

**LECTURES ON THE  
GROWTH OF  
CRIMINAL LAW IN  
ANCIENT COMMUNITIES**

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Lectures on the Growth of Criminal Law in Ancient Communities by Richard R. Cherry

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*Οἱ τοὶ νόμον μὴ ἔχοντες,  
ἑαυτοῖς εἰσι νόμος*

London  
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AND NEW YORK

1890

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## PREFACE.

IN the six lectures contained in the present volume I have attempted, as briefly as possible, to compare the early ideas of several nations as to crimes and their punishment. I have selected legal systems as far apart from, and as much independent of, each other as possible, with a view to showing that identity of usage did not arise from the adoption by one nation of the laws or institutions of another, but rather from the inherent principles of human nature. The close similarity between the early institutions of very distant races as regards Penal Law is extremely remarkable. Nothing illustrates so much the complete contrast between modern and ancient ideas, on legal subjects, as the study of this branch of Law historically. The existence of Law, without any Sovereign authority—without any sanction, or recognized tribunal—seems to us almost a contradiction in terms. Yet, it was out of such a state of society that Law developed itself in all its branches, gradually and

slowly. In the study of Criminal Law, we really have a test of the validity of the historical method. We can easily understand how such matters as the laws of inheritance and contract arose from custom, for even to the present day we recognize, in some degree, the binding force of customs in these branches of Law; but it is difficult to believe that Criminal Law could have originated in the same manner. Criminal Law naturally seems, even in its earliest stage, to be a restriction upon custom—a system of commands, necessarily, we would suppose, imposed by some political superior, to restrain the practice of customs which were disapproved of, rather than to sanction those already observed.

It appears to have been from the Criminal Law that the Analytical School of Jurisprudence derived its very notion of Law. To show, therefore, that the origin of Criminal, as well as of other branches of Law, was in primeval custom, is extremely important. My object, in these lectures, has been to do so, and at the same time to point out the traces of primitive ideas which remain in later developments of Criminal Law. I am aware that I have only carried out this object in a very imperfect and “sketchy” manner, but I could do no more than this in the limited number of lectures which a Professor of Law may legitimately devote to such an abstract subject.

The substance of the second lecture on Ancient Irish Law is taken from an article which I wrote some time ago in the *Law Magazine and Review*. It was the study of the Brehon Laws which completely satisfied Sir Henry Maine as to the validity of his historical method as applied to Civil Law. I do not think anyone who reads the *Book of Aicill*, however cursorily, can doubt that his method applies equally well to Criminal or Penal Law. The same state of affairs, as the *Book of Aicill* exhibits to us as existing in ancient Ireland, seems to have prevailed in all other nations at one period of their progress, though only traces of its existence remain elsewhere in the maturer laws of a more settled state of society.

R. R. CHERRY.

TRINITY COLLEGE, DUBLIN,  
*October, 1890.*