Aus: Encyclopaedia of Religion and Ethics 4 (1911), S. 283-285

animals were put to death; *e.g.* an ox that had gored a man or woman was to be stoned, and its flesh might not be eaten (Ex 21[28. 29. 32], cf. Lv 20[15f.]). Animals and even goods which could be burnt might be destroyed in the *hērem*, or ban (Jos 7[24]). In earlier times the family might be put to death for a crime committed by its head (cf. III. 1), but the practice is forbidden, as already noted, in Dt 24[16].

There is nothing to show at what age young persons became legally responsible for their actions. The census in Nu 1[3] included all males from twenty years old; and the age at which Levites began their service is variously given as twenty-five (Nu 8[24]), or thirty (4[35]), although responsibility must have begun earlier. Nothing is said as to exemption from punishment on account of mental weakness.

Naturally the legal codes did not recognize the principle that the powerful and wealthy might commit crimes with impunity; but they often enjoyed much licence in practice, as is shown by the narratives of Micah and the Danites; of David and Uriah; Amnon, Tamar, and Absalom; and the frequent protests of the prophets.

5. Humanity: adjustment of severity of punishment to heinousness of crime.—The legal codes were evidently anxious that the punishment should be justly proportioned to the offence, hence the obvious principle of equal retaliation, found in the codes of many peoples, of an 'eye for an eye, and a tooth for a tooth,' and the laws providing for compensation for injury to property or person.

The list of capital offences (II. 2. (*a*)) is a little long, and includes some which, according to modern ideas, do not permit so severe a punishment, *e.g.* insult to parents, Sabbath-breaking, etc. But, as we have said, it is doubtful whether death was ever regularly inflicted for ritual offences; and, at any rate, the laws are due to an exaggerated sense of the wickedness of such acts rather than to reckless severity. The use of barbarous punishments—burning alive, mutilation, and flogging—is strictly limited; and there is no trace, either in the Law or in the history, of the torturing of witnesses or accused persons in order to obtain evidence.

The principle of blood-money is recognized only to a very limited extent: Ex 21[28-32] provides that, if an ox known to be dangerous kill any one, the owner shall be put to death, but that 'if there be laid upon him a ransom, then he shall give for the redemption of his life whatsoever is laid upon him'—in the case of a slave thirty shekels to the slave's owner. Similarly, any one flogging his slave to death, without the slave actually dying under the rod, is sufficiently punished by the loss of his slave (Ex 21[20f.]); and in the case of injury to slaves the *lex talionis* is not to be enforced, any mutilation of slaves being atoned for by emancipation (Ex 21[26f.]). So, too, Ex 21[18. 19] permits compensation for bodily injury to a free man. On the other hand, Nu 35[31. 32] (P) prohibits the acceptance of blood-money for intentional murder, or even the release of a man who has committed unintentional homicide from the obligation of remaining in a city of refuge till the death of the high priest.

6. Connexion with methods of administration of justice in other nations.—Israel was always part of the international system which comprised Western Asia and Egypt; and there was a constant action and reaction between the various members of this system. At the outset, Israel was a group of nomad tribes, and the original basis of its Law was the tribal custom of the Bedawīn. The position of the *gō'ēl*, the next-of-kin, the avenger of blood, goes back to this source. The settlement in Canaan must have led to the adoption of many Canaanite laws. Now, Canaan and all Western Asia were, from a very early period, dominated by Babylonia; the conquests of Sargon I. of Akkad (*c.* 2700 B.C.) extended to the Mediterranean, so that the institutions of Canaan were partly shaped by Babylonian influence. But, again, both the Canaanites and the Babylonians probably sprang originally from Arabia; so that Israel, Canaan, and Babylon all drew from an original common stock of tribal customs; and it is very difficult to determine whether a law is a purely Israelite survival from this common stock, or has been derived through Canaan or Babylon. Moreover, during long periods the Egyptian kings exercised a suzerainty over Syria; and Egypt had its share in moulding the life of Canaan (cf. the Amarna tablets, *c.* 1400 B.C.). Something, too, may perhaps be due to the 'bondage' in Egypt; but not much, for the Israelite tribes for the most part lived a nomad life in the border provinces.

The recently discovered Code of Ḫammurabi (king of Babylon, *c.* 2100 B.C.) shows how much the Israelite institutions had in common with those of Babylon. There are numerous parallels between this Code and the Pentateuch, especially the ancient Book of the Covenant, Ex 20[22]-23. Both, for instance, lay down the principle of an 'eye for an eye,' etc.; both prescribe the punishment of death for kidnapping; and both direct that if a man is in charge of some one else's cattle he may clear himself by an oath and need not make compensation. As the Code of Ḫammurabi was certainly known in Babylonia and Assyria as late as the Exile, Israelite legislation may have been influenced by it at any time; but the parallels may be largely due to common dependence on the primitive tradition of Arabia.

In comparing the ethical and religious value of Israelite justice with that of other nations, we have to distinguish the practice of the monarchy and earlier times, as depicted in the history and Ex 20[22]-23, from the ideal set forth in Deuteronomy and the Priestly laws. It will have been seen that our knowledge of the early practice is fragmentary. It is possible, too, that the redactors of the literature suppressed evidence that was discreditable to Israel, though it is not likely that this has been done to any great extent. But, as far as our information goes, it does not appear that the administration of justice in ancient Israel differed conspicuously from that of neighbouring Semitic nations in the same period, as illustrated, for instance, by the Code of Ḫammurabi. And in such matters Israel would compare favourably with Greece, or Rome, or China, or with most Christian nations before the close of the 18th cent. A.D.

The Deuteronomic and Priestly ideal aims at a level of social righteousness which has never been attained in practice, and ranks with the Utopias of modern social reformers. The Priestly legislation is, indeed, disfigured by an undue care for the material interests of the sacerdotal caste; but neither the practice nor the theory of the religious law of Israel includes anything like the Inquisition and similar systems instituted by the Christian Church.

LITERATURE.—Art. 'Crimes and Punishments,' in *HDB*; artt. 'Law and Justice,' in *EBi*, and 'Gericht und Recht bei den Hebräern,' in *PRE*[3] (by **Benzinger**); the relevant sections of the OT *Archæologies* of **Ewald**, **Benzinger**, and **Nowack**; and the standard commentaries on the Pentateuch and other Biblical passages. For the Code of Ḫammurabi, see the art. on that subject by **C. H. W. Johns** in *HDB*, vol. v. p. 584, and **S. A. Cook**, *The Laws of Moses and the Code of Ḫammurabi*, London, 1903.

W. H. BENNETT.

CRIMES AND PUNISHMENTS (Hindu).—**1.** Most of the terms designating 'crime' or 'offence' in Sanskrit are essentially religious in their nature, and no strict line between sins and punishable offences has ever been drawn. The *Dharmaśāstras* (law-books) contain long lists of the

various degrees of crime or guilt—from mortal sins, such as sexual intercourse with one's mother, daughter, or daughter-in-law, down to crimes merely rendering the perpetrator unworthy to receive alms, such as receiving gifts from a despicable person, subsisting by money-lending, telling lies, serving a Śūdra, or to crimes causing defilement, such as killing birds, amphibious and aquatic animals, worms or insects, and eating nutmegs and the like. Analogous lists of sins may be found in the ancient religious literature of the Buddhists of India. Many of these sins recur among the offences mentioned in the secular laws of the Brahmans. Thus the killing of a cow, the sacred animal of the Hindus, is a punishable offence as well as a crime. The commission of a heavy sexual offence is to be visited with punishment by the king, and at the same time the stain caused by such sin is to be removed by religious atonement. Killing a Brahman, or depriving him of his gold, is a crime deserving capital punishment of an aggravated form, no doubt because the religious law affords special protection to the sacred person of a Brahman. Many eccentricities of the criminal law are due to the religious element entering largely into it. Thus the sacredness ascribed to the Vedas comes out in the following rules: a Śūdra listening intentionally to a recitation of the Veda shall have his ears filled with molten tin or lac; if he recites Vedic texts, his tongue shall be cut out; if he remembers them, his body shall be split in twain. The sanctity with which Brahmans are invested has led to establishing the principle that no corporal punishment shall ever be resorted to in the case of a criminal of the Brahman caste. Nor could the banishment of a Brahman be connected with the confiscation of his property, the ordinary consequence of banishment. The Śūdras, on the other hand, were treated very badly, because they were considered to have no share in the re-birth caused for the higher castes by their initiation with a sacred prayer from the Vedas. Thus, *e.g.*, a Brahman who abuses a Śūdra is condemned to pay no fine. A Śūdra, on the contrary, undergoes corporal punishment, if he only assumes a position equal to a member of a high caste, in sitting, in lying down, in conversation, or on a road. Money-lending is viewed as an unholy act; Brahmans are, therefore, forbidden to practise usury. Certain kinds of interest on loans are entirely prohibited. Among sexual crimes, intercourse with the wife of a spiritual teacher is looked upon as a very heavy offence, equal to incest, and so is intercourse with a Buddhist nun. Gambling is stigmatized as a sinful practice, though some legislators do not object to gambling in a public gaming-house, where the king may raise a certain percentage on the stakes. False witnesses are designated as thieves of words. Heaven is the reward of a witness who speaks truth; in the contrary case, hell will be his portion. Other crimes of the Brahmanical law savour of Oriental despotism, as, *e.g.*, when the forgery of a royal document is visited with capital punishment. The caste system becomes visible in the gradation of crimes and punishments according to the caste of the offender, as will be shown below.

2. 'Punishment' (*daṇḍa*) in the Code of Manu (vii. 14 ff.) is personified as a god with a black hue and red eyes, created by the Lord of the World as his son, and as an incarnation of Law, formed of Brahman's glory. Punishment is declared to keep the whole world in order, since without it the stronger would oppress the weaker and roast them, like fish on a spit; the crow would eat the consecrated rice; the dog would lick the burnt oblation; ownership would not remain with any one; and all barriers would be broken through. Punishment is declared to be in truth the king and ruler, although it has to be inflicted by the king on those who deserve it. The king in person should every day decide causes in the court when brought before him, or else he should send a Brahman acting as his deputy. A king when punishing the wicked is comparable to the god Varuṇa, who binds a sinner with ropes. If a king does not strike a thief who approaches him, holding a club in his hand and proclaiming his deed, the guilt falls on the king; the thief, whether he be slain or pardoned, is purified of his guilt. The king should first punish by admonition, afterwards by reproof, thirdly by a fine, after that by corporal chastisement (Manu, viii. 129). As a matter of fact, fines are by far the most common kind of punishment in the criminal code of the Sanskrit law-books, and they were equally common, shortly before the times of British rule, in the Hindu kingdoms of Rājputāna (Tod), Mysore (Dubois), and others. The fines might extend to confiscation of the entire property of a criminal; but in such cases, according to Nārada (xviii. 10 f.), the tools of workmen, the weapons of soldiers, and other necessary implements are to be exempt from confiscation. Capital punishment, in various aggravated forms, such as impaling on a stake, trampling to death by an elephant, burning, roasting, cutting to pieces, devouring by dogs, and mutilations, are also frequently inflicted, even for comparatively light offences. The *jus talionis*, which is so universally represented in archaic legislations, becomes especially conspicuous in these punishments. Thus a criminal is condemned to lose whatever limb he has used in insulting or attacking another. The thievish fingers of a cutpurse, and the evil tongue of a calumniator, are to be cut off. A Śūdra using insulting language is to have a red-hot iron thrust into his mouth, or boiling oil dropped into his mouth and ears. The breaker of a dike shall be drowned. The killer of a Brahman shall be branded with the figure of a headless corpse, a drunkard with the flag of a distillery shop. Banishment, public disgrace, imprisonment, fetters, forced labour, beating, and other forms of chastisement are also mentioned. Brahmans, however, are not to be subject to corporal punishment. Nor is this the only privilege enjoyed by Brahmans, who are allowed special indulgences in almost every case, the reduction of punishment in consideration of the rank of the person being one of the most salient features of the ancient legislation of India. Thus a Kṣatriya insulting a Brahman must be fined 100 paṇas; a Vaiśya doing the same, 150 or 200 paṇas; a Śūdra doing the same must receive corporal punishment. On the other hand, a Brahman shall pay only 50 paṇas for insulting a Kṣatriya, 25 paṇas for insulting a Vaiśya, and nothing at all for insulting a Śūdra. A similar gradation of fines may be observed in the punishment of adultery and many other crimes. If a man insults a Brahman by offering him forbidden food, he shall be amerced in a heavy fine; and, if he gives him spirituous liquor to drink, he shall be put to death. Another characteristic feature of the Indian criminal code is the infliction of worldly punishments for violations of the religious law, as, *e.g.*, when an apostate from religious mendicity is doomed to become the king's slave. King Aśoka, as early as the 3rd cent. B.C., appointed censors who were charged to enforce the regulations concerning the sanctity of animal life, and the observance of filial piety. King Harṣa, in the 7th cent. A.D., inflicted capital punishment on all who ventured to slay any living creature. King Kumārapāla of Gujarāt, in the 12th cent., is said to have confiscated the entire property of a merchant who had committed the atrocious crime of cracking a louse. A Hindu Rājā of Kolhapur, in

A.D. 1716, issued a rescript ordaining due punishment for all those who should be discovered to entertain heretical opinions in his kingdom. This union of Church and State was specially marked under the rule of the Marāthā kings; but even in 1875, when Dr. Bühler visited Kashmīr, he found the Mahārājā eagerly intent on looking after the due performance of the *prāyaśchittas*, or penances prescribed for breaches of the commandments of the *Smṛti*. The enforcement of these religious punishments otherwise rests with the caste, which levies fines for every breach of the caste rules, and, in serious cases, excludes the offender. (See EXPIATION AND ATONEMENT [Hindu].)

LITERATURE.—G. Bühler's and J. Jolly's translations of Sanskrit law-books, *SBE*, vols. ii. vii. xiv. xxv. xxxiii.; J. Tod, *Annals and Antiquities of Rajasthan*, revised ed., Calcutta, 1894; J. A. Dubois, *Hindu Manners, Customs, and Ceremonies*, tr. by Beauchamp, 2nd ed., Oxford, 1899; Sir R. West, 'The Criminal Law and Procedure of the Ancient Hindus,' *Indian Magazine*, 1893; V. A. Smith, *The Early History of India*², Oxford, 1908; K. T. Telang, 'Gleanings from Marāthā Chronicles,' *Trans. 9th Congr. of Orientalists*, London, 1893; A. Steele, *The Law and Custom of Hindoo Castes*, new ed., London, 1868; J. Jolly, *Recht und Sitte*, Strassburg, 1896, pp. 115–448 (=*GIAP* ii. 8).

J. JOLLY.

CRIMES AND PUNISHMENTS (Japanese).—Long before the dawn of Japanese history, Chinese travellers to Japan brought back accounts of that country which contain our earliest information on this subject, dating from the later Han dynasty (A.D. 25–220). One of these notices says: 'There is no theft, and litigation is unfrequent. The wives and children of those who break the laws are confiscated [sold as slaves], and for grave crimes the offender's family is extirpated.' Another account says: 'The laws and customs are strict.' There is not much to be learned about crimes and punishments from the mixture of myth, legend, and chronicle which takes the place of history in Japan for a thousand years previous to the 7th cent. A.D., though we hear of a staff or gild of executioners, and of capital punishment by decapitation; and a punishment by fine had its origin at this time, but it was only for such offences—comparatively few in number—as involved ritual uncleanness according to Shinto. An ordinance, enacted in 801, regularized what was, no doubt, an old practice, by which neglect in connexion with the *ohonihe*, or coronation ceremony, the eating of flesh, visiting the sick, being concerned in any way with capital sentences, or touching anything impure during the month of special avoidance of impurity, subjected the culprit to an *ohoharahi* ('greater purification'), *i.e.* he was obliged to provide the materials for the ceremony of his own purgation. This eventually became simply a fine. Other ritual offences which required purgation were incest, wounds given or received, bestiality, and leprosy. Homicide had to be atoned for in the same way, but the ritual character of the offence appears from the circumstance that even justifiable homicide caused uncleanness.

Weipert thinks that in these fines for ceremonial purification we have 'the first source of Japanese criminal law' (quoted by Florenz in *TASJ* xxvii. [1899] 57); but, in the opinion of the present writer, the evidence hardly bears out this conclusion. Weipert's theory does not account for the gravest of all punishments, that of death, nor does it apply to robbery, rebellion, adultery, arson, and other grave offences. Moreover, the absolution ceremony was seldom performed for individual offences. The Mikado twice a year celebrated a 'great purification' of the offences of the nation, and similar minor celebrations were usual before all the great ceremonies of Shinto. In such cases, of course, the idea of a fine was out of the question. There is abundant evidence that a criminal law existed from very ancient times which had nothing to do with the purgation of ritual offences.

Eventually the fines for ceremonial offences fell into abeyance, owing to a strong current of Chinese influence which set in during the 6th and 7th cents., and which led in 702 to the enactment of the code of civil and criminal law known as the *Taihōriō*. It was based on the laws of the Tang dynasty of China, though modified somewhat in accordance with Japanese usages. The penalties prescribed were five, viz. capital punishment, exile, penal servitude, beating (with a stick), and scourging (with a whip). These are simply copied from the Chinese code. Of the older five punishments of China—branding on the forehead, cutting off the nose, maiming, castration, and death—only the first and last were ever practised in Japan. A *History of Japan*, published by order of the Japanese Government (1893), mentions 'treason, contumely (slander [?]), unfilial conduct, immorality, and so forth' [*sic*], as the eight great crimes of the *Taihōriō*. Perhaps the excuse for this very unsatisfactory enumeration is the circumstance that a very substantial part of this code has not come down to us. It is the basis of all subsequent legislation. When the Taikō Hideyoshi came into power, in the latter part of the 16th cent., he contemplated its re-enactment for the whole country, but he died before giving any practical effect to his intention.

At first the Tokugawa Shoguns (1600–1868) followed the old method of making the laws known to those only who were required to enforce them. But this rule was subsequently modified. New laws were read to the people, and inscribed on notice-boards set up in conspicuous places. Towards the end of the Tokugawa period, a reaction to the former policy took place. The authorities considered it expedient to keep the people in ignorance of all but the most general principles of criminal law, thinking that the unknown would inspire greater terror. Such meagre information as they vouchsafed to the people was contained in a few brief edicts inscribed on notice-boards at the *Nihonbashi* in Yedo and other conspicuous places throughout the Empire, prohibiting the evil sect called Christian, conspiracy, insurrection, plotting to leave the village to which one belonged, murder, arson, and robbery. That was all. This system left room for much that was arbitrary in the administration of the law, which varied considerably in different parts of the Empire. The judicial officials did very much as they pleased.

A Japanese servant of a member of H.M.'s Legation stole a few dollars, and was handed over to justice. Three months later, a visit was received from an official, who gave his master the option of having him released—there was no room for him, it was explained, in the prison—or decapitated. Needless to say, the former alternative was accepted.

One of the worst features of the early Tokugawa legislation was the implication of the offender's family in the crimes of its head.

'If a man or woman, sentenced to be crucified or burned, had male children above 15 years of age, they were similarly executed, and younger children were placed in charge of a relative until they reached that age, when they were banished. Even when a parent suffered the ordinary capital punishment of beheading or hanging, it was within the discretion of the judge to execute or exile the male children. Wives and daughters were exempted from the rule of implication, though they might be reduced to the ranks of slaves' (Brinkley, *Japan*, iv. 56).

Thunberg (*Travels in Europe, Africa, Asia*, Eng. tr. 1795-96) says that, in the towns, a whole street was often made to suffer for the malpractices of a single individual, the master of a house for the faults of his domestics, and parents for those of their children. These cruel provisions were greatly modified in 1721, but the more lenient rules were not applicable to the *samurai* class. Theft was severely punished, usually with death, which was the penalty also for swindling or attempted extortion by force. Pickpockets, however, were let off with branding, or rather tatuing, though a repetition of the offence involved death. Not before the close of the 18th cent. was the execution of a pregnant woman deferred until after her delivery.

The law up to the close of the Tokugawa period required that an accused person must be induced to confess before his guilt was finally determined.