

The Gift
The Form and Reason for Exchange in Archaic Societies
By Marcel Mauss
Translated by W.D. Halls
2001 Routledge

INTRODUCTION

THE GIFT, AND ESPECIALLY THE OBLIGATION TO RETURN IT

Epigraph

Below we give a few stanzas from the Havamal, one of the old poems of the Scandinavian Edda.¹ They may serve as an epigraph for this study, so powerfully do they plunge the reader into the immediate atmosphere of ideas and facts in which our exposition will unfold.²

- (39) I have never found a man so generous
And so liberal in feeding his guests
That 'to receive would not be received',
Nor a man so...[the adjective is missing]
Of his goods
That to receive in return was disagreeable to
Him³

- (41) With weapons and clothes
Friends must give pleasure to one another;
Everyone knows that for himself [through his
Own experience].
Those who exchange presents with one another
Remain friends the longest
If things turn out successfully.
- (42) One must be a friend
To one's friend,
And give present for present;
One must have
Laughter for laughter
And sorrow for lies
- (44) You know, if you have a friend
In whom you have confidence
And if you wish to get good results
Your soul must blend in with his
And you must exchange presents
And frequently pay him visits.
- (44) But if you have another person
(sic) Whom you mistrust
And if you wish to get good results,
You must speak fine words to him
But your thoughts must be false
And you must lament in lies.
- (46) This is the way with him
In whom you have no trust
And whose sentiments you suspect,
You must smile at him
And speak in spite of yourself:
Presents given in return must be similar to
Those received.

- (47) Noble and valiant men
Have the best life;
They have no fear at all
But a coward fears everything:
The miser always fears presents.

Cahen also points out to us stanza 145:

- (145) ` It is better not to beg [ask for something]
Than to sacrifice too much [to the gods]:
A present given always expects one in return.
It is better not to bring any offering
Than to spend too much on it.

Programme

The subject is clear. In Scandinavian civilization, and in a good number of others, exchanges and contracts take place in the form of presents; in theory these are voluntary, in reality they are given and reciprocated obligatorily.

The present monograph is a fragment of more extensive studies. For years our attention has been concentrated on both the organization of contractual law and the system of total economic services operating between the various sections or subgroups that make up so-called primitive societies, as well as those we might characterize as archaic. This embraces an enormous complex of facts. These in themselves are very complicated. Everything intermingles in them, everything constituting the strictly social life of societies that have preceded our own, even those going back to protohistory. In these 'total' social phenomena, as we propose calling them, all kinds of institutions are given expression at one and the same time—religious, juridical, and moral, which relate to both politics and the family; likewise economic ones, which suppose special forms of production and consumption, or

rather, of performing total services and of distribution. This is not to take into account the aesthetic phenomena to which these facts lead, and the contours of the phenomena that these institutions manifest.

Among all these very complex themes and this multiplicity of social 'things' that are in a state of flux, we seek here to study only one characteristic—one that goes deep but is isolated: the so to speak voluntary character of these total services, apparently free and disinterested but nevertheless constrained and self-interested. Almost always such services have taken the form of the gift, the present generously given even when, in the gesture accompanying the transaction, there is only a polite fiction, formalism, and social deceit, and when really there is obligation and economic self-interest. Although we shall indicate in detail all the various principles that have imposed this appearance on a necessary form of exchange, namely, the division of labour in society itself—among all these principles we shall nevertheless study only one in depth. *What rule of legality and self-interest, in societies of a backward or archaic type, compels the gift that has been received to be obligatorily reciprocated? What power resides in the object given that causes its recipient to pay it back?* This is the problem on which we shall fasten more particularly, whilst indicating others. By examining a fairly large body of facts we hope to respond to this very precise question and to point the way to how one may embark upon a study of related questions. We shall also see to what fresh problems we are led. Some concern a permanent form of contractual morality, namely, how the law relating to things even today remains linked to the law relating to persons. Others deal with the forms and ideas that, at least in part, have always presided over the act of exchange, and that even now partially complement the notion of individual self-interest.

We shall thus achieve a dual purpose. On the one hand, we shall arrive at conclusions of a somewhat archeological kind concerning the nature of human transaction in societies around

us, or that have immediately preceded our own. We shall describe the phenomena of exchange and contract in those societies that are not, as has been claimed, devoid of economic markets—since the market is a human phenomenon that, in our view, is not foreign to any known society—but whose system of exchange is different from ours. In these societies we shall see the market as it existed before the institution of traders and before their main invention—money proper. We shall see how it functioned both before the discovery of forms of contract and sale that may be said to be modern (Semitic, Hellenic, Hellenistic, and Roman), and also before money, minted and inscribed. We shall see the morality and the organization that operate in such transactions.

As we shall note that this morality and organization still function in our own societies, in unchanging fashion and, so to speak, hidden, below the surface, and as we believe that in this we have found one of the human foundations on which our societies are built, we shall be able to deduce a few moral conclusions concerning certain problems posed by the crisis in our own law and economic organization. There we shall call a halt. This page of social history, of theoretical sociology, of conclusions in the field of morality, and of political and economic practice only leads us after all to pose once more, in different forms, questions that are old but ever-new.⁴

Method

We have followed the method of exact comparison. First, as always, we have studied our subject only in relation to specific selected areas: Polynesia, Melanesia, the American Northwest, and a few great legal systems. Next, we have naturally only chosen those systems of law in which we could gain access, through documents and philological studies, to the consciousness of the societies themselves, for here we are dealing in words and ideas. This again has restricted the scope of our comparisons.

Finally, each study focused on systems that we have striven to describe each in turn and in its entirety. Thus we have renounced that continuous comparison in which everything is mixed up together, and in which institutions lose all local colour and documents their savour.⁵

THE RENDERING OF TOTAL SERVICES.

THE GIFT AND POTLATCH

The present study forms part of a series of researches that Davy and myself have been pursuing for a long time, concerning the archaic forms of contract.⁶ A summary of these is necessary.

Apparently there has never existed, either in an era fairly close in time to our own, or in societies that we lump together somewhat awkwardly as primitive or inferior, anything that might resemble what is called a 'natural' economy.⁷ Through a strange but classic aberration, in order to characterize this type of economy, a choice was even made of the writings by Cook relating to exchange and barter among the Polynesians.⁸ Now, it is these same Polynesians that we intend to study here. We shall see how far removed they are from a state of nature as regards law and economics.

In the economic and legal systems that have preceded our own, one hardly ever finds a simple exchange of goods, wealth, and products in transactions concluded by individuals. First, it is not individuals but collectivities that impose obligations of exchange and contract upon each other.⁹ The contracting parties are legal entities: clans, tribes, and families who confront and oppose one another either in groups who meet face to face in one spot, or through their chiefs, or in both these ways at once.¹⁰ Moreover, what they exchange is not solely property and wealth, movable and immovable goods, and things economically useful. In particular, such exchanges are acts of politeness: banquets, rituals, military services, women, children, dances, festivals, and fairs, in

which economic transaction is only one element, and in which the passing on of wealth is only one feature of a much more general and enduring contract. Finally, these total services and counter-services are committed to in a somewhat voluntary form by presents and gifts, although in the final analysis they are strictly compulsory, on pain of private or public warfare. We propose to call all this the *system of total services*. The purest type of such institutions seems to us to be characterized by the alliance of two phratries in Pacific or North American tribes in general, where rituals, marriages, inheritance of goods, legal ties and those of self-interest, the ranks of the military and priests—in short everything, is complementary and presumes co-operation between the two halves of the tribe. For example, their games, in particular, are regulated by both halves.¹¹ The Tlingit and the Haïda, two tribes of the American Northwest, express the nature of such practices forcefully by declaring that ‘the two tribal phratries show respect to each other’.¹²

But within these two tribes of the American Northwest and throughout this region there appears what is certainly a type of these ‘total services’, rare but highly developed. We propose to call this form the ‘potlatch’, as moreover, do American authors using the Chinook term, which has become part of the everyday language of Whites and Indians from Vancouver to Alaska. The word potlatch essentially means ‘to feed’, ‘to consume’.¹³ These tribes, which are very rich, and live on the islands, or on the coast, or in the area between the Rocky Mountains and the coast, spend the winter in a continual festival of feasts, fairs, and markets, which also constitute the solemn assembly of the tribe. The tribe is organized by hierarchical confraternities and secret societies, the latter often being confused with the former, as with the clans. Everything—clans, marriages, initiations, Shamanist seances and meetings for the worship of the great gods, the totems or the collective or individual ancestors of the clan—is woven into an inextricable network of rites, of total

legal and economic services, of assignment to political ranks in the society of men, in the tribe, and in the confederations of tribes, and even internationally.¹⁴ Yet what is noteworthy about these tribes is the principle of rivalry and hostility that prevails in all these practices. They go as far as to fight and kill chiefs and nobles. Moreover, they even go as far as the purely sumptuary destruction of wealth that has been accumulated in order to outdo the rival chief as well as his associate (normally a grandfather, father-in-law, or son-in-law).¹⁵ There is total service in the sense that it is indeed the whole clan that contracts on behalf of all, for all that it possesses and for all that it does, through the person of its chief.¹⁶ But this act of 'service' on the part of the chief takes on an extremely marked agonistic character. It is essentially usurious and sumptuary. It is a struggle between nobles to establish a hierarchy amongst themselves from which their clan will benefit at a later date.

We propose to reserve the term *potlatch* for this kind of institution that, with less risk and more accuracy, but also at greater length, we might call: *total services of an agonistic type*.

Up to now we had scarcely found any examples of this institution except among the tribes of the American Northwest,¹⁷ Melanesia, and Papua.¹⁸ Everywhere else, in Africa, Polynesia, Malaysia, South America, and the rest of North America, the basis of exchanges between clans and families appeared to us to be the more elementary type of total services. However, more detailed research has now uncovered a quite considerable number of intermediate forms between those exchanges comprising very acute rivalry and the destruction of wealth, such as those of the American Northwest and Melanesia, and others, where emulation is more moderate but where those entering into contracts seek to outdo one another in their gifts. In the same way we vie with one another in our presents of thanks, banquets and weddings, and in simple invitations. We still feel the need to *revanchieren*,¹⁹ as the Germans say. We have

discovered intermediate forms in the ancient Indo-European world, and especially among the Thracians.²⁰

Various themes—rules and ideas—are contained in this type of law and economy. The most important feature among these spiritual mechanisms is clearly one that obliges a person to reciprocate the present that has been received. Now, the moral and religious reason for this constraint is nowhere more apparent than in Polynesia. Let us study it in greater detail, and we will plainly see what force impels one to reciprocate the thing received, and generally to enter into real contracts.

1

THE EXCHANGE OF GIFTS AND THE OBLIGATION TO RECIPROCATE (POLYNESIA)

I

'TOTAL SERVICES', 'MATERNAL* GOODS' AGAINST
'MASCULINE GOODS'† (SAMOA)

During this research into the extension of contractual gifts, it seemed for a long time as if potlatch proper did not exist in Polynesia. Polynesian societies in which institutions were most comparable did not appear to go beyond the system of 'total services', permanent contracts between clans pooling their women, men, and children, and their rituals, etc. We then studied in Samoa the remarkable custom of exchanging emblazoned matting between chiefs on the occasion of a marriage, which did not appear to us to go beyond this level.¹

* The French *utérin*, strictly speaking, relates to children of the same mother, but not necessarily of the same father. It is translated as 'maternal' and relates to the goods that are passed on to such children, i.e. 'maternal goods'.

† 'Masculine goods' [*biens masculins*] relates to goods passed on to children through the father's side.

The elements of rivalry, destruction, and combat appeared to be lacking, whereas this was not so in Melanesia. Finally, there were too few facts available. Now we would be less critical about the facts.

First, this system of contractual gifts in Samoa extends far beyond marriage. Such gifts accompany the following events: the birth of a child,² circumcision,³ sickness,⁴ a daughter's arrival at puberty,⁵ funeral rites,⁶ trade.⁷

Next, two essential elements in potlatch proper can be clearly distinguished here: the honour, prestige, and *mana* conferred by wealth;⁸ and the absolute obligation to reciprocate these gifts under pain of losing that *mana*, that authority—the talisman and source of wealth that is authority itself.⁹

On the one hand, as Turner tells us:

After the festivities at a birth, after having received and reciprocated the *oloa* and the *tonga*—in other words, masculine and feminine goods—husband and wife did not emerge any richer than before. But they had the satisfaction of having witnessed what they considered to be a great honour: the masses of property that had been assembled on the occasion of the birth of their son.¹⁰

On the other hand, these gifts can be obligatory and permanent, with no total counter-service in return except the legal status that entails them. Thus the child whom the sister, and consequently the brother-in-law, who is the maternal uncle, receive from their brother and brother-in-law to bring up, is himself termed a *tonga*, a possession on the mother's side.¹¹ Now, he is:

the channel along which possessions that are internal in kind,¹² the *tonga*, continue to flow from the family of the child to that family. Furthermore, the child is the means whereby his parents can obtain

possessions of a foreign kind (*oloa*) from the parents who have adopted him, and this occurs throughout the child's lifetime.

This sacrifice [of the natural bonds] facilitates an easy system of exchange of property internal and external to the two kinship sides.

In short, the child, belonging to the mother's side, is the channel through which the goods of the maternal kin are exchanged against those of the paternal kin. It suffices to note that, living with his maternal uncle, the child has plainly the right to live there, and consequently possesses a general right over the latter's possessions. This system of 'fosterage' appears very close to that of the generally acknowledged right of the maternal nephew in Melanesian areas over the possessions of his uncle.¹³ Only the theme of rivalry, combat, and destruction is lacking, for there to be potlatch.

Let us, however, note these two terms, *oloa*, and *tonga*, and let us consider particularly the *tonga*. This designates the permanent paraphernalia, particularly the mats given at marriage,¹⁴ inherited by the daughters of that marriage, and the decorations and talismans that through the wife come into the newly founded family, with an obligation to return them.¹⁵ In short, they are kinds of fixed property—immovable because of their destination. The *oloa*¹⁶—designate objects, mainly tools, that belong specifically to the husband. These are essentially movable goods. Thus nowadays this term is applied to things passed on by Whites.¹⁷ This is clearly a recent extension of the meaning. We can leave on one side Turner's translation: *oloa*=foreign; *tonga*=native. It is incorrect and insufficient, but not without interest, since it demonstrates that certain goods that are termed *tonga* are more closely linked to the soil,¹⁸ the clan, the family, and the person than certain others that are termed *oloa*.

Yet, if we extend the field of our observation, the notion of *tonga* immediately takes on another dimension. In Maori, Tahitian, Tongan, and Mangarevan (Gambier), it connotes everything that may properly be termed possessions, everything that makes one rich, powerful, and influential, and everything that can be exchanged, and used as an object for compensating others.¹⁹ These are exclusively the precious articles, talismans, emblems, mats, and sacred idols, sometimes even the traditions, cults, and magic rituals. Here we link up with that notion of property-as-talisman, which we are sure is general throughout the Malaysian and Polynesian world, and even throughout the Pacific as a whole.²⁰

II

THE SPIRIT OF THE THING GIVEN (MAORI)

This observation leads us to a very important realization: the *taonga* [sic] are strongly linked to the person, the clan, and the earth, at least in the theory of Maori law and religion. They are the vehicle for its *mana*, its magical, religious, and spiritual force. In a proverb that happily has been recorded by Sir George Grey²¹ and C.O.Davis²² the *taonga* are implored to destroy the individual who has accepted them. Thus they contain within them that force, in cases where the law, particularly the obligation to reciprocate, may fail to be observed.

Our much regretted friend Hertz had perceived the importance of these facts. With his touching disinterestedness he had noted down 'for Davy and Mauss', on the card recording the following fact. Colenso says:²³ 'They had a kind of exchange system, or rather one of giving presents that must ultimately either be reciprocated or given back.' For example, dried fish is exchanged for jellied birds or matting.²⁴ All these are exchanged between tribes or 'friendly families without any kind of stipulation'.

But Hertz had also noted—and I have found it among his records—a text whose importance had escaped the notice of both of us, for I was equally aware of it.

Concerning the *hau*, the spirit of things, and especially that of the forest and wild fowl it contains, Tamati Ranaipiri, one of the best Maori informants of Elsdon Best, gives us, completely by chance, and entirely without prejudice, the key to the problem.²⁵

I will speak to you about the *hau*...The *hau* is not the wind that blows—not at all. Let us suppose that you possess a certain article (*taonga*) and that you give me this article. You give it me without setting a price on it.²⁶ We strike no bargain about it. Now, I give this article to a third person who, after a certain lapse of time, decides to give me something as payment in return (*utu*).²⁷ He makes a present to me of something (*taonga*). Now, this *taonga* that he gives me is the spirit (*hau*) of the *taonga* that I had received from you and that I had given to *him*. The *taonga* that I received for these *taonga* (which came from you) must be returned to you. It would not be fair (*tika*) on my part to keep these *taonga* for myself, whether they were desirable (*rawe*) or undesirable (*kino*). I must give them to you because they are a *hau*²⁸ of the *taonga* that you gave me. If I kept this other *taonga* for myself, serious harm might befall me, even death. This is the nature of the *hau*, the *hau* of personal property, the *hau* of the *taonga*, the *hau* of the forest. *Kati ena* (But enough on this subject).

This text, of capital importance, deserves a few comments. It is purely Maori, permeated by that, as yet, vague theological and juridical spirit of doctrines within the ‘house of secrets’, but at times astonishingly clear, and presenting only one obscure feature: the intervention of a third person. Yet, in order to understand fully this Maori juridical expert, one need only say:

The *taonga* and all goods termed strictly personal possess a *hau*, a spiritual power. You give me one of them, and I pass it on to a third party; he gives another to me in turn, because he is impelled to do so by the *hau* my present possesses. I, for my part, am obliged to give you that thing because I must return to you what is in reality the effect of the *hau* of your *taonga*.

When interpreted in this way the idea not only becomes clear, but emerges as one of the key ideas of Maori law. What imposes obligation in the present received and exchanged, is the fact that the thing received is not inactive. Even when it has been abandoned by the giver, it still possesses something of him. Through it the giver has a hold over the beneficiary just as, being its owner, through it he has a hold over the thief.²⁹ This is because the *taonga* is animated by the *hau* of its forest, its native heath and soil. It is truly 'native':³⁰ the *hau* follows after anyone possessing the thing.

It not only follows after the first recipient, and even, if the occasion arises, a third person, but after any individual to whom the *taonga* is merely passed on.³¹ In reality, it is the *hau* that wishes to return to its birthplace, to the sanctuary of the forest and the clan, and to the owner. The *taonga* or its *hau*—which itself moreover possesses a kind of individuality³²—is attached to this chain of users until these give back from their own property, their *taonga*, their goods, or from their labour or trading, by way of feasts, festivals and presents, the equivalent or something of even greater value. This in turn will give the donors authority and power over the first donor, who has become the last recipient. This is the key idea that in Samoa and New Zealand seems to dominate the obligatory circulation of wealth, tribute, and gifts.

Such a fact throws light upon two important systems of social phenomena in Polynesia and even outside that area. First, we can grasp the nature of the legal tie that arises through the passing on of a thing. We shall come back presently to this

point, when we show how these facts can contribute to a general theory of obligation. For the time being, however, it is clear that in Maori law, the legal tie, a tie occurring through things, is one between souls, because the thing itself possesses a soul, is of the soul. Hence it follows that to make a gift of something to someone is to make a present of some part of oneself. Next, in this way we can better account for the very nature of exchange through gifts, of everything that we call 'total services', and among these, potlatch. In this system of ideas one clearly and logically realizes that one must give back to another person what is really part and parcel of his nature and substance, because to accept something from somebody is to accept some part of his spiritual essence, of his soul. To retain that thing would be dangerous and mortal, not only because it would be against law and morality, but also because that thing coming from the person not only morally, but physically and spiritually, that essence, that food,³³ those goods, whether movable or immovable, those women or those descendants, those rituals or those acts of communion—all exert a magical or religious hold over you. Finally, the thing given is not inactive. Invested with life, often possessing individuality, it seeks to return to what Hertz called its 'place of origin' or to produce, on behalf of the clan and the native soil from which it sprang, an equivalent to replace it.

III

OTHER THEMES: THE OBLIGATION TO GIVE, THE OBLIGATION TO RECEIVE

To understand completely the institution of 'total services' and of potlatch, one has still to discover the explanation of the two other elements that are complementary to the former. The institution of 'total services' does not merely carry with it the obligation to reciprocate presents received. It also supposes two

other obligations just as important: the obligation, on the one hand, to give presents, and on the other, to receive them. The complete theory of these three obligations, of these three themes relating to the same complex, would yield a satisfactory basic explanation for this form of contract among Polynesian clans. For the time being we can only sketch out how the subject might be treated.

It is easy to find many facts concerning the obligation to receive. For a clan, a household, a group of people, a guest, have no option but to ask for hospitality,³⁴ to receive presents, to enter into trading,³⁵ to contract alliances, through wives or blood kinship. The Dayaks have even developed a whole system of law and morality based upon the duty one has not to fail to share in the meal at which one is present or that one has seen in preparation.³⁶

The obligation to give is no less important; a study of it might enable us to understand how people have become exchangers of goods and services. We can only point out a few facts. To refuse to give,³⁷ to fail to invite, just as to refuse to accept,³⁸ is tantamount to declaring war; it is to reject the bond of alliance and commonality.³⁹ Also, one gives because one is compelled to do so, because the recipient possesses some kind of right of property over anything that belongs to the donor.⁴⁰ This ownership is expressed and conceived of as a spiritual bond. Thus in Australia the son-in-law who owes all the spoils of the hunt to his parents-in-law may not eat anything in their presence for fear that their mere breath will poison what he consumes.⁴¹ We have seen earlier the rights of this kind that the *taonga* nephew on the female side possesses in Samoa, which are exactly comparable to those of the nephew on the female side (*vasu*) in Fiji.⁴²

In all this there is a succession of rights and duties to consume and reciprocate, corresponding to rights and duties to offer and accept. Yet this intricate mingling of symmetrical and contrary rights and duties ceases to appear contradictory if, above all, one

grasps that mixture of spiritual ties between things that to some degree appertain to the soul, and individuals, and groups that to some extent treat one another as things.

All these institutions express one fact alone, one social system, one precise state of mind: everything—food, women, children, property, talismans, land, labour services, priestly functions, and ranks—is there for passing on, and for balancing accounts. Everything passes to and fro as if there were a constant exchange of a spiritual matter, including things and men, between clans and individuals, distributed between social ranks, the sexes, and the generations.

IV

NOTE: THE PRESENT MADE TO HUMANS, AND THE PRESENT MADE TO THE GODS

A fourth theme plays a part in this system and moral code relating to presents: it is that of the gift made to men in the sight of the gods and nature. We have not undertaken the general study that would be necessary to bring out its importance. Moreover, the facts we have available do not all relate to those geographical areas to which we have confined ourselves. Finally, the mythological element that we scarcely yet understand is too strong for us to leave it out of account. We shall therefore confine ourselves to a few remarks.

In all societies in Northeast Siberia⁴³ and among the Eskimos of West Alaska,⁴⁴ as with those on the Asian side of the Behring Straits, potlatch⁴⁵ produces an effect not only upon men, who vie with one another in generosity, not only upon the things they pass on to one another or consume at it, not only upon the souls of the dead who are present and take part in it, and whose names have been assumed by men, but even upon nature. The exchange of presents between men, the 'namesakes'—the homonyms of the spirits, incite the spirits of the dead, the gods,

things, animals, and nature to be 'generous towards them'.⁴⁶ The explanation is given that the exchange of gifts produces an abundance of riches. Nelson⁴⁷ and Porter⁴⁸ have provided us with a good description of these festivals and of their effect on the dead, on wild life, and on the whales and fish that are hunted and caught by the Eskimos. In the kind of language employed by the British trappers they have the expressive titles of 'Asking Festival',⁴⁹ or 'Inviting-in Festival'. They normally extend beyond the bounds of the winter villages. This effect upon nature is clearly brought out in one of the recent studies of these Eskimos.⁵⁰

The Asian Eskimos have even invented a kind of contraption, a wheel bedecked with all kinds of provisions borne on a sort of festive mast, itself surmounted by a walrus head. This portion of the mast projects out of the ceremonial tent whose support it forms. Using another wheel, it is manipulated inside the tent and turned in the direction of the sun's movement. The conjunction of all these themes could not be better demonstrated.⁵¹

It is also evident among the Chukchee⁵² and the Koryaka of the far northeast of Siberia. Both carry out the potlatch. But it is the Chukchee of the coast, just like their neighbours, the Yuit, the Asian Eskimos we have just mentioned, who most practise these obligatory and voluntary exchanges of gifts and presents during long drawn-out 'Thanksgiving Ceremonies',⁵³ thanksgiving rites that occur frequently in winter and that follow one after another in each of the houses. The remains of the banqueting sacrifice are cast into the sea or scattered to the winds; they return to their land of origin, taking with them the wild animals killed during the year, who will return the next year. Jochelson mentions festivals of the same kind among the Koryak, but he has not been present at them, except for the whale festival.⁵⁴ Among the latter, the system of sacrifice seems to be very well developed.⁵⁵

Bogoras⁵⁶ rightly compares these customs with those of the Russian *Koliada*: children wearing masks go from house to house demanding eggs and flour that one does not dare refuse to give them. We know that this custom is a European one.⁵⁷

The relationships that exist between these contracts and exchanges among humans and those between men and the gods throw light on a whole aspect of the theory of sacrifice. First, they are perfectly understood, particularly in those societies in which, although contractual and economic rituals are practised between men, these men are the masked incarnations, often Shaman priest-sorcerers, possessed by the spirit whose name they bear. In reality, they merely act as representatives of the spirits,⁵⁸ because these exchanges and contracts not only bear people and things along in their wake, but also the sacred beings that, to a greater or lesser extent, are associated with them.⁵⁹ This is very clearly the case in the Tlingit potlatch, in one of the two kinds of Haïda potlatch, and in the Eskimo potlatch.

This evolution was a natural one. One of the first groups of beings with which men had to enter into contract, and who, by definition, were there to make a contract with them, were above all the spirits of both the dead and of the gods. Indeed, it is they who are the true owners of the things and possessions of this world.⁶⁰ With them it was most necessary to exchange, and with them it was most dangerous not to exchange. Yet, conversely, it was with them it was easiest and safest to exchange. The purpose of destruction by sacrifice is precisely that it is an act of giving that is necessarily reciprocated. All the forms of potlatch in the American Northwest and in Northeast Asia know this theme of destruction.⁶¹ It is not only in order to display power, wealth, and lack of self-interest that slaves are put to death, precious oils burnt, copper objects cast into the sea, and even the houses of princes set on fire. It is also in order to sacrifice to the spirits and the gods, indistinguishable from their

living embodiments, who bear their titles and are their initiates and allies.

Yet already another theme appears that no longer needs this human underpinning, one that may be as ancient as the potlatch itself: it is believed that purchases must be made from the gods, who can set the price of things. Perhaps nowhere is this idea more characteristically expressed than among the Toradja of Celebes Island. Kruyt⁶² tells us 'that there the owner must "purchase" from the spirits the right to carry out certain actions on "his" property', which is really theirs. Before cutting "his" wood, before even tilling "his" soil or planting the upright post of "his" house, the gods must be paid. Whereas the idea of purchase even seems very little developed in the civil and commercial usage of the Toradja,⁶³ on the contrary this idea of purchase from the spirits and the gods is utterly constant.

Malinowski, reporting on forms of exchange that we shall describe shortly, points to acts of the same kind in the Trobriand Islands. An evil spirit, a *tauvau* whose corpse has been found (that of a snake or land crab) may be exorcised by presenting to it one of the *vaygu'a*, a precious object that is both an ornament or talisman and an object of wealth used in the exchanges of the *kula*. This gift has an immediate effect upon the mind of this spirit.⁶⁴ Moreover, at the festival of the *mila-mila*,⁶⁵ a potlatch to honour the dead, the two kinds of *vaygu'a*, those of the *kula* and those that Malinowski for the first time⁶⁶ calls 'permanent' *vaygu'a*, are displayed and offered to the spirits on a platform identical to that of the chief. This makes their spirits benevolent. They carry off to the land of the dead⁶⁷ the shades of these precious objects, where they vie with one another in their wealth just as living men do upon returning from a solemn *kula*.⁶⁸

Van Ossenbruggen, who is not only a theorist but also a distinguished observer living on the spot, has noticed another characteristic of these institutions.⁶⁹ Gifts to humans and to the gods also serve the purpose of buying peace between them both.

In this way evil spirits and, more generally, bad influences, even not personalized, are got rid of. A man's curse allows jealous spirits to enter into you and kill you, and evil influences to act. Wrongs done to men make a guilty person weak when faced with sinister spirits and things. Van Ossenbruggen particularly interprets in this way the strewing of money along the path of the wedding procession in China, and even the bride-price. This is an interesting suggestion from which a whole series of facts needs to be unravelled.⁷⁰

It is evident that here a start can be made on formulating a theory and history of contract sacrifice. Contract sacrifice supposes institutions of the kind we have described and, conversely, contract sacrifice realizes them to the full, because those gods who give and return gifts are there to give a considerable thing in the place of a small one.

It is perhaps not a result of pure chance that the two solemn formulas of the contract—in Latin, *do ut des*, in Sanskrit, *dadaṁmi se, dehi me*⁷¹—also have been preserved in religious texts.

NOTE ON ALMS

Later, however, in the evolution of laws and religions, men appear once more, having become again the representatives of the gods and the dead, if they have ever ceased to be. For example, among the Hausa in the Sudan, when the Guinea corn is ripe, fevers may spread. The only way to avoid this fever is to make presents of this grain to the poor.⁷² Also among the Hausa (but this time in Tripoli), at the time of the Great Prayer (*Baban Salla*), the children (these customs are Mediterranean and European) visit houses: 'Should I enter?' The reply is: 'O long-eared hare, for a bone, one gets services.' (A poor person is happy to work for the rich.) These gifts to children and the poor are pleasing to the dead.⁷³ Among the Hausa these customs may be of Moslem origin,⁷⁴ both Negro and European at the same time, and Berber also.

In any case here one can see how a theory of alms can develop. Alms are the fruits of a moral notion of the gift and of fortune⁷⁵ on the one hand, and of a notion of sacrifice, on the other. Generosity is an obligation, because Nemesis avenges the poor and the gods for the superabundance of happiness and wealth of certain people who should rid themselves of it. This is the ancient morality of the gift, which has become a principle of justice. The gods and the spirits accept that the share of wealth and happiness that has been offered to them and had been hitherto destroyed in useless sacrifices should serve the poor and children.⁷⁶ In recounting this we are recounting the history of the moral ideas of the Semites. The Arab *sadaka* originally meant exclusively justice, as did the Hebrew *zedaka*:⁷⁷ it has come to mean alms. We can even date from the Mischnaic era, from the victory of the 'Poor' in Jerusalem, the time when the doctrine of charity and alms was born, which, with Christianity and Islam, spread around the world. It was at this time that the word *zedaka* changed in meaning, because in the Bible it did not mean alms.

However, let us return to our main subject: the gift, and the obligation to reciprocate. These documents and comments have not merely local ethnographic interest. A comparison can broaden the scope of these facts, deepening their meaning.

The basic elements of the potlatch⁷⁸ can therefore be found in Polynesia, even if the institution in its entirety is not to be found there.⁷⁹ In any case 'exchange-through-gift' is the rule there. Yet, it would be merely pure scholasticism to dwell on this theme of the law if it were only Maori, or at the most, Polynesian. Let us shift the emphasis of the subject. We can show, at least as regards the obligation to reciprocate, that it has a completely different sphere of application. We shall likewise point out the extension of other obligations and prove that this interpretation is valid for several other groups of societies.

2

THE EXTENSION OF THIS SYSTEM

Liberality, honour, money

THE RULES OF GENEROSITY: THE ANDAMAN ISLANDS*

First, these customs are also to be found among the Pygmies, who, according to Fr Schmidt,¹ are the most primitive of peoples. As early as 1906 Brown observed facts of this kind among the Andaman Islanders (North Island) and described them extremely well with regard to hospitality between local groups and visitors to festivals and fairs that serve as occasions for voluntary and obligatory exchanges (a trade in ochre and sea products against the products of the forest, etc.):

In spite of the considerable volume of these exchanges, since the local group and the family, in other cases, know how to be self-sufficient

* See notes for Chapter 2, p. 97, introductory paragraph.

in tools, etc....these presents do not serve the same purpose as commerce and exchange in more developed societies. The goal is above all a moral one, the object being to foster friendly feelings between the two persons in question, and if the exercise failed to do so, everything had failed.²

Nobody is free to refuse the present that is offered. Everyone, men and women, tries to...outdo one another in generosity. A kind of rivalry existed to see who could give the greatest number of objects of the greatest value.³

Presents put the seal upon marriage and form a link of kinship between the two pairs of parents. They give the two 'sides' the same nature, and this identical nature is made clearly manifest in the prohibition that, from the first betrothal vows to the very end of their days, places a taboo on the two groups of parents, who from then onwards do not see each other or communicate verbally, but continue constantly to exchange presents.⁴ In reality this prohibition expresses both the close relations and the fear that reign between this type of reciprocal creditors and debtors. The proof that this is the underlying principle is shown by the fact that the same taboo, indicative simultaneously both of closeness and remoteness in relationships, is also established between young people of both sexes who have undergone at the same time the ceremonies of 'eating turtle and eating pig'⁵ and who are likewise bound for life to exchange presents. Facts of this kind are also observed in Australia.⁶ Brown again reports on the rituals of meeting after a long separation, the act of embrace, the greeting made in tears, and shows how the exchange of presents is their equivalent,⁷ and how feelings and persons are mixed up together.⁸

In short, this represents an intermingling. Souls are mixed with things; things with souls. Lives are mingled together, and this is how, among persons and things so intermingled, each emerges

from their own sphere and mixes together. This is precisely what contract and exchange are.

II

PRINCIPLES, REASONS, AND THE INTENSITY OF EXCHANGE OF GIFTS (MELANESIA)

More so than the peoples of Polynesia, those of Melanesia have preserved or developed the potlatch,⁹ although this is not a matter that concerns us here. In any case, the Melanesians, better than the Polynesians, have on the one hand preserved, and on the other, developed the whole system of gifts and this form of exchange. Since, moreover, with the former the notion of money¹⁰ emerges much more clearly than in Polynesia, the system becomes in part complicated, but is also more clear-cut.

New Caledonia

Here we again find not only those ideas we seek to highlight, but even their expression in the characteristic documents that Leenhardt has collected about the New Caledonians. He began by describing the *pilou-pilou* and the system of festivals, gifts and services of all kinds¹¹ that we should not hesitate to term 'potlatch'. The legal terms used in the solemn speeches made by the herald are entirely typical. Thus, at the ceremonial presentation of festival yams,¹² the herald says: 'If there is some ancient *pilou* before which we have not been, there, among the *Wi*, etc...., this yam hastens to it as once such a yam came from them to us.'¹³ It is the thing itself that comes back. Later in the same speech, it is the spirit of their ancestors who causes 'to descend... upon these portions of food the effects of their action and strength.' 'The result of the action you have accomplished appears today. Every generation has appeared in its mouth.' Another way of representing the legal tie, one no less expressive,

is: 'Our festivals are the movement of the hook that serves to bind together the various sections of the straw roofing so as to make one single roof, one single word.'¹⁴ It is the same things that return, the same thread that passes through.¹⁵ Other authors also point out these facts.¹⁶

Trobriand Islands

At the other end of the Melanesian world a very well-developed system is equivalent to that of the New Caledonians. The inhabitants of the Trobriand Islands are among the most civilized of these races. Today they are wealthy pearl fishermen, and, before the arrival of the Europeans, they were rich pottery manufacturers and makers of shell money, stone axes, and precious goods. They have always been good traders and bold navigators. Malinowski gives them a name that fits them exactly when he compares them to Jason's fellow voyagers: 'Argonauts of the Western Pacific'. In one of the best volumes of descriptive sociology, focusing, so to speak, on the subject that concerns us, he has described the complete system of inter- and intratribal trade that goes under the name of *kula*.¹⁷ We still await from him the description of all the institutions that are governed by the same principles of law and economics: marriage, the festival of the dead, initiation, etc. Consequently, the description that we shall give is still only provisional. But the facts are of capital importance, and are plain.¹⁸

The *kula* is a sort of grand potlatch. The vehicle for busy intertribal trade, it extends over the whole of the Trobriand Islands, a part of the Entrecasteaux Islands, and the Amphlett Islands. In all these territories it indirectly involves all the tribes and, directly, a few of the large tribes—the Dobu in the Amphletts, the Kiriwina, the Sinaketa, and Kitav in the Trobriands, and the Vakuta on Woodlark Island. Malinowski gives no translation of *kula*, which doubtless means 'circle'. Indeed it is as if all these tribes, these

expeditions across the sea, these precious things and objects for use, these types of food and festivals, these services rendered of all kinds, ritual and sexual, these men and women,—were caught up in a circle,¹⁹ following around this circle a regular movement in time and space.

Kula trade is of a noble kind.²⁰ It seems to be reserved for the chiefs. The latter are at one and the same time the leaders of fleets of ships and boats. They are the traders, and also the recipients of gifts from their vassals, who are in fact also their children and brothers-in-law, their subjects, and at the same time the chiefs of various vassal villages. Trade is carried on in a noble fashion, apparently in a disinterested and modest way.²¹ It is distinguished carefully from the mere economic exchange of useful goods, which is called *gimwali*.²² In fact, the latter is carried on, as well as the *kula*, in the large primitive fairs that constitute the gatherings of the intertribal *kula*, or in the small markets of the intratribal *kula*. It is marked by very hard bargaining between the two parties, a practice unworthy of the *kula*. Of an individual who does not proceed in the *kula* with the necessary greatness of soul, it is said that he is 'conducting it like a *gimwali*.' In appearance, at the very least, the *kula*—as in the potlatch of the American Northwest—consists in giving by some, and receiving by others.²³ The recipients of one day become the givers on the next. In the most complete form, the most solemn, lofty, and competitive form of the *kula*,²⁴ that of the great sea expeditions, the *Uvalaku*, it is even the rule to leave without having anything to exchange, without even having anything to give, although it might be exchanged for food, which one refuses even to ask for. One pretends only to receive. It is when the visiting tribe plays host the following year to the fleet of the tribe that has been visited that the presents will be reciprocated with interest.

However, in *kula* not given on such a grand scale, advantage is taken of the sea journey to exchange cargoes. The nobles themselves carry on trade. About this there is much native theory.

Numerous objects are solicited,²⁵ asked for, and exchanged, and every kind of relationship is established outside the *kula*, which, however, always remains the purpose, and the decisive moment in these relationships.

The act of giving itself assumes very solemn forms: the thing received is disclaimed and mistrusted; it is only taken up for a moment, after it has been cast at one's feet. The giver affects an exaggerated modesty:²⁶ having solemnly brought on his present, to the sound of a seashell, he excuses himself for giving only the last of what remains to him, and throws down the object to be given at the feet of his rival and partner.²⁷ However, the seashell and the herald proclaim to everybody the solemn nature of this act of transfer. The aim of all this is to display generosity, freedom, and autonomous action, as well as greatness.²⁸ Yet, all in all, it is mechanisms of obligation, and even of obligation through things, that are called into play.

The essential objects in these exchange-gifts are the *vaygu'a*, a kind of money.²⁹ It is of two kinds: the *mwali*, which are beautiful bracelets, carved, polished, and placed in a shell, and worn on great occasions by their owners or relatives; and the *soulava*, necklaces fashioned by the skilful craftsmen of Sinaketa in a pretty mother-of-pearl made from red spondylus. They are solemnly worn by the women,³⁰ and, in cases of great anguish, exceptionally by the men.³¹ Normally, however, both kinds are hoarded and treasured. They are kept for the sheer pleasure of possessing them. The making of the bracelets, fishing for and making the necklaces into jewellery, the trade in these two objects of exchange and prestige, together with other forms of trade that are more profane and vulgar, constitute the source of the Trobriand people's fortune.

According to Malinowski, these *vaygu'a* follow a kind of circular movement: the *mwali*, the bracelets, are passed on regularly from west to east, whereas the *soulava* always travel from east to west.³² These two movements in opposite directions occur in all the

islands—Trobriand, Entrecasteaux, Amphlett, the remote islands—Woodlark, Marshall Bennett, Tubetube—and finally the extreme southeast coast of New Guinea, from which come the unworked bracelets. There this trade meets the great expeditions of the same kind that come from New Guinea (South Massim),³³ which Seligmann has described.

In principle the circulation of these signs of wealth is continuous and unerring. They must not be kept too long a time, nor must one be slow or difficult in passing them on.³⁴ One should not present them to anyone other than certain partners, nor save in a certain direction—the ‘bracelet’ or the ‘necklace’ direction.³⁵ One can and should keep them from one *kula* to the next, and the whole community is proud of the *vaygu’a* that one of its chiefs has obtained. There are even occasions, such as in the preparation of funeral ceremonies, of great *s’oi*, when it is permitted always to receive and to give nothing in return.³⁶ Yet this is in order to give back everything and to spend everything, when the festival has begun. Thus it is indeed ownership that one obtains with the gift that one receives. But it is ownership of a certain kind. One could say that it partakes of all kinds of legal principles that we, more modern, have carefully isolated from one another. It is ownership and possession, a pledge and something hired out, a thing sold and bought, and at the same time deposited, mandated, and bequeathed in order to be passed on to another. For it is only given you on condition that you make use of it for another or pass it on to a third person, the ‘distant partner’, the *murimuri*.³⁷ Such is the nature of this economic, legal, and moral entity, which is truly typical, as Malinowski was able to discover, find again, observe, and describe.

This institution has also its mythical, religious, and magical aspect. The *vaygu’a* are not unimportant things, mere pieces of money. Each one, at least the dearest and the most sought after—and other objects enjoy the same prestige³⁸—each one has its name,³⁹ a personality, a history, and even a tale attached to it. So

much is this so that certain individuals even take their own name from them. It is not possible to say whether they are really the object of a cult, for the Trobriand people are, after their fashion, positivists. Yet one cannot fail to acknowledge the eminent and sacred nature of the objects. To possess one is 'exhilarating, strengthening, and calming in itself.'⁴⁰ Their owners fondle and look at them for hours. Mere contact with them passes on their virtues.⁴¹ *Vaygu'a* are placed on the forehead, on the chest of a dying person, they are rubbed on his stomach, and dangled before his nose. They are his supreme comfort.

Yet there is even more to it than this. The contract itself partakes of this nature of the *vaygu'a*. Not only the bracelets and the necklaces, but even all the goods, ornaments, and weapons, everything that belongs to the partner, is so imbued with it, at least emotionally if not in his inmost soul, that they participate in the contract.⁴² A very beautiful phrase, 'the enchantment of the seashell'⁴³ serves, after the possessions have been evoked, to cast a spell over and move towards the 'partner-candidate' the things that he must ask for and receive.⁴⁴

[A state of excitement⁴⁵ takes hold of my partner]⁴⁶

A state of excitement takes hold of his dog,

A state of excitement takes hold of his belt...

And so on: 'of his *gwara* [the taboo on coconuts and betel nuts];⁴⁷ of his necklace *bagido'u*; of his necklace *bagiriku*; of his necklace *bagidudu*,⁴⁸ etc., etc.'

Another more mythical,⁴⁹ even more curious phrase, but of a more common type, expresses the same idea. The partner of the *kula* has an animal to assist him, a crocodile that he calls upon that has to bring him the necklaces [in Kitava, the *mwali*]:

The crocodile falls upon him, carries off your man, and shoves him under the *gebobo* (the cargo hold on a boat).

Crocodile, bring me the necklace, bring me the *bagido'u*, the *bagiriku*, etc.

A formula that comes earlier in the same ritual invokes a bird of prey.⁵⁰

The last formula of enchantment used by those associated with or contracting in the ritual [at Dobu or at Kitava, by the people of Kiriwina] contains a couplet⁵¹ of which two interpretations are given. Moreover, the ritual is very long and is repeated at length. Its purpose is to enumerate all that the *kula* proscribes, all the things relating to hatred and war that must be exorcised in order to be able to trade between friends.

Your fury, the dog turns up its nose at it;
Your war paint, the dog turns up its nose at it, etc.,

Other versions go as follows:⁵²

Your fury, the dog is docile at, etc.

or:

Your fury takes off like the tide. The dog plays;
Your anger takes off like the tide. The dog plays; etc.

This must be understood as: 'Your fury becomes like the dog who is playing.' The essential element is the metaphor of the dog that gets up to lick the hand of its master. So the man, if not the woman of Dobu, should also act. A second interpretation, sophisticated and not untinged with scholasticism, so Malinowski declares, but clearly a very local one, gives a different gloss that ties in better with what we know:

The dogs are playfully nuzzling one another. When you mention this word 'dog', the precious things also come [to play], as has long

been ordained. We have given bracelets, necklaces will come. Both will meet each other (like the dogs who come sniffing at one another).

The expression, in the form of a parable, is a pretty one. The entire set of collective sentiments is expressed at a stroke: the potential hatred between associates, the isolation of the *vaygu'a*, ceasing as if by magic; men and precious things coming together like dogs that play and run up at the sound of one's voice.

Another symbolic expression is that of the marriage of the *mwali*, the bracelets, the feminine symbols, with the *soulava*, the necklaces, the masculine symbols, which stretch out towards each other, as does male towards female.⁵³

These various metaphors signify exactly the same thing as is characterized in different terms by the mythical jurisprudence of the Maori. Sociologically, it is once again the mixture of things, values, contracts, and men that is so expressed.⁵⁴

Unfortunately, our knowledge of the legal rule that governs these transactions is defective. It is either an unconscious rule, imperfectly formulated by the Kiriwina people, Malinowski's informants; or, if it is clear for the Trobriand people, it should be the subject of a fresh enquiry. We only possess details. The first gift of a *vaygu'a* bears the name of *vaga*, 'opening gift'.⁵⁵ It is the starting point, one that irrevocably commits the recipient to make a reciprocating gift, the *yotile*,⁵⁶ which Malinowski felicitously translates as the 'clinging gift': the gift that seals the transaction. Another name for this latter gift is *kudu*, the tooth that bites, that really cuts, bites through, and liberates.⁵⁷ It is obligatory; it is expected, and it must be equivalent to the first gift. Occasionally it may be seized by force or by surprise.⁵⁸ For a *yotile* that is an insufficient return gift, revenge may⁵⁹ be taken⁶⁰ by magic, or at the very least by insult and a display of

resentment. If one is not able to reciprocate, at the very least one may offer a *basi*, which merely 'pierces' the skin, does not bite, and does not conclude the affair. It is a kind of advance present, whose purpose is to delay. It appeases the former donor, now the creditor; but does not free the debtor,⁶¹ the future donor. These are all curious details, and everything about these expressions is striking. Yet we do not know the sanction behind it. Is it purely moral⁶² and magical? The individual who is 'obdurate at the *kula*', is he only scorned, and if needs be, cast under a spell? Does the partner who does not keep faith lose anything else: his noble rank, or at least his place among the chiefs? This we still need to know.

Yet from another viewpoint the system is typical. Except for ancient Germanic law that we shall be discussing later, in the present state of our observations and historical, juridical, and economic knowledge, it would be difficult to come across a custom of gift-through-exchange more clear-cut, complete, and consciously performed, and, moreover, better understood by the observer recording it than the one Malinowski found among the Trobriand people.⁶³

The *kula*, its essential form, is itself only one element, the most solemn one, in a vast system of services rendered and reciprocated, which indeed seems to embrace the whole of Trobriand economic and civil life. The *kula* seems to be merely the culminating point of that life, particularly the *kula* between nations and tribes. It is certainly one of the purposes of existence and for undertaking long voyages. Yet in the end, only the chiefs, and even solely those drawn from the coastal tribes—and then only a few—do in fact take part in it. The *kula* merely gives concrete expression to many other institutions, bringing them together.

First, the exchange of the *vaygu'a* themselves during the *kula* forms the framework for a whole series of other exchanges, extremely diverse in scope, ranging from bargaining to remuneration, from solicitation to pure politeness, from out-

and-out hospitality to reticence and reserve. In the first place, except for the *uvalaku*, large-scale solemn expeditions that are purely ceremonial and competitive,⁶⁴ all the *kula* provide the occasion for *gimwali*, which are commonplace exchanges, not necessarily occurring between partners.⁶⁵ A free market exists between individuals of allied tribes, side by side with closer associations. In the second place, between partners in a *kula* there pass, as if in a perpetual chain, additional gifts, presented and reciprocated, as well as obligatory transactions. The *kula* even takes these for granted. The association that is constituted, and which is the principle of the *kula*,⁶⁶ begins with a first gift, the *vaga*, that is solicited with all one's might by means of 'inducements'. For this first gift the future partner, still a free agent, can be wooed, and he is rewarded, so to speak, by a preliminary series of gifts.⁶⁷ Whilst one is certain that the reciprocating *vaygu'a*, the *yotile*, the 'clinging gift', will be returned, one is not sure that the *vaga* will be given, or even that the 'inducements' will be accepted. This way of soliciting and accepting a gift is the rule; each of the presents made in this way bears a special name. They are placed on display before being offered. In that case they are termed *pari*.⁶⁸ Others bear names that indicate the noble and magical nature of the object that is offered.⁶⁹ But if one accepts one of these presents it shows that one is disposed to enter into the game, if not to remain in it for long. Certain names given to these presents express the legal situation that acceptance of them entails:⁷⁰ this time the matter is regarded as settled. The present is normally something fairly valuable: for example, a large, polished stone axe, or a whalebone spoon. To accept it is to bind oneself definitively to making a gift of the *vaga*, the first present that is sought after. But one is still only half-committed as a partner. Only the solemn observance of the tradition commits one completely. The importance and nature of these gifts springs from the extraordinary competition that occurs

between the potential partners in the expedition that arrives. They seek out the best possible partner in the opposing tribe. The affair is a serious matter, for the association one attempts to create establishes a kind of clan link between the partners.⁷¹ Thus to choose, one must attract and dazzle the other person.⁷² Whilst rank is taken into account,⁷³ one must attain one's goal before the others, or in a better way than they do, so bringing about more plentiful exchanges of the most valuable things, which are naturally the property of the richest people. Competition, rivalry, ostentatiousness, the seeking after the grandiose, and the stimulation of interest—these are the various motives that underlie all these actions.⁷⁴

These are the arrival gifts. Other gifts, equivalent in value to them, are made in return. These are the departure gifts (called *talo'i* at Sinaketa),⁷⁵ made upon taking leave; they are always superior to the arrival gifts. Already the cycle of total services and total counter-services with interest is being completed side by side with the *kula*.

There have naturally been—throughout the time these transactions last—services of hospitality and food, and at Sinaketa, relating to women.⁷⁶ Finally, throughout this period, other additional gifts, always reciprocated regularly, are offered. It would even appear to us that the exchange of these *korotumna* represents a primitive form of the *kula*—when it consisted also of exchanging stone axes⁷⁷ and the rounded tusks of the wild pig.⁷⁸

Moreover, in our view the whole intertribal *kula* is merely the extreme case, the most solemn and most dramatic one, of a more general system. This takes the tribe itself, in its entirety, out of the narrow sphere of its physical boundaries, and even of its interests and rights. Yet within the tribe the clans and villages are normally joined by links of the same kind. In that case it is only local and domestic groups, together with their chiefs, who leave their homes, pay visits, trade, and intermarry. This may no longer be termed a *kula*. However, Malinowski, contrasting it with the 'coastal

kula', rightly talks of the 'internal *kula*' and of '*kula* communities', which provide the chief with the objects he will exchange. However, it is not overstating it to speak in such cases of a potlatch proper. For example, the visits of the Kiriwana people to Kitawa for the *s'oi*,⁷⁹ the funeral festivals, include many things other than the exchange of the *vaygu'a*. One can see them as a kind of simulated attack (*youlawada*),⁸⁰ and a distribution of food, with a display of pigs and yams.

Furthermore, the *vaygu'a* and all such objects are not always acquired, made, and exchanged by the chiefs themselves.⁸¹ Indeed, it may be said that they are neither made⁸² nor exchanged by the chiefs for their own advantage. Most come to the chiefs in the form of gifts from relatives of a lower rank, in particular from brothers-in-law, who are at the same time vassals,⁸³ or from sons who hold land separately as vassals. In return, most of the *vaygu'a*, upon the return of the expedition, are solemnly passed on to the chiefs of the villages and clans, and even to the common people of associated clans—in brief, to whoever has taken part, directly or indirectly, and often very indirectly, in the expedition.⁸⁴ In this way the latter are compensated.

Finally, side by side with, or if one wishes, above, below, and all around, and, in our opinion, at the bottom of this system of internal *kula*, the system of gift-through-exchange permeates all the economic, tribal, and moral life of the Trobriand people. It is 'impregnated' with it, as Malinowski very neatly expressed it. It is a constant 'give and take'.⁸⁵ The process is marked by a continuous flow in all directions of presents given, accepted, and reciprocated, obligatorily and out of self-interest, by reason of greatness and for services rendered, through challenges and pledges. Here we cannot set out all the facts. Moreover, their publication by Malinowski himself is not yet complete. First, however, here are two main facts.

An entirely analogous relationship to that of the *kula* is that of the *wasi*.⁸⁶ It establishes regular acts of exchange, which are

obligatory between, on the one hand, agricultural tribes, and on the other hand, coastal tribes. The agricultural partner comes to lay his products in front of the house of his fisherman associate. On another occasion, the latter, after a big fishing expedition, will go to the agricultural village to repay these with interest from the fruits of his catch.⁸⁷ It is the same system of division of labour as we have noted in New Zealand.

Another important kind of exchange takes on the form of exhibitions.⁸⁸ Such are the *sagali*, distributions of food⁸⁹ on a grand scale, that are made on several occasions: at harvest time, at the building of the chiefs hut or new boats, or at funeral festivals.⁹⁰ These distributions are made to groups that have performed some service for the chief or his clan:⁹¹ cultivation of the land, the transporting of the large tree trunks from which boats or beams are carved, and for services rendered at funerals by the members of the dead person's clan, etc. These distributions are absolutely equivalent to the Tlingit potlatch. Even the themes of combat and rivalry appear. In it, clans and phratries, and families allied to one another, confront one another. Generally distributions seem to be due to group action, in so far as the personality of the chief does not make itself felt.

Yet in addition to these group rights and this collective economy, already less resembling the *kula*, all individual relationships of exchange seem to us to be of this type. Perhaps only a few consist of mere barter. However, as barter is hardly carried on except between relatives, allies, or partners in the *kula* and the *wasi*, it does not seem that exchange is really free. Generally, even what is received and has come into one's possession in this way—in whatever manner—is not kept for oneself, unless one cannot do without it. Normally it is passed on to someone else, to a brother-in-law, for example.⁹² It can happen that the identical things one has acquired and then given away come back to one in the course of the same day.

All the rewards for 'total services' of any kind, things and services, fall within this category. In random order, the following are the most important.

The *pokala*⁹³ and *kaributu*,⁹⁴ 'solicitory gifts', which we have noted in the *kula*, are species of a much larger category that corresponds fairly closely to what we term 'remuneration'. They are offered to the gods and the spirits. Another generic name for the 'remuneration' is *vakapula*⁹⁵ and *mapula*.⁹⁶ They are marks of gratitude and hospitable welcome and must be reciprocated. In this connection, in our opinion Malinowski⁹⁷ has made a very great discovery that sheds light upon all the economic and juridical relationships between the sexes within marriage: the services of all kinds rendered to the wife by her husband are considered as a remuneration-cum-gift for the service rendered by the wife when she lends what the Koran still calls 'the field'.

The somewhat childish legal language of the Trobriand Islanders has given rise to a proliferation of distinctive names for all kinds of total counter-services, according to the name of the service that is being compensated,⁹⁸ the thing given,⁹⁹ the occasion,¹⁰⁰ etc. Certain names take all these considerations into account; for example, the gift made to a magic man, or for the acquisition of a title, is called *laga*.¹⁰¹ One cannot credit the extent to which all such vocabulary is complicated by a curious incapacity to divide and define, and by the strange refinements that are given to names.

Other Melanesian societies

One need not multiply the comparisons with other areas of Melanesia. However a few details gleaned here and there will strengthen conviction and prove that the Trobriand people and the New Caledonians have not developed in an abnormal way a principle that might not be found among kindred peoples.

At the southern limit of Melanesia, in Fiji, where we have identified the existence of potlatch, other remarkable institutions

thrive that belong to the gift system. There is a season, termed *kere-kere*, during which nobody must be refused anything.¹⁰² Gifts are exchanged between the two families on the occasion of a marriage, etc.¹⁰³ Moreover the money of Fiji, of sperm whale's teeth, is exactly of the same kind as that of the Trobriands. It bears the name of *tambua*;¹⁰⁴ it is decorated with stones ('mothers of the teeth') and ornaments that are kinds of mascots, talismans, and 'good-luck' objects of the tribe. The feelings cherished by the Fijians for their *tambua* are exactly the same as those we have just described: 'they are treated like dolls. They are taken out of the basket and admired, their beauty is spoken of; their "mother" is oiled and polished.'¹⁰⁵ To present them constitutes a request; to accept them is to commit oneself.¹⁰⁶

The Melanesians of New Guinea and certain Papuans influenced by them call their money *tau-tau*.¹⁰⁷ It is of the same kind and the object of the same beliefs as that of the Trobriand Islanders.¹⁰⁸ But this name must also be compared with that of *tahu-'ahu*,¹⁰⁹ which means the 'borrowing of pigs' (Motu and Koita), and is a name¹¹⁰ familiar to us. It is the very Polynesian term, the root of the word *taonga*, which in Samoa and New Zealand means the jewels and possessions incorporated into the family. The words themselves are Polynesian, as are the things.¹¹¹

It is known that the Melanesians and Papuans of New Guinea practise the potlatch.¹¹²

The fine documents that Thurnwald has passed on to us concerning the tribes of Buin¹¹³ and the Banaro¹¹⁴ have already provided us with numerous points of comparison. The religious nature of the things exchanged is apparent, particularly that of money, in the way that it rewards songs, women, love, and services. As in the Trobriand Islands, it is a kind of pledge. Finally, Thurnwald has analysed in a sound case-study¹¹⁵ one of the facts that best illustrates both what this system of reciprocal gifts consists of, and what is incorrectly called marriage by purchase. In reality this seems to include services to all involved, including the family-

in-law. The wife whose parents have not sent sufficient return presents is sent back to them.

To sum up, the whole area of the islands, and probably part of the world of Southern Asia that is related to it, possess the same legal and economic system.

The conception one should have regarding these Melanesian tribes, even richer and more committed to trade than the Polynesians, is therefore very different from normal. These peoples possess an extra domestic economy and a very developed system of exchange that throbs with life more intensely and more precipitantly perhaps than the one that our peasants or the fishing villages along our coasts were familiar with maybe not even a hundred years ago. They have an extensive economic life, going beyond the confines of the islands and their dialects, which represents a considerable trade. Through gifts made and reciprocated they have robustly replaced a system of buying and selling.

The stumbling block that these laws and, as we shall also see, Germanic law, came up against, was their inability to isolate and divide up their economic and juridical concepts. But they had no need to do so. In these societies neither the clan nor the family is able to isolate itself or dissociate its actions. Nor are individuals themselves, however influential and aware, capable of understanding that they need to oppose one another and learn how to dissociate their actions from one another. The chief is merged with his clan, and the clan with him. Individuals feel themselves acting in only one way. Holmes perceptively remarks that the two dialects, Papuan and Melanesian, of the tribes that he encountered at the mouth of the Finke river (Toaripi and Namau) have 'one single term to designate buying and selling, lending and borrowing'. Operations that are 'opposites are expressed by the same word'.¹¹⁶ 'Strictly speaking they did not know how to borrow and lend in the sense that we employ these terms, but there was always something given in the shape of an honorarium

for borrowing, and which was returned when the loan was repaid.¹¹⁷ These men have no conception of either selling or borrowing, but nevertheless carry out juridical and economic operations that fulfil the same functions.

Likewise the notion of barter is no more natural for the Melanesians than for the Polynesians.

One of the best ethnographers, Kruyt, whilst he uses the word 'selling', describes exactly¹¹⁸ this state of mind as it exists among the inhabitants of the central Celebes islands. Yet the Toradja have been for a long while in contact with the Malaysians, who are great traders.

Thus one section of humanity, comparatively rich, hard-working, and creating considerable surpluses, has known how to, and still does know how to, exchange things of great value, under different forms and for reasons different from those with which we are familiar.

III

THE AMERICAN NORTHWEST

Honour and credit

From these observations about a few Melanesian and Polynesian peoples there already emerges a very clearly defined picture of this system of the gift. Material and moral life, and exchange, function within it in a form that is both disinterested and obligatory. Moreover, this obligation is expressed in a mythical and imaginary way or, one might say, symbolic and collective. It assumes an aspect that centres on the interest attached to the things exchanged. These are never completely detached from those carrying out the exchange. The mutual ties and alliance that they establish are comparatively indissoluble. In reality this symbol of social life—the permanence of influence over the things

exchanged—serves merely to reflect somewhat directly the manner in which the subgroups in these segmented societies, archaic in type and constantly enmeshed with one another, feel that they are everything to one another.

The Indian societies of the American Northwest display the same institutions, although with them they are even more radical and more marked. First, one can say that barter is unknown. Even after long contact with Europeans,¹¹⁹ apparently none of the considerable transfers of wealth¹²⁰ constantly taking place among them is carried out save in the solemn form of the potlatch.¹²¹ We shall describe this institution as it relates to our study.

Before doing so, a brief description of these societies is indispensable. The tribes, peoples, or rather groups of tribes¹²² we shall discuss all reside on the Northwest coast of America, in Alaska: Tlingit and Haïda; and in British Columbia, mainly the Haïda, Tsimshian, and Kwakiutl.¹²³ They also live from the sea, or from the rivers, from fishing rather than hunting. But, unlike the Melanesians and Polynesians, they have no agriculture. However, they are very rich, and even now their fishing grounds, hunting grounds, and fur-trapping provide them with considerable surpluses, particularly when reckoned in European terms. They have the most solidly built houses of all the American tribes, and a very highly developed cedarwood industry. Their boats are good, and although they hardly venture out on the open sea, they know how to navigate between the islands and the coasts. Their material arts are of a very high order. In particular, even before the arrival of iron in the eighteenth century, they knew how to extract, melt down, mould, and beat out the copper that is to be found in a raw state in the Tsimshian and Tlingit lands. Certain kinds of this copper, real armorial shields, served as a kind of money for them. Another kind of money was certainly the beautiful, so-called Chilkat, blankets of wonderfully different colours that still serve as adornment,¹²⁴ some of them of considerable value. These peoples have excellent sculptors and professional designers. Their

pipes, tomahawks, sticks, spoons carved out of horn, etc., embellish our ethnographic collections. The whole of this civilization is remarkably uniform, within very broad limits. Clearly, these societies mingled with one another from very ancient times, although they belong, at least in language, to no less than three different families of peoples.¹²⁵ Their life in winter, even for the southernmost tribes, is very different from that in summer. The tribes have a dual structure: from the end of spring they disperse to go hunting, to gather roots and the juicy mountain berries, and to fish for salmon in the rivers; at the onset of winter they concentrate once more in what are called 'towns'. It is then, during the period when they are gathered together in this way, that they live in a state of perpetual excitement. Social life becomes extremely intense, even more so than in the assemblies of tribes that can take place in the summer. There are constant visits from whole tribes to tribes, from clans to clans, and from families to families. There are repeated festivals, continuous and long drawn-out. At a wedding, or at various kinds of ritual or promotions, everything stored up with great industry during the summer and autumn on one of the richest coasts in the world is lavishly expended. This even occurs in domestic life. The people of one's clan are invited when a seal has been killed or when a case of berries or roots that have been preserved is opened up. Everyone is invited when a whale is washed up. From the moral viewpoint also, the civilization is remarkably uniform, although ranging from the regime of the phratry (Tlingit and Haïda) of maternal descent, to the clan of modified masculine descent of the Kwakiutl. The general features of social organization, and particularly totemism, are roughly the same in all the tribes. In the Banks Islands the tribes have 'brotherhoods', as in Melanesia, which are wrongly called secret societies and are often international, but in which male society, and certainly among the Kwakiutl, female society, cuts across the clan organization. Part of the gifts and total counter-services of which we shall speak are intended,

as in Melanesia,¹²⁶ to finance the ranks and successive 'ascensions' (promotions)¹²⁷ in these brotherhoods. The rituals, both of these brotherhoods and clans, follow one another at the marriage of chiefs, at 'copper sales', at initiations, at Shamon ceremonies, and at funeral ceremonies—the latter being more developed in Haïda and Tlingit lands. All are performed during a series of potlatches that are prolonged indefinitely. There are potlatches everywhere, in response to other potlatches. As in Melanesia it is a constant 'give and take'.

The potlatch itself, so typical a phenomenon, and at the same time so characteristic of these tribes, is none other than the system of gifts exchanged.¹²⁸ It differs from that in Melanesia only in the violence, exaggeration, and antagonisms that it arouses, and by a certain lack of juridical concepts, and a simpler and cruder structure. This is particularly true of the two northern peoples, the Tlingit and Haïda.¹²⁹ The collective nature of the contract¹³⁰ is more apparent than in Melanesia and Polynesia. All in all, these societies, in spite of appearances, are closer to what we term 'simple total services'. Consequently, the juridical and economic concepts possess less clarity and less conscious precision. However, in practice, the principles are positive and sufficiently clear-cut.

Nevertheless, two notions are much more in evidence than in the Melanesian potlatch or the more developed, or more fragmented, institutions existing in Polynesia. These are the notion of credit, of the time limit placed on it, and also the notion of honour.¹³¹

Gifts circulate, as we have seen in Melanesia and Polynesia, with the certainty that they will be reciprocated. Their 'surety' lies in the quality of the thing given, which is itself that surety. But in every possible form of society it is in the nature of a gift to impose an obligatory time limit. By their very definition, a meal shared in common, a distribution of *kava*, or a talisman that one takes away, cannot be reciprocated immediately. Time is needed

in order to perform any counter-service. The notion of a time limit is thus logically involved when there is question of returning visits, contracting marriages and alliances, establishing peace, attending games or regulated combats, celebrating alternative festivals, rendering ritual services of honour, or 'displaying reciprocal respect'¹³²—all the things that are exchanged at the same time as other things that become increasingly numerous and valuable, as these societies become richer.

Current economic and juridical history is largely mistaken in this matter. Imbued with modern ideas, it forms a priori ideas of development¹³³ and follows a so-called necessary logic. All in all, it rests on ancient traditions. There is nothing more dangerous than this 'unconscious sociology', as Simiand has termed it. For example Cuq still states:

In primitive societies only the barter regime is conceived of; in those more advanced, sales for cash are the practice. Sale on credit is characteristic of a higher phase in civilization. It first appears in an oblique form as a combination of cash sale and loans.¹³⁴

(Cuq 1910)

In fact, the point of departure lies elsewhere. It is provided in a category of rights that excludes the jurists and economists, who are not interested in it. This is the gift, a complex phenomenon, particularly in its most ancient form, that of 'total services', with which we do not deal in this monograph. Now, the gift necessarily entails the notion of credit. The evolution in economic law has not been from barter to sale, and from cash sale to credit sale. On the one hand, barter has arisen through a system of presents given and reciprocated according to a time limit. This was through a process of simplification, by reductions in periods of time formerly arbitrary. On the other hand, buying and selling arose in the same way, with the latter according to a fixed time limit, or by

cash, as well as by lending. For we have no evidence that any of the legal systems that have evolved beyond the phase we are describing (in particular, Babylonian law) remained ignorant of the credit process that is known in every archaic society that still survives today. This is another simple, realistic way of resolving the problem of the two 'moments in time' that are brought together in the contract, which Davy has already studied.¹³⁵

No less important in these transactions of the Indians is the role played by the notion of honour. Nowhere is the individual prestige of a chief and that of his clan so closely linked to what is spent and to the meticulous repayment with interest of gifts that have been accepted, so as to transform into persons having an obligation those that have placed you yourself under a similar obligation. Consumption and destruction of goods really go beyond all bounds. In certain kinds of potlatch one must expend all that one has, keeping nothing back.¹³⁶ It is a competition to see who is the richest and also the most madly extravagant. Everything is based upon the principles of antagonism and rivalry. The political status of individuals in the brotherhoods and clans, and ranks of all kinds, are gained in a 'war of property',¹³⁷ just as they are in real war, or through chance, inheritance, alliance, and marriage. Yet everything is conceived of as if it were a 'struggle of wealth'.¹³⁸ Marriages for one's children and places in the brotherhoods are only won during the potlatch, where exchange and reciprocity rule. They are lost in the potlatch as they are lost in war, by gambling¹³⁹ or in running and wrestling.¹⁴⁰ In a certain number of cases, it is not even a question of giving and returning gifts, but of destroying,¹⁴¹ so as not to give the slightest hint of desiring your gift to be reciprocated. Whole boxes of olachen (candlefish) oil or whale oil¹⁴² are burnt, as are houses and thousands of blankets. The most valuable copper objects are broken and thrown into the water, in order to put down and

to 'flatten' one's rival.¹⁴³ In this way one not only promotes oneself, but also one's family, up the social scale. It is therefore a system of law and economics in which considerable wealth is constantly being expended and transferred. If one so wishes, one may term these transfers acts of exchange or even of trade and sale.¹⁴⁴ Yet such trade is noble, replete with etiquette and generosity. At least, when it is carried on in another spirit, with a view to immediate gain, it becomes the object of very marked scorn.¹⁴⁵

As may be seen, the notion of honour, which expresses itself violently in Polynesia and is always present in Melanesia, is, in this case, really destructive. Again on this point, conventional wisdom misjudges the importance of the motives that have inspired men, and all we owe to the societies that have preceded us. Even such a perceptive scholar as Huvelin felt himself obliged to deduce the notion of honour, reputedly ineffective, from the notion of the efficacy of magic.¹⁴⁶ He sees in honour and prestige only a substitute for magic. The reality is more complex. The notion of honour is no more foreign to these civilizations than is the notion of magic.¹⁴⁷ The Polynesian word *mana* itself symbolizes not only the magical force in every creature, but also his honour, and one of the best translations of the word is 'authority', 'wealth'.¹⁴⁸ The Tlingit and Haïda potlatch consists of considering the mutual services rendered as acts of honour.¹⁴⁹ Even among really primitive tribes, such as those in Australia, the point of honour is as delicate as that in our own societies, and is satisfied through the offering of services and food, acts of precedence and rites, as well as through gifts.¹⁵⁰ Men had learnt how to pledge their honour and their name long before they knew how to sign the latter.

The North American potlatch has been well enough studied as regards everything concerning the form of the contract itself. However, we need to fit the study of it made by Davy and Leonhard Adam¹⁵¹ into the wider context in which it should be placed for

the subject with which we are dealing. For the potlatch is much more than a juridical phenomenon: it is one that we propose to call 'total'. It is religious, mythological, and Shamanist, since the chiefs who are involved represent and incarnate their ancestors and the gods, whose name they bear, whose dances they dance and whose spirits possess them.¹⁵² The potlatch is also an economic phenomenon, and we must gauge the value, the importance, the reasons for, and the effect of these transactions, enormous even today, when they are calculated in European values.¹⁵³ The potlatch is also a phenomenon of social structure: the gathering together of tribes, clans, and families, even of peoples, brings about a remarkable state of nerviness and excitement. One fraternizes, yet one remains a stranger; one communicates and opposes others in a gigantic act of trade and a constant tournament.¹⁵⁴ We pass over the aesthetic phenomena, which are extremely numerous. Finally, even from the juridical viewpoint, to what we have already gleaned regarding the form of these contracts and what might be termed their human purpose, as well as the juridical status of the contracting parties (clans, families, ranks, and betrothals,) we must add this: the material purposes of the contracts, the things exchanged in them, also possess a special intrinsic power, which causes them to be given and above all to be reciprocated.

It would have been useful—if we had enough space—to distinguish, for the purposes of our exposition, between four forms of the potlatch in the American Northwest: (1) a potlatch in which the phratries and the families of chiefs are exclusively, or almost exclusively involved (Tlingit); (2) a potlatch in which the phratries, clans, chiefs, and families play roughly an equal part; (3) a potlatch by clans in which chiefs confront one another (Tsimshian); (4) a potlatch of chiefs and brotherhoods (Kwakiutl). But it would take too long to proceed thus. Moreover, the differences between three of the four forms (the Tsimshian form is not dealt with) have been expounded by Davy.¹⁵⁵ Finally, as far as our study is concerned—that of the

three themes of the gift, the obligation to give, the obligation to receive and reciprocate—the four forms of the potlatch are comparatively identical.

The three obligations: to give, to receive, to reciprocate

The obligation to give is the essence of the potlatch. A chief must give potlatches for himself, his son, his son-in-law, or his daughter,¹⁵⁶ and for his dead.¹⁵⁷ He can only preserve his authority over his tribe and village, and even over his family, he can only maintain his rank among the chiefs¹⁵⁸—both nationally and internationally—if he can prove he is haunted and favoured both by the spirits and by good fortune¹⁵⁹, that he is possessed, and also possesses it.¹⁶⁰ And he can only prove this good fortune by spending it and sharing it out, humiliating others by placing them ‘in the shadow of his name’.¹⁶¹ Each Kwakiutl and Haïda noble has exactly the same idea of ‘face’ as has the Chinese man of letters or officer.¹⁶² It is said of one of the great mythical chiefs who gave no potlatch that he had a ‘rotten face’.¹⁶³ Here the expression is even more exact than in China. For in the American Northwest, to lose one’s prestige is indeed to lose one’s soul. It is in fact the ‘face’ the dancing mask, the right to incarnate a spirit, to wear a coat of arms, a totem, it is really the *persona*—that are all called into question in this way, and that are lost at the potlatch,¹⁶⁴ at the game of gifts,¹⁶⁵ just as they can be lost in war,¹⁶⁶ or through a mistake in ritual.¹⁶⁷ In all such societies one hastens to give. There is not one, single, special moment, even apart from the winter solemnities and gatherings, when one is not obliged to invite one’s friends, to share with them the windfall gains of the hunt or food gathering, which come from the gods and the totems.¹⁶⁸ There is not one single moment when you are not obliged to redistribute everything from a potlatch in which you have been the beneficiary,¹⁶⁹ or when you are not obliged to acknowledge by gifts some service or other,¹⁷⁰ whether performed

by chiefs,¹⁷¹ vassals, or relatives:¹⁷² all this under pain of violating etiquette—at least for nobles—and of losing rank.¹⁷³

The obligation to invite is clearly evident when imposed by clans on clans, or tribes on tribes. Indeed it only has meaning if it is offered to others outside the family, the clan, or the phratry.¹⁷⁴ It is essential to invite anyone who can,¹⁷⁵ or wishes to¹⁷⁶ come, or actually turns up¹⁷⁷ at the festival at the potlatch.¹⁷⁸ Failure to do so has fatal consequences.¹⁷⁹ An important Tsimshian myth¹⁸⁰ reveals the mentality in which this essential theme of European folklore also originated: that of the wicked fairy who was forgotten at a baptism or a marriage. The tissue of institutions from which the theme is woven is clearly apparent here. We see in what civilizations it functioned. A princess of one of the Tsimshian villages has conceived in the 'land of the otters' and miraculously gives birth to 'the Little Otter'. She returns with her child to the village where her father is the chief. Little Otter catches a large halibut on which his grandfather regales all his fellow chiefs, from all the tribes. He presents his grandson to everybody and enjoins them not to kill him if they come across him in his animal form while out fishing: 'Here is my grandson who has brought this food for you and which I have served to you, my guests.' In this way the grandfather grew rich with all kinds of goods given him when they came to his home to partake of the whales, seals, and fresh fish that Little Otter brought back during the winter famines. But they had forgotten to invite one chief. So, one day when the crew of a boat belonging to the neglected tribe met Little Otter out at sea, holding a large seal in his mouth, the bowman in the boat killed him and took the seal from him. The grandfather and the other tribes searched for Little Otter until they became aware of what had happened to the forgotten tribe. The latter presented its excuses: it did not know who Little Otter was. His mother, the princess, died of grief. The chief who had been the unwitting culprit brought to the chief, the grandfather, all kinds of gifts to expiate his mistake. And the myth concludes:¹⁸¹

'This is why peoples mounted a great festival when the son of a chief was born and was given a name, so that no one should not know who he was.' The potlatch, the distribution of goods, is the basic act of 'recognition', military, juridical, economic, and religious in every sense of the word. One 'recognizes' the chief or his son and becomes 'grateful' to him.¹⁸²

The ritual followed in the Kwakiutl festivals¹⁸³ and those of other tribes in this group sometimes expresses this principle of obligatory invitation. It can happen that a part of the festival begins with the Ceremony of the Dogs. The latter are represented by masked men who leave one house and force an entrance into another. This commemorates the time when the people of the three other clans of the Kwakiutl tribe proper omitted to invite the most high-ranking clan among them, the Guetala.¹⁸⁴ The latter did not wish to remain 'profane' and, entering the house where dances were going on, destroyed everything.

The obligation to accept is no less constraining. One has no right to refuse a gift, or to refuse to attend the potlatch.¹⁸⁵ To act in this way is to show that one is afraid of having to reciprocate, to fear being 'flattened' [i.e. losing one's name] until one has reciprocated. In reality this is already to be 'flattened'. It is to 'lose the weight' attached to one's name.¹⁸⁶ It is either to admit oneself beaten in advance¹⁸⁷ or, on the contrary, in certain cases, to proclaim oneself the victor and invincible.¹⁸⁸ Indeed it seems, at least among the Kwakiutl, that an acknowledged position in the hierarchy, and victories in previous potlatches, allow one to refuse an invitation, or even, when present at a potlatch, to refuse a gift without war ensuing. Yet then the potlatch becomes obligatory for the one who has refused; in particular, he must make even richer the 'festival of fat' where this ritual of refusal can in fact be observed.¹⁸⁹ The chief who believes himself to be superior spurns the spoonful of fat presented to him; he goes to fetch his 'copper object' and returns with it

in order to 'put out the fire' (of the fat). There follows a succession of formalities that signify the challenge that binds the chief who has refused to give another potlatch, another 'festival of fat'.¹⁹⁰ But in principle every gift is always accepted and even praised.¹⁹¹ One must voice one's appreciation of the food that has been prepared for one.¹⁹² But, by accepting it one knows that one is committing oneself.¹⁹³ A gift is received 'with a burden attached'.¹⁹⁴ One does more than derive benefit from a thing or a festival: one has accepted a challenge, and has been able to do so because of being certain to be able to reciprocate,¹⁹⁵ to prove one is not unequal.¹⁹⁶ By confronting one another in this way chiefs can place themselves in a comic situation that is surely perceived as such. As in ancient Gaul or Germany, or at our own banquets for students, soldiers, and peasants, one is committed to gulping down large quantities of food, in order to 'do honour', in a somewhat grotesque way, to one's host. Even if one is only the heir of the person who has made the challenge,¹⁹⁷ it is taken up. To refrain from giving, just as to refrain from accepting,¹⁹⁸ is to lose rank—as is refraining from reciprocating.¹⁹⁹

The obligation to reciprocate²⁰⁰ constitutes the essence of the potlatch, in so far as it does not consist of pure destruction. These acts of destruction are very often sacrificial, and beneficial to the spirits. It would seem they need not all be reciprocated unconditionally, particularly when they are the work of a chief recognized in the clan as being superior, or that of a chief of a clan that has itself already been recognized as superior.²⁰¹ However, normally, the potlatch must be reciprocated with interest, as must indeed every gift. The rate of interest generally ranges from 30–100 per cent a year. Even if a subject receives a blanket from his chief for some service he has rendered, he will give two in return on the occasion of a marriage in the chief's family, or the enthronement of the chief's son, etc. It is true that the latter, in his turn, will give

away all the goods that he obtains at future potlatches, when the opposing clans will heap benefits upon him.

The obligation to reciprocate worthily is imperative.²⁰² One loses face for ever if one does not reciprocate, or if one does not carry out destruction of equivalent value.²⁰³

The punishment for failure to reciprocate is slavery for debt. At least, this functions among the Kwakiutl, the Haïda, and the Tsimshian. It is an institution really comparable in nature and function to the Roman *nexum*. The individual unable to repay the loan or reciprocate the potlatch loses his rank and even his status as a free man. Among the Kwakiutl, when an individual whose credit is poor borrows, he is said to 'sell a slave'. There is no need to point out the identical nature of this and the Roman expression.²⁰⁴

The Haïda²⁰⁵ even say—as if they had discovered the Latin expression independently—regarding a mother who gives a present to the mother of a young chief for a betrothal contracted as a minor, that she has: 'put a thread around him'.

But, just as the Trobriand *kula* is only an extreme case of the exchange of gifts, so the potlatch in societies living on the Northwest American coast is only a kind of monstrous product of the system of presents. At least in lands such as those of the Haïda and the Tlingit, where phratries exist, there still remain considerable traces of the onetime 'total services', which, moreover, are so characteristic of the Athapascans, the important group of related tribes. Presents are exchanged for any and every reason, for every 'service', and everything is given back later, or even at once, and is immediately given out again.²⁰⁶ The Tsimshian are not very far from having kept to the same rules.²⁰⁷ In numerous cases the rules even appertain apart from the potlatch, among the Kwakiutl.²⁰⁸ We shall not labour this point, which is self-evident. Older writers describe the potlatch no differently, so much so that one may wonder whether it constitutes a distinct institution.²⁰⁹ We recall that among the Chinook, one of the least well-known

tribes, but which might have been among the most important ones to study, the word potlatch signifies gift.²¹⁰

The force of things

One can push the analysis further and demonstrate that in the things exchanged during the potlatch, a power is present that forces gifts to be passed around, to be given, and returned.

First, at least among the Kwakiutl and Tsimshian, the same distinction is made between the various kinds of property as made by the Romans, the Trobriand peoples, and the Samoans. For these there exist, on the one hand, the objects of consumption and for common sharing²¹¹ (I have found no trace of exchanges). And on the other hand, there are the precious things belonging to the family,²¹² the various talismans, emblazoned copper objects, blankets made of skins, or cloth bedecked with emblems. This latter type of object is passed on as solemnly as women hand over at marriage the 'privileges' to their sons-in-law,²¹³ and names and ranks to children and sons-in-law. It is even incorrect to speak in their case of transfer. They are loans rather than sales or true abandonment of possession. Among the Kwakiutl a certain number of objects, although they appear at the potlatch, cannot be disposed of. In reality these pieces of 'property' are *sacra* that a family divests itself of only with great reluctance, and sometimes never.

More detailed observation among the Haïda will reveal the same distinctions between things. The latter have in fact even made the notion of property and fortune divine, as did the Ancients. Through a mythological and religious effort, fairly infrequent in America, they have raised themselves to a level where they have personified an abstraction. English writers refer to the 'Property Woman' about whom there are myths and of whom we have descriptions.²¹⁴ For the Haïda she is nothing less than the mother, the originating goddess of the dominant phratry, that of the Eagles.

Yet on the other hand—and this is a strange fact that awakens very distant recollections of the Asiatic and Ancient world—she seems identical to the ‘queen’,²¹⁵ the main protagonist in ‘the game of sticks’ (‘tip-it’), the one who wins everything and whose name she bears in part. This goddess is to be found in the Tlingit lands,²¹⁶ and the myth about her, if not the worship of her, among the Tsimshian²¹⁷ and the Kwakiutl.²¹⁸

The sum total of these precious things constitutes the magical dower; this is often identical for both donor and recipient, and also for the spirit who has provided the clan with these talismans, or the hero who is the originator of the clan and to whom the spirit has given them.²¹⁹ In any case all these things are always, and in every tribe, spiritual in origin and of a spiritual nature.²²⁰ Moreover, they are contained in a box, or rather in a large emblazoned case²²¹ that is itself endowed with a powerful personality,²²² that can talk, that clings to its owner, that holds his soul, etc.²²³

Each of these precious things, these signs of wealth possesses—as in the Trobriand Islands—its individuality, its name,²²⁴ its qualities, its power.²²⁵ The large abalone shells,²²⁶ the shields that are covered with these shells, the belts and blankets that are decorated with them, the blankets themselves²²⁷ that also bear emblems, covered with faces, eyes, and animal and human figures that are woven and embroidered on them—all are living beings. The houses, the beams, and the decorated walls²²⁸ are also beings. Everything speaks—the roof, the fire, the carvings, the paintings—for the magical house is built,²²⁹ not only by the chief or his people, or the people of the opposing phratry, but also by one’s gods and ancestors. It is the house that both accepts and rejects the spirits and the youthful initiates.

Each one of these precious things²³⁰ possesses, moreover, productive power itself.²³¹ It is not a mere sign and pledge; it is also a sign and a pledge of wealth, the magical and religious symbol of rank and plenty.²³² The dishes²³³ and spoons²³⁴ used

solemnly for eating, and decorated, carved, and emblazoned with the clan's totem or the totem of rank, are animate things. They are replicas of the inexhaustible instruments, the creators of food, that the spirits gave to one's ancestors. They are themselves deemed to have fairylike qualities. Thus things are mixed up with spirits, their originators, and eating instruments with food. The dishes of the Kwakiutl and the spoons of the Haïda are essential items that circulate according to very strict rules and are meticulously shared out among the clans and the families of the chiefs.²³⁵

The 'money of fame'²³⁶

Yet above all it is the emblazoned copper objects²³⁷ that, as basic goods for the potlatch, are the focus of important beliefs and even of a cult.²³⁸ First, in every tribe there exists a cult and a myth regarding copper,²³⁹ which is regarded as a living thing. Copper, at least among the Haïda and the Kwakiutl, is identified with the salmon, which is itself the object of a cult.²⁴⁰ Yet, besides this element of metaphysical and technical mythology,²⁴¹ all these pieces of copper are, each one separately, the subject of individual and particular beliefs. Each important piece of copper in the families of the clan chiefs has its name,²⁴² its own individuality, its own value,²⁴³ in the full sense of the word—magical, economic, permanent, and perpetual—despite the vicissitudes of the potlatch through which they pass, and even beyond the partial or complete acts of destruction they suffer.²⁴⁴

Moreover, they have a power of attraction that is felt by other copper objects, just as wealth attracts wealth, or dignities bring honours in their train, as well as the possession of spirits and fruitful alliances,²⁴⁵—and vice versa. They are alive and move autonomously,²⁴⁶ and inspire other copper objects to do so.²⁴⁷ One of them²⁴⁸ is called among the Kwakiutl 'the attracter of copper objects', and the story depicts how the copper objects

group around it. At the same time the name of its owner is 'property that flows towards me'. Another frequent name for copper objects is: 'the bringer of property'. Among the Haïda and the Tlingit the copper objects form a 'strongpoint' around the princess who brings them;²⁴⁹ elsewhere the chief who has them in his possession²⁵⁰ is rendered invincible. They are 'the flat, divine things'²⁵¹ of the household. Often the myth identifies them all, the spirits that have given the copper objects,²⁵² their owners, and the copper objects themselves.²⁵³ It is impossible to distinguish what makes the strength of spirit in the one and wealth in the other: the copper object speaks, and grumbles.²⁵⁴ It demands to be given away, to be destroyed; it is covered with blankets to keep it warm, just as the chief is buried under the blankets that he is to share out.²⁵⁵

Yet, on the other hand, at the same time as goods, it is wealth²⁵⁶ and good luck that are passed on. It is the initiate's spirit, it is his attendant spirits, that give the initiate possession of copper objects, of talismans that themselves are the means of acquiring other things: other copper objects, wealth, rank, and finally spirits, all things that, moreover, are of equivalent value. All in all, when one considers both the copper objects and the other permanent forms of wealth that are likewise an object of hoarding and of alternating potlatches, masks, talismans, etc.—all are mingled together as regards use and effect.²⁵⁷ Through them one obtains rank; it is because one obtains wealth that one obtains a spirit. The latter, in its turn, takes possession of the hero who has overcome all obstacles. Then again, this hero has his Shaman trances, his ritual dances, and the services of his government [sic] paid for him. Everything holds together, everything is mixed up together. Things possess a personality, and the personalities are in some way the permanent things of the clan. Titles, talismans, copper objects, and the spirits of the chiefs are both homonyms and synonyms²⁵⁸ of the same nature and performing the same function. The circulation of goods follows that of men, women,

and children, of feasts, rituals, ceremonies, and dances, and even that of jokes and insults. All in all, it is one and the same. If one gives things and returns them, it is because one is giving and returning 'respects'—we still say 'courtesies'. Yet it is also because by giving one is giving *oneself*, and if one gives *oneself*, it is because one 'owes' *oneself*—one's person and one's goods—to others.

First conclusion

Thus, in four important population groups we have discovered the following: first, in two or three groups, the potlatch; then the main reason for, and the normal form of the potlatch itself; and what is more, beyond the potlatch, and in all these groups, the archaic form of exchange—that of gifts presented and reciprocated. Moreover, we have identified the circulation of things in these societies with the circulation of rights and persons. We could, if we wanted, stop there. The number, extent, and importance of these facts justifies fully our conception of a regime that must have been shared by a very large part of humanity during a very long transitional phase, one that, moreover, still subsists among the peoples we have described. These phenomena allow us to think that *this principle of the exchange-gift must have been that of societies that have gone beyond the phase of 'total services' (from clan to clan, and from family to family) but have not yet reached that of purely individual contract, of the market where money circulates, of sale proper, and above all of the notion of price reckoned in coinage weighed and stamped with its value.*

3

SURVIVALS OF THESE PRINCIPLES IN ANCIENT SYSTEMS OF LAW AND ANCIENT ECONOMIES

All the facts set out have been gathered in what we term the ethnographical field. Moreover, they concentrate on the societies that people the borders of the Pacific.¹ Usually these kinds of facts are used as curiosities, or at the most for comparison, to gauge how far our own societies are removed from or resemble these kinds of institutions, which are termed 'primitive'.

However, they have general sociological value, since they allow us to understand a stage in social evolution. But there is more to them than this: they have also a bearing on social history. Institutions of this type have really provided the transition towards our own forms of law and economy. They can serve to explain historically our own societies. The morality and the practice of exchanges employed in societies immediately preceding our own still retain more-or-less important traces of all the principles we have just analysed. We believe, in fact, that

we are in a position to show that our own systems of law and economies have emerged from institutions similar to those we describe.²

We live in societies that draw a strict distinction (the contrast is now criticized by jurists themselves) between real rights and personal rights, things and persons. Such a separation is basic: it constitutes the essential condition for a part of our system of property, transfer, and exchange. Now, this is foreign to the system of law we have been studying. Likewise our civilizations, ever since the Semitic, Greek, and Roman civilizations, draw a strong distinction between obligations and services that are not given free, on the one hand, and gifts, on the other. Yet are not such distinctions fairly recent in the legal systems of our great civilizations? Have these not gone through a previous phase in which they did not display such a cold, calculating mentality? Have they not in fact practised these customs of the gift that is exchanged, in which persons and things merge? The analysis of a few features of Indo-European legal systems will allow us to demonstrate that they have, indeed, undergone this metamorphosis. In Rome we shall find traces of this. In India and ancient Germany it will be the laws themselves, still very much alive, that we shall still see functioning in a comparatively recent era.

I

PERSONAL LAW AND REAL LAW (VERY ANCIENT ROMAN LAW)

A comparison between these archaic laws and Roman law that predates the era, somewhat earlier than before it really becomes historical,³ and Germanic law at the time when it does likewise,⁴ throws light on both types of law. In particular, it allows us to pose

once again one of the most controversial questions in the history of law, the theory of the *nexum*.⁵

In a study that has done more than merely shed light on the matter,⁶ Huvelin has compared the *nexum* to the Germanic *wadium* and generally to the 'additional pledges' (Togo, the Caucasus, etc.) given upon the occasion of a contract and has then compared the pledges to the sympathetic magic and power that is given to the other contracting party by anything that has been in contact with the party proposing the contract. But such an explanation is valid for only some of the facts. The sanction of magic is only possible, and is itself only the consequence of the nature and spiritual character of the thing that is given. First, the additional pledge, and in particular the Germanic *wadium*,⁷ are more than the exchange of pledges, even more than life pledges designed to establish a possible magical hold over the other party. The thing pledged is normally without value: for example, sticks are exchanged, the *stips* in the 'stipulation' of Roman law⁸ and the *festuca notata* in the German 'stipulation'; even the pledges given on account,⁹ of Semitic origin, are more than advances. They are things that themselves are animate. Above all, they are still the residues of former obligatory gifts, that were owed because of reciprocity. The contracting parties are bound by them. In this respect these additional exchanges express, as a fiction, that coming and going of souls and things that are all intermingled with one another.¹⁰ The *nexum*, the legal 'lien', springs from things as much as from men.

This very formalism proves the importance of things. In Quiritary Roman law, the hand over of property—and essential items of property were slaves and cattle, and later immovable property—was in no way common, profane, or simple. The handing over is always solemn and reciprocal.¹¹ It is still carried out as a group: the five witnesses, who at least were friends, and the 'weigher' [arbitrator]. It is mixed up with all kinds of

considerations that are foreign to our purely modern juridical and economic conceptions. The *nexum* that is established is thus, as Huvelin clearly perceived, replete with those religious representations that he merely considered as relating too exclusively to magic.

It is true that the *nexum*, the most ancient form of contract in Roman law, is already separated from the substance of collective contracts and also from the ancient system of gifts that commit one. The prehistory of the Roman system of obligations can never be written with certainty. However, we believe we can point to how it might be investigated.

There is certainly a tie expressed by things, in addition to magical and religious ties: those of the words and actions of juridical formalism.

This link is still marked by a few very ancient legal terms in the law of the Latins and the peoples of ancient Italy. The etymology of a certain number of these terms seems to point in this direction. We set out the following as a hypothesis.

Originally—so much is sure—things themselves had a personality and an inherent power. Things are not the inert objects that the law of Justinian and our own legal systems conceive them to be. First, they form part of the family: the Roman *familia* includes the *res*, and not only people. We still have a definition of them in the *Digesta*.¹² It is most remarkable that, the farther one goes back in Antiquity the more the meaning of the word *familia* denotes the *res* that are part of it, even going so far as to include food and the family's means of subsistence.¹³ The best etymology of the word *familia* is without doubt that which compares it¹⁴ to the Sanskrit *dhaman*, 'house'.

Moreover, things were of two kinds. A distinction was made between *familia* and *pecunia*, between the things of the household (slaves, horses, mules, donkeys) and the cattle subsisting in the fields, far from the stables.¹⁵ A distinction was also made between the *res Mancipi* and the *res nec Mancipi*,

according to the forms of sale.¹⁶ As regards the former, which are made up of precious things, including immovable goods and even children, no disposal of them could take place save according to the precepts of the *mancipatio*,¹⁷ the 'taking (*capere*) in hand (*manu*)'. There is much discussion as to whether the distinction between *familia* and *pecunia* coincided with that between *res Mancipi* and *res nec Mancipi*. For us there is not a shadow of doubt that this coincidence originally existed. The things that did not fall under the *mancipatio* are precisely the small livestock in the fields and the *pecunia*, money, the idea, word, and form of which derived from cattle and sheep. It might be said that the Roman *veteres* make the same distinction that we have just noted in the areas where the Tsimshian and the Kwakiutl live, between the permanent and essential goods of the 'house' (as they still say in Italy and in France) and the things that are transitory: food, the cattle on the distant pastures, metals, and money, in which, after all, even the non-'emancipated' sons could trade.

Next, originally the *res* need not have been the crude, merely tangible thing, the simple, passive object of transaction that it has become. It would seem that the best etymology is one that compares the word to the Sanskrit *rah*, *ratih*,¹⁸ gift, present, something pleasurable. The *res* must above all have been something that gives pleasure to another person.¹⁹ Moreover, the thing is always stamped by a seal, as a mark of family property. Thus one can understand that a solemn handing over,²⁰ *mancipatio*, creates for these things, the *Mancipi*, a legal tie. For, in the hands of the *accipiens*, the thing handed over continues, in part and for a time, to belong to the 'family' of the original owner. It remains bound to him, and binds its present possessor until the latter is freed by the execution of the contract, namely by the compensatory handing over of the thing, price, or service that, in turn, will bind the initial contracting party.

SCHOLIUM—EXPLANATORY NOTE

The notion of the power inherent in a thing has, moreover, in two aspects, never been absent from Roman law: theft, *furtum*, and contracts, *re*.

As regards theft,²¹ the actions and obligations that it entails are patently due to the power inherent in the thing. It possesses within it an *aeterna auctoritas*,²² which makes itself felt when it is stolen and lost for good. In this respect the Roman *res* does not differ from Hindu or Haïda property.²³

The *re* contracts constitute four of the most important legal contracts: borrowing, deposit, pledge, and *commodate*. A certain number of *innominate* contracts also—particularly those we believe to have been, with the contract of sale, at the origin of contract itself: gift and exchange²⁴—are likewise said to be *re* ones. But this was inevitable. Indeed, even in our present legal systems, as in Roman law, here it is not possible to circumvent²⁵ the most ancient rules of law: there must be a thing or service for there to be a gift, and the thing or service must place one under an obligation. For example, it is evident that the cancelling of a gift made on grounds of ingratitude, which occurs in late Roman law,²⁶ but which is a constant factor in our legal systems, is a normal, perhaps even natural, legal institution.

But these isolated facts are proof only in the case of certain contracts. Our thesis is a more general one. We believe that there cannot have been, in the very distant eras of Roman law, a single instant in which the act of the *traditio* of a *res* was not—even in addition to words and documents—one of the essential elements. Roman law, moreover, has always vacillated on this question.²⁷ If, on the one hand, it declares that the solemnity of the exchanges, and at least the contract, is necessary, as the archaic laws we have described lay down, if it said: *nunquam nuda traditio transfert dominium*,²⁸ it likewise declared, although in an era

as late as that Diocletian (A.D. 298):²⁹ *Traditionibus et usucapionibus dominia, non pactis transferuntur*. The *res*, a service or thing, is an essential element in the contract.

Furthermore, all these questions, which have been much debated, are problems that relate to vocabulary and concepts, and, in view of the poverty of the ancient sources, ones that we are very badly qualified to resolve.

Up to this point we have been very sure of our facts. However, it may be permissible to go even farther and perhaps point out to jurists and linguists a broad highway along which search can proceed. At the end of this one may perhaps envisage that a whole legal system had already collapsed by the time of the Twelve Tables, and perhaps well before then. Legal terms other than *familia* and *res* lend themselves to an in-depth study. We shall sketch out a series of hypotheses, each one of which singly is perhaps not very important, but all of which as a whole cannot fail to constitute a fairly considerable body of law.

Almost all the terms of contract and obligation, and a certain number of the forms these contracts take, seem to link up with that system of spiritual bonds created through the crude fact of *traditio*.

First, the contracting party is *reus*,³⁰ he is above all the person who has received the *res* of another, and thereby becomes his *reus*, i.e. the individual who is linked to him by the thing itself, namely by his spirit.³¹ The etymology of this has already been suggested. It has often been contradicted on the grounds that it made no sense. On the contrary, its meaning is very clear. Indeed, as Hirn notes,³² *reus* is originally a genitive in -os of *res* and replaces *rei-jos*. It is the man possessed by the thing. It is true that Hirn, and Walde who reproduces it,³³ here translate³⁴ *res* by 'trial' and *rei-jos* by 'involved in the trial'. But this translation is arbitrary, and assumes that *res* is above all a procedural term. On the contrary, if our semantic derivation is accepted, since every *res* and every *traditio* of *res* is the object of an 'affair', a public 'trial',

it can be realized that the meaning of being 'involved in the trial' is, on the contrary, a secondary meaning. It is even more the case that the meaning of 'guilty' for *reus* is one still more derived. We would trace the genealogy of the meaning in a way that is directly the opposite to that ordinarily followed. We would say: (1) the individual possessed by the thing; (2) the individual involved in the matter caused by the *traditio* of the thing; (3) finally, the guilty one and the one responsible.³⁵ From this viewpoint all the theories of 'quasi-offence' as the origin of a contract, of *nexum* and *actio*, become a little clearer. The mere fact of having the thing puts the *accipiens* in an uncertain state of quasi-culpability (*damnatus, nexus, aere obaeratus*), of spiritual inferiority and moral inequality (*magister, minister*),³⁶ in relation to the one delivering (*tradens*) the contract.

We likewise link to this system of ideas a certain number of very ancient characteristics of the form still practised, if not understood, of the *mancipatio*,³⁷ of 'buying and selling', which was to become the *emptio venditio*³⁸ in very ancient Roman law. In the first place we must note that it always includes a *traditio*.³⁹ The first possessor, the *tradens*, displays his property, solemnly detaches himself from his thing, hands it over, and thus 'buys' the *accipiens*. In the second place, the *mancipatio* proper corresponds to this operation. He who receives the thing takes it in his *manus*, and not only acknowledges it as accepted, but acknowledges that he himself is 'sold' until payment has been made. Following the prudent Romans, we customarily consider only the *mancipatio* and understand it as only the assumption of possession, but there are several symmetrically corresponding acts of taking possession, of things and persons, involved in the same operation.⁴⁰

Moreover, there has been much lengthy discussion as to whether the *emptio venditio*⁴¹ corresponds to two separate acts or a single one. As can be seen, we provide yet another reason for saying that we must reckon with two, although they can follow

each other almost immediately in the case of a cash sale. Just as there is in more primitive forms of law the gift, and then the gift reciprocated, in ancient Roman law there is the putting-up for sale, and then the payment. Under these conditions one has no difficulty in understanding the whole system, and, in addition, even the act of stipulation.⁴²

It is in fact almost enough to note the solemn formulas used: that of the *mancipatio*, concerning the bronze ingot, that of the acceptance of the gold of the slave buying his freedom⁴³ (this gold 'must be pure, of good quality, profane, and his own'—'*puri, probi, profani, sui*'). The formulas are identical. Moreover they are both echoes of the formulas employed in the oldest form of *emptio*, that of cattle and the slave, which have been preserved for us in the form of *jus civile*.⁴⁴ The second possessor only accepts the thing if it is free from defects, and above all, from defects of magic. And he only accepts it because he can reciprocate or compensate, or pay the price. One should note the expression: '*reddit pretium, reddere*', etc. in which there still appears the root *dare*.⁴⁵

Moreover, Festus has clearly preserved for us the meaning of the term *emere* (to buy), and even the form of law that it expresses. He also says: '*abemito significat demito vel auferto; emere enim antiqui dicebant pro accipere*' (see under *abemito*) and, moreover, he comes back to this meaning: '*Emere quod nunc est mercari antiqui accipiebant pro sumere*' (see under *emere*), which, moreover, is the meaning of the Indo-European word to which the Latin word itself relates. *Emere* is to take, to accept something from someone.⁴⁶

The other term of *emptio venditio* likewise seems to sound a juridical note different from that of the prudent Romans,⁴⁷ for whom there was only barter and gift when there was neither price nor money, the signs of sale. *Vendere*, originally *venum-dare*, is a composite word of an archaic prehistoric type.⁴⁸ Without any doubt it clearly includes an element *dare*, which reminds us of

both gift and transfer. For the other element, it clearly seems to borrow an Indo-European term that already meant, not sale, but the price of sale, Sanskrit *vasnah*, which Hirn⁴⁹ has moreover compared to the Bulgarian word that means dowry, the buying price of a wife.

OTHER INDO-EUROPEAN LAW SYSTEMS

These hypotheses concerning very ancient Roman law relate somewhat to a prehistoric order. The law, morality, and economy of the Latins must have had these forms, but they were forgotten when their institutions entered the historical period. For it is precisely the Romans and Greeks,⁵⁰ who, perhaps, following upon the Semites of the north and west,⁵¹ invented the distinction between personal and real law, separated sale from gift and exchange, isolated the moral obligation and contract, and in particular, conceived the difference that exists between rites, laws, and interests. It was they who, after a veritable, great, and admirable revolution, went beyond all the outmoded morality, and this economy of the gift. It was too dependent on chance, was overexpensive and too sumptuous, burdened with consideration for people, incompatible with the development of the market, commerce, and production, and, all in all, at that time was anti-economic.

Furthermore, all our work of reconstitution leads only to a likely hypothesis. Yet the degree of probability in any case increases, because other Indo-European systems of law, authentic written law, have undoubtedly known, in times that are already historical and relatively close to our own, a system of the kind that we have described in the societies of Oceania and America, which are commonly called primitive, and are, at the very most, archaic. Accordingly, we can generalize with some certainty.

The two kinds of Indo-Germanic law that have best preserved traces of this are Germanic and Hindu law. They are also ones for which we have numerous written texts.

II

CLASSICAL HINDU LAW⁵²: THEORY OF THE GIFT

N.B. In using Hindu juridical documents one encounters a fairly serious difficulty. The codes and the epic books that have as much authority were drawn up by the Brahmins, and, one may say, if not for them, at least for their advantage, in the very era of their triumph.⁵³ They show us only a theoretical law system. Thus it is only by an effort at reconstitution, with the help of the numerous admissions that they contain, that we can catch a brief glimpse of what kind of law and economy prevailed among the two other castes, the *ksatriya* and *vaicya*. In the event, the theory, the 'law of the gift' that we are about to describe, the *danadharma*, is only really applicable to the Brahmins, to the way they solicit and receive a gift—without reciprocating it save through their religious services—and also to the way a gift is their due. Naturally it is this duty of giving to the Brahmins that is subject to numerous injunctions. It is probable that quite different relationships prevailed among the nobility, the princely, families, and, within the numerous castes and races, among the common people. We can scarcely surmise what they were. It is not important: the facts regarding Hindu practice are very widely known.

Ancient India immediately after the Aryan colonization was in fact a land of the potlatch twice over.⁵⁴ First, the potlatch is still found among two very large groups that were once much more numerous, forming the substratum of a great part of the Indian population: the tribes of Assam (Tibeto-Burman) and the tribes of *munda* origin (Austro-Asiatic). We are even entitled to suppose that the tradition of these tribes is the one that subsisted, but against a Brahmin background.⁵⁵ For example,

one might see the vestiges⁵⁶ of an institution comparable to that of the Batak *indjok* and to the other principles of Malayan hospitality in rules that forbid one to eat without having invited the unexpected guest to do so as well: 'he eats the *halahalalah* poison, [he who eats] without his friend joining in'. Moreover, institutions of the same kind, if not of the same species, have left a few traces in the most ancient Veda. As they are found over almost all the Indo-European world,⁵⁷ we have reason to believe that they were brought by the Aryans to India.⁵⁸ The two tendencies doubtless merged at a time that can almost be fixed as contemporaneous with the latter parts of the Veda and with the colonization of the two great plains of the two great rivers, the Indus and the Ganges. Undoubtedly these two traditions also reinforced one another. Thus, as soon as we leave behind the Vedic era of literature, we find that this theory has been extraordinarily developed, as have its usages. The Mahabharata is the story of a gigantic potlatch: the game of dice of the Kauravas against the Pandavas; jousting tournaments and the choice of bridegrooms by Draupadi, the sister and polyandrous wife of the Pandavas.⁵⁹ Other repetitions of the same legendary cycle are to be met with in the finest episodes of the epic—for example, the romance of Nala and Damayanti, as does the whole Mahabharata, tells of the construction and assembling of a house, a game of dice, etc.⁶⁰ But everything is distorted by the literary and theological flavour of the story.

However, the argument we are setting out does not necessitate our analysing these diverse origins and building a hypothetical reconstruction of the entire system.⁶¹ Likewise, the number of classes that were concerned, and the time when it flourished, need not be elaborated in detail in a comparative study. Later, for reasons that do not concern us here, this system of law disappears, except as it works in favour of the Brahmins. Yet one may say that it was certainly in force for six to ten centuries, from the eighth century B.C. to the second or third century A.D. This is sufficient:

the epic and the Brahmin law still survive in the old atmosphere: presents are still obligatory, things have special powers and form part of human persons. Let us confine ourselves to describing these forms of social life and studying the reasons for them. A simple description will be fairly conclusive.

The thing that is given produces its rewards in this life and the next. Here in this life, it automatically engenders for the giver the same thing as itself:⁶² it is not lost, it reproduces itself; in the next life, one finds the same thing, only it has increased. Food given is the food that in this world will return to the giver; it is food, the same food, that he will find in the other world. And it is still food, the same food, that he will find in the series of his reincarnations.⁶³ The water, wells, and springs that are given ensure against thirst;⁶⁴ the clothes, gold, and sunshades, the sandals that allow one to walk on the scorching-hot ground, come back to the giver both in this life and the next. The land given away that yields its harvests for others, causes the affairs of the donor to prosper both in this world and in the next as well as in future rebirths. 'As the waxing of the moon increases day by day, likewise the gift of land once made grows from year to year (from one harvest to the next).'⁶⁵ The earth produces its harvests, its income and taxes, mines and cattle. The gift of it once made enriches both giver and recipient with these same products.⁶⁶ All such juridico-economic theology is developed in infinitely magnificent phrases, in innumerable *centos* of verse, and neither legal codes nor epics cease to harp upon this theme.⁶⁷

The land, the food, and all that one gives are, moreover, personified: they are living creatures with whom one enters into a dialogue, and who share in the contract. They seek to be given away. The land once spoke to the sun hero, Rama, the son of Jamadagni, and when the latter heard its song, he gave it away in its entirety to king Kacyapa himself. The land⁶⁸ told him in its own, doubtless ancient language:

Receive me (the recipient);
 Give me (the donor);
 By giving you will obtain me once more.

And it added, speaking this time in a somewhat Low Brahmin tongue: 'In this world and in the next, what is given away is acquired once more.' A very old code⁶⁹ tells how Anna (food itself made into a god), declaimed the following verse:

He who, without giving me to the gods, to the shades, to his servants and guests, consumes me when prepared, and in his madness (thus) swallows poison, I consume him, I am his death.

But for him who offers up the *agnihotra*, accomplishes the *vaiçvadeva*,⁷⁰ and then eats—contentedly, in purity and faith—what remains after he has fed those that he should feed, for him I become ambrosia, and he has pleasure in me.

It is in the nature of food to be shared out. Not to share it with others is 'to kill its essence', it is to destroy it both for oneself and for others. This is the interpretation, both materialist and idealist, that Brahminism has given to charity and hospitality.⁷¹ Wealth is made to be given away. If there were no Brahmins to receive it, 'vain would be the riches of the rich'.⁷² 'He who eats without knowledge kills the food, and once it is eaten, it kills him.'⁷³ Avarice breaks the circle of the law; rewards and foods are perpetually reborn from one another.⁷⁴

Moreover Brahminism, in this interplay of exchange, as well as in theft, has clearly identified property with the person. The property of the Brahmin is the Brahmin himself. 'The Brahmin's cow is a poison, a poisonous snake', states already the Veda of the magicians.⁷⁵ The old code of Baudhayana⁷⁶ declares: 'The property of the Brahmin kills [the guilty one] with his sons and grandsons; poison is not [poison]; the property of the Brahmin is called poison [par

excellence].’ Property contains in itself its own sanction because it represents what is terrible in the Brahmin. There is even no need for the theft of the Brahmin’s property to be conscious and intended. The entire ‘reading’ of our Parvan,⁷⁷ of the section of the Mahabharata that most concerns us, tells how Nrga, the king of the Yadus, was changed into a lizard, through the sin of his own people, for having given a cow to a Brahmin that belonged to another Brahmin. He who had accepted it in good faith did not want to give it back, not even in exchange for a 100,000 others. It was a part of his household, it constituted one of his own:

It is adapted to the place and the times, it is a good milker, peaceable and very devoted. Its milk is sweet, it is a precious and permanent good in my household, (line 3466)

It (this cow) nourishes a little child of mine who is weak and has been weaned. It cannot be given away by me. (line 3467)

Nor will the one from whom the cow has been removed accept another. It is irrevocably the property of both Brahmins. Faced with the two refusals, the unfortunate king remains under a spell for thousands of years because of the curse that the property carried with it.⁷⁸

Nowhere is the link between the thing given and the donor, between property and its owner, closer than in the rules concerning the gift of the cow.⁷⁹ They are celebrated. By observing them, by feeding himself on barley and cow dung, by sleeping on the ground, king Dharma⁸⁰ (the law), Yudhishthira himself, the principal hero of the epic, becomes a ‘bull’ among kings. For three days and nights the owner of the cow imitates it and observes ‘the wishes of the cow’.⁸¹ He feeds himself solely on the ‘juices of the cow’—water, dung, and urine—one night out of three. (In the urine resides Çri (Fortune) herself.) One night out of three he lies down with

the cows on the ground, as they do, and, adds the commentator, 'without scratching himself, without disturbing the vermin', thus identifying himself, 'in one single soul, with them'.⁸² When he enters the stable, calling the cows by sacred names,⁸³ he adds 'the cow is my mother, the bull is my father', etc. He will repeat the above formula during the act of giving. There comes the solemn moment of transferral. After singing the praises of cows the recipient says:

Those which you are, those I am, become this day of your essence.
By giving you away, I gave myself.⁸⁴ (verse 3676)

and receiving the gift, the recipient (performing the *pratigrahana*),⁸⁵ says:

Mutated (transmitted) in spirit, received in the spirit, let us both glorify
each other, you in the forms of the Soma (moonlike) and Ugra
(sunlike).⁸⁶ (verse 3677)

Other principles of Brahmin law remind us strongly of certain Polynesian, Melanesian, and American customs that we have described. The way of receiving the gift is curiously similar. The Brahmin has an invincible sense of pride. First, he refuses to have anything to do with the transaction. He must not even accept anything that emerges from it.⁸⁷ In a national economy where there were towns, markets, and money, the Brahmin remains true to the type of economy and morality of the ancient Indo-Iranian pastoral peoples, as well as to that of the non-aboriginal and aboriginal peasants of the great plains. He even retains that dignified attitude of the noble,⁸⁸ who is the more offended the more one heaps upon him.⁸⁹ Two 'readings' in the Mahabharata recount how the seven rsi, the great seers, and their retinue, in a time of famine, when they were about to eat the body of the son of the king Cibi, refused the huge presents

and even the golden figs that were offered them by king Çaiyya Vrsadarbha, and replied to him:

○ king, to receive from kings is at first honey, at the end, poison,
(verse 445 and reading 93, verse 34)

There follow two series of curses. The whole theory is even somewhat comical. This entire caste, which lives on gifts, claims to refuse them.⁹⁰ Then it gives way and accepts those that have been spontaneously offered.⁹¹ Then it draws up long lists⁹² of the people from whom it can accept gifts, in what circumstances, and what kind of things,⁹³ going so far as to allow everything in the case of famine,⁹⁴ subject, it is true, to minor acts of expiation being carried out.⁹⁵

This is because the bond established between donor and recipient is too strong for both of them, as in all the systems we have studied previously, and here still more so, they are too closely linked with one another. The recipient puts himself in a position of dependence *vis-à-vis* the donor.⁹⁶ This is why the Brahmin must not 'accept' gifts, and even less solicit them, from the king. A divinity among divinities, he is superior to the king, and would demean himself if he did anything other than take gifts. Moreover, for the king the way of giving is as important as what he gives.⁹⁷

The gift is therefore at one and the same time what should be done, what should be received, and yet what is dangerous to take. This is because the thing that is given itself forges a bilateral, irrevocable bond, above all when it consists of food. The recipient is dependent upon the anger of the donor,⁹⁸ and each is even dependent on the other. Thus one must not eat in the home of one's enemy.⁹⁹

All kinds of archaic precautions are taken. The codes and the epic expatiate upon the theme—as Hindu writers well knew how to do—that gifts, givers, and things given are terms to be

considered relatively,¹⁰⁰ after going into details and with scruples, so no error is committed in the way one gives and receives. It is all a matter of etiquette; it is not like in the market where, objectively, and for a price, one takes something. Nothing is unimportant.¹⁰¹ Contracts, alliances, the passing on of goods, the bonds created by these goods passing between those giving and receiving—this form of economic morality takes account of all this. The nature and intentions of the contracting parties, the nature of the thing given, are all indivisible.¹⁰² The lawyer poet knew how to express perfectly what we seek to describe:

Here there is nothing save a wheel (turning only one way).¹⁰³

III

GERMANIC LAW (THE PLEDGE AND THE GIFT)

Although Germanic societies have not preserved for us such ancient and complete vestiges of their theory of the gift,¹⁰⁴ they nevertheless had a system of exchanges of gifts, given, received, and reciprocated either voluntarily or obligatorily, so clearly defined and well developed that there are few systems so typical.

Germanic civilization was itself a long time without markets.¹⁰⁵ It remained an essentially feudal and peasant society, and the notions and even the terms 'buying price' and 'selling price' seem to be of recent origin.¹⁰⁶ In earlier times it had developed to the extreme the entire system of potlatch, but in particular, the complete system of gifts. The clans within the tribes, the large undivided families within the clans,¹⁰⁷ the tribes one with another, the chiefs among themselves, and even the kings among themselves—all lived to a fairly large extent morally and economically outside the closed confines of the family group. Thus, it was by the form of the gift and the alliance, by pledges

and hostages, by feasts and presents that were as generous as possible, that they communicated, helped, and allied themselves to one another. We have seen earlier the whole range of presents borrowed from the Havamal. In addition to this beautiful landscape of the *Edda saga*, we shall point out three facts.

A detailed study of the very rich German vocabulary of the words derived from *geben* and *gaben* has not yet been made.¹⁰⁸ They are extraordinarily numerous: *Ausgabe*, *Abgabe*, *Hingabe*, *Liebesgabe*, *Morgengabe*, the very curious *Trostgabe* (consolation prize), *vorgeben*, *vergeben* (to waste, and to forgive), *widergeben* and *wiedergeben*. The study of *Gift*, *Mitgift*, etc., and the study of the institutions that are designated by these words has also yet to be made.¹⁰⁹ On the other hand, the whole system of presents and gifts, its importance in tradition and folklore, including the obligation to reciprocate, are admirably described by Richard Meyer in one of the most appealing works of folklore that we know.¹¹⁰ We can merely refer to it, for the time being drawing attention to the well-chosen remarks concerning the strength of the bond that imposes an obligation, the *Angebinde* that makes up exchange, the offer, the acceptance of that offer, and the obligation to reciprocate.

There is, moreover, an institution that only a short time ago persisted, that doubtless still persists in the morality and economic customs of German villages, and that has an extraordinary importance from the economic viewpoint: it is the *Gaben*,¹¹¹ the exact equivalent of the Hindu *adanam*. At baptisms, first communions, engagement parties, and weddings, the guests—who often include the whole village—for example, after the wedding breakfast, or on the previous day, or the following day (*Guldentag*), present gifts whose value generally greatly exceeds the expense of the wedding. In certain areas of Germany, the *Gaben* constitutes the bride's dowry, which is given to her on the wedding morning. This is known as the *Morgengabe*. In a few places the generosity of these gifts is proof of the fertility of the young couple.¹¹² The contract made through an engagement, the various

gifts that godfathers and godmothers make at different times in life to assist and help (*Helfete*) their grandchildren, are equally important. We recognize this theme, which is still well known in all our own customs, folk tales, and legends concerning the invitation, the curse of those not invited, and the blessing and generosity of those invited, particularly when they are fairies.

A second institution has the same origin. It is the need for a 'pledge' in all sorts of Germanic contracts.¹¹³ The very word *gage* (Fr.) comes from this, from *wadium* (cf. English, *wage*). Huvelin¹¹⁴ has already shown that the Germanic *wadium*¹¹⁵ provided a means of understanding the binding tie of contracts and compared it to the Roman *nexum*. Indeed, as Huvelin interpreted it, the pledge accepted allows the contracting parties in Germanic law to react with one another, since each possesses something of the other. The other, having been the owner of the thing, may have cast a spell upon it, and the pledge was frequently cut in two, half kept by one party and half by the other. Yet upon such an explanation it is possible to superimpose another more accurate one. The magic sanction can intervene. It is not the sole bond. The thing itself, given and committed in the pledge, is a bond by virtue of its own power. First, the pledge is compulsory. In Germanic law any contract, whether for sale or purchase, for loan or deposit, includes the constitution of a pledge. An object, generally of little value, is given to the other contracting party; a glove, a coin (*Treugeld*), a knife—or (as in France today) pins that will be returned when payment for the thing handed over has been made. Huvelin already notes that the thing is of little value, and normally is personal. He rightly compares this act with the theme of the 'life-token'.¹¹⁶ The thing passed on in this way is indeed very much infused with the individuality of the donor. The fact that it is in the hands of the recipient stimulates the contracting party to carry out the contract, to redeem himself by redeeming the thing. Thus the *nexum* is in the thing, and not merely in the magical acts, or only the solemn forms of the contract, the words, the oaths, the rituals exchanged, or the

shaking of hands. It is in it, as it is in the documents, the 'acts' of magical value, and the 'tallies' that each contracting party retains, the meals taken in common, in which everyone partakes of the substance of everybody else.

Two features of the *wadiatio* demonstrate, moreover, this power that is inherent in the thing. First, the pledge is not only a binding obligation, but also binds the honour,¹¹⁷ authority, and *mana* of the one who hands it over.¹¹⁸ The latter remains in a position of inferiority so long as he is not freed from his pledge-wager. For the word *Wette*, *wetten*,¹¹⁹ that the *wadium* of the laws translates, has as much the meaning of 'wager' as of 'pledge'. It is the prize of a competition and the sanction of a challenge even more directly than it is a means of constraint upon the debtor. So long as the contract is not completed, he is, as it were, the loser of the wager, the one who comes second in the race. Thus he loses more than he commits himself to, more than he will have to pay. This is without taking into account that he runs the risk of losing what he has received, which the owner will claim back from him, so long as the pledge has not been redeemed.

The second characteristic shows the danger inherent in receiving the pledge, for it is not only the giver who commits himself: the recipient also binds himself. Just like the recipient in the Trobriand Islands, he is wary of the thing that has been given. Thus, it is thrown down at his feet¹²⁰ when it is a *festuca notata*,¹²¹ ornamented with Runic characters and notches. When it is a tally of which he may keep a part or not, he receives it on the ground or in his lap (in *laisum*), and not in his hand. The whole ritual takes the form of a challenge and is full of mistrust, giving expression to both. Moreover, in English, at one time 'to cast (down) the gage' was equivalent to the phrase 'to throw (down) the gauntlet'. This is because the pledge, the 'gage', like the thing that is given, holds danger for both parties.

There is a third fact. The danger represented by the thing given or handed on is doubtless nowhere better sensed than in the very

ancient Germanic law and languages. This explains the double meaning of the word Gift in all these languages—on the one hand, a gift, on the other, poison. We have traced elsewhere the semantic history of this word.¹²² This theme of the fatal gift, the present or item of property that is changed into poison is fundamental in Germanic folklore. The Rhine gold is fatal to the one who conquers it, Hagen's cup is mortal to the hero who drinks from it. A thousand stories and romances of this kind, both Germanic and Celtic, still haunt our sensibilities. Let us quote this stanza, in which Hreidmar, a hero of the *Edda* saga,¹²³ replies to the curse of Loki:

You have given gifts,
 But you have not given gifts of love,
 You have not given with a kindly heart.
 You would already have been robbed of your life,
 If I had known earlier of the danger.

CELTIC LAW

Another family among Indo-European societies has certainly known such institutions. This is the family of Celtic peoples. Hubert and I have begun to provide the proof of this statement.¹²⁴

CHINESE LAW

Finally, a great civilization, that of China, has retained from the most ancient times this very principle of law that is our concern. It acknowledges the indissoluble link that binds everything to its original owner. Even today an individual who has sold an item of his property,¹²⁵ even a movable good, preserves his whole life through, vis-à-vis the buyer, a kind of right 'to weep for his property'. Fr Hoang has transcribed models of these 'notes of complaint', which the seller hands to the buyer.¹²⁶ It is a kind

of right of succession over the thing, mingled with a right of succession over the person, and which clings to the buyer a very long time after the thing has been definitively disposed of to another patrimony, and after all the terms of the 'irrevocable' contract have been carried out. Through the thing passed on, even if it is consumable, the alliance that has been contracted is no momentary phenomenon, and the contracting parties are deemed to be in a state of perpetual dependence towards one another.

In Annamite morality, to accept a present is dangerous. Westermarck,¹²⁷ who reports this fact, has perceived some of its importance.

4

CONCLUSION

MORAL CONCLUSIONS

It is possible to extend these observations to our own societies. A considerable part of our morality and our lives themselves are still permeated with this same atmosphere of the gift, where obligation and liberty intermingle. Fortunately, everything is still not wholly categorized in terms of buying and selling. Things still have sentimental as well as venal value, assuming values merely of this kind exist. We possess more than a tradesman morality. There still remain people and classes that keep to the morality of former times, and we almost all observe it, at least at certain times of the year or on certain occasions.

The unreciprocated gift still makes the person who has accepted it inferior, particularly when it has been accepted with no thought of returning it. We are still in the field of Germanic morality when we recall the curious essay by Emerson entitled 'Gifts'.¹ Charity is still wounding for him who has accepted it,² and the whole tendency of our morality is to strive to do away with the unconscious and injurious patronage of the rich almsgiver.

The invitation must be returned, just as 'courtesies' must. Surprisingly, here are to be seen traces of the old, traditional, moral basis, that of the ancient aristocratic potlatches. Here we also see come to the surface these fundamental motives for human activity: emulation between individuals of the same sex,³ that 'basic imperialism' of human beings. On the one hand, it is the social basis, on the other the animal and psychological basis, that appears. In that separate existence that constitutes our social life, we ourselves cannot 'lag behind', as the expression still goes. We must give back more than we have received. The round of drinks is ever dearer and larger in size. Thus, in our childhood, one village family in Lorraine, which normally contented itself with living very frugally, ruined itself for the sake of its guests on saints days, and at weddings, first communions, or funerals. One must act the 'great lord' upon such occasions. It may even be said that one section of our people is constantly behaving like this, and spends with the utmost extravagance on guests and on feast days, and with New Year gifts.

The invitation must be given, and must be accepted. This is still the custom, even in our liberal society. Scarcely fifty years ago, and perhaps even more recently, in certain parts of France and Germany the entire village came to the wedding breakfast. If anyone stayed away it was a very bad omen, a foreboding, proof of envy, and a sign of bad luck. In France, in quite a number of places everybody still takes part in such ceremonies. In Provence, when a child is born, everybody still brings an egg and other symbolic presents.

Things sold still have a soul. They are still followed around by their former owner, and they follow him also. At Cornimont, in a valley of the Vosges, the following custom was common not so long ago and perhaps continues to linger on in certain families: so that animals that had been bought should forget their former master and were not tempted to

return 'home', a cross was traced on the lintel of the stable door, the halter belonging to the seller was kept on the animals, and salt was fed to them. At Raonaux-Bois the animals were given a slice of bread and butter that had been carried three times round the dairy and was held out to them with the right hand. It is true that this was only for the larger livestock that, since the stable was part of the house, were part of the family. But a number of other French customs denote that the thing sold must be detached from the seller, by, for example, striking the thing that is sold, or by whipping the sheep that is sold, etc.⁴

One might even say that a whole section of the law, that relating to industrialists and businessmen, is nowadays at odds with morality. The economic prejudices of the people, the producers, arise from their firm determination to follow the thing they have produced, and from the strong feeling they have that their handiwork is resold without their having had any share of the profit.

Nowadays the old principles react against the rigour, abstraction, and inhumanity of our legal codes. From this viewpoint it may be said that a whole section of our law that is just emerging, with certain customs, consists of turning back the clock. This reaction against the Roman and Saxon (sic) [Northern?] insensitivity of our system is perfectly healthy and well founded. A few new principles of law and custom may be interpreted in this way.

It took a considerable period of time to acknowledge proprietorship in artistic, literary, and scientific work, beyond the peremptory action of selling the manuscript, the first machine, or the original work of art. In fact, societies are not very interested in recognizing for the heirs of an author or an inventor—a benefactor of humanity—more than certain limited rights over the things created by the one that owns those rights. One likes to assert that they are the product of the collective mind as much as

of individual mind. Everyone wishes them to fall into the public domain or join in the general circulation of wealth as quickly as possible. However, the scandal of the additional value acquired by paintings, sculptures, and objects d'art, during the lifetime of their creators or their immediate heirs, inspired the French law of September 1923 that gives to the artist and his inheritors a 'right of succession' over the series of additional gains made during the successive sales of their works.⁵

All our social insurance legislation, a piece of state socialism that has already been realized, is inspired by the following principle: the worker has given his life and his labour, on the one hand to the collectivity, and on the other hand, to his employers. Although the worker has to contribute to his insurance, those who have benefited from his services have not discharged their debt to him through the payment of wages. The state itself, representing the community, owes him, as do his employers, together with some assistance from himself, a certain security in life, against unemployment, sickness, old age, and death.

Even recent ingenious strategems, for example, the family assistance funds that our French industrialists have freely and energetically developed for the benefit of workers with family obligations, represent a spontaneous response to this need to forge links with individuals, to take into account the burdens they have to bear, and the varying degrees of material and moral interest that such burdens represent.⁶ Similar bodies operate in Germany and Belgium with just as much success. In Britain, during this time of terrible, long drawn-out unemployment affecting millions of workers, an entire movement is emerging in favour of insurance against unemployment, which would be obligatory and organized through corporate bodies. The municipalities and the state are tired of shouldering this immense expense of payments to the unemployed, whose root cause lies in industry and market conditions alone. Thus distinguished economists and captains of

industry such as Mr Pybus and Sir Lynden (sic) Macassey are urging that firms themselves, through their corporate associations, should organize these unemployment funds, and themselves make such sacrifices. In short, they would like the cost of security for the worker and his defence against being out of work to become part of the general expenses of each individual industry.

All such morality and legislation corresponds in our opinion, not to any upheaval in the law, but a return to it.⁷ On the one hand, one is seeing the dawning, and even the realization, of professional morality and corporate law. The compensatory funds and mutual benefit societies that industrial groupings are setting up in order to finance corporate charitable works, from a purely moral viewpoint are entirely admirable, save on one score: they are run entirely by the employers. Moreover, it is groups that are acting: the state, the municipalities, institutions of public assistance, pension funds, savings banks, mutual benefit societies, employers, and wage-earners. They are all in association together, as, for example, under the social legislation existing in Germany and Alsace-Lorraine. Very soon they will be similarly associated in French social security schemes. Thus we are returning to a group morality.

On the other hand, the state and its subordinate grouping desire to look after the individual. Society is seeking to rediscover a cellular structure for itself. It is indeed wanting to look after the individual. Yet the mental state in which it does so is one in which are curiously intermingled a perception of the rights of the individual and other, purer sentiments: charity, social service, and solidarity. The themes of the gift, of the freedom and the obligation inherent in the gift, of generosity and self-interest that are linked in giving, are reappearing in French society, as a dominant motif too long forgotten.

But to note the fact is not enough. One must deduce practice from it, and a moral precept. It is not sufficient to say that the law is in the process of ridding itself of a few abstractions such as the

distinction between real law and personal law; or that it is intent on adding other rights to the cold-hearted law of sale and payment for services. It must be said that this is a salutary revolution.

First of all, we return, as return we must, to habits of 'aristocratic extravagance'. As is happening in English-speaking countries and so many other contemporary societies, whether made up of savages or the highly civilized, the rich must come back to considering themselves—freely and also by obligation—as the financial guardians of their fellow citizens. Among ancient civilizations, from which ours has sprung, some had a (debtors') jubilee, others liturgies (of duty) such as choregies and trierarchies, and *syussitia* (meals in common), and the obligatory expenditure by the aedile and the consular dignitaries. We should return to laws of this kind. Then there must be more care for the individual, his life, his health, his education (which is, moreover, a profitable investment), his family, and their future. There must be more good faith, more sensitivity, more generosity in contracts dealing with the hiring of services, the letting of houses, the sale of vital foodstuffs. And it will indeed be necessary to find a way to limit the rewards of speculation and interest.

However, the individual must work. He should be forced to rely upon himself rather than upon others. On the other hand, he must defend his interests, both personally and as a member of a group. Over-generosity, or communism, would be as harmful to himself and to society as the egoism of our contemporaries and the individualism of our laws. In the *Mahabharata* a malevolent genie of the woods explains to a Brahmin who gave away too much, and too injudiciously: 'That is why you are thin and pale.' The life of the monk, and the life of a Shylock are both equally to be shunned. This new morality will surely consist of a good but moderate blend of reality and the ideal.

Thus we can and must return to archaic society and to elements in it. We shall find in this reasons for life and action that are still

prevalent in certain societies and numerous social classes: the joy of public giving; the pleasure in generous expenditure on the arts, in hospitality, and in the private and public festival. Social security, the solicitude arising from reciprocity and cooperation, and that of the occupational grouping, of all those legal entities upon which English law bestows the name of 'Friendly Societies'—all are of greater value than the mere personal security that the lord afforded his tenant, better than the skimpy life that is given through the daily wages doled out by employers, and even better than capitalist saving—which is only based on a changing form of credit.

It is even possible to conceive what a society would be like in which such principles were the rule. In the liberal professions of our great nations to some extent a morality and an economy of this kind already flourish. For them honour, disinterestedness, corporate solidarity are not vain words, nor do they run counter to the necessities of work. Let us humanize in the same way other occupational groupings and improve them still further. This will represent great progress, as Durkheim has often advocated.

In so doing, we shall return, I think, to the enduring basis of law, to the very principle of normal social life. We must not desire the citizen to be either too good or too individualist nor too insensitive or too realist. He must have a keen sense of awareness of himself, but also of others, and of social reality (in moral matters is there even any other kind of reality?) He must act by taking into account his own interests, and those of society and its subgroups. This morality is eternal; it is common to the most advanced societies, to those of the immediate future, and to the lowest imaginable forms of society. We touch upon fundamentals. No longer are we talking in legal terms: we are speaking of men and groups of men, because it is they, it is society, it is the feelings of men, in their minds and in flesh and blood that at all times spring into action and that have acted everywhere.

Let us demonstrate this. The system that we propose to call the system of 'total services', from clan to clan—the system in which individuals and groups exchange everything with one another—constitutes the most ancient system of economy and law that we can find or of which we can conceive. It forms the base from which the morality of the exchange-through-gift has flowed. Now, that is exactly the kind of law, in due proportion, towards which we would like to see our own societies moving. To make these distant phases of law understood, here are two examples, borrowed from extremely different societies.

During a *corroboree* (a public drama dance) at Pine Mountain,⁸ in mid-west Queensland, each individual in turn enters the consecrated place, bearing in one hand his spear-slinger, and with his other hand behind his back. He throws his weapon from a circle at the other end of the dance area, at the same time calling out the place from where he comes, for example: 'Kunyan is my land'.⁹ He stops for moment, and during this time his friends 'put a present', a spear, a boomerang, or some other weapon, into his other hand. 'A good warrior can thus receive more than his hand can hold, particularly if he has daughters to marry off.'¹⁰

In the Winnebago tribe (the Sioux tribe), the chiefs of the clans very typically give speeches to their fellow chiefs¹¹ from other tribes that are models of that etiquette¹² widespread in all the Indian civilizations of North America. Each clan cooks food and prepares tobacco for the representatives of the other tribes, during the clan's festival. Here, for example, are excerpts from the speech made by the chief of the Snake clan:¹³

I greet you. It is good. How could I do otherwise? I am a poor, worthless man and you have remembered me. It is good... You have thought of the spirits and you have come to sit down with me...Soon your dishes will be filled. So I greet you once again, you humans that take the place of the spirits. Etc.

And when each chief has eaten, and has put offerings of tobacco into the fire, the final form of words sets out the moral effect of the festival, and all the services that have been rendered:

I thank you for having come to sit down in this seat, I am grateful to you. You have encouraged me...The blessings of your grandfathers who have enjoyed revelations (and who are incarnate in you) are equal to those of the spirits. It is good that you have taken part in my festival. As our ancestors have said, this must be: 'Your life is weak and you can only be strengthened by the counsel of the braves.' You have counselled me... This is life for me.

Thus, from one extreme of human evolution to the other, there are no two kinds of wisdom. Therefore let us adopt as the principle of our life what has always been a principle of action and will always be so: to emerge from self, to give, freely and obligatorily. We run no risk of disappointment. A fine Maori proverb runs:

Ko Maru kai atu
Ko maru kai mai
ka ngohe ngohe.

'Give as much as you take, all shall be very well.'¹⁴

II

CONCLUSIONS FOR ECONOMIC SOCIOLOGY AND POLITICAL ECONOMY

These facts not only throw light upon our morality and help to direct our ideals. In their light, we can analyse better the most general economic facts, and even this analysis helps us dimly to perceive better organizational procedures applicable in our societies.

Several times we have seen how far this whole economy of the exchange-through-gift lay outside the bounds of the so-called natural economy, that of utilitarianism. All these very considerable phenomena of the economic life of all peoples—let us say, to fix things firmly in our minds, that they represent fittingly the great Neolithic civilization—and all these important vestiges of those traditions in societies close to our own, or of our own customs, fall outside the schemes normally put forward by those rare economists who have wished to compare the various types of known economies.¹⁵ We therefore add our own repeated observations to those of Malinowski, who has devoted an entire study to ‘exploding’ current doctrines concerning ‘primitive’ economy.¹⁶

From this there follows a very solid chain of facts: the notion of value functions in these societies. Very large surpluses, speaking in absolute terms, are amassed. They are often expended to no avail, with comparatively enormous luxury,¹⁷ which is in no way commercial. These are the signs of wealth, and kinds of money¹⁸ are exchanged. Yet the whole of this very rich economy is still filled with religious elements. Money still possesses its magical power and is still linked to the clan or to the individual.¹⁹ The various economic activities, for example the market, are suffused with rituals and myths. They retain a ceremonial character that is obligatory and effective.²⁰ They are full of rituals and rights. In this light we can already reply to the question that Durkheim posed concerning the religious origin of the notion of economic value.²¹ The facts also answer a host of questions concerning the forms and reasons behind what we so ineptly term exchange, the ‘barter’, the *permutation*²² of useful things, that, in the wake of the prudent Romans, who were themselves following Aristotle,²³ an *a priori* economic history places at the origin of the division of labour. It is indeed something other than utility that circulates in societies of all kinds, most of which are already fairly enlightened. The clans,

the generations, and the sexes generally—because of the many different relationships to which the contracts give rise—are in a perpetual state of economic ferment and this state of excitement is very far from being materialistic. It is far less prosaic than our buying and selling, our renting of services, or the games we play on the Stock Exchange.

However, we can go even farther than we have gone up to now. One can dissolve, jumble up together, colour and define differently the principal notions that we have used. The terms that we have used—present and gift—are not themselves entirely exact. We shall, however, find no others. These concepts of law and economics that it pleases us to contrast: liberty and obligation; liberality, generosity, and luxury, as against savings, interest, and utility—it would be good to put them into the melting pot once more. We can only give the merest indications on this subject. Let us choose,²⁴ for example, the Trobriand Islands. There they still have a complex notion that inspires all the economic acts we have described. Yet this notion is neither that of the free, purely gratuitous rendering of total services, nor that of production and exchange purely interested in what is useful. It is a sort of hybrid that flourished.

Malinowski has made a serious attempt at classifying,²⁵ from the point of view of motives of self-interest and disinterestedness, all the transactions that he noted among the Trobriand Islanders. He gradates them between the pure gift and pure barter after bargaining has taken place.²⁶ This classification is in reality inapplicable. Thus, according to Malinowski, the type of pure gift would be the gift between man and wife.²⁷ But, in our view, precisely one of the most important facts reported by Malinowski and one that throws a brilliant light upon all sexual relationships throughout humanity, consists of comparing the *mapula*,²⁸ the 'constant' payment made by the man to his wife, as a kind of salary for sexual services rendered.²⁹ Likewise the presents made to the chief are a tribute paid; the distributions of food (*sagali*)

are rewards for work or rituals performed, for example, in the case of funeral vigils.³⁰ All in all, just as these gifts are not freely given, they are also not really disinterested. They already represent for the most part total counter-services, not only made with a view to paying for services or things, but also to maintaining a profitable alliance,³¹ one that cannot be rejected. Such, for example, is the alliance between tribes of fishermen³² and tribes of farmers or pottery-makers. Now, this is a general fact. We have met it, for example, in the Maori and Tsimshian areas, etc.³³ We can therefore see where this force resides. It is one that is both mystical and practical, one that ties clans together and at the same time divides them, that divides their labour, and at the same time constrains them to carry out exchange. Even in these societies, the individual and the group, or rather the subgroup, have always felt they had a sovereign right to refuse a contract. It is this that gives the stamp of generosity to this circulation of goods. On the other hand they normally had neither the right to, nor any interest in refusing. It is this that makes these distant societies nevertheless related to our own.

The use of money might suggest other reflections. The *vaygu'a* of the Trobriands, bracelets and necklaces, just as the copper objects of the American Northwest or the *wampun* of the Iroquois, are both riches, signs of wealth,³⁴ and means of exchange and of payment, but also things that must be given, or even destroyed. However, these are still pledges linked to the persons that use them, and these pledges bind them. Since, on the other hand, they already serve as indicators of money, one has an interest in giving them away so as to be able to possess yet other objects, by transforming them into goods or services that, in their turn, can be transformed again into money. One might really say that the Trobriand or Tsimshian, although far removed from him, proceeds like the capitalist who knows how to dispose of his ready cash at the right time, in order to reconstitute at a later date this mobile form of capital. Self-interest and

disinterestedness likewise explain this form of the circulation of wealth and that of the archaic circulation of the signs of wealth that ensue.

Even pure destruction of wealth does not signify that complete detachment that one might believe to be found in it. Even these acts of greatness are not without egoism. The purely sumptuary form of consumption (which is almost always exaggerated and often purely destructive), in which considerable amounts of goods that have taken a long time to amass are suddenly given away or even destroyed, particularly in the case of the potlatch,³⁵ give such institutions the appearance of representing purely lavish expenditure and childish prodigality. In effect, and in reality, not only are useful things given away and rich foods consumed to excess, but one even destroys for the pleasure of destroying. For example, the Tsimshian, Tlingit, and Haïda chiefs throw these copper objects and money into the water. The Kwakiutl chiefs smash them, as do those of the tribes allied to them. But the reason for these gifts and frenetic acts of wealth consumption is in no way disinterested, particularly in societies that practise the potlatch. Between chiefs and their vassals, between vassals and their tenants, through such gifts a hierarchy is established. To give is to show one's superiority, to be more, to be higher in rank, *magister*. To accept without giving in return, or without giving more back, is to become client and servant, to become small, to fall lower (*minister*).

The magic ritual of the *kula* called the *mwasila*³⁶ is full of formulas and symbols that demonstrate that the potential contracting party seeks above all this advantage of social superiority—one might almost say brute superiority. Thus, having cast a spell over the betel nut that they are going to use with their partners, after having cast a spell over the chief, his comrades, their pigs, the necklaces, then the head and its orifices, plus everything that is brought there, the *pari*, the opening gifts,

etc....after having cast a spell over all these, the magician sings, not without exaggeration:³⁷

I topple the mountain, the mountain moves, the mountain crumbles away, etc....My charm goes to the summit of the Dobu mountain...My boat is going to sink...etc. My fame is like that of the lightning. My tread is like that of the flying witch doctors, the Tudududu.

To be first, the most handsome, the luckiest, the strongest, and wealthiest—this is what is sought after, and how it is obtained. Later, the chief gives proof of his *mana* by redistributing what he has just received to his vassals and relations. He sustains his rank among the chiefs by giving back bracelets for necklaces, hospitality for visits, etc. In this case riches are from every viewpoint as much a means of retaining prestige as something useful. Yet are we sure that it is any different in our own society, and that even with us riches are not above all a means of lording it over our fellow men?

Let us now put to the test the other notion that we have just opposed to that of the gift and disinterestedness: the notion of interest, of the individual search after what is useful. This does not present itself either as it functions in our own minds. If some equivalent reason animates the Trobriand or American Indian chiefs, the Andaman clans, etc., or once motivated generous Hindus, and Germanic or Celtic nobles, as regards their gifts and expenditure, it is not the cold reasoning of the merchant, the banker, and the capitalist. In those civilizations they are concerned with their own interest, but in a different way from our own age. They hoard, but in order to spend, to place under an obligation, to have their own 'liege men'. On the other hand, they carry on exchange, but it is above all in luxury articles, ornaments or clothes, or things that are consumed immediately, as at feasts. They repay with interest, but this is in order to humiliate the person

initially making the gift or exchange, and not only to recompense him for loss caused to him by 'deferred consumption'. There is self-interest, but this self-interest is only analogous to what allegedly sways us.

A relatively amorphous and disinterested economic system exists within subgroups, that regulates the life of the Australian clans or those of North America (the East and the Prairies). On the other hand there exists also the individualistic and purely self-interested economy that our own societies have experienced at least in part, as soon as it was discovered by the Semitic and Greek peoples. Between these two types there is an entire and immensely gradated series of institutions and economic events, and this series is not governed by the economic rationalism whose theory we are so willing to propound.

The very word 'interest' is itself recent, originally an accounting technique: the Latin word *interest* was written on account books against the sums of interest that had to be collected. In ancient systems of morality of the most epicurean kind it is the good and pleasurable that is sought after, and not material utility. The victory of rationalism and mercantilism was needed before the notions of profit and the individual, raised to the level of principles, were introduced. One can almost date—since Mandeville's *The Fable of the Bees*—the triumph of the notion of individual interest. Only with great difficulty and the use of periphrasis can these two words be translated into Latin, Greek, or Arabic. Even those who wrote classical Sanskrit, who used the word *artha*, fairly close to our own idea of interest, had a different idea of it from our own, as they did for other categories of action. The sacred books of classical India already divide human activities up as follows: law (*dharma*), interest (*artha*), desire (*kama*). But above all it is a matter of political self-interest—that of the king and the Brahmins, of the ministers, in the kingdom and in each caste. The considerable literature of the *Niticastra* is not concerned with economics.

It is our western societies who have recently made man an 'economic animal'. But we are not yet all creatures of this genus. Among the masses and the elites in our society purely irrational expenditure is commonly practised. It is still characteristic of a few of the fossilized remnants of our aristocracy. *Homo oeconomicus* is not behind us, but lies ahead, as does the man of morality and duty, the man of science and reason. For a very long time man was something different, and he has not been a machine for very long, made complicated by a calculating machine.

Moreover, happily we are still somewhat removed from this constant, icy, utilitarian calculation. We need to carry out an analysis in depth, with statistics, as Halbwachs has done for the working classes, of our own consumption and expenditure, we of the western middle class. How many needs do we satisfy? And how many inclinations do we not satisfy whose ultimate purpose is not one of utility? How much of his income does or can the rich man allocate to his personal utilitarian needs? His expenditure on luxury, on art, on outrageous things, on servants—do not these make him resemble the nobles of former times or the barbarian chiefs whose customs we have described?

Is it good that this should be so? That is a different question. It is perhaps good that there are other means of spending or exchanging than pure expenditure. In our view, however, it is not in the calculation of individual needs that the method for an optimum economy is to be found. I believe that we must remain something other than pure financial experts, even in so far as we wish to increase our own wealth, whilst becoming better accountants and managers. The brutish pursuit of individual ends is harmful to the ends and the peace of all, to the rhythm of their work and joys—and rebounds on the individual himself.

As we have just seen, already important sections of society, associations of our capitalist firms themselves, are seeking as bodies to group their employees together. Moreover, all

syndicalist groupings, whether of employers or wage-earners, claim they are defending and representing the general interest as fervently as the individual interest of their members or even their corporations. These fine speeches, it is true, are adorned with many metaphors. However, we must state that not only morality and philosophy, but even public opinion and political economy itself, are beginning to elevate themselves to this 'social' level. We sense that we cannot make men work well unless they are sure of being fairly paid throughout their life for work they have fairly carried out, both for others and for themselves. The producer who carries on exchange feels once more—he has always felt it, but this time he does so acutely—that he is exchanging more than a product of hours of working time, but that he is giving something of himself—his time, his life. Thus he wishes to be rewarded, even if only moderately, for this gift. To refuse him this reward is to make him become idle or less productive.

Perhaps we may point out a conclusion that is both sociological and practical. The famous Sourate LXIV, 'mutual disappointment' (the Last Judgement) given to Mahomet at Mecca, says of God:

15. Your wealth and your children are your temptation, whilst God holds in reserve a magnificent reward.
16. Fear God with all your might; listen and obey, give alms (*sadaqa*) in your own interest. He who is on his guard against his avarice will be happy.
17. If you make a generous loan to God, he will pay you back double; he will forgive you because he is grateful and long-suffering.
18. He knows things visible and invisible, he is the one powerful and wise.

Substitute for the name of Allah that of society and the occupational grouping, or put together all three names, if you are religious. Replace the concept of alms by that of co-operation,

of a task done or service rendered for others. You will then have a fairly good idea of the kind of economy that is at present laboriously in gestation. We see it already functioning in certain economic groupings, and in the hearts of the masses, who possess, very often better than their leaders, a sense of their own interests, and of the common interest.

Perhaps by studying these obscure aspects of social life we shall succeed in throwing a little light upon the path that our nations must follow, both in their morality and in their economy.

III

CONCLUSION REGARDING GENERAL SOCIOLOGY AND MORALITY

May we be allowed a further remark about the method we have followed? We have no wish to put forward this study as a model to be followed. It only sets out bare indications. It is not sufficiently complete and the analysis might be pushed still farther.³⁸ We are really posing questions to historians and ethnographers, and putting forward subjects for enquiry rather than resolving a problem and giving a definitive answer. For the time being it is enough for us to be persuaded that in this direction numerous facts will be discovered.

Yet, if this is so, it is because in this way of treating a problem there lies a heuristic principle we should like to bring out. The facts that we have studied are all, if we may be allowed the expression, *total social facts*, or, if one wishes—although we do not like the word—general ones. That is to say, in certain cases they involve the totality of society and its institutions (potlatch, clans confronting one another, tribes visiting one another, etc.), and in other cases only a very large number of institutions, particularly when these exchanges and contracts rather concern the individual.

All these phenomena are at the same time juridical, economic, religious, and even aesthetic and morphological, etc. They are juridical because they concern private and public law, and a morality that is organized and diffused throughout society; they are strictly obligatory or merely an occasion for praise or blame; they are political and domestic at the same time, relating to social classes as well as clans and families. They are religious in the strict sense, concerning magic, animism, and a diffused religious mentality. They are economic. The idea of value, utility, self-interest, luxury, wealth, the acquisition and accumulation of goods—all these on the one hand—and on the other, that of consumption, even that of deliberate spending for its own sake, purely sumptuary: all these phenomena are present everywhere, although we understand them differently today. Moreover, these institutions have an important aesthetic aspect that we have deliberately omitted from this study. Yet the dances that are carried out in turn, the songs and processions of every kind, the dramatic performances that are given from camp to camp, and by one associate to another; the objects of every sort that are made, used, ornamented, polished, collected, and lovingly passed on, all that is joyfully received and successfully presented, the banquets themselves in which everyone participates; everything, food, objects, and services, even ‘respect’, as the Tlingit say, is a cause of aesthetic emotion, and not only of emotions of a moral order or relating to self-interest.³⁹ This is true not only for Melanesia, but even more especially so for the system of potlatch in the American Northwest, and still more so for the festival-cum-market of the Indo-European world.⁴⁰ Finally, the phenomena are clearly structural. They all occur during assemblies, fairs, and markets, or at least at festivals that take their place. All such festivals presuppose congregations whose duration can exceed one season of social coming together, as do the winter potlatches of the Kwakiutl, or weeks, as do the seafaring expeditions of the Melanesians. Moreover, there must

be roads or at least trails, and seas and lakes across which one may peaceably transport oneself. There must be tribal, intertribal, or international alliances, those of the *commercium* and the *connubium*.⁴¹

Thus these are more than themes, more than the bare bones of institutions, more than complex institutions, even more than systems of institutions divided, for example, into religion, law, economy, etc. They are whole 'entities', entire social systems, the functioning of which we have attempted to describe. We have looked at societies in their dynamic or physiological state. We have not studied them as if they were motionless, in a static state, or as if they were corpses. Even less have we decomposed and dissected them, producing rules of law, myths, values, and prices. It is by considering the whole entity that we could perceive what is essential, the way everything moves, the living aspect, the fleeting moment when society, or men, become sentimentally aware of themselves and of their situation in relation to others. In this concrete observation of social life lies the means of discovering new facts, which we are only beginning dimly to perceive. In our opinion, nothing is more urgent or more fruitful than this study of total social facts.

It has a double advantage. Firstly, there is the advantage of generality. Those facts that relate to the general functioning of society are likely to be more universal than the various institutions, or the various themes that relate to these institutions, which are always more or less accidentally tinged with local colour. But above all such a study has the advantage of reality. Thus one succeeds in seeing the social 'things' themselves, in concrete form and as they are. In societies one grasps more than ideas or rules, one takes in men, groups, and their different forms of behaviour. One sees them moving, as one does masses and systems in mechanics, or as in the sea we notice the octopuses and the anemones. We perceive

numbers of men, forces in motion, who are in movement in their environment and in their feelings.

The historians feel and rightly object to the fact that the sociologists are too ready with abstractions and unduly separate the various elements of societies from one another. We must do as they do: observe what is given. Now, the given is Rome or Athens, the average Frenchmen, the Melanesian from this island or another, and not prayer or law by itself. After having of necessity divided things up too much, and abstracted from them, the sociologists must strive to reconstitute the whole. By so doing they will discover rewarding facts. They will also find a way to satisfy the psychologists. The latter are strongly aware of their privileged position; the psychopathologists, in particular, are certain that they can study the concrete. All these study or should observe, the behaviour of total beings, not divided according to their faculties. We must imitate them. The study of the concrete, which is the study of completeness, is possible, and more captivating, more explanatory still in sociology. For our part, we observe the complete and complex reactions of numerically defined masses of men, complete, complex beings. We, too, observe what constitutes their organism or their psyche. At the same time we describe the behaviour of this mass and its corresponding psychoses: sentiments, ideas, and the volitions of the crowd, or of organized societies and their subgroups. We, too, view entities, and the reactions of those entities, whose ideas and feelings are normally interpretations, and more rarely do we see the reasons for them. The principle and the end of sociology is to perceive the whole group and its behaviour in its entirety.

We have not had time—it would have meant extending unduly a limited subject—to try to perceive at this time the structural basis for all the facts we have indicated. However, it is perhaps useful to indicate, at least as an example, the method we would like to follow, and along what lines we would carry out that research.

All the societies, we have described above, except for our European societies, are segmented. Even Indo-European societies—Roman society before the Twelve Tables, Germanic societies even very late on, up to the writing down of the *Edda* saga, and Irish society up to the creation of its main literature—were still based on the clan and, at the very least the large families, which formed internally a more or less undivided block, being more or less externally isolated from one another. All these societies are or were far from our own state of unification, or the unity that a defective history ascribes to them. Moreover, within these groups, individuals, even those with strong characteristics, were less sad, less serious, less miserly, and less personal than we are. Externally at least, they were or are more generous, more liable to give than we are. The law of friendship and contracts, with the gods, came to ensure ‘peace’ within ‘markets’ and towns. This occurred when groups paid visits to one another at tribal festivals and at ceremonies where clans confronted one another and families allied themselves or began ‘initiations’ with one another. It happened even in more advanced societies when the ‘law of hospitality’ had been developed. Over a considerable period of time and in a considerable number of societies, men approached one another in a curious frame of mind, one of fear and exaggerated hostility, and of generosity that was likewise exaggerated, but such traits only appear insane to our eyes. In all the societies that have immediately preceded our own, and still exist around us, and even in numerous customs extant in our popular morality, there is no middle way: one trusts completely, or one mistrusts completely; one lays down one’s arms and gives up magic, or one gives everything, from fleeting acts of hospitality to one’s daughter and one’s goods. It is in such a state of mind that men have abandoned their reserve and have been able to commit themselves to giving and giving in return.

This was because they had no choice. Two groups of men who meet can only either draw apart, and, if they show mistrust towards

one another or issue a challenge, fight—or they can negotiate. Until legal systems and economies evolved not far removed from our own, it is always with strangers that one ‘deals’, even if allied to them. In the Trobriand Islands the people of Kiriwina told Malinowski:⁴² ‘The men from Dobu are not good like us; they are cruel, they are cannibals. When we come to Dobu, we are afraid of them. They might kill us. But then I spit out ginger root, and their attitude changes. They lay down their spears and receive us well.’ Nothing better interprets this unstable state between festival and war.

One of the best ethnographers, Thurnwald, writing about another Melanesian tribe, giving genealogical statistics,⁴³ describes for us a particular event that also clearly demonstrates how these people, as a group, suddenly pass from festival to battle. Buleau, a chief, had invited another chief, Bobal, and his people to a banquet, probably the first in a long series. They began to rehearse the dances the whole night through. In the morning they were all in a state of nerves from their sleepless night, the dances, and the songs. As a result of a simple remark made by Buleau, one of Bobal’s men killed him. And the rank and file massacred, pillaged, and carried off the women of the village. ‘Buleau and Bobal were rather friendly, and merely rivals’, Thurnwald was told. We have all observed such facts, even around us.

It is by opposing reason to feeling, by pitting the will to peace against sudden outbursts of insanity of this kind that peoples succeed in substituting alliance, gifts, and trade for war, isolation and stagnation.

This is therefore what one may have found at the conclusion of this research. Societies have progressed in so far as they themselves, their subgroups, and lastly, the individuals in them, have succeeded in stabilizing relationships, giving, receiving, and finally, giving in return. To trade, the first condition was to be able to lay aside the spear. From then onwards they succeeded in

exchanging goods and persons, no longer only between clans, but between tribes and nations, and, above all, between individuals. Only then did people learn how to create mutual interests, giving mutual satisfaction, and, in the end, to defend them without having to resort to arms. Thus the clan, the tribe, and peoples have learnt how to oppose and to give to one another without sacrificing themselves to one another. This is what tomorrow, in our so-called civilized world, classes and nations and individuals also, must learn. This is one of the enduring secrets of their wisdom and solidarity.

There is no other morality, nor any other form of economy, nor any other social practices save these. The Bretons, and the *Chronicles of Arthur*⁴⁴ tell how King Arthur, with the help of a Cornish carpenter, invented that wonder of his court, the miraculous Round Table, seated round which, the knights no longer fought. Formerly, 'out of sordid envy', in stupid struggles, duels and murders stained with blood the finest banquets. The carpenter said to Arthur: 'I will make you a very beautiful table, around which sixteen hundred and more can sit, and move around, and from which no-one will be excluded...No knight will be able engage in fighting, for there the highest placed will be on the same level as the lowliest.' There was no longer a 'high table', and consequently no more quarrelling. Everywhere that Arthur took his table his noble company remained happy and unconquerable. In this way nations today can make themselves strong and rich, happy and good. Peoples, social classes, families, and individuals will be able to grow rich, and will only be happy when they have learnt to sit down, like the knights, around the common store of wealth. It is useless to seek goodness and happiness in distant places. It is there already, in peace that has been imposed, in well-organized work, alternately in common and separately, in wealth amassed and then redistributed, in the mutual respect and reciprocating generosity that is taught by education.

In certain cases, one can study the whole of human behaviour, and social life in its entirety. One can also see how this concrete study can lead not only to a science of customs, to a partial social science but even to moral conclusions, or rather, to adopt once more the old word, 'civility', or 'civics', as it is called nowadays. Studies of this kind indeed allow us to perceive, measure, and weigh up the various aesthetic, moral, religious, and economic motivations, the diverse material and demographic factors, the sum total of which are the basis of society and constitute our common life, the conscious direction of which is the supreme art, Politics, in the Socratic sense of the word.

Marcel Mauss