; or she may be inherited from a brother or tribal kinsman".

B. *The wife is entirely in the power of her husband, and treated accordingly.*

a. Sometimes such *general expressions* are found, as the wife being her husband's "*property*" or "*slave*". So on Moreton Bay: wives are slaves. On Herbert River: wives are slaves. In N. S. Wales: "the woman is the absolute property of her husband". In S. W. Australia: "the state of slavery in which they [the women] are all held, is really deplorable." In Central Australia: the wife is desired by the husband only for a slave. In Tasmania: the women are slaves and do all the menial work. We may add Curr's statement about the Australians in general: The wife "is not the relative, but the property of her

husband". "The husband is the absolute owner of his wife (or wives)". Brough Smyth too remarks that the husband is called the owner of the wife.

b. *He treats her with contempt.* In S. Australia women are despised. In the Moore River District of W. Australia the husband gives his wife only the offal of the chase. Central Australian men "eat alone, and throw what they can't eat to the women". In N. S. Wales "as her husband walks along, she follows him at a respectful distance If they sit down to [13] a meal, she still keeps behind and gets her share flung to her without ceremony".

c. *He may sometimes ill-use and even kill her.* On Moreton Bay the wife is often beaten by her husband, especially when he is drunk with rum. The Queenslander of Herbert River "treats his wife with but little consideration, is often very cruel; he may take her life if he desires". In N. S. Wales the husband "may do with her whatever he likes, even to the extent of putting her to death, without any challenge from social or tribal law." "The waddy (club) is applied to their heads in a most unmerciful style, and few old women are to be seen who do not bear unquestionable marks of the hard usage they have received." The Cammarray beats his wife violently for a trifling fault even a few hours before her confinement. Dawson speaks of the "apparent hard usage to which the women [of W. Victoria] are subjected". In S. W. Australia the method he [the husband] adopts for correcting her is so barbarous, that it often occurs that for a single look he pierces her leg with the *ghici*, breaks her head with the *dauac*, and treats her to other similar caresses". The natives of King George Sound treat their wives very badly. In the Moore River District most of the women die a violent death before they have reached an advanced age. If, after an unsuccessful chase, the husband finds that his wife has not enough yams, she is glad to get off with only a flogging. In cases of famine the women are eaten. In Central Australia women are very badly and roughly treated. Nobody aids an ill-used woman. "If . . . rightly or wrongly, a man thinks his wife guilty of a breach of the laws which govern marital relations, then undoubtedly the treatment of the woman is marked by brutal and often revolting severity." Tasmanian wives were often cruelly beaten by their jealous husbands. According to Curr, the Australian husband may "treat her well, or brutally ill-use her, at his pleasure." The wives "are, occasionally, cruelly beaten, or speared, for even a trifling offence". Brough Smyth states that "if she shows favour towards another and be discovered, she may suffer heavy punishment, be put to death even". And, according to Thomas, "an erring wife might be clubbed or speared through the leg on the spot by her husband, and [14] no one would take much notice of the incident. Indeed, the injured husband might actually kill her."

d. *The husband exchanges and lends his wife.* At Powell's Creek wives are sometimes exchanged. In Queensland and S. Australia "it frequently occurs, that a woman is exchanged, and passes to a number of husbands in a few years". The Moreton Bay aborigines lend their wives to each other and offer them to Europeans. In N. S. Wales "when visitors come to the camp they are accommodated with wives while they remain; and a brave chief, who has

done much for their tribe by his prowess, gets the wives of other men sent to him by them as a mark of respect and friendship. Two men may even agree to exchange wives for a time". "They will frequently give one of their wives to a friend who may be in want of one." At Port Lincoln the men frequently exchange wives. The S. Australian husband offers his wife to friends and strangers. Exchange of wives also occurs in S. Australia. In Central Australia the husband lends his wife to his friends. When he goes abroad a husband is given her for the time. A guest is also provided with a wife. Men and parents prostitute their wives and daughters. "At times a man will lend his wife to a stranger as an act of courtesy". Another writer informs us that they often bring them [their wives] up to white men and beg of them to take them". The natives of Port Darwin "exchange wives occasionally". Tasmanian women were offered to whites for payment. A describer of the Australians in general states that the husband may "keep her to himself, prostitute her, exchange her for another, or give her away to any male of the same class as himself". According to another writer a young man who has no wife sometimes gets one from an old man, who is tired of her. And Thomas states: "The Australians were accustomed to lend their wives to strangers on festive occasions or during ordinary visits. They might even agree to exchange wives for a month".

e. After his death she becomes the property of his brother. Among the Dieri "the elder brother claims her as she is the wife of his brother". On Herbert River the widow belongs to the deceased man's brother. In N. S. Wales "when a man dies, his widow is the property of his next brother". Among the [15] Kurnai the same custom prevails. In N. Australia "a widow belongs to her late husband's brother". We may add Curr's general statement that "when a man dies, his widows devolve on his eldest surviving brother".

C. The husband makes his wife work for him. As regards the Dieri we are told that "the more wives a man has, the more indolent he becomes; as they do not till the soil, each wife has to go daily in search of food, gather seeds, roots, and other vegetable products according to the seasons; the men with a plurality of wives stay at home making weapons, ornaments and fishing nets from rushes grown on the banks of the lakes". At Powell's Creek "polygamy is common, more so amongst the old men, who find a plurality of wives useful in hunting for them, and as carriers when shifting camp, etc.". On Herbert River the women procure the food, and for this often make long journeys; they do all the hard work. The husband makes the frame of the hut; she covers it. When travelling she carries all that is to be carried. The husband often keeps the animal food to himself; his hunting has rather the character of a sport; the procuring of food is entirely incumbent on the wife. According to Fraser the fate of the native wife in N. S. Wales is very pitiable. "Married at an early age, she has not only to bear and rear the children, but she does all the heavy work of the family; in camp, it is her duty to put up the rude windshelter of sticks and foliage which serves them as a home, to make a fire and keep it burning, and to cook the food; on the march, she carries in a bag, resting on her back and slung from her neck, all their portable property, and seated on this bag is her youngest child, . . . in this

bag, in addition to the few utensils she requires for domestic labours, she has a yam-stick with which to dig up the numerous native roots which are used as food, a supply of these and other articles of food required for a meal, a quantity of native string and hooks for catching fish For the ready kindling of a fire, whenever it is required, she has to carry with her a smouldering piece of firewood; if she allows this to go out, and thus puts her lord and master to the labour of getting fire by friction, or if she in any other way gives him displeasure, he will beat her severely, [16] even till her body is covered with bruises and her hair is matted with blood". At Victoria River Downs Station an old man generally has many wives, "probably to work and get food for him, for in their wild state the man is too proud to do anything except carry a *woomera* and spear." In Western Victoria "after marriage the women are compelled to do all the hard work of erecting habitations, collecting fuel and water, carrying burdens, procuring roots and delicacies of various kinds, making baskets for cooking roots and other purposes, preparing food, and attending to the children. The only work the men do, in time of peace, is to hunt for opossums and large animals of various kinds, and to make rugs and weapons." In S.W. Australia "when, wandering through the woods, the savage observes that the sky threatens rain, he enjoins his wife to erect a hut at the place which he thinks most fit, and where he intends to pass the night". At King George Sound the women look very miserable; they do all the work. In the Moore River District the wife who has not yams enough for her husband is severely beaten (as quoted above). The Central Australian wife is the drudge of her husband. About the natives of Port Darwin we get this information: "The only reason I know of for the practice of polygamy is that, as the wives have to provide food for their lords and carry all their family possessions when travelling, the husband can lead a perfect life of indolence". Tasmanian women had to procure all sorts of food, except the kangaroo. Ling Roth quotes a description of a Tasmanian repast: "Hitherto we had had but a faint idea of the pains the women take to prepare the food requisite for the subsistence of their families. They quitted the water only to bring their husbands the fruits of their labour, and frequently returned almost directly to their diving, till they had procured a sufficient meal for their families". Curr, surveying the mode of life of the Australians in general, remarks: "Wives have to undergo all the drudgery of the camp and the march, have the poorest food and the hardest work". Brough Smyth enumerates as duties of the wife "building a new camp, getting firewood etc. and on journeys acting as a carrier for all the worldly goods of her husband. They are packed on her back, all excepting his war implements, which he himself deigns to carry". [17]

This picture, surely, is very black. But, unlike Letourneau, we must not view the dark side only. We may remark, first that, as it appears from the foregoing survey, there are with regard to each of the Australian tribes but a part of the enumerated phenomena on record; the black picture is produced by blending the dark sides of each into a whole. And, secondly, the same writers relate some particulars, which prove that the life of the Australian wife is not all darkness. These too we shall arrange in the order observed above.

A. In some cases we are told, that *the girl's wishes* are to some extent *taken into consideration* as to the choice of her husband. On Herbert River the woman sometimes gets the man she loves; she is then very happy; sometimes she runs away with the beloved man. In N. W. Queensland, when a young man and a girl are in love with each other, and the camp-council is not opposed to it, they elope, live as husband and wife for some two months, and then return to the camp. In N. S. Wales a girl, to escape from the betrothed man (oftentimes an old one), may elope with her young lover; she is then brought back and beaten by her family, "but it may be that she elopes again and again, and, if at last they see that she is determined on it, they let her have her own way". In Tasmania the woman was stolen from her tribe, but not against her will. Most often the girl succeeded in getting from her father the man she wanted; otherwise she had to run away with him. Curr remarks: "In no instance, unless Mr. Howitt's account of the Kurnai be correct, which I doubt, has the female any voice in the selection of her husband." This may be true, if we take "voice" in the sense of a legally recognized right; virtually, however, she sometimes has a "voice", as appears from the instances given here. Howitt's account which Curr alludes to we have not been fortunate enough to meet with. According to Brough Smyth "a young man who has engaged the affections of a girl of a neighbouring tribe, agrees with her to run away at the first opportunity that offers". They are then persecuted by the members of her tribe, as custom and law require, but not energetically. After a few days the young man and his wife return to his tribe. Except at first some scolding and muttering his new state [18] provokes little comment. "His young wife is treated well, and is soon familiar with all the women of the tribe, to which she has become attached".

B. a, b. Sometimes the ethnographers tell of much *affection* existing between husband and wife. At Moreton Bay there is often a great affection. On Herbert River "as a rule man and wife apparently get on very well". According to Eylmann, happy unions are not unknown among the natives of South Australia. Fraser remarks about the aborigines of N. S. Wales: "the *kuri* or black man is usually kind and affectionate to his *jiu*, wife"; "in spite of the hardness of their mode of life, married couples often live happily and affectionately together to a considerable age". On the river Darling, N. S. Wales, according to Bonney, "although young women are often compelled to marry a man of whom they know little and often nothing, they generally find happiness and contentment in their married lives. Quarrels between husband and wife are rare, and they show much affection for each other in their own way". In Central Australia "the women are not treated usually with anything like excessive harshness". "Taking everything into account . . . the life of one of these savage women, judged from the point of view of her requirements in order to make life more or less comfortable, is far from being the miserable one that it is so often pictured". Dawson, after describing the work imposed on women in W. Victoria (as quoted above), adds: "But notwithstanding this drudgery and the apparent hard usage to which the women are subjected, there is no want of affection amongst the members of a family". Even Salvado, who so pities the S. W. Australian wife, remarks: "Sometimes I heard a betrothed man say: I love her and she loves me". Of

the Tasmanians we are told that they "treat their women kindly". Brough Smyth makes this general statement: "It is hard to believe that even in a lower state the male would not have had the same feeling of affection for his mate and an equal jealousy of love as we see among the aborigines now". In the same sense Bonwick remarks on the Australian natives in general: "Home life there was not quite the dark scene some pictured Affection is witnessed between [19] husband and wife, parent and child, tribesman and mate".

We may add, that the Tasmanian women, though overburdened with work, are described as a merry and laughter-loving kind of people. And Curr remarks about Australian women in general: "In every way the female's looks to us a hard lot; and yet, notwithstanding, I do not hesitate to say that they are, on the whole, fairly happy, merry and contented."

c. The husband does not always enjoy such an entire freedom of action towards his wife.

Sometimes, for punishing and divorcing her, he must have the consent of the tribe. So in N. S. Wales, in case of adultery "he may complain to the elders of the tribe, and they, on cause shown, decree a divorce; but not if she has children." According to another writer "the husband who suspects another of seducing his wife, either kills one or both. The affair is taken up by the tribe, if the party belongs to another, who inflict punishment on him." In W. Victoria "a man can divorce his wife for serious misconduct, and can even put her to death; but in every case the charge against her must be laid before the chiefs of his own and his wife's tribes, and their consent to her punishment obtained. If the wife has children, however, she cannot be divorced". Here we find also some slight traces of protection of the wife by her relatives: "A man is allowed to marry his brother's widow, or his own deceased wife's sister, or a woman of her tribe; but he is not permitted to do so, if he has divorced or killed his wife". In N. W. Central Queensland the wife is avenged by her relations. "In the case of a man killing his own *gin* [wife], he has to deliver up one of his own sisters for his late wife's friends to put to death, he personally escaping punishment A wife has always her "brothers" to look after her interests". At the initiation-feasts "each woman can exercise the right of punishing any man who may have ill-treated, abused or "hammered" her the delinquent not being allowed to retaliate in any way whatsoever". If these women are slaves, they at least have their *saturnalia* . [Curr asserts that, if the husband killed his wife, "her death would be avenged by her brothers". But the information we get about the several tribes makes it probable, that this is not true regarding the majority of Australian tribes.] [20]

We even find cases of *the wife putting a check upon her husband*, especially in a sexual respect. On Herbert River the wife is furious if her husband is unfaithful to her. In N. S. Wales "a wife may similarly complain to them [the elders of the tribe] of the conduct of her husband, and they may order both the man and his paramour to be punished". In W. Victoria "if a husband is unfaithful, his wife cannot divorce him. She may make a complaint to the

chief, who can punish the man by sending him away from his tribe for two or three moons; and the guilty woman is very severely punished by her relatives". "A chief who has been married under the law of betrothal, is not permitted to marry another woman for a long time; and should he do so without obtaining the consent of his wife, there would be constant quarreling". At Port Lincoln an old, former wife sometimes forces her husband to desist from taking a young, new one.

Finally we meet with instances of *the wife having a real ascendancy over her husband*. On Herbert River the husband is sometimes led by his wife, and even beaten by her. A curious piece of information we get about W. Victoria. When a wife treats her husband with such persistent disrespect or unkindness as to make him wish to get rid of her, he goes away to some neighbouring tribe and tries to bring about her death by means of sorcery. The wife, being informed of this, repairs thither and entreats him to return, and so a reconciliation is effected.

In Tasmania the husband could divorce his wife; but she could also force him to do so.

d. *Exchange of wives* does not seem always to take place against their will. In W. Victoria wives may be exchanged only after the death of their parents and with the consent of the chiefs, but not if one of them has children. After the exchange both couples live peacefully together in one hut, each in a separate compartment. If a man knows that his wife is in love with another, and he is not opposed to it, she can be amicably transferred to the other man with the consent of the chief. At Port Lincoln the men frequently exchange wives; brothers and near relatives have their wives nearly in common. The wife calls the brothers of her husband by the name [21] of husbands. This seems rather a kind of group-marriage than a bartering of wives as of commodities.

These two instances point to the possibility that in other cases too exchange of wives may be not so arbitrary an action as at first sight it seems.

As to the *lending of wives*, in some cases it appears that these offer themselves to strangers. In N. S. Wales the husband "is quite ready to bargain with a white man, and with her consent too; for a black woman considers it an honour to be thus courted by a man of a superior race". The Cammarray women prostitute themselves to Europeans for almost nothing, and among themselves without any shame. In Central Australia marriage does not impose any obligation of chastity; the wives always prostitute themselves. In S. Australia women give themselves to strangers with or without the consent of their husbands. On Moore River the wives often have connections with young men; the husbands do not seem to take much notice of it. Moreover, Spencer and Gillen warn us, that "in many cases in which apparently women are lent (in the sense in which we use the word, which is the sense in which it is generally used in this connection) indiscriminately, a knowledge of details would show that this was not so In the nine tribes examined by us we have found that intercourse of this nature is strictly regulated by custom".

e. The *levirate law* sometimes appears in the character of a duty rather than a right of the deceased man's brother. Fraser (describing N. S. Wales) calls it a "refuge" for the widow. Dawson, speaking of the aborigines of W. Victoria, states: "When a married man dies, his brother is bound to marry the widow if she has a family, as it is his duty to protect her and rear his brother's children". Salvado speaks of the philanthropy of the S. W. Australian, who takes upon himself the care of the wife of an absent friend or parent, or of a brother's widow.

C. Among the Kurnai *the man must hunt* for the sustenance of his wife and children, and fight for their protection. In Central Australia the women "have, as amongst other savage tribes, to do a considerable part, but by no means all, of the work of the camp, but, after all, in a good season this does [22] not amount to very much, and in a bad season men and women suffer alike, and of what food there is they get their share". The last-cited cases of levirate law, too, show that the subsistence of the family does not depend on the wife only. Even the instances quoted under C (p. 15) provide us with evidence that the men perform some kind of work as hunting the larger animals, making weapons and fishing-nets, getting fire by friction, etc. And what is said here about the Kurnai certainly applies to all these tribes: the husband fights to protect his wife. This being his great and indispensable function, we must not wonder at his not liking to do other work that women can perform as well. [Literature referred to in surveying the state of the Australian wife. On the Dieri: Gason in Frazer's Notes, p. 170; Powell's Creek: The Stationmaster, *ibid.* pp. 177, 178; Victoria River Downs Station: Cranford, *ibid.* p. 181; Queensland and S. Australia: Matthews, *ibid.* pp. 187, 188; S. Australia: Eylmann, pp. 129, 130, 131; Moreton Bay: Lang, pp. 337, 338; Herbert River: Lumholtz, pp. 100, 160-164, 213; N. S. Wales: Fraser, pp. 2, 26-28, 35; Wilkes, II p. 205; River Darling (N. S. Wales): Bonney p. 129; Cammarray: Collins, pp. 559-562; Kurnai: Fison and Howitt, pp. 204, 206; N. W. Central Queensland: Roth, pp. 141, 176, 181; W. Victoria: Dawson, pp. 27, 28, 33-37; Port Lincoln: Woods, p. 223; S. Australia: Angas, I pp. 82, 93; S. W. Australia: Salvado pp. 313, 314, 349; King George Sound: Browne, *Die Eingeborenen Australiens*, pp. 450, 451; Moore River District: Oldfield, pp. 248-251; Central Australia: Spencer and Gillen, Native tribes, pp. 50, 93, 102, 558; Spencer and Gillen, Northern tribes, p. 33; Eyre II p. 322; Willshire, in Frazer's Notes, pp. 183, 184; Port Darwin, etc.: Foelsche, *ibid.* p. 194; Tasmania: Bonwick, Tasmania, pp. 56, 62, 66, 68, 73; Ling Roth, Tasmania, pp. 125, 46; Australia in general: Curr, I pp. 106-110; Brough Smyth, I pp. 76, 79-82, 85, 86; Bonwick, Austr. Natives, p. 205; Thomas, pp. 151, 174, 177.]

The division of labour between the sexes is not always so unreasonable as at first sight it seems. Hore, speaking of the African Wajiji, very justly remarks: "Much has been said about the unfair division of labour in such circumstances, but when it is considered that a wild man finds scarcely anything to his hand, but must himself cut the wood and the grass to build his house, manufacture his spear and cooking vessels, take his part in tribal duties, and is frequently compelled to seek food in long and laborious

hunting expeditions, it will be seen that he often gets his fair share of work". [Hore, p. 11.] A similar division of labour is admirably described by Pinart, as existing among the Indians of Panama: "I may be allowed to make here a short digression on woman's place in the Indian household. [23] It is commonly said by those who have not lived intimately with the Indians, that they consider woman as a beast of burden, that to her share falls a life full of troublesome and fatiguing work, and to the man's an easy and idle existence. It may, indeed, seem strange to the superficial observer to see the woman charged with heavy burdens and the man walking before her carrying nothing but his weapons. But if the observer will only reflect a little, he will understand that, whereas the man carries his weapons only, the responsibility and the safety of his wife and children are incumbent on him. The Indian's life is indeed surrounded with dangers; when traversing a savannah, or forest, a hostile Indian may appear at any moment; a tiger, a snake etc. may throw himself upon the travellers. Therefore it is the man's task to be continually on the alert, to have his hands and his movements free, in order to be able immediately to take his arms and defend those who are dear to him. How often have not I seen the Indian, when about to traverse a river, making his family stand still, entering into the water and reconnoitring whether it was not too deep or the stream too rapid; then inspecting the opposite bank to see whether all was right there; then crossing the river again, helping his wife and children to pass through, often even carrying the burdens, and several times re-crossing the river to transport on his back his wife and children. The river being crossed, the man again takes the lead with his arms, the wife and family resume their burdens, and the little caravan continues its way in the same order". [Pinart, pp. 44, 45.]

Another fact, proving that the Australian women are not in every respect regarded as slaves, is the great influence they often have in intertribal matters. "The peace-making influence of the women is very great, and has often been observed among many tribes". "The peace-making function of the women is also very characteristically shown by their being employed as international ambassadors". [Steinmetz, Strafe, II p. 45.] Darwin justly remarks: We thus see that with savages the women are not in quite so abject a state in relation to marriage, as has often been supposed". [Darwin, Descent of Man, p, 593.] [24]

The question to be settled now is this: Are these Australian wives, and accordingly all the wives that live in an abject state, to be called slaves? Remembering the conclusion we arrived at in the third paragraph, we may put the question thus: are they objects of possession? Under B, a, we have quoted several statements of ethnographers calling them the slaves, or the property, of their husbands. We must not, however, forget Ingram's warning against taking a rhetorical use of the word "slave" too literally. The facts recorded under B, c, B, d, and C are of more interest to us. The husband may do with his wife as he likes: ill-use and kill her, overtax her with work, exchange and lend her. It is but seldom that her relations protect her; in but very few cases is the man's power interfered with by the chief or elders of the tribe. Therefore we cannot but admit that she is the property of her husband.

Yet there is a reason, why we are not to bring these wives under the denomination of slaves. We may refer here to the point of view we have taken in determining the nature of slavery. Slavery is an organ in the social body, that in a peculiar manner brings about a division of labour. The Australian wives share the character of this organ as an object of possession. Yet they are not the same organ; for besides being forced labourers they are wives; hence it follows that their relation towards their husbands is wholly bound up with the sexual and family life: it is their character as women, not as labourers, that prevails. We may remember here the mutual affection observed in so many cases by the ethnographers. As the mother of his children, too, the husband is likely to value his wife. We have seen (under B, c) that in a few cases she cannot be divorced or exchanged if she has children. Besides, it is frequently stated, that the Australian aborigines are very fond of their children. [See Ploss, II pp. 333, 334, and Steinmetz, *Das Verhältniss zwischen Eltern and Kindern*, p. 613.]

The Australian woman discharges the duties of a wife and a mother, and besides, to some extent, the work that among other peoples falls to the share of the slave; therefore she is not a slave. If she were, her place, in a slave-keeping society, [25] would be entirely occupied by the slave; but no one will doubt whether in any such society there are wives. In an evolutionary sense the slave and the Australian wife differ in this: the Australian wife is a not-yet-differentiated organ, performing two functions, which at a later stage of development will be incumbent on two quite distinct organs: the peculiar function of a wife, and the labour of a slave. This reasoning is not an assertion *a priori*, by a biological parallelism, of a development that must actually have taken place; it is only intended to show the fundamental difference existing between wives, however abject their condition, and slaves. [Lippert (II p. 535) distinguishes the wife, as mistress of the household, from the slave, who has no share in the authority wielded by the master. This may be true, but it is only a small portion of the truth.]

We may even go farther and say: *Slavery proper does not exist, when there are none but female slaves*. For when females only are enslaved, the reason probably is, that they are valued as women, not only as labourers; otherwise males would be enslaved too. So, according to Meyer [Meyer, *Die Sklaverei im Altertum*, p. 18.], in the early stages of ancient history, most of the slaves were women and their chief function was a sexual one. And even where such women are not, all of them, actually treated as wives or concubines, but only kept as labourers, there is no slavery in the true sense of the word. In such cases, the husband keeps his wife or wives subjected; this leads to the keeping of numerous subjected females, who are scarcely to be called wives. But it is always women, as the weaker sex, who are subjected to the men; subjection of labourers, only in their quality of labourers, does not exist. The labourers have the name, if not the state, of wives; this proves that the subjection of labourers as such, i. e. slavery, is not yet developed.

We have dwelt at considerable length on this distinction between slaves and subjected wives. There are some more distinctions to be made between

slavery and kindred phenomena; but these will not occupy so much space and time. [26]

§ 5. *Distinction of slavery from kindred phenomena.*
II. *Children subjected to the head of the family.*

There was a time, the time of the good old patriarchal theory, when the condition of children in the early stages of social life was thought to be one of complete subjection to the head of the family, the *pater familias*, who had over them an unlimited power, extending to the power of life and death. Carey, among others, holds this view, and very plainly expresses it. "By nothing is the progress of mankind in population and wealth made more manifest than by the change in the relation of parent and child. In the infancy of cultivation the one is a tyrant and the other a slave". [Carey, p. 275. See also Wuttke and Maine, as quoted by Steinmetz, Strafe II pp. 180, 181.]

The adherents of the matriarchal theory have assigned to the Roman-like agnatic family its place as a later product of history; but to the question as to how children were treated in an ante-patriarchal state of culture they have not given much attention.

It is to Professor S. R. Steinmetz that we are indebted for the first exact inquiry into the early history of the treatment of children. His conclusions, based upon a large amount of ethnographical materials, are these:

With most savages rational education is out of the question, the children soon growing independent, and when young being either neglected or much petted and spoiled [Chamberlain (p. 116) justly remarks: "Much too little has been made of the bright side of child-life among the lower races."]; a lesser number of savage tribes show some slight beginnings of education without or nearly without bodily castigation; in a few cases the children are under strict discipline. In this last set of cases there is to some extent a subjection of the children. "With the power over the mother the father gradually acquired the power over the children." "The patriarch became master of his children and, whenever circumstances required and allowed it, introduced a strict discipline over them". [Steinmetz, Strafe II pp. 179-253, see especially p. 252, and his article on: "*Das Verhältniss zwischen Eltern und Kindern bei den Naturvölkern.*"] [27] We may therefore suppose, that there will be instances of children being treated in a somewhat slave-like manner. We shall presently see that there are a few such cases on record in Steinmetz's book.

Among the Apaches the father holds unlimited sway over his children up to the age of puberty. [Steinmetz, Strafe II p. 190 (after Bancroft).]

Tlinkit boys must render unbounded obedience to their parents and especially to their maternal uncle, to whom, according to the law of inheritance, they are almost more nearly related than to their own father. They have to perform the labour imposed upon them, without any claim to compensation. [Steinmetz, Strafe II p. 194 (after Krause).]

Of the Botocudos we are told, that the father, being stronger than his children, compels them to work for him.[Steinmetz, Strafe II p. 196 (after Zu Wied).]

Among the Aeneze Bedouins the young girls work hard; they drive the cattle to the pasture-ground; if one out of the herd is lost, they are severely beaten by their father. [Steinmetz, Strafe II p. 199 (after Burckhart).]

Among the Assja Samoyedes the father has a patriarchal power, and punishes at his discretion and according to custom.[Steinmetz, Strafe II p. 210 (after Von Middendorf).]

In these few cases only is it clearly stated that the head of the family has an arbitrary power. The value of Zu Wied's statement about the Botocudos is much lessened by the same ethnographer telling us that the children enjoy much freedom. [Steinmetz, Strafe II p. 196 .]

Considering now the state of the children in the cases referred to here, are we justified in calling it slavery?

The head of the family has power over the children; and so far as it appears from the particulars given by the ethnographers, this is a legally unlimited power, that may be called right of property, and is likely to lead to compulsory labour, as among the Tlinkits and Aeneze Bedouins it certainly does. The condition of these children may therefore be expressed by the word "possession", our criterion of slavery.

We may even go farther. The condition of slaves is not always very bad; but however kindly treated, they are slaves, are the property of their masters. So with children too. They may not be, as in the cases mentioned above, under strict discipline; yet the father's, or in a few cases the maternal [28] uncle's, power, however moderate a use he makes of it, may be legally unbounded, not restricted by social rules, not interfered with by the community. In such a case the head of the family may be called owner of the child, and is really called so in Roman law, so clearly distinct from Roman practice. "The *patria potestas* of ancient civil law means the full power of the father over the persons subjected to him (the child, the grand-child by the son, the wife *in manu*), the right of death and life (*ius vitae ac necis*) and the right to sell into slavery". [Sohm, p. 363.] "This *potestas* originally was equal to that over the slaves". [Puchta, II p. 384. As this is not the place to enter into a systematic description of the treatment of children among savages, we have confined ourselves to mentioning the results of Steinmetz's investigations. Yet we will quote here one ethnographical record, that clearly shows the high degree of development of the *patria potestas* possible among savages. "In Flores the sons even of rich families, as long as their father lives, at public feasts are dressed like slaves, and also at his funeral; this being apparently the external sign of a strict *patria potestas*, which remains in force till the funeral; until then the son is the father's slave." Von Martens, p. 117.]

We see that the term "possession" may well be used here. Yet there is a reason that induces us not to call these children slaves, a reason resembling that for which we have excluded the subjected wives. These children may be called the property of their fathers; but this is not the whole, nor even the main part of their condition. The relation between father and child, if it includes subjection, includes much more. There is mutual sympathy and in many respects a coincidence of interests; there is respect on the side of the child; there is on the side of the father a desire to promote the welfare of the child, however much bound up with egotistical motives. There is also physical and mental superiority on the side of the father and inferiority on the side of the child [Viz. as long as the child is really a child. Savage children are generally much sooner full-grown than those of civilized nations; See Steinmetz, Strafe, II pp. 215-217.]; and this in some cases may bring about a somewhat slave-like condition of the latter; but this condition is not an essential part of the relation between father and child; *a fortiori* it is not coextensive with the relation, as in the case of the slave. Biologically expressed: the child is quite another organ, with quite another function, but in some cases performing in some degree [29] the function of a slave; therefore it is not a slave. We may add, that the child is only temporarily subjected; one day he will be a master himself. [See Lippert, II p. 535.] This also bears upon the treatment of the child: the slave is brought up to servility, the child to authority. Children can never form a subjected class.

As for adopted children, it is not always easy to distinguish them from slaves. Sometimes they are rather severely treated, especially those captured in war or kidnapped. Tanner was thus adopted by an Indian of the Shahnee tribe. The youngest son of this Indian had lately died, and his wife had told her husband, she could not live if he did not restore her the child. The husband accordingly went off, and came back with Tanner whom he had kidnapped. Tanner was adopted on the grave of the deceased boy, and given an Indian name. But the adoptive father treated him not at all as a son. He had to do the hardest work, got but little food, and was often severely beaten. If the mother tried to protect him, she was beaten too. Finally the father, regardless of the mother's wishes sold him to an old Indian woman, who now became his adoptive mother. She treated him kindly, yet made him cut wood, carry water and meat, and perform other kinds of labour, which generally were not imposed upon children of his age. However, he was not a slave. When full-grown, he was considered by the Indians one of their tribe, and married an Indian girl. [Tanner, pp. 8-17, 114; see also p. 315.]

In the second Chapter we shall meet with more instances of captives being adopted either into the tribe or into one of the families within the tribe. As long as such persons are children, it is often not easy to see whether they are slaves or adopted children, for it is not always stated, as in Tanner's case, that they are formally adopted. We must ask then, what becomes of them when full-grown. If they have still a master to serve, it is clear that they are slaves; for if they are adopted members of the community, they will be free when adult, excepting the (most often slight) moral obligations of full-grown children towards their parents. Other facts proving that the captives are

slaves, are their not taking share in government [30] affairs, when the tribe is democratically organized, and their being excluded from marriage with native-born women. With the aid of these criteria we shall try, in every particular case, to decide whether the captives are slaves or adopted members of the community. What has been said here of captives, equally applies to purchased persons.

The last two paragraphs show that there is still something wanting in our definition. Not every state of possession is slavery; those arising from family relations are to be excluded. Thus only can we come to a true understanding of the signification of slavery. For wives and children may accidentally be forced labourers and the like; the slave only is *ex definitione* a subjected person, a forced labourer, an object of possession. Wives and children there would be, and there are in many cases, without subjection; slaves there are not where there is not subjection and compulsory labour. A society that begins to keep slaves, develops a new organ with a special, well marked function; and it is the evolution of this organ we are to trace in the following Chapters.

Our definition therefore wants an addition. We may now put it so: *Slavery is the fact, that one man is the property or possession of another beyond the limits of the family proper.*

§ 6. *Distinction of slavery from kindred phenomena.*

III. *Members of a society in their relation to the head of the community.*

Bastian, after remarking that in a social community nobody is literally free, gives a great number of quotations, describing widely different kinds of subjection, and among these some few, where the subjects of a despot are called his slaves or his property. "The Siamese are all (even marked) slaves of their king." "The subjects of the king of Djagga are slaves, who may not marry without his consent." "In Usumbara all are slaves of the king." "The absolute rulers dispose of all their subjects as their property (even without having acquired a right by the subjects having transgressed the law), and even [31] mark with their badge the different working-guilds, as is done by the king of Siam." "The princes and princesses on the Congo have the right to sell any one who is not a prince like themselves". [Bastian, *Rechtsverhältnisse*, pp. 15, 15 note 2, 187, 187 note 2. *Post* (Ethn. Jur., I p. 358) also speaks of subjects being the slaves of the king.]

What Bastian means by heaping up these various quotations, without any order or attempt at an explanation, is not clear. We, however, must not follow his example, but inquire whether the word "slave" is rightly used here, whether the subjects of a despot may be called slaves. A few moments of consideration will show that they may not. For however great the power of the chief, the king, the despot, in a word the head of the community, over his subjects, they are not his property. "Property" supposes a power of the master, pervading the whole life, personal, domestic and social, of the slave;

so great a power over his subjects a chief never has. The following reasoning will make this clear. Slavery would not be capable of much development, if it depended upon the master's personal superiority only; for slavery to become a social system, the master's power over the slave must be recognized by the society. The slave lives in a society that regards him as a slave; slavery cannot exist where there is not a society of freemen. Therefore the despot, however great his power, is not as such a master of slaves. The slave-owner has the community on his side; the chief has subjects who themselves compose the community. Looked at from the practical side, the chief's power contains much more of voluntary submission than the slave-owner's. A chief never has the whole person of the citizens subjected in his own behalf; he may exact some performances for his personal benefit, but the restrictions put upon the subjects, encroaching on their freedom in private life, will generally be measures taken in the (real or supposed) interest of the community, and approved of by the community. These restrictions are mutual, and arise from the social connection itself; this is not, as in slavery, using one person as a means to the purposes of another definite person. This yet more distinctly appears, where not a single man imposes these rules, [32] but the council of citizens. In a communistic society there would be an entire absence of personal freedom; yet there would be no slaves, as there would be no freemen whom they could serve.

It need hardly be said, that a chief may keep slaves like any other freeman. The public power as such, the state, also sometimes keeps slaves {e.g. the *servi publici* in Rome). But these slaves are quite distinct from the main body of citizens.

Sometimes it is stated, that the chief, or the public power, has slaves, whereas no mention is made of any other slaves. In such cases the slaves generally become such as a punishment for some offence. Where such a state of things exists, we may not speak of a slave-keeping people. For here the power of the government is so great, that it can avail itself of the labour of the citizens; whether this is done by imposing an equal amount of labour on all of them, or by selecting a few persons for this purpose and keeping them in a slave-like state, does not make much difference. Besides, slavery here cannot have the same influence on social life it generally has; for every freeman has to work for himself. This kind of slavery may be compared with the tread-mill and other kinds of penal servitude existing in more civilized societies. And we may not speak of a slave-keeping people, where the only slaves are criminals, who become the slaves of him who represents the public power, any more than we can say that slavery exists in those civilized countries, where penal servitude is still practised.

One more remark has to be added here. Hitherto we have used the terms "possession" and "property" synonymously as indicating the nature of slavery. In this paragraph it has been shown, that an essential feature of slavery is its being recognized by the community. Therefore we prefer the term "property", that, better than the other term, conveys the notion, not only

of a virtual subjection, but of a subjection considered legal in those communities where it exists. [33]

§ 7. *Distinction of slavery from kindred phenomena.*

IV. Subjected tribes; tributary provinces; lower classes; free labourers.

We shall meet with instances of tribes, the members of which are bound to perform some kind of labour for other tribes or for the members of the latter.

This is not slavery; for slavery is subjection of one individual to another, and a subjection that absorbs the whole personality of the subjected; and under such circumstances it is not possible that the subjected lead a tribal life. Therefore, where the subjected are described as forming a separate tribe, we may be sure that they are not slaves. Ingram justly remarks that "the lowest caste may be a degraded and despised one, but its members are not in a state of slavery; they are in collective, not individual, subjection to the members of the higher classes". [Ingram, p. 3. Schurtz also remarks that pariah artisais, though despised, are not slaves. (Das afrikanische Gewerbe, p. 142).] What Ingram says here of the lowest caste, often applies to subjected tribes.

That conquered districts, bound to pay a tribute in kind or money, do not consist of slaves, is clear.

The foregoing remarks would be almost superfluous, were it not that some ethnographers in such cases spoke of "slave tribes" and "slave districts". This may partly be caused by the natives themselves making an incorrect use of the term "slavery". In North Africa the coast tribes call the inland tribes their slaves, because they keep them bound by a trade monopoly. In the same regions a chief calls himself the slave of another chief, to whom he has to pay a tribute. [Goldstein, pp. 354, 355.] As in some cases the slaves live together in separate villages [See for instance Hutter, pp. 270, 271.], it may be difficult to decide whether we have to deal with slave villages or with subjected groups. The criterion then is, whether the subjected people have each an individual master. When we are informed that such is the case, or that they are bought and sold, we may be certain that they are slaves.

Lower classes can be of different kinds. Where they are [34] only considered inferior to the upper classes, or excluded from governmental functions, it is easy to see that they are not slaves. Greater difficulties are presented by some other cases. Sometimes a lower class consists of free labourers. Now theoretically free labourers are easy to distinguish from slaves: the slave is compelled to work, the free labourer voluntarily submits to it. But the accounts of the ethnographers do not always make it clear, which of these two kinds of labourers we have to deal with in any particular case. When a labourer lives in the house of his master and is wholly dependent on him, it may be rather difficult at first sight to decide whether he is free or a slave. Sometimes the details given are sufficient to settle the question; if not, we shall have to leave it undecided.

A lower class can also consist of serfs. What they are, and what is the difference between them and slaves, will be shown in the next paragraph.

§ 8. *Distinction of slavery from kindred phenomena.*
V. *Serfs.*

What we have said of free labourers applies also to serfs: to draw the theoretical line of demarcation between them and slaves is not so very difficult; but practically it is not always easy to decide, whether a subjected class we get some information about consists of slaves or of serfs; sometimes even, because of the unstable terminology and the scanty information, it is quite impossible. But there are several unequivocal cases of serfdom, too, on record in history. Mentioning a few of these will suffice to give the reader a clear idea of its nature as distinct from slavery.

In Germany *Leibeigene* was, in the earliest times, synonymous with slave. The law placed the *Leibeigenen* on a level with the domestic animals. The master had the *ius vitae ac necis*, an unlimited right to sell them, the right to exact from them all possible services, to marry and divorce them. The owner of the *Leibeigene* was also owner of his goods and chattels. The lord was responsible for any damages caused by his servant, as for those caused by his horse, and might claim indemnity [35] if any one injured his man. But gradually this slavery was mitigated into a state of subserviency. First the claim to unlimited services was waived, and on the *Leibeigene* were imposed definite *Roboten* (labour dues) and tributes. He had to work on fixed days, to perform fixed services, to pay fixed sums. His earnings legally still belonged to the lord, and the latter succeeded to his goods; but from the 13th century the lord's right of inheritance dwindled into a present (*mortuarium*). From the 14th century the serfs acquired a usufruct of the soil they tilled, and so their obligations assumed more or less the character of a quit-rent. Sometimes they were even allowed to choose another lord. In the Frankish empire the lords were already forbidden to sell them abroad; from the 13th century they lost the right to kill them, and afterwards also the right to whip them. The church took away from the lord the right to divorce his serfs, if the marriage had been contracted with his consent. The *ius primae noctis* remained longer. Moreover, the relations of the serfs towards others were gradually recognized by law, at first only as to unjust acts, later on as to contracts. And so, when at last serfdom was abolished, the only changes effected by this were: allowing of the right of emigrating, abolition of the marriage-consent and of the court-services and personal tributes.

Thus Siegel describes the development of serfdom in Germany. [Siegel, pp. 328-330.] Other writers come to nearly the same conclusions. According to Brunner, there was among the Western Germans a class between freemen and slaves, called *Liten* or *Aldien*, a hereditary class, whose position was secured by law. They had the right of acquiring property and making contracts; they could by emancipation become fully free, or purchase their own liberty. To marry they wanted the consent of their lord. They had the right of feud (*Fehderecht*), and when they were killed a wergild was paid,

that fell partly to the lord. Their right of inheritance was originally not recognized. [Brunner, I pp. 101, 102.]

Schröder remarks, that the difference between freemen and subservients (*Hörigen*) consisted in this, that the landed [36] possessions of the latter were smaller and liable to tribute. Moreover, they had no connubium with freemen, nor any political rights; the wergild paid for them was one half of that paid for a freeman. [Schröder, p. 41. He states that these *Hörigen* were also called *lati* or *aldio* (I.c., p. 40); so they are the same class as those described by Brunner.]

In medieval France a similar state of things prevailed. There were no longer slaves, but serfs. "Serfdom is a transitory stage between slavery and entire liberty. The serf of the middle ages is not, like the ancient slave, indissolubly riveted to his condition, deprived of rights by his very birth, placed on a level with the beasts of burden of his lord's estate. Public opinion is favourable to him." "The facts agree with the doctrine. The serf has some means of acquiring property: he may marry and have legitimate descendants, who will succeed to his goods; he may give evidence in the courts; he may purchase his liberty by means of his *peculium*. By getting some profits he is interested in the cultivation of the soil. Giving his labour to the land, he may expect to enjoy the fruits of it, by paying fixed tributes. By marrying his children to free women he secures the liberty of his offspring. By paying an indemnity he acquires the succession to his father's inheritance, and the right of property over his savings He may dispute the tributes (*tallies et cens*) which the lord levies on the tenement he cultivates, invoke an enquiry of experts who attest his means, contract to pay a fixed annuity and so know beforehand what profit he may depend upon". [Gasquet, II, pp. 281, 282.]

With these serfs may be compared the Roman *coloni*. "The *colonatus* consists in this, that men are inseparably attached to a landed property for the purpose of cultivating it This connection with a determinate estate, from which the *colonus* might be severed only in some cases fixed by law, brought about an approximation of the *colonus* to the slave (as *servus terrae*). but also a difference between them, a security for the *colonus*, which protects him from the lord's arbitrary power. Hence the *colonus* stands with regard to the lord on the free footing of one bound only to comply with the [37] yearly canon, *annua functio*, a tribute fixed by contract or custom, which he has to pay to the lord, generally in products of the land". [Puchta II p. 97.]

The foregoing statements once more prove the sufficiency of our definition of slavery. As soon as the forced labourer is no longer entirely at the disposal of the lord, the latter being entitled to fixed services and tributes only, such a state of things is called serfdom, or *colonatus*, or subserviency, but not slavery. This agrees with our definition of slavery. The slave, as we have remarked above, is the property of his master, whose power is in principle unlimited, not restricted to fixed performances. Therefore, even if the writers referred to here called such institutions as serfdom and *colonatus* slavery, we are not to do so; but we may regard it as a corroboration of the conclusion we had arrived at before, that such writers, most of whom have not made any

special research into the nature of slavery, when they meet with such an institution as serfdom, feel that they are not to call it slavery.

Now let us look what the theorists have to say on the subject.

Ingram remarks: "The transition to serfdom took place in civic communities, when the master parted with or was deprived of his property in the person of the slave, and became entitled only to his services, or a determinate portion of them. In rural life, where the march of development was slower, the corresponding stage was reached when, in accordance with the fundamental principles of feudalism, the relation between the lord and serf, from being personal, became territorial". [Ingram, p. 262.]

The first words here perfectly express the truth: when the master loses "his property in the person of the slave", he is no longer a slave-owner. What follows, that the master "became entitled only to his services", is less correct; for he who is entitled to all the services of another is his owner; just the limiting of the master's right to "a determinate portion of them" is the change from slavery to something else. If I may require all the services a man can perform, I am his owner; if I am restricted to a determinate portion of them, I am not. [38]

Spencer says: "As the distinctions between different forms of slavery are indefinite, so must there be an indefinite distinction between slavery and serfdom, and between the several forms of serfdom. Much confusion has arisen in describing these respective institutions, and for the sufficient reason that the institutions themselves are confused". [Spencer, Ind. Inst., p. 472.]

This consideration, however true, will not prevent us from drawing a theoretical line of demarcation. Not a single social institution is practically strictly separated from kindred institutions; yet we cannot understand such institutions, unless we make a distinction, and not an "indefinite" one.

Letourneau, after describing the state of the *colonus*, adds: "In a word, he was not an object of possession, a slave, but only a proletarian attached to the soil." In another passage he remarks that slavery always undergoes some mitigation in the course of civilization: "Less and less is the person of the slave himself oppressed; one is contented with exploiting him, depriving him in a larger or smaller degree of the fruits of his labour, in a word the slave becomes a serf". [Letourneau, pp. 423, 355, 356. In a letter we received from Mr. A. C. Kruyt, it is remarked that among the Dyaks and the Toradja of Celebes a slave in some cases rises to the position of a serf; he is then no longer continually in the service of his master, but only has to work at definite periods.]

These quotations may suffice to show that our view of the matter is held by theorists as well as historians.

The serf, therefore, is not a slave, because he is not the property of his master, and the particulars of serfdom related by historians provide us with

means of more clearly understanding the practical meaning of this notion "property". It means a power that, however leniently exercised in many cases, is in principle unlimited. Among many peoples the master may ill-use and even kill his slave, without the law taking any notice of it. And even where his power is restricted by social regulations, he may have a right of property, viz. if his authority be in principle unbounded, and any limitation put upon it suppose a special legal provision. The slave-owner may do with his slave whatever he is not by special laws forbidden to do; the master of a serf may require from his man such services and tributes only, as the law [39] allows him to require. The slave-owner has a right of property; the master of a serf has, so to speak, a *ius in re aliena*. [Mr. Westermarck observes: "According to a common definition of slavery, the slave is the property of his master, but this definition is hardly accurate. It is true that even in the case of inanimate property the notion of ownership does not involve that the owner of a thing is always entitled to do with it whatever he likes; a person may own a thing and yet been prohibited by law from destroying it. But it seems that the owner's right over his property, even when not absolute, is at all events exclusive, that is, that nobody but the owner has a right to the disposal of it. Now the master's right of disposing of his slave is not necessarily exclusive; custom or law may grant the latter a certain amount of liberty, and in such a case his condition differs essentially from that of a piece of property. The chief characteristic of slavery is the compulsory nature of the slave's relation to his master" (Moral Ideas, I pp. 670, 671).

We are fully aware that a certain amount of liberty is often granted to the slaves. This was also the case in ancient Rome; yet we think the Roman legislators were correct in calling the slaves the property of their masters. For every check, put by custom or law upon the master's power over his slaves, is foreign to the nature of slavery; in principle the master's power is unlimited, just as the owner's power over his property. It is just in this that slavery differs from other relations of a compulsory nature.]

§ 9. *Pawns or debtor-slaves.*

In the course of our investigation it will be shown, that among some peoples a debtor, unable to pay a debt he has contracted, becomes the slave of his creditor. Sometimes such persons are ordinary slaves; but pawns or debtor-slaves in the restricted sense (who are of frequent occurrence in the Malay Archipelago, Dutch *pandelingen*) are a class whose slave-state is conditional; they become free as soon as the debt is paid by or for them; the creditor cannot refuse to accept the money. Because of this great difference between pawns and ordinary slaves (who generally have not a right to be ransomed), most ethnographers do not call the former slaves, but give separate descriptions of slavery and pawning.

The question arises, and has to be settled here, whether we for our purpose have to call these pawns slaves. We shall quote here one description of pawning. Among the Tshi-speaking peoples of the Gold Coast of West Africa "a pawn is a person placed in temporary bondage to another by the

head of the family either to pay a debt, or to obtain a loan When a person is pawned on account of a debt, the services [40] of the pawn, even should they extend over a considerable number of years, count for nothing towards the liquidation of the debt; and a pawn has to serve his master, until the amount of the original debt with 50 per cent, interest, is paid by the person who pawned him". [Ellis, Tshi-speaking peoples, p. 294.]

Here the debtor pawns one of the members of his family; among some other peoples (e. g. in the Malay Archipelago) he pawns himself; this is not essential. The main fact is that the pawn is in "bondage", however temporarily, that he "has to serve his master." Therefore, as long as the debt remains unpaid, the pawn is in the same condition as a slave. He has not to perform a fixed amount of labour, he must serve his master without any limitation; the master has over him a power that is, in principle, unlimited. Now we have to inquire: Is this pawn a slave, i. e. is he the property of his master? In a legal sense the creditor has not a right of property over his pawn; his right agrees with a kind of pignus which the Romans called *antichresis*, i. e. something yielding profit was handed over to the creditor, who utilized it instead of receiving the usual interest. [Puclita, II p. 250; see also Wilken, Pandrecht, pp. 42-44.] Yet the right of the holder of the pawn bore much resemblance to that of the owner: he had a *utilis in rem actio*, a *vindicatio pignoris*. [Puchta, II p. 264.] We, for our purpose, may classify the pawns among the slaves, if we can prove that sociologically a system of pawning performs the same function as a slave-system. And this certainly is the case. The same system of compulsory labour, the same subjection of the entire person exists, whether the subjected are perpetually slaves or temporarily pawns, viz. in those cases where, as among the Tshi-speaking peoples, the master's power is in principle unlimited. Where pawns have a fixed amount of work to do, they are temporary serfs; but where (as is most often the case) no limit is put to the amount of work the master may exact from them, they are temporary slaves, and as long as they are slaves, take the same place as other slaves in the social system.

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