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Customs of the Western Pyrenees

KELTIC elements enter largely into the composition of the Basque, whether a native of Soule Labourt or of French or Spanish Navarre. To a less degree are they to be traced in the man of Béarn or Bigorre, the latter of whom in many respects more nearly approaches the Basque type. In consequence of the comparatively peaceful and secluded lives these populations have led, and of their common descent, their characteristic institutions are very similar, while they differ considerably from those of the neighbouring Gascon Provençal, or man of Catalonia, in some of whom, notwithstanding, a still stronger Keltic strain is traceable, owing to their land having been frequently overrun by foreigners. As a fact, what strikes the student of medieval life in especial in Pyrenean as opposed (for example) to Gascon districts is, in the first place, the favoured position occupied in the former by women and slaves, as well as the consequent mildness of the *patria potestas* and of marital control; and, in the second place, the sacrosanct character of the family and its home, notably among the Basques, and the resulting collectivist as opposed to individual tenure of land, marked traces of which exist to this day from inland Andorre to the Ocean at Hendaye. It has been customary to hold that chivalry, the outcome of feudalism, and Christianity evolved out of Roman civilisation, are chiefly responsible for these beneficent results. The truth is that neither the one nor the other force was here predominant, and that the good results were naturally evolved.

Thus it does not follow because we find in Aragon that feudalism abruptly changed the devolution of property—so that,

whereas in 1247 the noble father could do no more for a favourite son than give him a little larger portion than his brethren, in 1307 he had obtained the right to choose which son should succeed to the bulk of his wealth—that the operation of feudalism was equally far-reaching elsewhere. The same right developed itself under the Old For of Béarn,¹ and gave way in due course to the custom of primogeniture, but by no sudden wrench, and altogether apart from feudal influences. Again, in the Irish Brehon laws an equally potent agent was at work apparently upon feudal lines, which had in fact nothing whatsoever to do with feudalism. There an indigenous hierarchy sprang up by slow degrees by reason of the prevalence of the custom of *cheptel* or partnership in cattle, a custom also universal in the Pyrenees. This in due course as effectually broke up the ancient clan system as feudalism would have done in a much shorter time. For by its means a new association, of persons of wealth (in cattle obtained by war or depredation, which was then the chief form of wealth) and of poor freemen who took from them such cattle to agist, became at length established. In this instance there ensued none of the incidents of true feudalism; we may therefore infer that it had nothing to do with the change. But none the less surely, if not as sharply, was the tenure of land affected in this case as it was by the growth in power of a feudal aristocracy in Aragon, or in Hindustan by the British occupation. The latter case affords a further illustration, that what would at first sight appear rightly attributable to feudal causes operating by leaps and bounds was in reality brought about by other violent means. In the Pyrenees there was no action similar to that set up in India, with the consequent treatment by the conquerors of the zemindars and taloukdars, as if they were in reality life tenants of entailed estates. Such treatment caused at one stroke a transformation in the social order of that part of Asia, which it took little less than centuries of time to bring about in Europe. Another proof of the lack of force in Pyrenean feudalism is that local autonomy and the existence of the house community were to be seen down to a late date throughout most of this region, vestiges of which remain to this day in the mountainous districts of Upper Aragon, between Catalonia and Navarre.

Again, the position of women varied qualitatively in the different states and quantitatively also according to the rank of woman in each one of them, and is therefore hard to measure, whether we attempt to do so by a 'fundamental' or 'derived' standard. But regarded from the point of view of Roman law, and relatively to other regions, women of all classes in the Pyrenees during the middle ages occupied an exceptionally high position in comparison

¹ Old For, Rubr. xiii. art. 18.

with men of the same rank of life. Nor was this in any appreciable degree due to the influence of chivalry, and only in some small part to the power of Christianity. For at the same period we find both heresy² and treason treated here with exceptional leniency, a circumstance unusual elsewhere in medieval history.³ Probably the notion which, roughly speaking, here obtained, that woman was nearly the equal of man, was largely due to the important if not predominant part she played in pastoral life, and also to the general operation of collectivist principles which brought forth their fruit in due season.

The most interesting aspects of medieval family life in the Pyrenees, and particularly the unique position of their women, are to be noticed in the private law of the Basques. This is true of the Custom of Labourt (1514) in old French, in that of Soule (1520), and in the one belonging to Basse-Navarre (1622), the two latter in Béarnais patois. It is curious to note that not one of these Customs is in the language of the people to whom it belongs. The first two are apparently derived from the same primitive root, while the last shows traces also of the Old For of Béarn written in Béarnais (*circa* 1200); all three probably to some extent came from identical original sources. The same may be said of the customs of Barèges and Lavedan, both in Bigorre, and also of some others in the Landes. A prevailing feature in all alike, but notably in that of Soule, is the equality with which women are treated in the matter of succeeding to property, and generally in the family circle. This may be the result of the matriarchate which Strabo⁴ says existed among the Cantabrians, or proceed merely from the desire to uphold the family home which under the exigencies of a pastoral life is the most marked characteristic and object of Basque legislation. In Béarn, likewise, we find that property other than *biens nobles* went under the Old For (as was also the case in Bigorre) to the eldest child, whether girl or boy. By the New For⁵ the right of the eldest son to succeed in the case of all property is declared, but at the same time that of all eldest daughters already married expressly reserved. Nor is the reason for this far to seek. Henri I had been trying in Béarn to substitute agriculture for a wholly pastoral life. In such a calling as the serious tilling of land as opposed to *petite culture*, the relative value of the services of individuals made itself at once apparent, and the average man, being stronger than the woman, got himself recognised as her superior *ad hoc*, and therefore as being the more likely

² The Rubrique de Blasphémateurs, a. 1443, prescribes for heresy a fine of 20 sols in Béarn.

³ M. Crackanthorpe, *Nineteenth Century*, Jan. 1900, p. 108.

⁴ Book iii. 4, 18; cf. *Inst. Cout. de Loysel*, no. 688, and Letourneau, *L'Evolution de la Femme*, p. 140.

⁵ Rubr. 48, Des Successions.

person to keep together family property. Still, we have many instances of women being 'neighbours' or heads of families, and when this was so they had the vote just like the men. Such was the case at Cauterets in the year 1816,⁶ where there would seem to have existed both manhood and womanhood suffrage. If further evidence be required, it will be found in the fact that portions were brought by the husband to the wife, just as by the wife to the husband, as long ago as in the time of the Cantabrians.⁷ Cordier, in 'Le Droit de famille aux Pyrénées,'⁸ also clearly establishes the similarity of the position of the sexes as regards hereditary primogeniture and matrimonial arrangements. The importance of this will at once become apparent if we compare the contemporary habits of other countries in this regard. There often a price was paid to the woman's family for her by her husband, or a *Morgengabe* given to her by him, 'because he had had pleasure in her beauty.' This must not of course be confounded with a marriage contract (which in itself conveys the idea of some equality on the part of the contracting parties) such as that of Gilbergue of Bigorre, to whom her husband Rami gave lands *à titre d'arrhe et de dot à cause de son amour et de la beauté de sa fiancée*.

It is true that in the For of Navarre, as noticed by Lagrèze,⁹ the 'purchase' of the wife is alluded to, as also the warranty of her virginity. These facts no doubt to some extent make against the case of the equality of woman that we are setting up, as of course does the widespread existence of *massipia* and *barraganía* (concubinage) both in Bigorre and Navarre. The same may be said of the *jus primæ noctis* (not to be confounded with that *unius noctis*¹⁰) which undoubtedly existed here and there, and notably at Louvie and at Bizanos,¹¹ of which the pretty folk-tale of the death-knell of the Lord breaking in upon the marriage bells at the prayer of the young bride Loubet of Soulan, and so releasing her from all fear of the exercise of the odious *droit du seigneur*, is some corroboration. But as against this barbarous custom, which was everywhere prevalent in some analogous form at the period of which we are writing, must be set the general esteem that women were held in, especially by the Pyrenean courts, which gave them a much better position than they had under the Roman law. In Rome women could not be present at the Comitia, could not be obliged to appear as witnesses, could not adopt children, and generally had not the *potestas*, or even complete contractual capacity. In the Pyrenees the *taula benedissent*, or woman who said

⁶ See the Bail à Fief given *in extenso* by Lagrèze, *Droit dans les Pyrénées*, p. 494.

⁷ Strabo, iii. 4.

⁸ Paris, 1859.

⁹ *Navarre Française*, ii. 173, 174.

¹⁰ See Barrechea, in *Dénombrement, &c.*, de l'Hôpital d'Ordi, in the Archives des Basses-Pyrénées, G 210.

¹¹ Archives des Basses-Pyrénées, B 884, B 850.

Benedicite at meals—that is, who was head of the family—was as good a witness as any man. It would appear, however, that unless she occupied that position she could not give evidence¹² except in certain cases, when she was heard by preference. This seems to show that in a pastoral country the circumstances of life had not brought her into the prominence she occupied, for example, in a community of sailors on the Breton coast, where during the long enforced absence of the man she necessarily took his place.¹³ On the other hand, it is difficult to find anywhere else except in Bigorre women exercising a right of asylum, similar to that afforded by churches and other religious places, or an assault committed before a lady punishable, as under the For of Navarre, by a fine of 500 sols.¹⁴ If we glance at the criminal law, we find the plucking a man's beard and pulling down a woman's hair regarded equally as offences, and conjugal infidelity often punishable in exactly the same way in the case of either sex, as by being driven ignominiously through the streets naked, and then put out of the city. It is, however, only fair to say that the punishment of putting a bit into the mouth of those who spoke evil of others appears to have been specially reserved for the gentler sex.¹⁵

Many other instances of the respect shown to women at this rough period might be given, as for example the provisions under the Old For of Béarn for protecting their *dot*, and securing it upon the husband's property and freeing it from all liability for his debts, some of which had previously existed among the Gauls.¹⁶ Most of these can be traced through the Theodosian Code up to the *Lex Julia de fundo dotali*, as they occur also in the Customs of Toulouse. But what we find no ground for attributing to dominant outside influences, except to some small extent to the general one of Christianity, are conceptions such as that in the For of Morlaas that husband and wife are two things in one body (that 'they twain are one flesh') and¹⁷ that the husband must 'clothe and find shoes for his wife, and give her meat and drink, and take care of her in health and in sickness,' and, finally, that to show respect to women in their maternal capacity, no seizure could be made in any house in which one lay in childbed. The idea of the *couvade*¹⁸ also, perhaps, illustrates the desire to assimilate the condition of husband and wife. It existed in Béarn, as did a

¹² Lagrèze, *Nav. Franç.* ii. 275.

¹³ As to this see Demolin, *Science Sociale*, Sept. 1890.

¹⁴ Lagrèze, *Nav. Franç.* ii. 368.

¹⁵ Schaeffer, *Hist. du Portugal*, p. 153.

¹⁶ Dupin, *Communes*, p. 7.

¹⁷ Rubr. xix. art. 335, Rubr. xv. art. 292, Rubr. xvi. art. 150.

¹⁸ *Bulletin de la Société des Sciences etc. de Pau*, 1877 and 1878, p. 74. Cf. the *Academy*, 16 Feb. 1884, p. 112, and Cordier, *L'Organisation de la Famille chez les Basques*, p. 24.

somewhat similar custom mentioned by Strabo¹⁹ among the people of Iberia. In brief, these among many other other provisions and customs in operation throughout the region under notice seem to justify Lagrèze's summary of the position of women:²⁰ 'Michelet says that the customs of the olden times were generally unfavourable to women. If that were so, those of the Pyrenees form a curious exception. There the daughter of the house was treated as well as and often better than the son.'²¹

In the same districts the *patria potestas* was very limited in its extent. The main object of the head of the house was to have children and keep together the family home and property. What further derogated from his position was that not only might the head be a woman, but that, even when a widower, if he had a married child, and that child resided, as was usual, at home, if the father did not take proper care of the family property he might be deposed in favour of his child. Thus a right of co-seignory was established in the case of the eldest child if married with the consent of the father and sometimes even when married without.²² Another inroad made upon the *patria potestas* was the prohibition to alienate, hypothecate, or dispose by will of ancestral property without the consent of the person next entitled, and only with his consent if emancipated. Thus not only could the *potestas* be in the hands of a woman, but in any case it was strictly limited in extent. Nevertheless, there was no need to put in any one of the Basque Customs the exhortation to be found in art. 371 of the French Code Civil: *Que l'enfant à tout âge doit honneur et respect à ses père et mère*. Speaking generally of wardship among the Basques, as to which we find no written provisions in Navarre, woman or man, according as she or he was the survivor, became guardian of the children. If father and mother are both dead, and there are no grandparents, the eldest child, male or female, if over eighteen, is guardian of the rest. In other cases the guardians were legally appointed, one from the father's and the other from the mother's family. Between the ages of fourteen and eighteen the Basque child had a curator only, but on marriage he or she became emancipated. In Béarn likewise, on the father's death, the charge of children devolved upon the mother. But emancipation then took place (without reference to the concurrence of the parent) automatically, at fourteen for boys and at twelve for girls. Love of liberty among the peasant proprietors of Béarn was too strong to support the tyranny of the

¹⁹ Book iii. c. 17.

²⁰ *Droit dans les Pyrénées*, p. 66.

²¹ This was not so among the Gauls; marriage was sacred and *communauté de biens* recognised.—Dupin, *Communes*, p. 7.

²² Custom of Soule, Rubr. xxvii. art. 29; Custom of Labourt, Rubr. xii. art. 12.

Roman *patria potestas*. Yet the son, notwithstanding his early emancipation, could compel his father to lodge and feed him *pourvu qu'il n'eût pas de trop mauvaises mœurs*, unless such expense would entail the sale of family property. Here, again, we see that the conservation of family property overruled every other obligation.

In this connexion the subject of marital authority not unnaturally presents itself for consideration. In a word, among the Basques, if the husband was possessor of the home, he was master. If the wife, it was she who consented to the marriage of the children, and administered the family property. Such a state of things existed not even in the neighbouring state of Béarn. There we can gather to some extent the position from the following rules in the For de Morlaas :²³

If a man and woman are married, and after having lived together amicably they fall out through the fault of either, as, for example, if the wife commit adultery, and thereupon the husband summon her to return to him, or the wife the husband at the summons of the church : in such case, if the party summoned obey, no one must intermeddle. But if the husband was the first to blame, he has only to summon her if they have no children, and then she can ask for her *dot*. The reason is that he has to clothe her and find her in shoes, and give her to eat and drink, and keep her in health and sickness, for thus the Roman law orders.

And this she could require without waiting a year and a day.²⁴ But the husband could not part with any portion of his wife's property without her consent.²⁵ Further insight is afforded into the subject of marital control, if we compare the older Béarnais domestic legislation, *i.e.* that in force before 1552 with parallel provisions of Roman law. In this way it can be readily seen how the severity of the latter was mitigated by peculiar racial bias. In Béarn the wife and her property both passed under her husband's control. But he was enjoined to treat both her and it properly, 'for husband and wife are two things in the same flesh.' The husband could not alienate his wife's *dot* without her consent either under the *Lex Julia de fundo dotati*, or, as we have seen, under the Old For.²⁶ But by the former the wife was also prevented from agreeing to the hypothecation of her *dot*, which in Béarn she could do. Probably the idea was there, as in Navarre, that the family home must be kept up at all hazards, and that the wife in such case would be a safe judge of the wisdom or unwisdom of the proposed proceeding. Others think that hypothecation, *i.e.* the giving security upon a property the possession

²³ Rubr. xciv. art. 292.

²⁴ Old For of Béarn, Rubr. lxxxiii. art. 267.

²⁵ *Ibid.*, Rubr. lxxxviii. art. 278.

²⁶ *Ibid.*

of which was retained by the mortgagor, was unknown to the Béarnais lawgiver. The truer view is that the upholding of the family one and indivisible was the root idea in Béarn as elsewhere in the Pyrenees, as is well shown by a provision like the following: ²⁷ 'No man must instal a second wife in the property of his first wife, without the consent of the children of the first marriage.' By another regulation, ²⁸ 'If a husband part with his wife's linen and bed against her will, he must restore the full value, and the wife is to be believed upon her simple oath. If the wife can swear with hand and mouth that it belonged to her, she can get it back even though it has been sold.' Another peculiarity in relation to marriage law was, as we have seen before, the identity of punishment for man and woman for adultery, namely, that they should both be driven round the town naked, and afterwards banished. ²⁹ Further, the reasons for which a husband could repudiate a wife were peculiar. Besides consanguinity, 'if the father being a priest had baptised her, or if she were leprous, *ou si elle a l'haleine puante,*' she could be 'put away privily.' ³⁰ Widows were favoured in Béarn. They alone of women could, when heads of houses, in all matters give evidence in court. This was denied to other women, except in certain criminal cases in which they were outraged parties. But a widow upon re-marriage was restrained from all testamentary disposition without her second husband's consent, even though she had children by her previous marriage. She then became *nulle comme femme*, and lost everything she got from her first husband. But until second marriage, even though *elle fait largesse de son corps*, her first husband's friends after his death could not deprive her of his property, if she had children by him still alive.

Again, but a few words are required to explain the comparatively happy position of the slaves. Under Roman law the master had the right not only to the use of his slave and all he might acquire, but also to destroy or alienate him at his will. Though modified from time to time, especially as the force of Christianity became more and more far-reaching, the root idea remained that the slave was a captive kept (*servatus*) and not killed as he might have been if so desired. ³¹ Far different was the Pyrenean view. Lagrèze well says ³² that slavery in Bigorre did not display the same rigours as elsewhere, or else it got wonderfully modified *par le temps et les mœurs du pays*. Cadier, too, ³³ speaks of numerous enfranchisements of serfs in Béarn, due no doubt to the desire on the part of the barons in the fourteenth century to raise money.

²⁷ Old For, Rubr. lxxxiii. art. 270

²⁸ For de Morlaas, Rubr. xii. art. 21.

²⁹ Gaius, i. 52.

³⁰ *Les Etats de Béarn*, p. 74.

²⁷ *Ibid.*, art. 263.

²⁸ *Ibid.*, Rubr. cxxxvi. art. 357.

²⁹ *Droit dans les Pyrénées*, p. 43.

Slaves thus got into the possession of the church, which then alone had funds to spare, and in its hands were even better off than they had been before. Gaston Phoebus, too, in 1387 considerably ameliorated their condition by reason of the inquiry he caused to be made with reference to them. The serf was either a *questal* proper, one who paid a tax to his master and might be in trade or not, or a *ceysal* attached to the land, which he followed as an accessory and for which he paid rent. In towns (as at Oloron), if a serf resided there a year and a day he became a free man.³⁴ Besides these there were the *esterlos*, or escaped slaves (cf. *hospites capitales*). These could not leave the land, but more could not be demanded of them in respect of that which they occupied than they could reasonably afford to pay. For example, they were not to be obliged to sell their oxen to pay the *queste*.³⁵

As the homestead was matter of first necessity to the family upon ceasing to be nomad, so villages or a collection of villages (*respublica*) were next developed by the common protective faculty of divers aggregations of individuals. Kings, nobles, and feudal rights had to be held at bay, and protection from these by *fueros* or *fors*, which were merely charters and privileges, was obtained in the case of many tribes or bands of families by dwelling together, just as was immunity from the attacks of robbers or wild beasts, while male members of a pastoral population were far away tending their flocks and herds, often by night as well as by day. The needs of such as these kept alive a spirit of interdependence, and continued patriarchal customs with reference to home life and the common holding of land, which was itself but the next step to the occupation by wandering tribes of a new district in which to settle. Usually land, whether pasture, wood, or waste, roughly speaking, got into the hands either of the tribe or village, or of a syndicate of 'neighbours' of some sort, wherever it had not been seized by any one over-masterful person. When the latter was the case, however, the others always managed to retain many rights over it: for instance, the right to run pigs in the lord's wood at Artiguelouve in Béarn, but not to pick up acorns, as that would be unfair to others having the same right.³⁶ Moreover, we find that it was chiefly in pastoral districts that a little bit of arable or garden ground was held by each family all to itself. The distinctive mark of the family was the house with its fire on the hearth. Note the penalty of 60 sols directed by the Fuero of Navarre³⁷ to be paid by the neighbour who refused another neighbour a light for his fire. When the family house devolved upon a woman, her husband was known by its name.³⁸

³⁴ For d'Oloron, art. 5.

³⁵ For de Morlaas, Bubr. lxx. art. 233.

³⁶ See *Etude Historique du Diocèse de Bayonne*.

³⁷ iii. 19.

³⁸ May not the maxim 'Nul Seigneur sans terre,' which universally obtained in Béarn, be rightly viewed in this connexion?

For the most part in this house, which usually went to the eldest son even after the father's death, the widow and all the unmarried children still made their home. The married sons and daughters, under their respective marriage contracts, had reserved to them the right of returning there in case of necessity, *avec droit à la chambre et aux herbes deu casau* (garden). Among the Basques the younger children had each their portion³⁹ given them by their elder brother, who assumed the rule of the house upon his father's death. An extreme case was the custom of Barège, under which the younger children became the so-called *esclaus* (slaves) of the elder brother,⁴⁰ and practically never quitted the home except to emigrate. Under the custom of Bigorre, the eldest child, male or female, inherited, just as certainly as to-day in Malabar inheritance runs in the female line.⁴¹ The principle was much the same as that in Borough English: namely, what was at the time considered best for the family. In the English township it was thought, as Littleton says, that the youngest son should have the tenements, as he was the one who 'may least of all his brethren help himself.' In the pastoral valley under the Pyrenees, the ægis of the eldest child was held to be the one that would best keep together the family home and property. In Ossau, and indeed generally throughout Béarn, it was the eldest son who succeeded, but, as we have seen in the case of nobles, each noble in Béarn originally chose which son he would to make his successor.⁴² But whatever was the exact rule as to the devolution of the demesne, it by no means follows that the system of house-communities, which no doubt did exist in Upper Aragon, can be correctly traced as existing in all pastoral districts, such, for example, as the valley of Ossau. There the *famille-souche* does not seem to have taken root as in the north of France, and it is mainly the patriarchal character of the people that has caused the adoption of this view by certain writers. Notwithstanding the sacrosanct character of the house (*lar*), as to which Mr. Webster, the greatest living authority upon Basque customs and folklore, has told us⁴³ that a victim was not infrequently immured in the Pyrenean dwelling, and that it was the asylum of but one family, its leading social characteristic was that it was represented by its head, male or female, and that such a one alone had any official status. He or she, as the case might be, belonged to the confraternity of neighbours or shareholders in the communal property, and as such had rights and duties peculiar to such office and position.⁴⁴ The neighbours were fined if they did not meet as a

³⁹ Custom of Labourt, Tit. ix. 18.

⁴⁰ Lagrèze, *Nav. Franç.* ii. 240.

⁴¹ *Nineteenth Century*, Dec. 1899. For d'Azun, art. 88, quoted in *Droit dans les Pyrénées* p. 184.

⁴² Old For. Rubr. xii. art. 181.

⁴³ *Bulletin Sci. et Arts de Bayonne*, 1884.

⁴⁴ *Règlements d'Artiguelouve, Études Historiques du Diocèse de Bayonne*.

village parliament, when among other things they decided by lot what portions of common wood should not be cut (*bedat*). As an instance, the valley of Ossau owned pasturages in the Pont Long, on the other side of Pau, as well as much mountain land. The administration of these, to take an example in the case of a particular village, Aste-Béon, was in the hands of ninety-six members, there being there ninety-six fires. A tax used to be levied upon each fire, called *foegage*, and so *foec alugant* (*feu allumant*) came to denote a house, *i.e.* the thing which paid fire-tax. The neighbours, therefore, were heads of families living within a certain area. These usually, except in the case of the Basques, had their dwellings in a village for mutual protection, particularly as there was little individual property of the nature of a farm, upon which houses could be erected or occupied with advantage.

We now pass to the tenure of land in the Pyrenean districts, as to which, of course, many modifications were in force at one and the same period, especially with regard to pasture land, in contrast to that used for purposes of cultivation, as from the nature of the case were bound to exist. Side by side with the possession of commons and woods, as in Labourt, by each parish for the use of its inhabitants, but not for sale or alienation,⁴⁵ we find that in the provinces of Zamora and Léon, and especially at Llanabes,⁴⁶ all arable land was village property, divisible at stated periods by lot among the heads of families (*vecinos*), the meadows alone being in the hands of individual proprietors. But, as can readily be understood, the converse was the case in the pastoral valley of Ossau, where pasture land and most of the wood were the property of the commune, and only meadow land, of which there was but little, belonged to individuals. It was the possession of these common lands by shepherd communities that caused many of the tribal wars so numerous in the middle ages, of which the one between the men of Baretous and those of Roncal,⁴⁷ and the tribute paid as the result, is a type. But on either slope of these mountains collectivism became of necessity the rule, and individual possession the exception, and such individual rights were always subject in the case of the nobles to the rights of their dependents, and, in that of the bourgeois, to those of other members of the family. Indeed, were it not for rights such as these, not only could not the poor have lived,⁴⁸ but even the ordinary inhabitant would have been unable, as was shown in the case of the Highland crofter,⁴⁹ to gain his own living with anything like certainty.

⁴⁵ *Coutumes de Labourt*. Bordeaux, 1714.

⁴⁶ Webster in *Bulletin Sci. et Arts de Bayonne*, 1884.

⁴⁷ Duboul in *La Revue des Basses-Pyrénées et des Landes*, 1883.

⁴⁸ *E.g.* they were allowed to pick up dead wood in the forests two days a week, as also to hunt for game.

⁴⁹ *Report of Crofters and Cotters Commission*, Edinburgh, 1884.

With these limitations life was comparatively easy, even in those distant days, and upon such poor and hungry soil, while a certain amount of culture existed.

A concrete example of a peculiar change in medieval legislation with reference to succession to property is afforded by the Custom of d'Acs.⁶⁰ In it we find existing side by side primogeniture and equality of partition in rural (though not in noble) property. In some places where this custom was in force, the eldest child, male or female, succeeded to the entirety. In others, all alike took equal shares. Again, in Soule (one of the Basque provinces, the capital of which was Mauléon) in some families named in the Customs of that district the eldest child, male or female, inherited noble property, and in others the eldest male. If, as we think, a people does not change its spirit arbitrarily, inasmuch as *natura non facit saltum*, regulations so different must spring from different racial sources, the former probably Iberian, the latter Keltic, both of which elements largely commingle in the Pyrenean population. Nor here again can the influence of feudalism be justly traced, as witness the little town of Tartas, where the Customs of d'Acs obtained, and where paternal rural property was divided among sons, and that of the mother among all children alike. It was not there, especially in connexion with rural estate, that the feudal system exercised baneful influences, such as can sometimes clearly be traced, for example in the case of Aragon. There in 1307 the nobles obtained the right to choose which of their sons should succeed, and to give him what land they would *ut casalia eorum in suo bono statu conserventur, cum per divisionem filiorum de facili deperire possent*. Primogeniture is easy to understand in a warlike monarchy, where the real estate of nobles is being dealt with, but not as having any *raison d'être* in the custom of a town like Dax, even when the rural property of peasants is unaffected, inasmuch as this latter, of course, in great degree partook merely of a personal character. In a word, in Labourt, Navarre, and Soule, as also in Barège (in Bigorre), feudalism, and indeed ultramontanism likewise, was less of a disturbing element than in most countries of Western Europe. But, though similar in many respects, the Pyrenean peoples differ as they ever did, the Basques retaining their marked liberal characteristics⁶¹ even more strongly than the Gascon Kelts and the proud inhabitants of Catalonia ('bellicosus Cantaber') their aristocratic tendencies. Hence the grave difficulty in accurate generalisation, which should always be attempted with diffidence.

In fulness of time the family became the unit of proprietor

⁶⁰ Dax, Department Landes.

⁶¹ The watchword of the Basques under Don Carlos was 'Vivent les Fueros.'—*La Réforme Economique*, 14 March 1876.

ship by regular process of evolution, and not correlatively to the institution of the feudal fief, nor by reason of the influence of Christianity upon the model of religious communities. Caesar speaks of *cognationes hominum qui una coierunt* as existing among the Germans, and in Tacitus are to be found references to the *vendetta* which, together with *Welrgeld*, and *Mundwald* or guardianship of the head of the family, concentrated power in the family, and made for centralisation in its strong hands, rather than for decentralisation in the weaker ones of the individual. The doctrine *Le mort saisit le vif son hoir*⁵² sprang, too, from continuous collective proprietorship of the family. Curiously enough, here again the growth of feudalism wrought no injurious change in the position of the family as tenant of property, because the security of a family as such was better than that of one individual. But, on the other hand, the increasing influence and spread of Roman law helped forward the recognition of the individual, as did also the slow progress of civilisation, by developing opportunities for making his personality felt. Furthermore, as terror of serfdom and mortmain decreased, the advantages of family collectivism became less apparent. If, then, it was in the middle ages that the rights of the individual to hold land became recognised in Pyrenean countries, he mostly held it at that period as trustee for the family. Still he, and not the family, became at length the ostensible unit of proprietorship. What his limitations were we shall now try to show, in so far as they can be said to have generally obtained in that region at the time of which we are writing.

As good an illustration as any other of the sacrosanct character of the family is furnished by the law relating to testamentary disposition and succession to property. In Béarn and Soule as well as generally in Basse-Navarre, Roman law regulated the validity of wills. In the Compilation d'Augens Priviledges et Reglements deu Pays de Béarn,⁵³ it is enacted that the civil and canon law, as well as that of the For, is to be kept and observed in the matter of wills, as also⁵⁴ with reference to the exclusion of religious from all successions.⁵⁵ Neither in the Old nor in the New For of Béarn is there to be found any decision touching testamentary disposition, which is not based upon Roman law. The same may be said of the Fors et Costumas deu Royaume de Navarre Deca-Ports, which were finally reduced to writing in 1611. But by the Custom of Soule⁵⁶ we find that persons not in the power of another, whether male or female, could make a will after fifteen years of age, and all

⁵² *Coutumes de Paris*, ed. 1580, art. 318.

⁵³ Rubr. xxvi. art. 1 (date 1557).

⁵⁴ *Ibid.* art. 2 (date 1639).

⁵⁵ This was so also in other Customs, i.e. Paris, ed. 1580, art. 337.

⁵⁶ Rubr. xxvi. art. 2 (date 1520), and Labourt, Rubr. xi. (date 1514).

others after eighteen. The same Custom permits the free disposal of all property, however acquired, by the testator himself, but prescribes, as necessary for the alienation of anything derived from an ancestor (*biens avitins*), the consent of the heir apparent, and, should this be a son, his previous emancipation. The Coustume de Bayonne has no provision of a similar character, though the object of it, as of many other Customs, like that, for example, of Barège, was to keep together family property. It was for this reason that we find expressly provided by its short Custom, that in Bigorre impotent persons and those in religion could not inherit, nor prodigals, nor madmen. This freedom in the matter of the disposition of property in Soule and Labourt did not enable the testator there, any more than under the Fueros of Navarre, to deal with family property as he pleased. Family property had to be kept in the family, and only such things as had been acquired by the testator were capable of anything like free alienation.

Viewing succession to property in a somewhat more general way, we may perhaps summarise the medieval Pyrenean Customs affecting it as follows. The rule was that in the case of gentry the eldest son should inherit the whole of his father's ancestral estate, but that out of acquired property primarily, and, failing a sufficiency of this, out of the ancestral estate, the younger children should each have some small portion. In Soule, in some families the eldest child, girl or boy, succeeded to noble and always to rural property. Where two or more marriages had taken place, and there was no son, but only one or more daughters of the first, yet a son or sons of a subsequent family, then the eldest daughter of the first succeeded. And the same rule applied to collateral representation. In Béarn under the Old For, as has been shown, the noble father could choose which son he would as his successor, who no doubt, as a rule, would be the eldest. Thus no sudden change was effected when, under the New For, the eldest son succeeded as of right, and if there was no son, then the eldest daughter in the case of both noble and also of rural property, all the rights of those already married being expressly reserved. The father could not prevent a child from succeeding, except for the causes allowed by Roman law, and, as has been elsewhere noticed, for marrying when under age against his will. The other chief rules were *Paterna paternis, materna maternis*, and *Le mort saisit le vif plus habile à succéder*.⁵⁷

As in Roman law, when a fixed sum had been given a child for a portion by way of *dot* or by will, the child could not demand more out of the father's estate except where there was settled pro-

⁵⁷ Old For, Rubr. xiii. art. 18, and Rubr. lxxxiv. art. 274. Cf. New For, Rubr. xliii. art. 3.

perty, when, if it was a ridiculous sum that had been given, a fair share could be claimed. This does not seem to have been settled until the case of Demoiselle Dandichon de Pontacq,⁵⁸ who left, for no apparent reason, one particular nephew only 25 fr. out of *biens avitins* and the others about 3,000 fr. each. Moreover, portions might be made to return to the family exchequer, by being given out of *biens vinclés* and not from *biens libres*. Finally, if a father neglected to give portions to his children, the eldest son had to remedy this neglect; failing them, four of the nearest relatives constituted a family council, whose award was final in this regard.

From this rough outline it will have been gathered that collectivism, and not individualism, continued to be the rule.

Privatus illis census erat brevis,
Commune magnum,⁵⁹

whether in the household or in the larger communities of the village township or valley in the Pyrenees. But there is no necessity to consider seriously in this place at what exact period the unit there was the house-community, the village, or the tribe. Suffice it for us that such unit was certainly not the individual. The head of the house (*lou meste*) simply represented the house, the home, the family for its good, and not his own, as is abundantly evidenced by the medieval forms of land tenure usually obtaining there, the almost universal existence of guilds and confraternities of neighbours, and also by the social position occupied by women and slaves, all circumstances reflecting the strongest possible light upon the fixed characteristics of a people at a particular epoch. But sufficient reference has now been made to Béarnais, Basque, Bigorrean, and incidentally to Spanish sources, to show that the family as owner retained its grip on property in the Pyrenees much longer than elsewhere; that the evolution of individualism out of collectivism was of slow indigenous growth, and not there forced on by feudalism or outside stimulus of any sort; that, in a word, family life was the ideal, not 'each man for himself,' and conservation of energy of the family rather than of the individual the Pyrenean rule. Sons-in-law and daughters-in-law inherit equally with father and mother the family home. The old master and the young master in one house are a recognised institution now, just as in Bela's day. Back from South America to their home still come frugal Basque younger children who left the family in youth for its greater good, their savings effectively subsidising an establishment which by hard labour at home could never, in the struggle for life of to-day, have been kept going as a peasant household upon a solid foundation, were it not thus broad-based upon the support and co-operation of the entire family both at home and abroad.

⁵⁸ 24 April 1697.

⁵⁹ Hor. *Od.* ii. 15, 13.

Just as, in 1398, Archambaut had to swear to maintain the Fors of Béarn, and after him every ruler in succession, so later on, in 1692, in the valley of Aspe on the Spanish frontier, 'a republic which had offered itself of its own free will to the sovereign lord of Béarn,' he in turn, though king of France, had to promise to preserve it in its customs and liberties. Likewise in our own day the Basques under Don Carlos cried out for the preservation of the *Fueros*. Moreover, the house-community exists at Sayago in the north-east of the province of Samorra, and at Ricano in Leon, to this day, as well as fraternities and guilds of neighbours, if not under the same names. In a hamlet near Laruns called Goust, the land is still all in the hands of a very small number of families, and no child is allowed to remain there and marry till there is a vacant spot in which the new *ménage* can find a reasonable means of livelihood. The sanctity of the house is still, just as it was under the Fuero of Daroca or Medina Celi, kept up, as well as many old funeral and other customs. The black dress of the Iberian, and especially the hood, is worn at the present date. To-day the Basquaises walk *couvertes de leurs cotillons qu'elles rejettent sur la tête*.⁶⁰ If in the olden time security could be given, no man might be put in prison. Now as then, the *habeas corpus* is the cherished right of Biscayan, Guipuzcoan, Castilian, Alavan, and Basque alike.

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⁶⁰ Sommerdyck, *Voyage d'Espagne* (1866), p. 6.