

CHAPTER XXIX
ADMINISTRATION OF JUSTICE

PRELIMINARY

I HAVE already discussed, under the title of the “Social Character of War,” the vengeance inflicted by a man and his people upon anyone who had done him an injury and the people of the culprit. The subject now to be considered is primarily the formal administration of justice by persons or bodies of persons whose office it was to perform the duty, though I shall also refer to punishments that were adopted for certain offences, even though they did not follow formal trials. In some of the islands there seems to have been little or no organized system of justice, especially as regards offences committed against persons not belonging to the aristocracy, the general bulk of the people being to some extent left to fight out their own quarrels. Concerning the punishments considered to be appropriate for specific offences, it is sometimes difficult, and indeed impossible, to determine whether writers are referring to those inflicted by a qualified person or court, or to those which public opinion recognized as a fitting retribution to be dealt by the aggrieved person or persons themselves. In this respect there may be some confusion in my introduction of some statements as to punishments into this or the other chapter.

The penalties generally adopted in the various islands for adultery and other sexual offences may be mentioned incidentally now and then, but will not be regarded as forming any part of the present subject matter, unless, at all events, they appear to have been inflicted by order of a tribunal, and not merely by the aggrieved parties. Writers give for some of the islands more or less detailed graduated scales of punishment for various sexual offences; so the subject is more suitable for consideration in connection with sexual and matrimonial matters, with which I hope to deal at a later date.

I have in my investigations and in writing this book been under the difficulty of trying to discriminate between customs

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that may be regarded as truly native in character, and such as may have had their origin in the influence of government officials, missionaries, and others. Changes of this sort may be suspected in matters of government, and in none more so than in those relating to the forms of administration of justice, and particularly the punishments inflicted for the various offences. We must recognize the possibility, and in some cases the strong probability, that some of the forms of punishment of which writers tell us were not quite those of the early days prior to the beginning of European influence.

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In Samoa punishment for an offence was to a very large extent left to the injured person or persons. Several writers assert this, or make statements which indicate that it was so¹.

As regards judicial punishment, it would seem that the head of the family had some jurisdiction within his own family. Stuebel gives an account of a rape by a young man, apparently a member of a consanguine family occupying a village, upon a girl of what appears to have been of the same family, and the account says that, on complaint being made to the head of the family, he ordered that the offender should be very severely beaten if he attempted to do it again². Walpole says that each family generally had its orator, who arranged its disputes, and pleaded its cause, and each village had an orator who acted as magistrate and adjudicated, though an appeal might be made to the *fono*³. I do not know in what sense Walpole uses the terms "family" and "village," but we may, I think, assume that he regards the former as being a section of the latter; and as we have seen that the orators at *fono* were heads of families or other social groups, we are led to the conclusion that the head of what he calls a family, or a village, was its official magistrate, subject, in the latter case—the group referred to there being large enough to have a *fono*—to an appeal to the *fono*.

Ella says that the principal duties of a chief consisted in administering municipal laws, settling disputes, punishing transgressors, and other matters which he mentions⁴. He says on another page, that, though the chiefs acted as magistrates

¹ Wilkes, vol. II, p. 150. Hood, p. 133. Von Bülow, *Globus*, vol. LXIX, p. 193. Krämer, *S.I.* vol. II, p. 96. Stuebel, p. 133. Ella, *A.A.A.S.* vol. IV, p. 633.

² Stuebel, p. 139.

³ Walpole, vol. II, p. 355.

⁴ Ella, *A.A.A.S.* vol. IV, p. 631.

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and judges, as well as councillors and law-makers, their authority was little more than nominal, and it was a difficult matter to maintain their laws or impose punishment for offences; a spirit of democracy had always characterized the Samoan people¹. Elloy says that the authority of the chiefs was only shown when certain thefts or notorious crimes, such as adultery, homicide, or grave insult to a chief had to be punished². It must be borne in mind that the chiefs to whom these writers refer would, presumably, be heads of social groups, generally larger or more important than those whose magistrates were merely orators; so we have evidence of an extension to what seems to have been a higher circle of the system of jurisdiction to which Stuebel and Walpole refer, the underlying principle of which—magisterial powers of the head of the social group—is not destroyed by any statements as to weakness of authority, either of the orator, from whose decision an appeal could be made, or of the chief.

Passing now to the system of magisterial jurisdiction of the *fono*, Turner says that, if two families in a village district [I am using my terminology] quarrelled, and wished to fight, the other heads of families and the chief stepped in and forbade it; and it was at the peril of either party to carry on the strife contrary to the decided voice of public opinion. Then again, just as in the individual village districts the chief and heads of families united in suppressing strife, so in the event of a disturbance between any two village districts of the district, the combined chiefs and heads of families of all the other village districts in the district united in forbidding it³. Ella says that public offenders were arraigned and their punishment adjudged at the *fono*⁴. According to von Bülow, disputes between the kindred of different families were adjusted by the assembly of the place, which punished the originator, or, if it thought fit, both parties. The assembly of the place, however, only interfered with disputes inside the same family in order to prevent excesses; such disputes referred to the name of the family [its headship], which was perhaps claimed by several members of the family at the same time, or to the landed property of the family⁵. Hübner says the authority, exercised by the chiefs and *tulafale*, at a village or district assembly, which possessed

¹ *Ibid.* vol. VI, p. 598.² *A.P.F.* vol. XLIV, p. 368.³ Turner, pp. 180 *sq.*⁴ Ella, *A.A.A.S.* vol. IV, p. 633.⁵ Von Bülow, *Globus*, vol. LXIX, p. 193.

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both legislative and judicial powers, was never contested either in the village or the district¹. Krämer, after referring to the system of punishment without trial by the aggrieved parties, says that though this was in the main the old Samoan method, there were a number of crimes, such as adultery or robbery of taro plantations, which were regarded as being so evil that the co-operation of a third party often occurred in such cases, and as an illustration of this, he refers to punishment by the village council². Elloy says that, if a quarrel arose between different villages, the principal persons of the governing village of the district intervened to make peace. If there was too much delay in hearing them, they brought the whole population: and as these had to be received, the provisions were soon exhausted, and the quarrellers, having nothing more to pay to their advocates, had to come to an understanding³. Von Bülow says that, though the Samoan had the right of private vengeance, this right expired as soon as the assembly of the place had punished the offender, or had accepted an atonement offered to it; and that he who avenged himself personally after this had been done incurred the penalty of being driven out of the place and having his house burnt down, his property devastated, and his plantations and pigs forfeited to the assembly⁴.

Walpole appears to be the only writer who refers to the case of an adjudication by a single official being subject to an appeal to the *fono*, so we cannot say to what extent it prevailed. Also there is no suggestion of the decision of a *fono* of a small area, such as a village, being the subject of a possible appeal to the *fono* of the larger area—say the village district. I draw attention to Ella's use of the word "public," in speaking of the offender whose case came before the *fono*, and to von Bülow's statement that the assembly of a place only interfered with disputes inside the same family in order to prevent excesses. I may point out as to this that in general administrative work each area and sub-area was self-governing; so that the internal affairs of, say, a village would presumably not be interfered with by the *fono* of the district in which that village was situate, except so far as it might be necessary to do so for the purposes of the district as a whole. It is possible and seems likely, that a similar system prevailed in the administration of justice; that is, that a father's

¹ Hübner, vol. II, p. 359.

² Krämer, *S.I.* vol. II, p. 96.

³ *A.P.F.* vol. XLIV, p. 368.

⁴ Von Bülow, *Globus*, vol. LXIX, p. 192; cf. *Ibid.* vol. LXXXIII, p. 376.

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jurisdiction over the members of his domestic household would not be interfered with by the village *fono*, unless it was thought necessary to do so for the safety and well-being of the village; and the *fono* of the village district would not interfere with the judicial decisions of the *fono* of the village, unless necessary for the village district; and so on. My suggestion is obviously speculative, but statements by Brown are consistent with it. He says that acts of oppression or cruelty by the head of a family, or haughty conduct of a chief, could not be punished; the only remedy for the oppressed person was to go away and live with another branch of the family¹. On the other hand, offences against other villages were often visited with very severe punishment, because they might lead to war. There is an example of a youth who stole a canoe belonging to a man of another village, and who was found out. The heads of families of his village therefore bound him in the usual way, like a pig intended for killing and eating, carried him to the other village, and deposited him as a symbolic sacrifice in the *malae* there; and by this act of deep humiliation they appeased the anger which had been caused².

Brown seems to be the only writer who gives any account of the course of procedure of a *fono* in acting as a court of justice, and his account applies only to what he calls a village *fono*. He says that there was no recognized form of procedure, except that the accused was not allowed to be present, unless he had a seat in the *fono*, in which case he might deny the charge, and would then be confronted by the accuser. Some speaker would describe the offence, and in case of punishment being decided on, young men of the village would carry out the sentence, as there were no regular officers appointed for the purpose. There were, however, generally one or two members of the *fono* who had the right of "naming" [I suppose this means deciding upon and not merely pronouncing] the punishment³.

I imagine that the verdict of the *fono* would often be based upon a consideration of evidence of guilt submitted to it verbally; but the Samoans had other methods of arriving at a decision.

One method of detecting a thief was to send for a sacred object from the temple—a coconut-shell drinking cup, or conch shell, or two stones—and each of the suspected parties would

¹ Brown, p. 261. An offending chief could, however, be deposed.

² *Ibid.* pp. 289 sq.

³ *Ibid.* p. 288.

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lay his hand on the object, and pray that the god would look upon him, and send swift destruction, if he had taken the thing which had been stolen. Under this ordeal the truth was rarely concealed, as they firmly believed that it would be death to touch the sacred object and tell a lie¹; indeed any one who became ill soon after he had taken an oath, was regarded with suspicion². If the suspect, before swearing, laid a handful of grass upon the sacred object, his imprecation involved the death of all his family and the overgrowing of their habitation with grass³. As regards the use of a drinking cup, I may say that in one place a large wooden bowl [perhaps a kava bowl], decorated with white shells, and regarded as sacred to the great god Moso, was used by priests in praying to him to punish thieves and other offenders with sudden death⁴, and in another place a bowl was the "image" [I am sure he only means emblem] of the god Tangaroa⁵. The object used in any village or district would probably be something associated with a god who was worshipped there. Another method was for the suspected person to dig a hole in the ground, the idea involved being that he should die and be buried, if he had committed the offence charged against him; or he would touch his eye or pretend to cut himself with a knife, thereby indicating a punishment of blindness or a violent death⁶. A person being suspected of not telling the truth [I do not gather that this refers to proceedings at a *fono*, or even to crime only], the person who doubted him would say "Shall Moso eat you?" and if he was being truthful he would reply "Moso may eat me"; this was sufficient to convince the most incredulous, but if the man dared not repeat the words, it was safe to conclude that he had lied⁷. This would probably be in a place where Moso was the great god. Stuebel refers to this method as having been used to settle a dispute⁸; he also tells of a method of ascertaining which of two disputants was telling the truth by the spinning of a coconut, and observing to which of them its eye pointed when it fell⁹. Von Bülow says that the oath of an alleged thief was evidence of guilt or innocence¹⁰, which shows how implicitly the people believed in the divine punishment or magical disaster, that would fall upon a man

¹ Turner, p. 19. Brown, pp. 268 *sq.*² Brown, p. 289.³ Turner, p. 184.⁴ *Ibid.* p. 36.⁵ *Ibid.* p. 53.⁶ Brown, pp. 268 *sq.*⁷ Pritchard, p. 113.⁸ Stuebel, p. 130.⁹ *Ibid.* pp. 129 *sq.* Cf. Krämer, *S.I.* vol. II, p. 99.¹⁰ Von Bülow, *Globus*, vol. XXIX, p. 193.

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who swore falsely on a sacred object, in the name of a god, or with the symbolic actions to which I have referred.

Sometimes all the members of a village would have to clear themselves by taking the oath¹. At the time appointed, the chief men of the place would assemble in the *faletele* or big house, where, having sworn their own freedom from sin, they sat in solemn state, whilst the rest of the people of every sort and description filed before them, each in turn swearing his innocence. The system was usually successful in case of theft by a native from a native². If all swore, and the culprit were still undiscovered, the chiefs wound up the proceedings by committing the case to the village god, and solemnly invoking him to mark out the culprit for speedy destruction³. Another method of discovering which of a number of persons had been guilty of theft is described by Stuebel. The chiefs and *tulafale* being assembled, a kava vessel was brought, and each person had a small piece of cord in which a knot was tied, which he dipped into the kava, after which, the kava and knots being mingled together, the kava was prepared and drunk. When a man's kava was brought to him, he poured a little on the ground for the god, and pronounced a prayer that "this drink of kava shall reveal him who has stolen the thing." After that, if any man was bitten by a "fish" in the sea and died, or was bitten by an animal in the forest, or thrown down and wounded, or killed by a [falling?] tree, this was attributed to the miraculous power of the god⁴. Stuebel says the thief generally shrank from the consequences of his oath and confessed⁵. A somewhat similar account of this ceremony is given by Krämer⁶. I may say that the belief prevailed in parts of Polynesia that illness inflicted by the gods often took the form of knotting or twisting up of the internal organs; and it may be that the knotted cord was symbolic in this sense.

Brown says that in disputed cases and judicial proceedings the oath was not taken by the accuser or by any of the witnesses, but only by the accused or suspected person or persons⁷. Elsewhere, however, he says that an accused person, *or some witness* [the italics are mine] might take an oath, and in those cases perjury was supposed to be punished by disease or death⁸. It is possible that he is, in this latter statement, referring to some

¹ Turner, pp. 183 sq. Brown, p. 268.

³ Turner, p. 184.

⁵ *Ibid.* p. 133.

⁷ Brown, p. 268.

² Churchward, p. 186.

⁴ Stuebel, p. 130.

⁶ Krämer, *S.I.* vol. II, p. 99.

⁸ *Ibid.* p. 289.

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relative or friend of the accused who, perhaps in his absence, swore on his behalf. I presume that Brown's statement that the accused was not allowed to be present at the trial referred only to the time of hearing the verbal evidence against him; he must have been there if he had to take the oath.

Several writers deal with the different forms of offence and the punishments that were regarded as appropriate to each. The evidence shows that various alternative punishments might follow the same offence, and that various offences might be visited by the same punishment. An attempt to tabulate the matter would therefore be unsatisfactory and confusing; but I propose to refer to the different methods of punishment, indicating generally, so far as I can, the class or classes of cases in respect of which each is said commonly to have been inflicted. In doing this, I may, as already indicated, introduce evidence which really relates to private vengeance not following judicial proceedings, it being impossible in some cases to say what is the interpretation to be put upon the evidence.

Stair divides the methods of punishment in Samoa into two classes, namely *o le sala*, destruction of houses, live stock and plantations, with, at times, the seizure of personal property and banishment, and *o le tua*, or personal punishment¹.

Stair gives an account of the mode of inflicting the punishment of *o le sala*, which, he says, was usually carried into effect immediately after the *fono* had decided upon it. The "leading men" [which expression probably refers to the principal members of the *fono*] rising from the place of meeting, proceeded with their followers to the house of the family to be punished, and seated themselves down in front of it. One of them then addressed the head of the family, informing him of the decision, and that they had come to enforce it. After this one of the judicial party got up, and began to ring the family's breadfruit trees, so as to destroy the parts above the injured bark, leaving the stumps alive and uninjured, so that fresh shoots would spring from them, and they would again bear fruit after two or three seasons. This was the signal for resistance or submission; and in the latter case the family would gather together some belongings and leave the house, which was then set on fire and destroyed. In the meantime the young men had been

¹ Stair, p. 91.

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sent off to plunder the family's plantations and catch and kill their pigs; and even the mats and household property were apparently confiscated, unless, as often happened, the family had heard of the sentence in time sufficient to enable them to remove these things to a place of safety. Whilst all these proceedings were going on, the members of the *fono* continued sitting in front of the house, quietly plaiting sinnet, chatting together and watching, apparently quite unconcerned. Finally the provisions which had been collected were cooked and eaten by the expelling party, who then returned to their homes. Sometimes banishment was not included in the sentence, and in that case the house would not be burned. When it was included, the family could only wander off in search of a home elsewhere. The period of banishment was not specified, except on very particular occasions; nor was the place of it. It was generally considered sufficient to know that the banished people were on the road, and they were free to take shelter where they liked provided they kept out of the village from which they had been expelled; sometimes, however, they were warned to remove to a distance. Should the banished party be influential, it sometimes happened that, they having acknowledged the power of their village by submitting quietly to punishment, some friend would suggest that the authority of the *fono* having been asserted and acknowledged, it was desirable to recall the exiles, and so avoid the loss of strength to the village caused by their absence. If this was agreed upon, those who had decreed the punishment went in a body to the place where they were to be found, and invited them to return. Generally they consented to do this, but sometimes a banished family, even if asked to return, would remain away for years, or even permanently¹.

Von Bülow refers to the severe punishment of slaughtering all the offender's pigs and devastation of his taro plantation, rendered still more severe by burning his house and driving him out of the place. He says a banished man sought admittance from the chief of, or relations in, a friendly clan (*Stamm*); sometimes it would be an enemy chief or relations in an enemy clan, and in that case he might not return to his village. Any effort by a man to return uninvited was regarded as a challenge to war; it was necessary for the village that had banished him to fetch him, or the friendly village in which he had sought

¹ *Ibid.* pp. 91-4.

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shelter might lead him back and beseech that he should again be admitted¹.

Stair, after referring to the power of the *tulafale* to depose and banish an obnoxious chief, and the many instances of this having been done to chiefs on account of their tyranny and oppression, says the obnoxious chiefs were always taken to Tutuila, the recognized place of banishment, and committed to the charge of the authorities of that island, who were advised of it beforehand, so that they might make the needful preparations to receive the chief and his party. A great many of the chiefs and people of the district accompanied the exile or exiles to see that their sentence of deportation, and their punishment and degradation were duly carried out. When the party reached Tutuila, the prisoner was landed from his canoe, and had to run the gauntlet from the beach to the settlement to which he was taken, the inhabitants of the district forming two lines between which he ran, and pelting him with stones, belabouring him with sticks, and subjecting him to other indignities, so that he was often severely injured, or even killed². Ella also says that chiefs were occasionally deposed and sent to Tutuila³. Stair gives examples of cases in which chiefs of Savai'i, and even *tuiaana* were banished in this way to Tutuila⁴.

It will be noticed that in Stair's account first above quoted he says it was generally considered sufficient to know that the banished people were on the road, they being free to take shelter where they liked, though sometimes they were warned to remove to a distance; whilst in the Tutuila banishments they were taken there. Probably the one only refers to ordinary cases, and the other to those of chiefs—perhaps chiefs of some importance—who had to be got well away. I have found no reference to any custom of sending banished persons adrift and alone in canoes.

Stair says that the punishment of *o le sala* was usually inflicted by the whole available force of the district awarding it, and I assume that in this he is referring to punishment by the *fono*. Sometimes it was submitted to tamely, but at other times there was resistance, involving desperate encounters, and even general wars. The punishment was also inflicted sometimes by one family upon another, if the former was strong enough to

¹ Von Bülow, *Globus*, vol. LXXXIII, p. 377. Cf. von Bülow, *Globus*, vol. LXIX, pp. 192 sq.

² Stair, *J.P.S.* vol. IV, p. 113.

³ Ella, *A.A.A.S.* vol. VI, p. 597.

⁴ Stair, pp. 71 sqq., and *J.P.S.* vol. IV, pp. 114 sq.