The Watching Brief*

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I should have interrogated MiYan earlier, but I had no idea of what to ask her or what to say. She had been in the jail hospital for the two days since her arrest. Yet I knew I could not just leave her sitting there in custody, hospital though it was, until some formal legal processes were pursued. As I rode my bicycle to the hospital, I found myself anxiously trying out sentences in my head. I wanted to have a sense of MiYan as a person to see if I could begin to understand why she had let her child die.

Dr. Veraswami said there was no reason why I should not speak to MiYan; she seemed in good enough health. He had put her in a single room for the time being and had seen no point in locking the door. He thought it might be wise to move her to a dormitory since she seemed very withdrawn and perhaps the support of some other women, sick though they were, might be of comfort to her.

I looked into the small, scrubbed room to which Veraswami had directed me. There was a hospital bed, there was a small wooden table; nothing more. The woman on the bed lay on her side. She faced the wall, and I could not tell whether she was asleep. The swing door was not latched; the window to the courtyard was open; MiYan, if it was she, was not physically restrained. So far as I could see, she could walk out of the jail hospital when she chose, unless the plain, white, loosely tied hospital gown which had been substituted for her Burmese village clothes would inhibit such an elopement — and I supposed it would.

"MiYan?"

There was a small movement of her head, but no reply.

"May I come in?"

She twisted upright and turned to sit on the edge of the bed,


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her gown falling apart above the knees. Her eyes lifted briefly to mine. I moved beside the table, facing the bed and a little to one side of MiYan. “I would like to talk to you,” I said. “Do you understand me?” I knew, of course, that as a servant in an English household she would have some English; but I needed some word from her if I was ever to launch a discussion rather than a monologue.

I achieved minimal success: “Yes, Sir.”

Encouraged but embarrassed both by ignorance and by a realization of her combined vulnerability and attractiveness — which I had not expected — I ploughed into a lengthy explanation, the words and syntax becoming increasingly complex, of why she had been arrested and what the next legal steps would have to be. I spoke excessively of preliminary enquiries and bail, of assigned briefs, of the fact that she need not answer any questions put to her by me or by anyone else, except in the courtroom, but that she could do so if she wished, though she should know that anything she said “might well be used in evidence against her.” It all sounded stilted and silly to me; to her it must have been another demonstration of her helplessness. I finished with a moronic “Do you understand?”

MiYan came immediately to the heart of the matter, repeating, I suppose, what the sergeant who arrested her had told her, unencumbered by my legalistic baggage: “Yes, Sir. You brought me here because my baby died. I am to be punished. You will tell me how.”

To my astonishment I found my eyes starting to fill with tears. I moved to the window and looked out to cover my embarrassment, and then turned back to face her: “Do you want to talk now?”

She made a small gesture of helplessness, raising her left hand slightly from the bed and letting it fall.

“Did you think that your baby would die when you left her with your mother at Talaban?”

“Yes.”

“But did you not want to help her? Did you not love her?”

MiYan made no answer. She remained immobile, her eyes lowered. And then, unexpectedly, she veered away from my questions and challenged me. “I think my mother may die now. She needs me, and you have brought me here. I think she may walk into the jungle and get lost.”

“I will see that she is looked after,” I said, though not with any great confidence. Perhaps a communication to the Headman of
Pakara would help.

I determined not to be put off by MiYan’s apparent concern for her mother. “But your mother did not help your baby, MiYan. She hit her, I think. And she did not take her to the hospital when she should have.”

MiYan became suddenly engaged by what I was saying. She was puzzled by it, or so it seemed. Looking young and much more in need of my protection than of my continued aggression, she said: “It is best for the baby, what happened, and even also for my mother if she is lost in the jungle. But what about me? Am I to have no one to help?”

I knew I could not in conscience continue the interrogation. The more I understood, the less my own actions made any sense. I asked if there was anything she needed. She did not answer. I said I would call on her again in a day or two, and left.

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On the bicycle ride back to the police station I rehearsed in my mind what I knew of the death of MiYan’s baby. Now that it had become a problem for me, I had better get the facts straight and clear.

I recalled the shack where I first saw the baby. It stood, or rather leaned, at the edge of the village, in appearance and situation a compromise between the jungle and a village hut, distinguishable from the other huts by its patched and scabrous walls — and by its smell. Dogs, their ribs protruding, had settled aimlessly around it, sharing in adversity rather than seeking sustenance.

I had never seen such a wretched hovel; it repulsed me. But Veraswami had told me I should investigate. After Veraswami’s regular sanitation inspection of the village a few days earlier, the Headman had asked him to look in one of the huts at a baby girl who lived there with her grandmother. The child was bruised about the face and body. Veraswami had suggested to the grandmother and to the Headman that the child be brought to the hospital for attention. The grandmother had been evasive about the cause of the bruises — Veraswami thought the child had been slapped frequently and severely. That was also the opinion of the Headman. The child had not been brought to the hospital.

Veraswami had decided to mention his anxiety about the child to me because, he said, of rumors he had later heard from some servants at the Club. Some English ladies were talking there of a baby girl in a nearby village, sick nearly to death and badly attended; they had heard about it from one of their house-servants
and thought it shocking that I had done nothing about it.

I had learnt that whenever Veraswami offered advice about my police work I should take it seriously. So, the day after he spoke to me, I made an early morning trip to the village of Talaban, where Dr. Veraswami had seen the baby.

As I had walked toward the hut, I was astonished to find Charles Moffat, the Regional Administrator, also there, accompanied by a native assistant.

The Regional Administrator did, of course, have to travel widely in his territory, but our paths rarely crossed. On police and judicial matters I reported not to him but directly to Regional Headquarters in Mandalay. On all other matters — "administration" was the word for everything that was neither "police" nor "judicial" — he was, as Regional Administrator, my superior officer. There was a required weekly meeting when we discussed any police and judicial activities likely to be of general administrative concern, and we also met occasionally at the Club; but not in a Burmese village early in the morning.

Relations between us were cautious and distant. There was not much objective cause for this; we had always been at arms length. He had been in Moulmein for two years before my arrival; he had been a friend of Captain Thomas, my predecessor as District Officer, and would often mention Thomas in our discussions, with apparent approval and a hint that my decisions suffered by comparison with his, despite the alcoholic haze in which Thomas had customarily moved. Moffat implied that I was rather a ninny as compared to the hard-drinking Thomas, whose common sense kept the natives in their proper place. Yet Moffat had always been careful to respect the narrow ambit of my authority, and I had no cause to complain.

The tension between us was a matter of atmosphere and personality rather than of substance. He was a bull of a man, heavily muscled and stocky, each of the many hairs on his forearms reminding me of the whiskers on my childhood crystal sets. He was twenty years older than me and far more experienced in the East, indeed on the brink of a reasonably anticipated knighthood; but even the impending "K" surely gave him no right to be quite so condescending towards me.

Moffat's presence at Talaban that morning was a puzzle. It appeared we were on the same errand. With his assistant a pace or two to the rear, there he was on the edge of the village, approaching the same decrepit hut, and also surprised to find me there.

Moffat swiftly took the initiative. "What are you doing here,
Blair? Is there some crime you are investigating—and alone?"

I told him of Dr. Veraswami's advice.

"Why didn't Veraswami look after the matter himself?" Moffat asked.

I told him I had asked Veraswami the same question and that he had replied that the villagers never asked him to visit them. When, as the sanitation inspector, he visited a village, they would let him inspect their huts without protest; but they did not solicit his medical assistance, then or at any other time. If a Burmese villager were so sick as to risk treatment by an Indian doctor in an English hospital, particularly a hospital near a jail, rather than trust to the traditional Burmese herbs and Buddhist incantations, Veraswami would come or be brought to the hospital. He was not at all welcome among the villagers. They liked Indians little better than they liked Europeans. Also, they were scared of him, and he could understand this since he was always associated with pain and often with death. Then, too, there was their calm acceptance of their fate, the reality of their karma, their certainty that pain, suffering and death were ordained for their progression towards happier and more perceptive reincarnations. Illness and its consequences were to be accepted, not struggled against.

Moffat's question had distracted me from my own appropriate enquiry. What was he doing here? So often Moffat seemed to preempt me. After all, his presence needed as much explanation as my own—indeed more—but I had let the time of courteous enquiry pass.

As Moffat and I approached the hut, a middle-aged woman, bent and tattered, hair and clothes awry, and in apparent fear, scurried out of the hut and away from us into the jungle. Moffat made "Anyone there?" noises but received no reply. We entered. The smell was appalling—and the filth. A baby girl lay naked on a rough plank-and-hessian cot, her left jaw swollen grossly, a dark red bruise across her temple and angry bruises elsewhere. One of her eyelids was puffed closed; the other was half open but the eye did not move to follow our entrance. Flies gathered at the effluvia from her nostrils and at the corners of her mouth. She was breathing quietly, apparently not in pain, but it was clear she was very ill indeed.

My gorge rose. Somehow I controlled myself; though I saw that Moffat had seen my gulp for air, no doubt confirming his ill-concealed view of my sentimental weakness. How could anyone treat a baby like this? Rage struggled with disgust; I had to do something or I would vomit, and I didn't propose to do that in
front of Moffat. So I brushed the flies from the baby’s face and looked for something with which to clean the excreta from her face and body, eventually dedicating my handkerchief in perpetuity to that fetid task.

Moffat lit a cigarette. I remember my sudden fury at his mid-length, over-filled, precisely-pressed khaki shorts, the neat tabs of office on his shoulders, the calf-length socks, and his air of confronting and overcoming the developing heat by calm determination. He had removed his topee as he entered the hut, as a routine reflex rather than any gesture of courtesy. He stood beside me, glancing at the child, and gazing about the hut in growing disgust.

As I fussed uncertainly with my handkerchief, Moffat stood immobile, apparently trying to decide what to do or what to order me to do or, more likely, planning how to shift the responsibility for an initial decision to me so as to preserve his calm authority. Just as I was reflecting on the pettiness of my judgment of him, he dropped his briefly-smoked cigarette and with studied care ground it out on the dirt floor of the hut. My eyes followed his twisting, well-polished shoe as he pressed the butt into the floor. My distaste must have been evident.

“Oh, don’t be such a fool, Blair. Look at the place. They live like pigs. And in any event, these huts are tinder. Perhaps you think it would be better to burn it down?”

I did not reply. Clearly the baby needed help. The smell from her jaw reminded me strongly of an odor I associated with hospitals, but I could not recall precisely what it was. I knew I would have to get the baby to the hospital.

Summoning reserves of courtesy I did not feel, I asked Moffat if he would be kind enough to see that the baby was cared for until I could get her taken to the hospital.

“By all means, Blair, if you think so. I suppose this is police business. I will tell my boy to stay here until you have the child collected.”

I rode my bicycle back to police headquarters and made arrangements for a police sergeant to take the child to the hospital.

“What shall I tell whoever is looking after the child?” the sergeant asked.

“Give any reason. Just say, police business, or something like that. But take the child to the hospital.”

I put the matter out of my mind until late afternoon. I knew the child would be looked after and that I could be of no use. But when what passed for a day’s work was done, I decided to go to the hospital.
Dr. Veraswami was bustling about one of the wards in his ill-fitting white coat. He gestured me towards his office and soon joined me there.

"I am verry glad, Mr. Blair, you saw to that child. She had only a bruise or two when I saw her in the village; now she iss quite battered, verry sick, verry sick indeed. Probably she will die; though we will do our best, our verry best, I promise you that. But her condition iss critical, critical," and his head waved repeated doubts.

"Is she Burmese or half-caste, Dr. Veraswami?" I asked.

Dr. Veraswami seemed slightly put out by the question. "I don’t really know. Her skin iss somewhat light for a Burmese, I think she had a European father, but her features — her eyes and nose — are not now ass they should be. It iss hard to be sure. Doess it matter? She iss, to me, just a baby to be saved."

I asked what was wrong with her and, in particular, about the sickly-sweet smell I remembered but could not place.

"You have a perceptive nose, my friend. I wish the baby’s mother or grandmother had your olfactory sensibility," and he gave a high-pitched giggle. I did not have any idea what he was laughing about, probably about the ornate words themselves.

He saw my mild annoyance and hurried to answer my question: "An abscessed tooth. That iss the main malady. The tooth either grew into the gum — that does happen you know — or it wass twisted or diverted into the gum by a blow of some sort. The tooth infected the gum and then the jaw. Someone rubbed some herbs on the gums which reduced the pain, but gangrene developed. That iss what smells. The baby has had a gangrenous jaw for several days. It iss verry doubtful we can save her. But there iss a chance, a chance."

The chance did not come. The child died the next day. I reported the matter to Mandalay, as was my duty, but since the Regional Administrator had been involved, if only peripherally, I put in a more detailed report than usual. There seemed nothing more to be done — an unpleasant event but not all that unusual. But I was wrong. Very wrong.

A week later a memorandum came to me from Mandalay Regional Headquarters marked IMMEDIATE. Its curt purport was that I had reported a grave felony, a homicide by neglect, but had not troubled to investigate who was responsible; indeed, there appeared doubt that I had recognized the likelihood of a crime. My attention was directed to the Indian Criminal Code of 1860, section 304A:
Whoever causes the death of another person by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment for a term which may extend to two years, or with a fine, or both.

Had I forgotten what I should have learnt of the law of homicide in my training? If so, certain specified pages in the manual might refresh my memory of both homicide and infanticide. Prompt action and prompt reporting on that action were expected. It was a far from gentle reminder.

I had not for a moment thought of the child's death as a crime. Who would think that? But as I did think, the sickening recognition of my stupidity took hold. I knew that exposure and neglect unto death of female babies was a pervasive practice in the East. I knew that in our training and in regular memoranda from Mandalay we had been told of the Government's determination to rid the administered territories of that evil practice, much mention being made of the Infanticide Act of 1870 which had laid the statutory basis for an attack on child killing in India and Burma. But I had not thought of the child's death in a criminal context. Perhaps if she had been exposed, unattended, or allowed to starve to death I would have, or if I had thought she had died from the blows revealed by the bruises on her body; but I had no reason to think anyone wanted the child dead, and so had considered the death from the gangrenous jaw a sadness, but not a crime. Yet it was, to my hot anxiety, true that as a technical matter I had reported to Mandalay what might well be a felonious homicide without giving the slightest indication that I recognized that fact.

I realized I had better find out promptly everything I could about the baby's death and what to do about it. The facts proved easy to discover; it was their moral and legal import that perplexed and threatened me.

Within two days the Indian sergeant who had taken the baby to the hospital told me the entire story, at least as it appeared on the surface. No one knew who the baby's father was; the mother, whose name was MiYan, had never been married and apparently had not lived with anyone in a matrimonial relationship. The same was true of the grandmother, so that all three generations—grandmother, mother and baby girl—were not seen by the villagers as a family at all and hence were peripheral to the life of the village. They were not treated badly; they were tolerated; but they lived in every sense on the edge of Talaban. A situation like this, a family that was not a family and yet was part of the village, was not rare in a Karen village—the sergeant had seen such cases
before.

The sergeant was surprised to discover — I was not — that for the past two years MiYan had worked as a housemaid in the Regional Administrator’s bungalow, that is to say, for Charles and Claire Moffat. She had lived in their servants’ quarters, some two miles from Talaban. The baby had been cared for, if that was the appropriate phrase, by her grandmother. MiYan spent one day a week at the village — her day off work — as well as an occasional evening when she walked to and from Talaban to be with her child. The sergeant told me that when she was in the village, MiYan was reputed to do her best to look after the child.

The grandmother would not talk to the police sergeant — she had hidden in the jungle — but the villagers had told him that apart from when he had visited, and when Moffat and I had visited, she stayed close to the child and would not let anyone else near her. She was thought to treat the child quite severely, slapping the baby to stop her crying. That had been true also, some of the older women said, of her treatment of her own child, MiYan.

MiYan had known of the baby’s toothache and did what she thought was proper, rubbing the child’s gums with taro root. An evening or two after the baby became ill, MiYan had walked back to Talaban to see how the child was. She found the baby much worse. The baby had been crying a great deal and, it seemed the grandmother had slapped her quite vigorously to try to quiet her, so that she was more bruised about the head than MiYan had ever seen before, and her jaw was much more swollen.

MiYan spent the night at Talaban and in the early morning carried the baby back to the Moffat’s bungalow. She asked Mrs. Moffat if she might keep the baby in her room in the servants’ quarters while she worked. Mrs. Moffat said no, telling her there were luncheon guests who would require her full attention, and that she must immediately take the baby back to the village and return promptly in time to help with the luncheon.

Mrs. Moffat also told her to have her mother take the baby to the hospital: “The baby is very sick, you stupid girl. Can’t you see that? She needs medical care. Tell your mother to take her to the hospital immediately.”

I began to have some idea then why Charles Moffat and I were together that morning in Talaban.

MiYan passed on to her mother Mrs. Moffat’s order to take the baby to the hospital; a screaming refusal was the only reply.

MiYan had never been examined by a Western doctor herself and must have seen Veraswami as a distant and terrifying figure.
The only time grandmother, mother, or child had been seen by a Western-trained doctor was when Veraswami had been taken to their hut by the headman. On what were reported to the sergeant to be religious grounds, they both rejected Western medicine entirely and had always refused medical assistance. These attitudes were, I knew, quite common in the villages and quite understandable. Village life had changed little for centuries: the same prosperities and the same sufferings, the same local healers and the same religious beliefs and consolations.

The sergeant did not know how strongly MiYan felt about these matters. She echoed the Buddhist beliefs of her mother, but without much feeling. She was clearly even more scared of her own mother than she was of Mrs. Moffat — and she seemed terrified of Mrs. Moffat. She was a scared person generally, the sergeant thought.

On the death of the baby, MiYan and her mother left Talaban and walked the twenty or so miles south of Moulmein to the village of Pakara, where MiYan’s mother was born, and which she had left when she was pregnant with MiYan.

The sergeant told me he had had no trouble finding out these facts for me, apart from his interview with Mrs. Moffat, who had resented his enquiries and told him so: “Why doesn’t your Mr. Blair ask me himself? I shall speak to my husband about this.” Probably she was right; it would have been better to talk to her myself rather than to send the sergeant as part of his general enquiry.

So I forced myself to call on Moffat. Waiting in his office I found myself at a loss how to broach the question of the baby’s paternity — or whether I should.

“Come in . . .” Moffat called a clipped perfunctory greeting which did not conceal his dislike of the whole affair and his resentment of my intrusion. “I don’t see what those dolts in Mandalay think they’re on about, really. They’ve no idea what it’s like down here, not an inkling how these people live.” He tossed a stack of papers into the rubbish basket and started to straighten the remaining papers on his desk. “I must say you did what you could, and after all, I knew more about it than you. I remember when MiYan had her, and Claire told me the poor little wretch was unwell, but really there was nothing to be done.”

I tried to turn the discussion away from his hostilities to my superiors in Mandalay. Despite our unease with one another, I wanted to discover whatever I could from him about MiYan and her baby. I said I had been surprised that Mandalay saw the
baby’s death as a likely homicide by MiYan: “after all she did not kill the child deliberately, though I suppose she may have neglected it unto death.” I tried also to apologize for having the police sergeant interview Claire Moffat rather than going myself. “I should have been more considerate,” I said; but even that did not seem to mitigate his anger.

“I don’t care if your meddlesome superiors think it is a crime or not. It is ridiculous to test such a question in a case like this,” Moffat said, ignoring my apology.

I agreed that I had been surprised by this, and wondered why they had selected the child’s mother for my investigation: “Why not the grandmother? After all she was looking after the child for MiYan?”

“Why not, indeed?” Moffat replied, seeming to like the idea. “I hear she often struck the baby, and she may thus have caused its death for all we know. But surely we can’t start punishing villagers for trying to discipline their children. Surely not even your people in Mandalay would take that position. They must know how hard it is to get these villagers to observe even minimal decencies.”

“Maybe,” I offered, “they see the matter differently because MiYan and, in a sense, her child were part of your household. Do you know who the father was? Veraswami is unsure whether he was a European or a Burmese; he thinks European.”

Understandably, Moffat was furious. Red-faced, he glared at me: “Have those police dolts hinted at such things to you, Blair? Or is this your own wild theory? Really, I must say, we’ve acted perfectly properly, and Claire has gone out of her way for that stupid girl and her baby. What utter rot!” He glared at me and drummed at the desk in the effort to regain control.

I tried to retreat as best I could, though I felt hypocritical in the effort: “I was not, Sir, for a moment suggesting that you had any particular obligation to the baby, other than the normal responsibilities one has to a child of one’s servants.”

I remember that even as I said it, I felt weak and gutless. Failing to be direct, I sounded mealy-mouthed. And Moffat was no fool to be put off by circumlocutions. Cold with anger, directed now at me and not at my “meddlesome superiors,” he drew my own behavior into the equation: “I claim no parentage here, Blair. That’s not to say my behavior has been any better than yours, since I do hear that you entertain village girls at your bungalow regularly enough. But if you suggest in any way or to anyone that I am the father of that child I shall certainly sue you. It will not only be my
career that’s ruined; rely on that.”

I think I made waving, dismissive motions with my hands, hoping to separate myself from my innuendos. “I repeat, Sir, I was not for a moment suggesting any failure on your part.”

“You were referring to my wife, then!”

The retreat was clearly in disarray, but I clung to whatever scraps of mendacious protection I could: “Of course not; I’m just trying to understand what happened. I should have interviewed Mrs. Moffat myself. I do apologize for embarrassing you both in this way.”

He accepted my apology, though I am sure he suspected that I had, at some level, meant to suggest his and his wife’s moral failure. But he was far too provoked to prolong the discussion further.

As I got up to leave, he either relented somewhat or had a self-protective idea. “If you like, Blair, I will discuss your reply memorandum to Mandalay with you when you have it in draft. I know it is within your jurisdiction, not mine, but perhaps I could be of assistance.”

I thanked him and left, increasingly disliking Moffat and the Moffats’ role in the baby’s death.

I knew I had better take Mandalay seriously if this were not to develop into an even worse problem for me than it already was. To have failed to recognize felonious homicide before my very eyes was one thing, but to do nothing, nothing whatsoever, about the likely felon was quite another. MiYan would have to be brought into custody, cruel though that might be. She might then be allowed to return to Pakara, but only after I had decided, as a policeman, whether a charge should be filed against her, and, as a magistrate, if she were charged, whether she should be allowed bail or held in jail.

To follow Moffat’s advice and try to brush the affair off as inconsequential seemed to me a recipe for disaster. He might be right in the long run, but too much had happened for me, at my level of seniority, to dismiss the affair. His knighthood was at risk, it seemed. That did not worry me greatly, although it possibly explained a lot about his and his wife’s actions. For me, more was at stake; direct orders from superior officers cannot be ignored unless one wants to be cashiered.

So, making out the arrest warrant myself and citing the Indian sergeant and Veraswami as the informants, I sent the sergeant to arrest her. I had told him to tell MiYan she must come because of the death of her baby, but otherwise to avoid conversation entirely about that matter. He should take her to the jail hospital where
Dr. Veraswami would have made arrangements that she be held until the preliminary enquiry or a bail hearing, and he should then report back to me at the police station or at my bungalow.

While I was making these arrangements and completing and signing the arrest warrant, yet another telegraphic bombshell reached me from Mandalay. I was advised that Lieutenant George Brett would be arriving in Moulmein a few days hence. Brett would be in touch with me concerning his travel arrangements, and I was directed to assist him with his accommodations at either the barracks or the Club's depending on his preferences. He would be assisting me in the enquiry into the death of the baby in the village of Talaban and would be pursuing other duties of which I would be advised. I knew exactly what that meant: he had a watching brief, which meant that he was coming less to help than to report on my inadequacies.

So, I was not to be trusted at all in this matter. Another officer would be peering over my shoulder, reporting to headquarters, having no responsibilities other than those of a critic. It was not at all reassuring. I had not met Brett. I knew of him, of course, in the sense that I had read the names and ages and seniorities and postings of all officers in the Burmese Police establishment, but that was all.

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It seemed the course both of courtesy and prudence to meet Brett at the railway station. He had, after all, been sent to Moulmein because my superiors doubted my competence in this matter. There seemed little point in alienating their emissary.

I was dripping wet after my bicycle ride from the hospital; I had pedalled too hard for the time of day. I often forget that the height of the sun governed all our activities in Burma. So I rode home, showered, lay on a towel under the rotary fan for a while until I thought I might possibly have ceased perspiring, and then put on fresh clothes in which to meet Brett.

The train was, as usual, late. And late at the worst time of the day, the early afternoon boiling-point when all sensible people in Burma took rest or shade or preferably both. I had changed into the lightest clothes that could be defined as a uniform, but already I could feel the patches of sweat darkly staining the back of my shirt and saturating the inner headband of my cap. There was nothing to do but wait — sit in the shade of the shabby station and wait — my only companions a line of vultures, heads hanging low in the heat, perched on the branch of a nearby leafless tree. I
thought the vultures were wise to be waiting for me, but even that thought did not amuse me.

I heard the train first through the hum of the rails and walked toward the rear of the station where the first-class carriages normally came to rest — as far as possible from the soot of the engine. Brett was immediately recognizable, the only officer in uniform on the train. But I was unsure for a moment since he was not alone. There was a woman with him, a quite unusually presentable woman at that. I hesitated. He caught sight of me. “Is that you, Blair?” and, as I moved toward him, he added, “Good of you to meet us. Let me introduce my wife, Rosemary.”

I saluted her, murmured a greeting to them both, and moved to help with the luggage.

“Oh, leave it Blair. Let the batman look after it.”

I had not expected such luxury. As a lieutenant, he was entitled to a batman, of course, but it was unusual to travel with such retainers. Indeed the service did not issue travel orders for the batmen of those of rank less than major, but let the rest of us pick up such assistance wherever we happened to be stationed. And the presence of his wife had the same oddness — she too would not be covered by a travel order. Brett must be paying their fares himself!

I told the Bretts that motors were seldom available and that I had arranged to convey them to the Club in a rather small tonga; I gestured toward the somnolent horse and immobile driver at the other side of the platform.

Mrs. Brett responded with enthusiasm. “I much prefer a tonga to a truck, Mr. Blair, particularly in this heat. But I doubt we can all fit in.”

“I can send a vehicle for your luggage and the batman later, Mrs. Brett. The three of us can squeeze into the tonga to the Club, I think, or, if you prefer, I can come along later.”

“But there is the Burmese gentleman too, Mr. Blair.” I had no idea who she was talking about, and her husband also seemed either unsure or annoyed.

“No, dear. He will not be coming with us.” Turning to me, he added, “My wife speaks of a Burmese barrister who is also travelling on this train. He will certainly not be staying at the Club.”

Turning about I caught sight of him. There stood U Tin Hlang a few paces off, quietly observing the three of us, amusedly waiting for some sign of recognition by me.

I must have seemed most discourteous to the Bretts. I was entirely delighted to see U Tin Hlang again. He beamed at my obvious pleasure in seeing him, even the scar curving from above the
right eye over the bridge of the nose and down under the right eye, which usually gave his face a somewhat sinister air, now melded into an appearance of benevolence. I hurried over to embrace him in a most un-English way.

“How grand to see you again, Mr. Lang,” I said, accenting as banter the anglicized version of his name. “What are you doing here?”

“You will learn that soon enough, Your Honor, and I doubt that you will be pleased. But let me not detain you now. You have the Bretts to attend to.”

I turned back toward the Bretts and sought to unify the group. George Brett, stiff and unsmiling, the very image of the pukka subaltern on parade, was clearly embarrassed and disapproving. Rosemary Brett, however, was smiling in uncritical amusement at my developing unease.

U Tin Hlang eased the situation for me. “We three met at Rangoon station, Blair. You see to them now; I’ll get over to my hotel, the impeccable Htun Hla, you will recall. I’ll call on you later.” He turned back to the train and, I assumed, his luggage.

Brett was grumbling about keeping his wife standing about in the sun. I moved quickly to tell the batman that I would send a vehicle for him and the luggage as soon as I could, and escorted the Bretts to the tonga. I found myself beginning to play the servant to Brett, which was odd, since we were of equal military rank, both lieutenants. He was probably older both in years and in the service and therefore senior to me; but there was more to it than that. He had such a confident air — taciturn, privileged, assuming he was to be served and thus attracting service. Though it was indeed very hot, he maintained an air of cool collectedness. By contrast, his wife, Rosemary, made no effort to separate herself from the hot realities of Moulmein station. Fanning herself with a large hat she had removed soon after alighting from the train, she climbed into the back of the tonga, patted the seat beside her to tell me to sit there, and looked around in quick interest. But there was not much to see.

Brett checked that the batman was staying with the luggage and joined us in the tonga. We set off for the Club.

To make conversation, I asked them about U Tin Hlang and, risking the obvious, enquired if he too had come on the MiYan case.

“Of course he has, Blair. Though how he knew I had been sent to assist you is a puzzle. Nobody I know told him, of that you can be sure. When we were at Rangoon station he came up and intro-
duced himself to Rosemary and me, saying some rot about where you go I go too. But I made sure we were in separate carriages throughout the whole lousy journey. I don’t want to talk to him about the case, and I don’t suppose you do either. I knew of him, of course, a troublemaker if ever there was one, but I had not spoken to him before. You seem to know him well, if I may say so” — and his disapproval of the manner in which I had greeted U Tin Hlang was clear.

Mrs. Brett changed the subject and began a flow of sensible enquiries about Moulmein and what there was for them to do and see while they were there.

I did my best, but the truth was that there was not much for a tourist in Moulmein, and I said so.

She bridled. “I am not a tourist, Mr. Blair. I want to find out all I can about the life here — for people in the government, for the natives, for everyone. I’m sure there is a lot to learn.”

She was right, of course. I had been my usual clumsy self. I am never easy in the presence of young women, particularly attractive young women, and even more particularly attractive young women who know you are attracted to them. She let me down lightly and did not pursue the attack, telling me instead that she would be grateful for any help I could give her husband and herself while they were in Moulmein.

Brett interrupted, curtly I thought. “Blair and I will be fully occupied, my dear, with the MiYan case. And he also has the District to look after. You must not expect him to be a Cook’s Tour guide to us.”

She made no response.

I left them on the balcony of the Club where the Club Steward, to my surprise, was waiting to welcome them. Brett asked if I would meet him for lunch at the Club the next day and take him to his office. They were weary from the journey, he said, and the MiYan case could well wait another day. Mrs. Brett waved a friendly farewell and said she hoped they would see me soon.

* * * *

By mid-afternoon I had finished my office work. I decided to call on U Tin Hlang. It seemed proper that we should consult, and anyhow I enjoyed his company.

Nothing had changed in the lobby of the Htun Hla since U Tin Hlang, Veraswami and I had dined there to discuss the case of Ake Dah, except that this time, having ridden my bike to the hotel rather than being driven in a tonga, I was even hotter and sweatier.
There was no need to ask for U Tin Hlang. The staff knew I must be calling on him. As I arrived an Indian servant scuttled up the stairs. A few moments later the same servant hurried up to me obsequiously to enquire if I would be good enough to follow him to Dr. Hlang’s room. Dr. Hlang, he said, “would be honored if I would join him for a chat in his room.” I wondered where U Tin Hlang had acquired his medical education, but sympathized with the servant’s desire to do honor to the hotel’s increasingly famous guest. Since we had last met — on the Ake Dah matter — I had noticed more frequent and critical reference to U Tin Hlang in the English press, which must mean a surge of influence among the indigenous populations of Burma, that is, among all other than the Europeans and particularly the British, who never could be said to risk a taint of indigenousness no matter how long their suzerainty of a tropical country.

I followed the Indian servant to the room, centrally placed on the floor above the entrance to the hotel, the only room with a balcony. Before the servant could knock, U Tin Hlang opened the door. He was dressed simply but elegantly in a full, soft, off-white single garment hanging loosely to the calves like a modified nightgown, short-sleeved, with an open round neck — comfortable and sensible. His greeting was warm beyond courtesy, and I tried to express my pleasure in seeing him again.

The Ake Dah case had cut itself deeply into my memory and my feelings. Apart from its innate interest and my continuing occasional contact with Ake Dah himself, it was a matter in which I had outwitted the redoubtable U Tin Hlang, outwitted him politically, denying him an increment of political advancement by another victory for the Burmese lawyer over the Raj. And what pleased me further was that Ake Dah had not been injured in the process. I suppose I was a little puffed up, and perhaps that is why I felt so warmly towards U Tin Hlang. Anyhow, self-satisfaction apart, it was a delight again to be with such an urbane and amusing companion as the newly medically qualified Dr. Hlang.

“Your man suggests you are now a member of Veraswami’s profession. How you have found the time for such demanding studies, while leading the Burmese revolution and appearing bewigged in the Supreme Court whenever it sits, astonishes me.”

“He is not my man, Blair. He works for this hotel, and you know it. ‘My man,’ as you call him, and another servant or two, will be coming tomorrow and travelling back and forth to Rangoon quite frequently, at costs that I hesitate to load onto my employer, the Young Men’s Buddhist Association — but I will. And it is
graceless of you to mock my doctorate. A university in Delhi needed a non-Indian for its annual commencement ceremonies and thought my efforts in the law and on behalf of my countrymen, downtrodden mercilessly by your countrymen, merited an honorary doctorate. We negotiated whether it should be in law or letters; I preferred the former, they the latter; we settled for philosophy since they lacked a faculty of politics. So don't mock my academic distinction, Blair; obviously jealousy moves you."

I offered excessive congratulations on his doctorate and expressed the hope that it would not remove him too far from his circle of erstwhile friends, amongst whom I hoped he numbered the District Officer of Moulmein.

Suddenly serious, the scar on his face reddening, his voice hesitant rather than orotund as usual, U Tin Hlang said: "Thank you for the opportunity to say so, Blair. I was touched, deeply touched, by the manner of your greeting to me this morning. It was in the presence of an officer of rank equal to yours, but a man of more influence than you. I know such things are not easy. You must know his opinion of me. You must know what will be reported to your superiors. Yet you expressed yourself in that wonderfully warm way. I am, as I say, deeply touched.” And he glowered at me as if he were angry.

I was, I knew, receiving credit I did not deserve. None of the calculations he suggested had passed through my mind at the railway station when I caught sight of him. I had simply seen him, and my body had rejoiced for me. I am glad I did. I am glad I embraced him. But certainly no merit attached to the gesture; it took no courage; it was almost reflexive. But there seemed no point in saying all this to U Tin Hlang. Indeed I doubt I understood it enough at the time to have said anything sensible, and the moment passed. I found myself, blushing I suspect, accepting his offer of some chilled barley water and looking around the room for a chair.

It was a clean and spacious room, with wooden slats for windows, wicker furniture, a large and comfortable looking bed crowned by spotless mosquito netting, neatly folded. Firm, straight-lined wooden tables and chairs. U Tin Hlang’s suitcases were of dark leather, and there were several small wooden trunks. One was open beside a desk and had obviously been the center of U Tin Hlang’s interest before I arrived; I could see several papers, folded length-wise in the fashion of lawyer’s briefs, tied with single, red ribbon bows. It struck me that U Tin Hlang must in fact work hard and long, that his air of effortless superiority was an affectation to cover extreme diligence. While in Moulmein he was
not able to work only on my case, to keep a watching eye on Brett while Brett kept a watching eye on me; there must be many other matters, legal and political, that currently burdened him.

I sat on a wicker couch while U Tin Hlang went out to the top of the stairs above the lobby and shouted down for barley water. I had no particular agenda of topics to discuss, though I supposed the case of MiYan's baby could not be avoided. Otherwise, I was there because I wanted to see him.

"Is it MiYan that brings you here?" I asked.

"Of course. Again your superiors have given me a cause I cannot lose. You punish her: you are insensitive brutes, uncaring for the cruel lives of your village servants. You don't punish her: you are insensitive brutes, uncaring for the lives of Burmese infants."

I could not resist a jab. "You said something like that about the Ake Dah case, as I recall, but it didn't work out that way."

"I thought you wouldn't soon forget that victory, Blair. Yes, you won that, I admit, though whether you won it fairly I am not sure. Still, I would have been pleased to win as fairly as you did. But I don't see how you can win this one, particularly with me and George Brett and Charles Moffat and your superiors in Mandalay all peering over your shoulders. Those young shoulders are wide and they may even support a sensible enough head; but what with the haughty and selfish Moffats, the strangely matched Bretts, and the rest of us..."

and his voice trailed away in artfully contrived doubt.

I asked him how he had heard about the baby's death. His answer revealed that very little passed through official police or military channels, or over the telephone line, or by telegraph, that did not find its way to the political planners of the Young Men's Buddhist Association. But he was not boasting, just displaying realities I had suspected, and he made the contrary point, which I had not suspected, that the military and police authorities gave the same attention to all his communications. Hence his need for servants from Rangoon to travel back and forth should they be needed as messengers — with some hope of confidentiality. And he reminded me that when it mattered my superiors directed me by documents hand-carried and delivered by members of the Corps of Signals who, in these cases, used no signals whatsoever, which amused him: "They should be called the Corps of No Signals, don't you think?"

"I hope we may talk to one another about the case at hand, Dr. Lang, as we usually do, rather than trying to avoid it," I said, finding myself giving him his academic honorific. "It seems to work
"There is no need for the doctorate in our conversation, Blair. You have teased me quite enough with that to satisfy your envy. Yes, by all means, let us share our views on this case, though you must not count on any complete disclosure — nor will I. I well remember you kept your plan for Ake Dah entirely to yourself until you sprung it on me as a piece of immediate blackmail in his presence. So don't be too sure I will be open as the fields to you — I will try to dig a secret ditch or two for you to fall into. But let us at least pretend to play it all openly."

The barley water arrived in a tall jug covered by a round crocheted cover weighted around the edges by colored glass beads. Remarkably, there was a substantial piece of ice floating in it. Uttin Hlang poured for us both, handed me a glass, and wandered towards his desk and its attendant trunk of papers. I found myself more at ease than I usually am with anyone. The game of pretended disclosure between us amused me, even though people's lives were at stake. I knew that in a deeper sense, beyond the politics, our views tended to match. But I was in no hurry to come to a discussion of the death of MiYan's baby. I would have to know more and to think more before I could continue to play this game with my friend. And I had the secure sense that he was a friend.

"When would you like to see your client?" I asked.

"She is not yet my client, Blair. I will have to offer my services, paid for by the admirable Young Men's Buddhist Association. They are, as you know, a generous and selfless group, seeking nothing other than to demonstrate the iniquity of the Raj. MiYan may as well be a beneficiary of that noble sentiment, don't you think?" I told him I did not so think, but suggested that he call on MiYan soon and then advise me if he were representing her so that we could arrange a bail hearing, if that was what he wanted. He was ahead of me, of course. He had already arranged with Veraswami to see MiYan first thing the next morning. He told me he would call on me to discuss bail and the arrangements for the preliminary enquiry later in the morning, if it suited me. I said it did.

These preliminaries out of the way, I turned to what also troubled me about the day’s events. "Tell me about the Bretts, would you?" I asked. "They seem to travel in some style."

"I know a little about them, not much," Hlang replied. "They do indeed spend freely, far beyond his military pay and allowances. But it is not his money; it is hers, I am told. Indeed, the lawyer who told me, an English Silk, put it rather well I thought. He said that though Brett is a soldier, he earns more by his prick than by
his sword.”

I found I was annoyed; annoyed that Hlang should speak of her like that. It seemed demeaning; unworthy of her. I said that I had found her a charming and intelligent person.

“What has that to do with it, Blair?” and then he saw my annoyance and smiled happily. “I apologize for my vulgarity, Blair. I meant no disrespect of her. She is indeed a most attractive lady. I wish you well. As I said, they are a mismatched pair.”

“Do you know why she came here?” I asked. “Surely the MiYan case won’t take that long. Can’t she bear to be separated from him at all?”

“You keep worrying about their love-life, Blair. I have no idea as to her erotic needs. But before you fly at me in a rage, let me say that I do think there is more than one reason for his being here, which may explain why she came too. Was the previous District Officer at Moulmein not a captain? Are not district officers normally captains? And you are not really yet due for promotion, Lieutenant Blair, despite your wonderful service to us poor Southern Burmese. Brett is, like you, a lieutenant; but I am told he is about due for a captaincy. He is not without influence in Mandalay and Rangoon. Nor is she. Perhaps they are surveying your fiefdom, wondering if it would suit them. I thought of this in the train. It makes sense. I don’t know if it is so. But his watching brief in the MiYan case was easy to arrange, I should think — a word or two in the Club when he heard of your myopia towards baby killing, and your need for assistance in the matter. And here they both are.”

I felt hollow. I did not wish for indeterminate service in Moulmein, but this was certainly not the way to leave. And she had seemed so pleasant, so outgoing, so genuinely interested to learn everything she could about Moulmein and all who lived there. Of course she was interested. She was deciding whether she wanted it for herself. How utterly mean of her, to be dissimulating in this way. And how cunning of him, to use a minor oversight of mine both as a means to see whether he wished to take over my job and as a lever to arrange it if the case came out badly. Heaven knows where I might be sent.

I was slow to reply to U Tin Hlang. He sat, his hand beside the glass of barley water, looking at me speculatively. I said that I was troubled how all the cases we were involved in together seemed to threaten me in one way or another. “They become so autobiographical, don’t you think? Anyhow they do for me; perhaps less for you, though they all run close to your political ambitions. I thought judges and lawyers were meant to be immune from
these personal concerns in their cases; but it doesn’t work out that way for me.”

I found myself troubled by the increasing unpleasantness of this whole case. It had been a long day. I was detaining U Tin Hlang. I had exceeded my welcome. It was time to go to my bungalow and try to think. I told Hlang that I hoped he would spare me time for a talk soon at my bungalow, and asked if tomorrow night, after dinner, would be convenient. Perhaps he and I and Dr. Veraswami could together bring some sense to this case. I said I was sure Dr. Veraswami would be willing to join us.

He was nodding in amused agreement throughout this long and circuitous invitation. “I will try, Blair, but like the full disclosure between us, don’t count on it. But it would be good to be with you two again. I’ll try.”

* * * *

Since U Tin Hlang had told me that he would interview MiYan the next morning, I had an early breakfast and rode my bicycle to the barracks and the police station in the cool of the morning. It promised to be a busy day: George Brett and I were to lunch at the Club and work through the early afternoon. Then, in the evening, after dinner, I hoped that Veraswami and U Tin Hlang would come for a talk; and now I probably faced a bail hearing in the morning — as well as the usual small pile of official and largely formal reports.

I fell to the paper work and completed a surprising amount before an Indian runner brought a hand-written message from U Tin Hlang, asking me to come to the jail hospital immediately if I were free to do so.

U Tin Hlang was waiting for me at the entrance to the hospital as I leaned my bicycle against the wall. “Blair, she says she does not want my help. Have you already poisoned this air? Did you warn her against me when you brought her here?”

“I certainly did not,” I said. “I would prefer that she be represented by someone, and I know no one here of your ability. I am not at all clear what should be done about her, whether she should be sent to trial at the Rangoon Assizes, or tried summarily here, or whether she should be put on trial at all. No, I did not get in your way.”

“Well then, Blair, talk to her. Tell her she needs my help — or that of someone else, if she dislikes the scar on my face.”

I suggested we go together to see MiYan immediately. U Tin Hlang declined: “I can’t keep pushing myself on her. You will have
to persuade her. If not, we shall save some money for the YMBA
and I can return to Rangoon.”

I said I would do my best and added the hope that I would see
him that night after dinner at my bungalow. We parted at the en-
trance to the hospital.

Dr. Veraswami was not in his room. I did not need his permis-
sion to see a jailed inmate of his hospital, though as a courtesy I
normally sought it. But I wanted to see MiYan promptly. I went to
her room.

The half-door to her room was swung closed, but I could see
someone sitting on her bed talking to MiYan as I approached. I
knocked and entered without waiting for a reply. To my astonish-
ment, there sat Rosemary Brett smiling warmly in greeting. Even
MiYan looked up in apparent amusement at my surprise.

“What are you doing here, Mrs. Brett?” I asked, too curtly I
suppose.

“I always first visit the hospital at any new station, Mr. Blair.
It is a good spot to begin to find out what a place is like. And I do
have some experience of these matters. Dr. Veraswami has been
called to a patient; he suggested I talk to this lady while he was
away. Is there something wrong?”

“No. Not at all. I’m sorry I barged in on you. But I do have to
talk to MiYan,” I said, gesturing toward MiYan.

“Very well. I shall wait in Dr. Veraswami’s office until he is
free.” And she stepped down from the edge of the bed, ready to
leave if I got out of her way.

“Oh, I didn’t mean that, Mrs. Brett. Please stay. You can per-
haps help me.”

She looked about, uncertain. There seemed little space for the
three of us in the tiny room. “All right, if you say so. Perhaps you
could sidle past us and sit on the table there.” She seemed to be
taking charge. MiYan still had not spoken; but her physical atti-
dute seemed less strained than when I had first seen her. I brushed
past them both to the table beside the window and half-sat, half-
leaned there. It really was close quarters. If I relaxed our knees
touched. It seemed too intimate for the type of legalistic conver-
sation I must pursue with MiYan; but I was certainly not about to
ask Mrs. Brett to leave, even if she and her husband were after my
job.

I found I was still wearing my cap; Good Heavens, I should
have saluted. But that would have looked absurd. I took it off and
put it on the window sill. “You look hot,” Mrs. Brett said.

I said I was, and mopped at my head with a fortunately clean
handkerchief. I found I constantly wanted Mrs. Brett to see me in a good light. But it was not easy now; I felt so awkward interrogating MiYan. Yet here was Rosemary Brett chatting lightly with MiYan, or so it seemed — certainly not at all ill at ease. And then the suspicion came to me that perhaps she had been sent to interview MiYan, sent by George Brett; perhaps he thought a woman was in a better position to wheedle facts out of another woman, facts that might further underline my inefficacy in the whole matter. And within me resentment fought with attraction.

I turned to MiYan. “The Burmese lawyer who came to see you this morning tells me that you do not want him to help you. Is that right?”

She nodded assent.

“T think it would be a good idea to let him help you, MiYan. You will not have to pay him. He is an excellent lawyer. If you go to trial for the death of your baby, and you might, you will have to have a lawyer. You might as well have a good one.”

MiYan managed to say, “You know what happened, Sir. You will do what is right. He cannot help me.”

“You are wrong, MiYan,” I said. “I am sure he can help you. He knows much more about the law than I do, and he wants to help you.”

Rosemary Brett obviously could no longer contain herself: “Surely, Mr. Blair, you should not be badgering her like this. If she doesn’t want U Tin Hlang, that is the end of it. And I can’t say I blame her. He will simply turn it all into a political circus to serve his own ends. Why should you be pushing him upon her?”

I said that I had had some experience of U Tin Hlang and his work before, as she probably knew, and that I had always found that though he did indeed seek political ends embarrassing to the administration in the cases he took, he also was a considerate and forceful advocate for his clients. “MiYan can hardly do better,” I concluded.

Rosemary Brett raised a very graceful eyebrow, and turned her head slightly to signify her disengagement from this issue: “Well, it’s up to her, of course,” and then added, with a smile of understanding towards me, “but I do believe you really are worrying about what is best for MiYan here,” and she laid a hand on MiYan’s arm. “I think it would be a good idea for me to leave you both now. I will wait for you, Mr. Blair, in Dr. Veraswami’s office.”

I stood up, occupying even more space, and unintentionally making her exit quite difficult.

MiYan appeared sorry to see Rosemary leave. I continued to
argue the case for her being represented by U Tin Hlang, after a while making the point that I could do my job better if Hlang helped her. It seemed an odd inversion, but it persuaded her: “If you say so, Sir, I will trust him.” Relieved, I hurried off to Veraswami’s office, hoping that Rosemary had not left.

She was talking, happily and easily, with Veraswami. He waved me to a chair. “Would you like tea, Blair? Nurse Brett won’t join me.” I declined the tea.

Veraswami said that he would have to get back to work and suggested I stay in his office with Mrs. Brett until a tonga could be brought for her. He bustled out.

Words deserted me. They often do when I most want them. They flood in, appropriate and unsolicited when I am alone; but Rosemary Brett completely dried up the flow. After an uneasy silence, while she looked at me expectantly, she said: “I am sorry I argued with you in front of that poor girl.”

“No. Not at all. You were right. No you weren’t; she should have counsel. But you were right to say what you thought; though you were wrong.” It must have sounded mystifying to her. I was not clear what I was saying, but there seemed a thread of truth in it somewhere; at least, I hoped so.

She laughed lightly, a sound I found I greatly enjoyed. “I suppose you persuaded her to have that dreadful Burmese Silk as her counsel.” I nodded agreement. “What persuaded her?”

“To help me,” I replied. And now she laughed out loud. “You seem dangerous, Mr. Blair. No one told me that. I shall have to warn my husband.”

I decided to go directly to the point: “You know the broad facts, I assume. What do you think should be done about MiYan?”

“Why nothing, of course.”

“But surely, Mrs. Brett, we should try to protect village babies. MiYan’s baby does seem to have been very badly treated.”

“Help them, protect them, yes; but policemen and lawyers are not the people for that. George wants to make an example of MiYan to save other babies. I’ve told him you won’t improve maternal care in that way, but he thinks it will help. I suppose you agree with him,” she said and, in self mockery, she glared at me balefully.

I found I disliked being linked in her mind with her husband; to hold the same opinions on any topic seemed a mistake, though on this topic the course of bureaucratic caution was to be in agreement with my silent overseer, Lieutenant George Brett.

“I am unsure what I think, Mrs. Brett. I find it very difficult.
The law may not help much, but it may help a little; it may pro-
tect some babies who would otherwise be neglected—perhaps die. It may be worthwhile.”

“Do you really think, Eric, that anything the law does can strengthen a mother’s love? And how can you know about that? I don’t think a parliament of women would pass a law to punish a mother like MiYan. You and George and other men make the laws and the punishments; you mean well, I know, but you seem so insensitive.”

I increasingly disliked the way the conversation was going. To oppose her in anything seemed an incongruity; to be thought un-
feeling and punitive a disaster. “I’m sorry you think so. May we talk about it together sometime later?” I added, as I saw her tonga arriving outside the entrance to the hospital. She had seen it too, and rising said, “I should enjoy that. I think you will be seeing my husband for lunch. Perhaps we can meet soon and talk. I shall ask him to arrange it.”

This time, even though capless, I made a sort of saluting ges-
ture to say good-bye. It seemed to amuse her.

Veraswami accepted my invitation for the evening, and I set out for the Club for lunch with George Brett.

* * *

Brett went by the rules. He dressed, spoke and reacted pre-
cisely and primly. Worst of all, he insisted on telling me at length, and with reflective deliberation, what I already knew about the law pertaining—yes, he did use the word “pertaining”—to the death of MiYan’s baby. I found myself thinking of many other things while we lunched and talked. Did he think I had not boned up on the law? Did he think that my Police Training Manual and the notes I had taken on omissions and duties to act during that year at the Mandalay Police Training Course had remained undis-
turbed over the past few days? He was relentless; he insisted on our wading through it.

It seemed to him, he averred, that MiYan was under a legal as well as a moral duty to take better care of her child, at least to sustain her life, and since medical care was readily available her failure to fulfill that legal duty might well be criminal homicide. So he averred, and averred and averred. How could Rosemary stand him?

Yet I had to admit he looked the part of the young officer on his way to staff rank: every blond hair in rigid place, square-jawed, squarer-shouldered, his face a mask of severity and sincerity never
to be erased by any lightness of touch. He was of my age; yet he seemed to me of an earlier, mid-Victorian era, clinging to appearances as all. I struggled to pay at least minimum attention to what he was saying; after all, he was my Inspector General as far as the MiYan case was concerned.

He said he thought there was no problem of causation in the case. The child had died from the neglected abscessed tooth and from nothing else. If there was criminal responsibility for failure to provide medical or dental care for the abscessed tooth, there must also be criminal responsibility for the child's death, did I not agree?

I said I thought the question of what caused the baby's death was obvious enough, as a matter of medical fact, but thought there was much more to consider before MiYan could be convicted and punished. He most seriously concurred—again, his word—but offered the opinion that it was desirable for us to get all these things straight, did I not agree?

I had little choice; I "concurred." And then, in revolt, I decided, despite the likelihood of alienating him, that I should make this harangue more difficult for Brett by raising a few obstacles in his grimly dull path—concur less and probe more.

"What about the grandmother, Brett? It seems she hit the baby quite hard in the face. Perhaps those blows, and not just the neglect of the tooth, helped kill the baby."

Brett was astonished. "But Mandalay isn't interested in her. Surely you know that. Obviously babies should not be struck; but every villager knows that. What they don't know, some of them, is that they must provide proper medical care for their babies, particularly their girl babies, whom they don't seem to care about so much. That is what the case is about, not violent grandmothers. And, anyhow, it would be enormously difficult to prove that her blows hastened the baby's death. And in that case both MiYan and her mother might escape punishment."

I allowed that this did not seem too bad an idea to me. Brett, troubled, decided I must be joking. "Surely, Blair, we must put an end to this infanticide. The Government could hardly have made it more clear."

I was beginning to enjoy myself, though I felt I might well pay a heavy cost. Still, he was too tempting a target. So, I agreed, indeed several times vigorously concurred, that the central problem in the case was the failure to provide needed medical care for the baby, once her serious, life-threatening condition was apparent. Was I right? Yes, I was right? "Well, then what about Mrs. Mof-
fat? She knew how sick the baby was; she did nothing to help."

Brett was appalled. "She does not have to take care of sick Burmese babies. She did what she should have; she told MiYan to get medical help for the baby."

"First her luncheon party, then the baby; those were her priorities. Wasn't that neglectful of the baby's life?"

"You cannot mean to involve her, Blair. I know U Tin Hlang will try to, but you must not let him. She had no duty of care for the baby—you know that. You are not called 'The Rickshaw Wallah' for nothing; you know you should not volunteer in such matters. Mrs. Moffat behaved sensibly. It would be dreadful to involve her and her husband in this. And I know, for certain, that Mandalay would not like it at all if you did." And his precisely shaped mouth clamped shut.

I did not share with Brett my suspicions about the paternity of the child. I don't think it was fear of any action by Moffat that stilled my tongue; it was rather a recognition of the frailty of the allegation and of the turmoil that would follow if the facts were as I suspected. And also, my suspicions, true or false, didn't make much difference to MiYan's duty to care for her baby.

Brett was probably right, and my obstacles to his analysis were gaining me nothing other than his increased dislike. They were probably also increasing the likelihood of my losing this district office. Claire Moffat had no duty at law to care for the baby; MiYan did. The common law of England had found that duty to exist for centuries, and had backed it up with criminal punishments occasionally in egregious cases. And the section of the Indian Penal Code that had been set out in that memorandum from Mandalay, section 304A, had also made such conduct punishable. "Neglect" was the operant word in the section—she did seem to have neglected the child's care. But even that idea had a certain imprecision to it—would it include consideration of all the pressures bearing on MiYan, her own violent mother, her views of the better future life for the baby if she did die now, her wish to keep her employment with the Moffats—in general, her own miserable circumstances? Under those circumstances, was her failure to take the child to Dr. Veraswami, whom anyhow she mistrusted, really "neglect"? I didn't know.

I yielded to Brett the accuracy of his analysis of MiYan's duty of care for the baby and her failure to provide adequate care, but I fear that I did not concur as energetically as he apparently expected. My doubts were poorly concealed. The law might be clear enough, and I thought he was right about that, but it seemed so
wickedly cruel and pointless to punish MiYan further. I could not see myself pronouncing punishment on her—the scene was abhorrent to me—and if, as I suspected he would, U Tin Hlang elected to put her on trial summarily before me instead of having her face a jury at Assizes, I would have to confront that abhorrent moment. The law seemed clear, but it also seemed nonsense. MiYan and her mother had suffered enough already, and every villager would share my view. My error was in reporting the story at all, but I supposed since Moffat was there I had had no real choice.

I dealt with the remainder of the lunch with Brett as best I could, calling again on such reserves of courtesy as I could summon. I tried not to alienate him further. I think he saw my enquiries as to the guilt of Claire Moffat and MiYan’s mother as the troubles of an over-taxed mind. In the end he invited me to dine with his wife and himself two nights hence. It was not the joy of his company that led me promptly and with gratitude to accept.

* * * *

I had a new self-indulgence to show off to my guests: an upright, oaken ice chest, with a zinc-lined container for a block of ice in the upper half, and a well-insulated bottom half with front-opening doors and brass fittings where bottles could be stored in surprising coolness. To the touch, the beer bottles felt quite cold, colder than achieved by Veraswami’s competing method of a block of ice resting in a large open bucket surrounded by a garland of beer bottles.

My bungalow was set in less built-up surroundings than Veraswami’s, more a part of a jungle clearing than of a township. I left the veranda unlit so that the insects of the night would not intrude. With a full moon, as tonight, and occasional scudding clouds moving shadows across the heavy foliage overhanging the veranda, it was a dramatic yet luminous setting for an after-dinner talk.

Close to the magnificence of the ice chest, I placed three high-backed wicker chairs facing out toward the jungle, each chair having a convenient recess in its right armrest to hold a glass. The chairs were also recent acquisitions, products of local craftsmanship, much cooler and more comfortable than the severe, stuffed, government-issue armchairs of the Club.

Veraswami and U Tin Hlang would be ideal guests. The night was not oppressively hot; I counted myself very fortunate. I would insist that they admire the ice chest and the chairs before we talked of anything else. Civilization had come to Moulmein and I was its embodiment.
Veraswami arrived bursting with jollity. His greeting was effusive. He admired my ice chest as if it were the achievement of a cultivated and precise taste; he gasped in delight at the coldness of the beer, the comfort of the chairs, the charm of the surroundings. I began to believe him.

He had visited me rarely at my bungalow and I tried to express my pleasure that "my only friend in Moulmein" was visiting me and my hope that it would not be so long before he came again. "You are very kind to me, Dr. Veraswami. I seem to spend most of my leisure hours on your veranda—anyhow, the hours I most enjoy."

He was pleased by my reference to him as my only friend in Moulmein. I am not sure, but I think he blushed; it is hard to be sure with one of Veraswami’s Dravidian coloration.

To cover his embarrassment, I hurried on, "But we have another friend coming tonight—U Tin Hlang. He said he would try to drop in. I think he will. He knows you are here. And I think he will be interested to learn of my talk with MiYan today."

Veraswami plunged into the MiYan case, pressing me on the relevant law. I told him I had done my best to brush up my understanding of the law over the past few days and that although George Brett had given me an exquisitely dull refresher course I was no authority on the subtleties.

He waved this disclaimer aside as excessive modesty, but added, "In any case, if U Tin Hlang joins us, he will be able to advise precisely, issn’t it?"

"I’m not too sure how much we can rely on Lang’s commentaries on the law," I said. "After all, he will slant what he says in favor of his client. He will not quite lie; but he will be parsimonious of the truth. He is quite open about it. That’s one of the things I like about him."

We were hardly into our first beer when loud and repeated noises from the jungle, which at first I thought came from a large animal in pain, heralded the arrival of U Tin Hlang, tooting vigorously on the horn of his bull-nosed Fiat. He pulled up briskly at the front steps of my bungalow; he must have had the car driven down from Rangoon by the “man” of whom we had spoken. But he had driven himself to my bungalow this evening.

U Tin Hlang and Veraswami made eyebong to one another; U Tin Hlang shook my hand in both of his. "It is good to be with you two again. I like it in this peaceful backwater. Though I must say, Blair, you do manage to attract to yourself an undue proportion of politically disturbing cases—no doubt in the hope of seeing me."
I got him seated and equipped with a cold beer. He asked immediately about MiYan. "Tell me, Blair, shall I head for Rangoon in the morning in this chariot," gesturing toward the car parked beside the veranda, "or will MiYan deign to allow me to serve her?"

I told him of her decision and, on his enquiry, of the grounds on which she had made it.

"You really must give up being a policeman, Blair, and join me at the Bar; don't you think so Veraswami?"

Veraswami waved his head about somewhat wildly in the manner of an Indian who does not wish to give an opinion but wishes also not to be thought unsympathetic—it was a peculiarly rounded and effective gesture, I thought, demanding much of the neck muscles and shoulders.

"So. I stay," Hlang said. "Let us talk about the case then. Blair and I agreed, Veraswami, that we should fence with one another in this way; and you know more about the case than either of us, I imagine. I'll tell you what puzzles me: the baby is dead. Blair's superiors are on his tail to punish Miyan for the death as a warning to others. Why doesn't he just go ahead and commit my client for trial. What is he fussing about? He needn't decide. Just commit her for trial at Rangoon Assizes. I shall be happy to defend her there and find a way to persuade a jury to acquit her. I won't trouble him further with it. Why must he act the moral hero, a hero uncertain of the path of heroism but sure that if he searches, it will be somewhere for him to follow?" And lowering his voice conspiratorily and leaning towards Veraswami, in a stage whisper of surprising resonance Hlang offered his answer to his rhetorical question, "Could it be that our District Officer is racially prejudiced? Burmese babies don't matter!"

I knew he was baiting me, not really attacking me, but I confess I was hard put to keep my temper. I turned to Veraswami: "Is that what you think, too, Dr. Veraswami?"

Veraswami was silent for a moment. "I have watched you for some time, Eric, and I know you mean well by the natives here. But let me press you in the same way. Suppose it was a member of one of the European families who had mistreated a baby unto death, would you be hesitating? Would you not then think that it was a jolly good thing to punish whoever had killed the baby? Your duty to let the law take its course, and so on, isn't it?"

The question troubled me. I had to admit that I thought the criminal law would have a more deterrent, educative effect in such a case than when a dominant culture, here the British, tried to
impose its values on another culture, here that of a Burmese village, by means of criminal punishments. Anyhow, it seemed a harsh pedagogical method, even worse than those corporal methods pursued at St. Cyprians’ and Eton.

“I don’t think it is racial prejudice that moves me, Doctor,” I said. “I think I would feel the same way about a European baby.”

U Tin Hlang was upon me before the sentence was out: “You deceive yourself, Blair. You don’t even know the baby’s name, or that of MiYan’s mother. I can hear you if they were English—such solicitude, on a first-name basis I’m sure.”

And now I felt beleaguered, angry. Of course one identified with one’s own more than with others. But neither in this case nor in my few years in Moulmein had I been neglectful of the villagers. Yet, . . . it was true what they said. I didn’t know the baby’s name and I would have had she been English. I had not seen a possible crime before my nose and I would have had those involved been European. My anger abated in a sigh.

And then the realization of a sharp threat struck me: the baby might well have been part European. A phrase of U Tin Hlang’s came back to me: “I will try to dig a secret ditch or two for you to fall into.” Perhaps this was such a ditch, and a deep one too. At trial he might spring on me the suggestion that it was because the baby was half-caste (with a strong hint that Moffat was the father) that MiYan was being tried for the baby’s death. He would be protected from an action in slander by the courtroom setting. My ruling in court that such a suggestion, unsupported by evidence, was both improper and irrelevant would not for a moment diminish its devastating political effect. His employers at the Young Men’s Buddhist Association would be well pleased with U Tin Hlang. I certainly must avoid this ditch if I could. I wondered whether MiYan would help him with the digging; surely not — unless it was true.

Dragging my mind back to the veranda, I tried to turn the discussion in a less threatening direction: to MiYan’s ethnicity rather than her baby’s. “Perhaps I would think European parents more deserved punishment. After all, it is easier for them to look after their babies. But MiYan is Burmese, not European. I don’t think punishing her will help other Burmese babies. And I am not at all sure that she deserves to be punished. I find it hard to think of her as wicked. But you both seem to be attacking me; you are meant to be helping me. Tell me what you would do. Do you wish her to be convicted of child killing, Veraswami?”

“I had hoped you would not ask me that, Eric, but I suspected
you would. Walking over here tonight I knew I must make up my mind about that. If I have to answer you now, I must say, yes; on what I now know she should be tried and convicted. I think I am a reluctant protagonist of putting her to trial. I think you are a reluctant opponent. We are both reluctant, we vacillate, we are unsure, we both hesitate too much. And when I am with MiYan, I must admit, I do not think of her as a criminal; in that you are right, she does not seem to be deserving of further punishment."

“Well, then, how in conscience can you punish her? You say she doesn’t deserve punishment, but you would punish her.”

“I have watched what happened in India with suttee and with infanticide, Eric. Many who followed village ways, good people, were punished. Many widows have thus been saved from the fire, many babies thus saved from painful deaths. It is worth it, I think, and what they did was wrong, absolutely wrong, even if their culture said it was not.”

U Tin Hlang, who had been watching me carefully as Veraswami declared himself, interjected: “So you don’t believe in cultural neutrality, Veraswami? Most interesting, most interesting. It is a difficult question for a Burmese politician.”

“I don’t know what you are talking about, Lang,” I said, “I don’t know what cultural neutrality is.”

Veraswami seemed appalled, not at my ignorance but at his causing me what he thought was embarrassment. He decided that a high-pitched giggle would best meet the occasion, culminating in a “Ha Ha, how very funny. Yes, I reject cultural neutrality; some things are bad even in those cultures that think them good—culture cannot entirely define virtue. Suttee is bad, though many Indians hold it as part of their religion. Infanticide, letting baby girls die, or exposing them to die, because of the caste system and the need for dowries for daughters is bad. We must stamp them out.” And he tried to do so, pounding his foot on the veranda.

U Tin Hlang moved uninvited toward the ice chest. I was glad he felt at home. But I began to resent his role of spectator of the disagreement between Veraswami and me. “Is Veraswami right about that, Lang? Do you wish your people to be educated by the English criminal law?”

“Oh, you do it to yourselves too, Blair. Whenever you English lost a battle at sea—not often enough for my taste—you executed an admiral or two to encourage the others, so the history books tell me. It made the fleet, I’m told.”

“I thought you were defending MiYan, Lang. You talk more
like a prosecutor.”

“No doubt, when we get the Raj out of here, if I am not Prime Minister I will be the chief government prosecutor. But don’t confuse what I say and do for a client with what I believe. You hit the right jurisprudential note to defend MiYan, stick to it: only the wicked deserve criminal punishment, no matter what good such a punishment may do for others, and I will drub you with that at the preliminary hearing and drub your superiors with it in Rangoon if you put her to trial. But still our good doctor is right. What MiYan did is bad, absolutely bad, whatever the local customs. It is, how should I say it, species bad, in a real sense, inhuman. And at one level or another MiYan knew it.” The vision of U Tin Hlang years hence as a leader of his government came clear to me. And I began to see, too, why successful defense counsel often become aggressive prosecutors—they have heard and used all the excuses. U Tin Hlang had not committed himself about MiYan, but it seemed clear that, as a personal view, he inclined toward her prosecution. I wondered how he would approach the prosecution of others in the case.

“Tell me, Lang, as a prosecutor, is MiYan the only one you would pursue in this case?”

“Of course not, Blair. My name must constantly be in the news. I prosecute them all. Dr. Veraswami, an Indian you know, doesn’t give a damn for Burmese babies. Sees them sick in the village and does nothing about them except talk to a young district officer. What a villain; let us prosecute him. And the Moffats, oh the Moffats; slave owners neglectful of their slaves. Let us prosecute them. You are right, Blair, the life of a prosecutor will be a wondrous joy.”

“Stop it, Lang, please,” I said, “I have enough difficulty with this case without your mocking me. Seriously, what about Claire Moffat? I’m sure you agree with me, Veraswami, she should have seen that the baby got to the hospital, or called you to her bungalow to see the baby when MiYan brought her from the village. Surely giving precedence to her inconsequential luncheon party over the life of the baby is both wicked and criminal.”

U Tin Hlang was delighted. Prancing about the veranda in front of us, waving his glass but managing not to spill a drop, he was a picture of joy. “Do please charge her with the baby’s death, Blair. It will be wonderful fun. Of course, the master owes a duty of care to the servant, and presumably to the servant’s baby if it is on the master’s premises, though I am not so sure about that. But yes, do it Blair. What wonderful fun. And I’m sure Rangoon and
Mandalay and Charles Moffat will approve of your moral diligence and express their approval. As will I.” And beaming at me, he added, “Believe me I will dwell on it in court, Mr. Rickshaw Wallah, how you, the District Officer, have appreciated that the typical behavior, no the paradigmatic behavior, of English memsahibs is morally grotesque, meriting criminal punishment. Perhaps I could act as Crown Counsel for the occasion. It would get me elected, appointed, anointed—I know not what honours—by a grateful Raj anxious to make amends for its earlier moral myopia, and by very grateful Burmese nationalists anxious to be rid of the Raj.”

“If you go on like this, Lang, we shall have to talk about something else,” I said. “Try to be serious for a moment. So far you think only your client should be tried for the baby’s death. What about MiYan’s mother?”

“Another name you don’t know, Blair. But put that aside.” And turning to Dr. Veraswami as if he were an expert witness in court, Hlang asked if it was his view that the baby had died from blows struck by her grandmother.

Veraswami said that his examination of the baby’s jaw and teeth both before and after her death did not reveal, so large was the swelling and so advanced the gangrene, whether the abscessed tooth was a result of a blow to her face or had occurred independently of any trauma. “It was impossible to tell, impossible both when she reached the hospital and later. But her hitting the baby probably contributed to her death.

U Tin Hlang held his finger to the side of his nose in the posture of the cunning negotiator. “Beware, Blair. There is more to it than that. Apart from striking the child and thus hastening her death, MiYan’s mother had undertaken to care for the baby. She might be just as responsible in law for a failure of care as MiYan. There was no express contract between MiYan and her mother, of course, but it was clear to both that caring for the baby was her job while MiYan earned what she could for the three of them from the generous-hearted Moffats. So, beware Blair: if you put MiYan on trial without the mother also being charged, I shall have a great deal, a very great deal indeed, to say in court about the behavior of MiYan’s mother. She was the real villain.”

But U Tin Hlang was not finished with the theme. The prancing and gesturing continued. “And was MiYan’s mother not instructed by MiYan herself to take the baby to the hospital? And she failed to do so. Is it not very likely, Dr. Veraswami, I say likely and certainly quite possible, that had the baby reached you earlier she would have lived? You can give only one answer to that; it is
the only type of question I like to ask. So, I urge upon this honorable if slightly inebriated court the guilt of MiYan’s mother for the death of her grandchild. She must be executed forthwith as a warning to other Burmese grandmothers and English admirals."

Then even more dramatically, U Tin Hlang posed, left hand to brow, right hand and glass extended laterally: “And if you do put her to trial I shall have even more wonderful fun. Oh, flint-hearted Raj, bringing this good woman to this sad state of penury and madness, so that she loses the only two people she loves, and now seeking to punish her further and cruelly for what you have done to her. Your hearts are as empty as...this glass,” which he handed to me.

Veraswami applauded, looking for a moment like a young Indian urchin, the rotundities of age and prosperity falling away. “Magnificent. What does it all mean?”

I got a beer for Hlang, who had stopped his theatrics and was back in his wicker chair.

Veraswami and U Tin Hlang had both ignored my question. It was hard to be sure what U Tin Hlang really believed, but I had the sense that everyone I consulted, except Rosemary, thought MiYan should be punished. Perhaps the support of Rosemary was enough. My mind drifted far away, with Rosemary, not on the verandah at all. A change in the tone of Veraswami’s voice wrenched me back. “So, if Mr. Blair iss right in law—that MiYan owed a legal duty of care to her baby which she broke and which caused the baby’s death and that she iss therefore guilty—what, if anything other than those distractions about the failures of others, can you say in her defense Mr. Lang?”

“Don’t underestimate the effect of such distractions on a jury,” Hlang said. “But there is another line of defense that does seem to me persuasive. Tell me what you think of it. The Raj said it would respect the freedom of religious beliefs in India and Burma. Let us put them to the test. Perhaps I can make a convincing argument along those lines.”

The thrust of his argument went beyond the belief in karma, whereby the baby would move on to another and happier life, which the Indian sergeant who investigated the case had told me about. U Tin Hlang spoke of religious obligation not to try to interfere with the mystical workings of this karma. “Nothing happens by chance. You are responsible for yourself; you make life for yourself, life after life. In a previous existence, the baby made its miserable life in Moulmein; it remains responsible. You are not punished for sins, you are punished by sins, they are the punish-
ment, they influence this life now and the next life. So that it is more than futile for others to interfere with the baby's condition. The baby is making its own karma. Its sickness could be made more comfortable; that is all. She will be happier thus; and her next life cannot fail to be preferable. You see the idea, Blair? It is by no means stupid—difficult to swallow perhaps, but so are most religious ideas, and no less believable than some ideas about God that were drummed into your head at Eton.”

“So the baby committed karma suicide. Is that it?” I said. “Have I invented a new crime?”

“Don’t be frivolous, Blair,” U Tin Hlang replied. “Let me tell you a Burmese folk tale that may drive the matter home despite the superiority of your British beliefs to those of us lesser breeds without the law.”

And he told the story of Ma Pa Da, a Burmese folk-tale about a young woman from Thawati who, in the time of the Buddha, in most poignant circumstances witnessed the deaths of her husband, then her two children, and then—because of her unwillingness to accept her karma—even the deaths of her parents, so that she was alone in the world. She went mad; her troubles were more than she could bear; she threw off all her clothes, let down her long hair and wrapped it about her naked body, and walked about raving. She came, after a time, to where the Buddha was teaching, seated under a fig tree. She told her troubles to the Buddha who tried to console her, but she would not be comforted and demanded of the Buddha the return of her dead. To which the Buddha replied:

“You must go, my daughter, and get some mustard seed, a pinch of mustard seed. Bring it to me and I can bring back their lives. Only you must get this seed from the garden of him near whom death has never come. Get this, and all will be well.”

“You already see the moral of this, I’m sure,” U Tin Hlang continued. “Her lightness of heart at the Buddha’s promise restored her sanity. She dressed and searched diligently and long for the pinch of mustard in such a garden. You know what happened. There is no such seed. She learned that death and life are one. So that, as the Buddha said, ‘There is nothing that can happen to us, however terrible, however miserable, that can justify tears and lamentations and make them aught but a weakness.’ MiYan did what was right. She suffered quietly, knowing the unity of life and death. Is she to be punished for her devout religious beliefs? As you see, Blair, it is not only for political purposes that I put on my Buddhist face; I really do know the stuff.”

Veraswami had been silent through U Tin Hlang’s talk of reli-
gion, silent but apparently interested. Still, I felt that Hlang and I had perhaps not included him enough. And there was one question on which I wanted his guidance. “Let me ask you a medical question, Doctor, which may not matter in law but seems important to me. How much pain did the baby feel? Do babies feel pain as we do?”

“That is most interesting, Eric. Some research colleagues in London say that a baby’s nervous system, in the first few months of life, is not completely formed, and that it is much less sensitive to pain. Like fish, I suppose, though how we know fish don’t feel pain, I don’t know. And people act on that belief about babies, boy babies in particular, they cut off bits of their little penes without anaesthetic, the penes of commoner babies and princes alike; it is very strange. But I have listened carefully to babies crying when they are complaining, whining, uncomfortable; that crying is quite different from when they cry in pain. I think they feel pain precisely as an adult. What is different is that they cannot tell you about it—like fish. We are untroubled by pain in animals that cannot express pain—fish, insects, smaller animals. And even the largest animal, the whale, is cruelly tortured, partly, I believe, because it cannot communicate its pain to us; what a huge and terrifying noise it would make if it could. I think MiYan’s baby endured a lot of pain, but I don’t think MiYan knew that she did.

There was a booming sound from U Tin Hlang’s chair. “I am a large animal that feels pain now. Too much beer. Too much of Blair’s agonizing. Even the ice in Blair’s oaken chest grows weary. I’m going back to the delights of the Htun Hla. Can I give you a lift, Veraswami?”

They thanked me for my hospitality, of which there had been little enough, and I spoke of my pleasure in their company. Veraswami said he would walk home. “It will clear my head.” They left together, Veraswami silently with a wave to me; U Tin Hlang loudly with tooted farewells.

* * *

I doubt that the Club had ever contained the like; certainly I had seen no dress like it in Burma. A simple, sleeveless dress of raw silk, almost aged ivory in tone, the silk’s original color I suppose. The dress set off the brighter tints of her long blonde hair, and the blue sash, tied at her left side and hanging to the hemline, precisely caught the vibrant color of her eyes. I was not the only one who stared. And I suppose I must admit that with Brett in his dress uniform they made a strikingly handsome couple. The Moul-
mein Club was not at all accustomed to such style. My own freshly pressed uniform—tidy enough but not designed to conceal, if such were possible, my angular awkwardness, protruding wrists and too-large hands—better matched the local style.

I did not think I was late, but there they were at a table in the corner of the bar waiting for me, looking like mannequins in a window at Harrod's—precisely how the young officer and his wife should appear to the native servants of the Raj who might be privileged to observe them about to dine.

I must have stopped and stared. His eyes lifted, not coldly, but neutrally. One can never tell much from a greeting when one is expected. It is only when you come upon people by surprise, when they do not expect to see you, that their first reaction tells you something of their feelings for you.

Rosemary spared me any embarrassment. "Hello, Mr. Blair. How nice to see you."

I made my apologies for lateness, hoping I had not kept them waiting—though I was sure I was not late.

"Don't worry, Blair," Brett said, "there's not much to do here anyhow. But join us, do."

I filled in a "chit" for a beer and signalled the "boy." We drifted into small talk about Moulmein.

Though it was clearly against my own interests, if U Tin Hlang's suspicion was correct and the Bretts were exploring whether Brett would like mine as his first district, I found myself acting the enthusiast for Moulmein and its peoples, struggling to add touches of grace and interest to even the dullest of realities about my district. I understood what moved me—enthusiasm for her. She was so absolutely stunning—I had seen nothing like her since London. No, I had never seen anything like her.

I found Brett's constant reference to Rosemary as "my wife" rather than as "Mrs. Brett" or "Rosemary" quite annoying. Here I was, "Mrs. Brett"-ing her in sentence after sentence, and he "my wife"-ing her as if she were a proprietary interest of his. And this despite U Tin Hlang's intelligence that the financial relationships at any rate were otherwise. Brett seemed to think she thought and spoke only within the ambit of his permission. When our dinner-table conversation drifted towards the Moffats, he advised me crisply that "my wife doesn't wish to discuss the Moffats; it's sort of sub judice, don't you think Blair?"

Annoyed, I said I didn't think so at all. We could talk about them without discussing MiYan and her baby, surely. And if he were in Moulmein to assist me and not merely to observe and re-
port what happened, he and I would have to talk about all these matters. "And I assume you will discuss such things with Mrs. Brett. It seems to me that a woman's perspective may be very helpful indeed." Recalling Rosemary's earlier comments, I added, "Women carry the burden of care for babies; perhaps what will influence them is different from what you and I think."

"Don't be sentimental, Blair. Your only authority here is the authority of law. You're not some sort of social worker. But in any case, even though my wife has already talked about the case with the woman MiYan and with you and with some Indian doctor—though without my approval—I must confess I still think it inappropriate for the three of us to discuss the matter further."

What a pompous ass. Did he think we were witness, counsel and judge in the Royal Courts of Justice in the Strand, holding ex parte discussions about a pending case, rather than minor functionaries of the Raj trying to serve Burmese villagers? It seemed silly to me. Obviously I would have to make up my own mind as a magistrate, but their opinions could be useful and there seemed no point in avoiding the topic. But what astonished me was that Rosemary put up with this disrespectful verbal dominance. Indeed, she seemed more interested in calming me than in confronting him. Why, in heaven's name, shouldn't she be entirely capable of discussing the Moffats without trespassing into his apparent task, whatever it was, either to see that I handled the case sensibly or to report on how badly I handled it (I began not to care which)?

"Have it your own way, Brett. As yet I don't entirely understand your rules and I don't feel at all bound by them. You talked to me long enough about the case at lunch two days ago; gave your advice without much hesitation, not at all troubled by the case being mine to decide. Why not now? Still, have it your way."

I had clearly upset Rosemary. I had thus even more clearly upset myself. My hands wrestled with each other beneath the tablecloth.

"It's simple enough Blair; I'm sure my wife understands, if you don't. We three should not talk at all about the death of MiYan's baby. You and I can talk as much as you like—but on duty. I'm happy to help you, then, and I think you need help. But it is none of my wife's business whatsoever, and you should spare her your uncertainties."

What a cad he was, despite his dress uniform, square jaw, and neat head with every short blond hair in place. I did not reply, and Rosemary had apparently decided that the topic was long exhausted. We managed to get through the dinner without further
reference to MiYan or even to Moulmein.

The tension was alleviated by a general move from the dining room toward the bridge and billiards tables. Brett seemed to welcome the idea; I hated it. I had no idea of Rosemary's preference. To my relief I heard her saving me, and more: "George, don't let us stop you. I know you would enjoy a game. I would prefer to sit here and talk to Mr. Blair about whatever he wishes to talk about and," with a smile to me, "I don't think Mr. Blair will mind. Play a few rubbers. We will be alright here."

The daft man was obviously pleased to be released, and with a reiterated "if you are sure" he joined the bridge players and we were alone. That is to say, we were not alone, but we could talk to one another as if we were alone. The chairs in the Club lounge suddenly seemed near to paradise for me.

My joy must have been apparent to Rosemary: "You suddenly seem happy, Mr. Blair."

"Of course I am. To be talking to you alone—no MiYan, no Veraswami, no... no one else." I had nearly said "no Brett." By her smile she knew it. It astonished me to be talking like this; I never had before, to any female, to anyone. And what was both surprising and delightful was that Rosemary seemed to understand and to be both lightly amused and friendly. She didn't seem to mind at all.

I had talked in terms of open sexuality with those ladies who had been paid to visit me from the village, but they had little idea of what I was saying. Anyhow, this was entirely different, and it was gross of me to have thought of them at this time. My attraction to her was so very different. Yet she must know how I felt or she would not be reacting so kindly—not angry at all, not moving to join her husband, just smiling gently at me.

For a time she did not speak. Her hand reached out and touched my arm lightly. There was warmth in her glance. I felt ill at ease, but not embarrassed. I knew I was in no way troubling her, but the silence between us was beginning to oppress me.

"Perhaps you should not be so obviously happy about such things here, Mr. Blair. Later, perhaps; not now. Let us talk of other things for a while, not of ourselves. And surely your coffee must be quite cold by now."

I gulped the demitasse of lukewarm brew called coffee at the Club: "I like it chilly in this climate." She was amused, so I launched without anxiety into the topic forbidden by her husband. "What did you think of MiYan? If you don't mind my asking, R... Mrs. Brett."
I had tried to say “Rosemary” but the word had stuck. She had seen my hesitancy. She glanced toward the bridge tables, and made no immediate reply.

“I hope you do not mind my asking, . . . Rosemary, if I may?”

“Of course you may. I hope you often will.”

Astonishment upon astonishment. She seemed genuinely pleased by my now open attraction to her. It was quite unbelievable; but it was indeed happening.

“Really, Eric, I think we had better do what you say—start talking about something. You seem excellent at discussing what should be discussed, and disagreeing with George about it. He is not my censor. So let me say what I think: I found MiYan a most troubled and troubling person. I found it impossible to put myself in her place. That is my fault, not hers. I have no idea of what her life must have been like. You have seen where she lived. Do you have any idea of how she lived? What a day was like for her?”

Rosemary leaned toward me, her hand most distractingly brushing some wisps of hair back from her brow. “You may be right. It may not matter. But if you and George are to punish her as a criminal I would like to have some idea of what it must have been like for her with an unreliable mother caring for her very sick child.”

I tried to tell Rosemary of the condition of the baby and of the hut when I found her. I did not do very well. It sounded so bland. Noflies at her nostrils and lips. No urine and excreta on her legs. It was hardly a fit subject for an after-dinner talk at the Club. Perhaps Brett had been right. And then an unlikely and wild thought struck me and expressed itself before I could judge its wisdom: “UTin Hlang is driving me to Talaban tomorrow, about mid-morning. We both want to talk to the headman and perhaps to others. We plan a picnic lunch by the river afterwards. He does these things well. I wonder, would you come? I know he would be pleased, and I . . .” I left the sentence unfinished for it was all too obvious how I
felt.

Unhesitatingly, crisply, with no apparent thought of her husband's certain displeasure or of my discourtesy in not inviting him, Rosemary responded: "Of course. Yes. You are sure Mr. Hlang won't mind?"

"Lang will be delighted. But what about your husband?"

She bridled slightly at my enquiry, but quickly relaxed. "You must not worry about that, Eric. He is less authoritative in private. He knows I dislike scenes in public, so he goes on with those orders he issues to me and about me, knowing I will let them pass. But don't worry. When will you pick me up? I will be ready."

"Lang told me he would pick me up about ten. We shall come straight over here if that is convenient. I will let you know if there is any change."

Brett returned from the bridge tables too soon for my taste. Rosemary rose as he approached. "I am on the weary side, George. I think I shall go to bed. And I have a busy day tomorrow. Mr. Blair and Mr. Hlang are taking me to the village where the baby died."

"But really, Rosemary. I thought you had agreed not to meddle," he said.

She made no reply, but turning to me, held out her hand. "Good night, Eric. I look forward to seeing you tomorrow."

I think I took her hand. I think I thanked them both for a pleasant evening. I am not sure. My purpose was a swift retreat. I was getting out of my depth.

* * * *

There it was again, a full-scale production. A noisy U Tin Hlang arrival in his green, bull-nosed Fiat tourer. The car was more appropriate to a Sunday morning in Chelsea than to the ribbed and dusty roads of Moulmein, and so was U Tin Hlang's dress—khaki slacks, open-necked white shirt and matching leather driving cap and gloves, the scar curving across his cheek adding a rakish touch. I am sure he enjoyed the attention he attracted, but I am also sure that he was not insensible to the political advantage he gained. No one, either townsman or villager, native, Indian, Chinese or European, could possibly fail to enquire who he was, if they didn't already know. I wondered whether he would have been prepared to substitute a top hat for the cap if he thought that necessary to achieve universal recognition throughout Burma.

My staff—cook, houseboy, and gardener—were assembled, open mouthed, to observe his arrival. He did not disappoint them.
Making his usual swift approach and vigorous stop at the steps of my bungalow, he shouted "Come along, Blair," over the still running engine.

I was ready, of course; one tended to be ready for U Tin Hlang.

I tried to turn the handle of the door on the passenger's side. It was stiff. "Leave it, Blair," U Tin Hlang said, "climb over like everyone else. Don't be so militaristic."

It was an easy vault, with U Tin Hlang patting the seat to signal the rather obvious spot for my bottom. He beamed at me joyously. "I hope we are not rained out this time. You remember our last trip—to the pagoda?"

Of course I did, and as Hlang, waving to my staff, launched us from my bungalow, I had the sense of chucking away all anxiety for the welfare of my district—a youth on a spree.

"We head for the Club, do we not? I assume your inamorata has not changed her mind about this trip."

I was astonished. I had not thought it necessary to send a message to U Tin Hlang about Mrs. Brett's acceptance of my invitation. And I had not even asked U Tin Hlang if I might invite her, since I knew the general lavishness of his catering for lunch and was sure he would be pleased if she came too. But how did he know? My mouth had been opening to ask his consent to her coming with us to Talaban—it stayed open.

"Don't look so bewildered, Blair. There is not much that happens at the Club that I am not advised about if I enquire. The little scene last night between Rosemary and the two officers of our constabulary did not go unnoticed. It wasn't difficult to guess the rest."

"Yes, if you don't mind. She said she would last night. I thought you would enjoy her company, and I know you always overfill luncheon hampers."

He nodded his agreement, while I added: "But I do wish you would not call her my inamorata, or anything like that—things are difficult enough with George Brett without your adding to it. I think they are looking over Moulmein as you suggested to see if they would like it here. So, please, be gentle with her and with me; it's not easy."

"Have no fear, Blair. I will not embarrass you, at least not while she is with us, but I must tell you now that I have thought of the perfect solution—he stays in Mandalay, or preferably further away, and she comes to Moulmein to comfort the District Officer. Right."
I thought it best not to reply. It was a lovely day and it was a joy to be rushing along, the air whistling over the windshield and tugging at my cap, for I had worn my uniform, but the version with baggy shorts and long socks, Sam Browne belt and officer's cap. It was too hot for more formal dress yet I had to be in duty dress for what was obviously an official call on the Headman of Talaban.

Hlang asked, in mock seriousness: "Do you think they will let this chariot enter the sacred precincts of the Club? I suppose they will think I am your chauffeur, Blair. Perhaps you would climb over into the back seat, look as haughty as you can manage. I will crouch into servility, and we will make an entrance."

I stayed where I was. Rosemary was on the veranda of the Club as we arrived, slightly ahead of time. I suppose she wanted no further public scene. U Tin Hang was quiet and circumspect, as he had promised. I climbed out of the car and took Rosemary's offered hand as she came down the front steps of the Club. U Tin Hlang remained at the wheel. The three of us performed the Anglo-Saxon rituals of repeated good-mornings.

Rosemary seemed entirely at ease, not at all troubled by what I assumed must have been a conflict-ridden time with her husband. She was dressed in clothes startlingly like those U Tin Hlang was wearing: An open-necked shirt of a lighter material than his, but of a very similar soft white, khaki slacks which seemed to suit her admirably, though I had not before seen a woman so sensibly dressed for a jungle path, sensible stout boots, and (quite unlike U Tin Hlang’s leather cap) a soft, wide-brimmed hat of the style worn by Australian soldiers.

"I am so glad you decided to come with us, ..." I tried for the "Rosemary," but it would not come.

"You seem surprised, Eric. I told you I would."

I insisted that she sit in the front beside Hlang, and I managed to wrench open the little, curved side-door to ease her entrance.

It took us fifteen or twenty minutes, and a rather bumpy fifteen or twenty minutes, to reach Talaban. Hlang drove well but not at all timorously, and the road was more suited to a bullock wagon or an elephant carrying a howdah than to a rakish Fiat tourer. Rosemary removed her hat—fearing it would be blown off if she didn’t, I suppose—and her hair blew back toward me as I leaned forward hoping to talk between the two in the front. My earlier juvenile joy in an escapade had changed to some anxiety about what I was doing there with these two. It seemed to fall outside military regulations. I did not know what rules I was
breaking, but I had the sense there must be some. I remembered my housemaster at St. Cyprians’ telling me, “There are no rules here, Blair, and if you break them you will be sent down.” I knew precisely what he meant. And I again had childhood’s sense of free-floating guilt. Everything seemed so fine; there must be something wrong with it.

The journey passed too swiftly. I knew this joy in a school-boy outing would fade with the realities of Talaban and the baby’s death. It was obvious that we were expected—anyhow that U Tin Hlang was expected. I might be the official representative of the Raj, but U Tin Hlang was of much more interest as the official representative of nationalistic opposition to the Raj—entirely apart from the compelling attraction of his automobile to the children of the village.

He performed his usual dust-scattering arrival, and we stopped in front of the headman’s hut.

It was all rather formal and contrived, like an official inspection. The hut MiYan and her family had occupied had been cleaned up, the dogs scattered, the smell reduced. The hessian cot on which the baby had lain in her excrement had been removed. I did my best to tell Rosemary what it had been like, but sounded to myself somewhat precious, as if exaggerating the squalor by contrast to my own fine sensibilities. She listened, enquired occasionally, but did not talk much.

U Tin Hlang barely glanced at the hut before having the headman take him around the village in the manner of a politician, U Tin Hlang pressing him for swift details of each family in the village, making eyebong to as many villagers as he could draw into his vicinity, patting any passing children on the head, and generally enjoying himself.

As Rosemary and I left the hut, I found myself wondering how MiYan must have felt when she did what Claire Moffat had ordered her to do and left her obviously very sick baby with her mother. Did she feel rage? Was she really helpless? Why did she comply? She could have gotten a job with some other Europeans, I supposed. Or could she, if the baby was half-cast? An unmarried planter would certainly not mind that. Perhaps she thought the Moffats could stop her. I really had no idea. I put my doubts to Rosemary.

Rosemary seemed equally perplexed: “I tried to feel what the hut and the baby must have looked like when you first saw her, Eric, and I cannot understand at all how a mother could let that happen. . .it is very wicked. . .somehow we should try to prevent
it. Yet MiYan seems such a sensible and kind girl. She must have been torn apart. Perhaps she has been helpless all her life, doing only what others tell her. Yet think of the pain and misery of that baby."

While Rosemary and I were standing outside MiYan’s hut, one of my policemen rode up on a bicycle. I had, of course, told my staff where I was going, but his arrival surprised me.

He handed me a message from Dr. Veraswami which, apparently, the doctor had sent over to the police station earlier in the morning. The envelope was unsealed; the duty sergeant had had the sense to read it to see if it was urgent enough to send on to me. It was brief: "Dear Mr. Blair: A man from Pakara came to the hospital this morning to tell MiYan that her mother has been missing for two days. They have been searching for her in the jungle. MiYan wishes to go to the village to try to find her. I am not empowered, I think, to let her do this unless you authorize it. I shall wait to hear from you." It was signed, "With sympathy, V."

Rosemary saw my distress: "Is it bad news?" I handed the note to her.

I could not see how I could release MiYan at this stage. Mandalay had surely made it clear that I must appreciate that I was dealing with a felony, a homicide. If it was proper to have MiYan arrested, it could hardly be proper to let her go to help search for her wandering mother.

The policeman had his message pad with him. I asked him for it and wrote a note to the duty sergeant telling him to advise Dr. Veraswami that I would call on him in the late afternoon and that in the meantime he should not release MiYan. I instructed the duty sergeant to send two men immediately, by lorry to Pakara to help in the search.

Rosemary waited quietly while all this was going on. When the policeman left, she handed Veraswami’s note back to me, took my arm and said, "Let’s leave now. Its time for our picnic, don’t you think. I am finding this a sad little visit. I suppose that is what I should have expected, but we’re not doing much good here now. Should you go straight back to Moulmein to see about MiYan, or can we have our picnic?"

Since it seemed wrong to release MiYan, there was no urgency in our return. "No; there’s no point in my hurrying back. Let’s see if we can drag Lang away from his state visit."

Hlang made no protest. He could, apparently, adjust the time of his gracious condescension to the villagers to whatever period was available. "Yes, Blair, your chauffeur is ready if you are."
I managed again to wrench open the little door on the passenger’s side for Rosemary. Hlang and I climbed over the side into the car; he to drive, me to ride in the back seat.

A comet’s tail of naked children rushed behind us as Hlang performed his usual impressive circling of the open spaces between the huts, revving the engine but moving quite slowly, before setting off on the narrow road from Talaban.

He drove with one hand on the wheel, the other waving an ordinance map on which he had marked the bend in the Salween river he said was perfect for lunch. Soon he turned onto what could hardly be described as a road—more a jungle path, but wide enough for the car—and we bumped and edged our way to the river.

It was indeed lovely. The Salween widened into a lazy curve. The jungle stood slightly back from the banks, which, on our side, were shady and cool. We had hardly stopped before Hlang was at the hamper, strapped on the back, removing two large rugs which he ceremoniously spread as “dining room, sitting room, buttery, kitchen and all, armchairs, dining chairs, couches and all.”

I carried the hamper to the edge of the rugs. Rosemary started to unpack it, Hlang advising me with glee on the impossibly extensive lunch that faced us. And then, feeling behind the spare wheel strapped on the driver’s side on the running board, he produced a paper-wrapped parcel whose shape told me immediately of its contents: two bottles of wine, wrapped when chilled in paper and towels. Stripping one bare and carefully rewrapping the other, Hlang said: “Hardly chambré but potable I believe.”

It was a feast, and we feasted. What we talked about during lunch I do not recall, but I do know that it was Rosemary who first turned us from chatter to the business of the day. And she was kind to me in doing so, asking Hlang, not me, what he thought should be done about MiYan and her mother.

“Blair can’t do much about the mother except hope that she will be found. As to MiYan: I think Eric has to prosecute her. On the face of it, she seems to have broken the law. I will find a way to get her acquitted at trial in Rangoon. But his superiors haven’t given our District Officer much choice.”

Rosemary pressed Hlang on what might be done to give infant girls in the village better protection from cruelty and neglect. Hlang said he did not think the law would help much: “After all, it doesn’t do much good in England. The babies of the poor die there at least as frequently as here—anyhow, there’s not much difference—and what our District Officer should do is help the villagers
to health and prosperity, and help me to give them independence from their English masters. Though I don't suppose he can be too open about the latter."

All of a sudden the events of the morning struck home. A parallel hit me that turned the joy of the picnic to queasy misery. In my heart I had been blaming the Moffats more than anyone else for the death of MiYan's baby. But now... now... I saw clearly that if MiYan's mother died, as well she might, I would have behaved towards her exactly as Mrs. Moffat had behaved towards the baby, denied her the care of the one person who gave her a chance of life and protection. No one cared for the baby except MiYan. No one cared for the mother except MiYan. She did her poor best for them both, and given a chance might succor them both. But hindered, they might die. The baby had. The mother might have. Mrs. Moffat had allowed the first death; I the second. The mother was as helpless, absent MiYan, as the baby, or very nearly so. Was I a felon also? Should I report myself to Mandalay? What crazy wickedness it all was.

Rosemary saw my distress. "What is wrong? Do please tell us."

She and Hlang were sitting well apart on each side of the rugs. I had propped myself against the hamper between them before getting up and wandering about. I shut the hamper, and sat down on it, facing my friends, from whom it was unnecessary to conceal my feelings, except perhaps a few about Rosemary. I told them the parallel I saw between the Moffats and myself.

Hlang tried by satire to jolly me out of it: "Of course you had a great deal of freedom of decision once Mandalay told you to treat her as a child killer. You've got to be a king, not a lieutenant, to play Lear."

"That's true," I replied, "I had to arrest her. But I could have arranged for her mother to be better cared for, and I didn't give it a thought."

Rosemary seemed moved by my self-criticism, moved more than it merited, I thought. "Poor Eric, you do punish yourself a lot, don't you," and she stretched out her hand to me.

U Tin Hlang got up crisply for one of his bulk. I'm going for a digestive walk along the river, you two, and I don't want company. You two had better talk to one another, I think. I mean talk, not chatter. Good luck." And he was off.

I took Rosemary's hand and sat down beside her. She was blushing as U Tin Hlang left.

It might have been the wine, but I think not. It might have
been her reference to caring for others. More likely it was the utter novelty for me of being with a lovely woman of my own age who openly and warmly expressed affection for me. Whatever the causes, I found myself for the first time in my life capable of being both loving and direct.

I put my arm around her, leant towards her, kissing her lightly on the cheek, and said, “Thank you, Rosemary, for worrying about me.” It sounded most unlike me; but that seemed a most desirable change.

She made neither resistance nor further approach, but sat there, still holding my hand: “You must not further punish that girl; it would be punishing her for the sins of all of us. She cannot purge our uncaring. You must find a way.”

Every instinct told me she was right. But the thought would not be banished that it was precisely that: my instincts telling me she was right and not my judgment. Her humane, unlegalistic directness appealed so deeply. Did it appeal because I was falling in love with her, or was I falling in love with her because I found such comfort in what she said? I smiled at such silly confusion. Rosemary was watching my face. “What are you amused about, Eric. I meant what I said. You must find a way to save that poor girl.”

“I was amused at me, Rosemary, not by what you said. I am moved by what you said, but I think that is because I am beginning to love you. MiYan has a powerful champion in you if I am to decide her fate. But at the moment I think I would agree with most anything you said.”

Rosemary seemed resentful. She moved slightly away from me. “You must not humour me, Eric. Treat me as an equal. Don’t agree with what I say because you like me.” Then she relented, moved closer again, and added, “Though I do know the feeling.”

We were silent for a moment or two, and then it was clear to me. She was right. I was no longer prepared to sacrifice MiYan on the altar of deterring others from neglecting their babies. How I would square that decision with Mandalay’s obvious contrary wishes, and indeed orders—as well as with Brett’s watchful eye—was not clear to me; but even if it cost me my posting I would not further punish MiYan.

“It may mean my leaving here; but I agree she has suffered enough,” I said, and, letting my thoughts run free, added: “It probably also means that you and George will come here in my place. That’s what U Tin Hlang thinks.”

She sat a bit more stiffly but did not move away: “No, it doesn’t. We had talked about that on the way here, but once I got
to know you and thought what it would be like here with George, I knew it wasn’t for me. Which means it isn’t for him. He may order me about in public, as you have seen; but when things matter he does what I want. He doesn’t have much choice if he wants to stay with me. Mandalay or Rangoon with George are supportable; a small district would not be.”

I was astonished, not by what she was telling me about her relations with her husband, but by her rejection of Moulmein. I could imagine nothing more perfect than the life here of a District Officer with her as a wife. And—I don’t regret it—I said so.

“It would be lovely, Eric, but that is not what it would be like. George never in any way involves me in his work, never tells me what he is doing, never talks to me about anything that matters. I have tried hard, but he is beyond changing. He has an unalterably fixed view of a woman’s place. He knows I have a swifter mind than his, but he is adamant that my interests are women’s interests and none other. The prolific Mr. Mill and his dear friend Harriet Taylor will never change George Brett’s opinion on this—woman are a subject race, they are happy only that way. I am useful to him, and we enjoy one another in many ways. Together we make it possible for each of us to lead the life we lead. But a small district with him would be a very dull life for me—though it would be fine for him, perhaps. We will not be coming here, that I promise you. In the end George has to do what I want if we are to stay together, and he wants that.”

Empowered by her frankness I asked the probably unforgivable question: “Do you love him?”

She looked me directly in the eyes as she hesitated and then replied, “He makes life possible for me.”

I was at a loss as to what she meant. “But Lang tells me that you are wealthy. That you keep him. How can he behave as he does?”

She moved closer. She was clearly not at all troubled by my interrogation. “You two go in for tittle tattle, I see. Yes, my father had good sense in such matters, even if the law doesn’t. The dowry means that I can travel with George and live as we do, but the real money is safely in a trust for me only and not available at all to George, except through me. Daddy explained that with effort even the English law about married women can be overcome.”

“Why did you marry him? It sounds like a business enterprise.”

“You have no idea how awful life is for an unmarried woman in London who detests the round of parties and the futility of the
social scene. You are treated as a fool; you become a fool. There is so little you may do. Brett set me free, and I am grateful to him. And we were attracted to one another in a physical way, and still are—I hope I do not shock you. No, why should it shock you? I’m sure you do not live all that solitary a life here. George tells me that he is informed that you don’t. See, I hear things too. Why should it be any different for me? So George has many valuable purposes, you see.”

I knew it would take me time to understand all she was saying, but broadly it sounded as if U Tin Hlang was right—Brett did earn more by his prick than by his sword. But what an awful thought that was. No, it wasn’t; there was more to it than that. I could see how useful they were to one another. And why should I feel so proper, so censorious about such matters. I should rejoice in her openness, not be troubled by it. And yet, my feelings for her were surely not only sexual. It was a delight to be with her, that apart, though she did look terribly attractive.

“Would you leave Moulmein soon?” I asked.

She knew I spoke with regret. She understood and replied to more than I had asked. “I don’t think we can be together here, Eric. It is too awkward. Perhaps we can meet again somewhere else. Before too long, I hope. But you do so very well here. And my Daddy was not able to rearrange English law sufficiently before he died so that a married woman can rearrange her life as you and I would both like. You arrived too late for me.” And, smilingly, she added, “Though even if you had been on time I cannot really see you fitting in to the London social scene which gave me George. You would be even worse than I was.”

“So there’s nothing for me—for us, I mean?”

“That’s right. Not now. Perhaps when you come to Mandalay. Perhaps when we meet again somewhere else. But not here. I won’t do that to George.” And she leant against me and returned my earlier kiss, equally lightly, with at least equal affection.

A noise of exaggerated tramping could be heard. U Tin Hlang was apparently trying to emulate the stamp of an elephant. Rosemary did not move away from me, but held me beside her as he arrived. He beamed down at us. “Time to be going, or must I go for another walk? It’s nice to be wanted.”

She was as direct with him as she had been with me: “Eric and I have gone as far as we can go for the time being. You don’t need to keep walking. May I drive back to the Club?”

U Tin Hlang looked shocked. “Drive? Can you? Have you ever driven a Fiat? It’s a heavy car, you know,” and he looked around
as if there might be a way of escape in the jungle.

Before he was finished Rosemary was on her feet and we were packing the hamper and loading it onto the car.

Our talk had left her joyous, me sad. She drove with less panache than U Tin Hlang, but carefully and well. When she had traversed the track and reached the road to Moulmein, U Tin Hlang insisted that we change places, and that I ride beside her in the front while he sat in the back. “I have always wanted to be driven to the Club by a female chauffeur and a military postilion,” he said, and folding his arms in the style of a pasha he prepared for his grand entrance.

At the steps to the Club, Rosemary thanked us warmly but briskly for the outing and the lunch. She did not invite us in. U Tin Hlang resumed his place at the wheel, and we left. No one seemed to have noticed our arrival or departure.

I asked U Tin Hlang to take me to the police station. We did not talk much, and not at all about the case or about Rosemary or myself. Hlang was a dear chap; he respected my need to try to think it all through.

At the police station the news I feared awaited me. The two policemen were on their way back from Pakara. MiYan’s mother had been found before they arrived—dead, fallen a day or two ago into an animal trap in the jungle.

* * * * *

It was a rotten night. By her visit Rosemary had made the stark loneliness of my life in Moulmein more than clear to me. And having listened to Veraswami and U Tin Hlang and George Brett urging me to prosecute MiYan, and to Rosemary urging me not to (and my then agreeing), I found I was still more unsure that I was not being led astray by loneliness and affection to do that which I ought not to do, and which, incidentally, would likely not help my career in the Civil Service. I was tired, depressed, sorry for myself. My bungalow seemed desolate without my guests of two nights before. The beer was poor consolation, though I vigorously tested its adequacy to that end. Miserable, I crawled early, unsteadily to bed.

For once the beer helped; I slept soundly. I went to bed confused and uncertain; I awoke clear-headed and without doubts. I must draft a brief memorandum to Mandalay and get it off today; copies must be sent to Moffat and to Brett and this must be noted on the memorandum; a blind copy must be sent to Dr. Veraswami and its confidentiality marked on it. I must not consult further
with anyone. If I could not rely on my own judgment now I would never develop that capacity in the future. I should no longer wrestle with the question of whether I was moved by heart or head; in this case they came together to my larger comfort. In the memorandum I would not struggle to give closely reasoned explanations of what I had done—I would state my decisions and the broad reasons for them. The keys were confidence and brevity. That is how they had told us to conduct ourselves towards others in our districts; let me now so conduct myself towards my superiors.

I found the memorandum easy to write. Its thrust was that there had been no provable failure in law by anyone concerned with the death of the baby, that this was not a suitable case for deterrent efforts directed to improving infant care in the villages, that I had been in error in not noting these facts in my previous report, and that I appreciated the opportunity to do so now. I added that further enquiries would, I thought, cause embarrassment to the administration in my district and urged that I be called on the telephone to explain these likely embarrassments if this were thought necessary.

In good bureaucratic style I numbered the paragraphs of the memorandum, confined each paragraph to one topic, and kept each paragraph short. In the second to the last paragraph I stated that, as I visited each village in my district in the future, I would speak to each headman about the desirability of advising me of any cases of infant or child neglect or cruelty he might suspect in his village—I would tell them that such matters would be dealt with kindly and discreetly, the parents being helped by a benevolent Raj to care for their children better. In the last paragraph I reported my intention to arrange immediate and extra instruction for my men on the necessity to be on the lookout for such cases and to bring them promptly to my attention.

It read crisply. I sent it off to Mandalay, with copies to Brett and Moffat delivered by a policeman on a bicycle.

I saw Moffat the next day when I had to report to him for our weekly meeting. He made only passing reference to the memorandum: “A pity you didn’t let me help you with that memorandum, Blair—I could have helped you shape it up a bit—but all in all it did no harm. Let’s see what they say.” I gained the impression that he was well satisfied with what I had done—and greatly relieved.

I asked Moffat if MiYan would be returning to work for him. “I mentioned this to Claire,” he said, “I doubt she will have her back—too unreliable.” I thought there was more than a gleam of relief in his eyes.
Veraswami read my memorandum carefully when I gave it to him. "It iss verry good, verry wise. You were right to be conclusio-
nary and not argumentative. These questions are too close for exe-
gesis, issn't it? You are learning the ways of power, I see. I hope
you have done the right thing; it iss difficult." And for reasons
which at first I found elusive he told me that he thought there
were only two good professions: his, medicine, because with some
effort you can persuade yourself you are doing good, and astron-
omy, because you can then be fairly certain you are doing no harm.
"Primum non nocere, Blair, that's the great thing isn't it?" His
joke, if that is what it was, caused him glee; it depressed me.

Nevertheless, I felt that Veraswami thought I had chosen the
right path, but that he was unsure about it; that he hoped it had
not corrupted me in any way, and didn't think it had, but was not
sure of that either.

I asked him what he thought should be done about MiYan. As
usual he had anticipated me. "She tells me she wishes to work in
the hospital. She will be most helpful, most helpful. Though you
arrested her as a neglectful killer, Eric, I think she hass a talent for
caring for others; it iss most unexpected."

I was anxious about Brett's reaction. By now he must detest
me cordially; my handling of the MiYan case certainly gave him
ample room for the insertion into my fledgling career of some pro-
fessionally damaging knives. Mandalay had not sent him to Moul-
mein to cheer me on.

He came to the police station the next morning. I had hoped
to avoid him until I had heard from Mandalay, but there was no
escape. He was not cordial nor was he hostile: "My wife and I plan
to leave Moulmein tomorrow, Blair. Could we requisition a vehicle
to take us to the station?"

I said that would be done, and enquired if he had decided to
leave now that MiYan was not to be prosecuted.

"Well, yes, I'm glad that's over; but my wife and I want to get
back to Rangoon. The new C.O. of Burma Police has just arrived
in Rangoon. I met him in London and my wife knows him well. He
hasn't yet appointed an A.D.C. It carries a captaincy. I'm about
due and there's a chance, so he says. The MiYan matter can wait."

My heart leapt for Rosemary; that would suit her perfectly.
But the thought of her leaving was misery—perhaps he would die
before the morrow; but the odds of that seemed low. Not a word
from him about my memorandum; not a criticism, not a compli-
ment. How could she stand him?

Later that afternoon, to my surprise, I heard the unmistakable
sound of U Tin Hlang’s Fiat performing its ritual of arrival at the police station. I went to the entrance to greet him. He seemed furious. “Blair, may I see you in private?”

I stood aside at the entrance to my office to show him in. He brushed past me, glaring ahead. My sergeant looked at me enquiringly. I waved my hand to reassure him and followed Hlang into the office, closing the door behind me.

Hlang came to the point. “You’ve wasted my time again, Blair. You arrest her and then release her. Why don’t you make up your mind before having me dragged here? And that poppycock you wrote to Mandalay. . .”

And now I found that I too was furious: “How do you know what was in my memorandum? I’m sure neither Moffat nor Brett nor Veraswami would have shown it to you.”

“Don’t be so simple, Blair.” And waving to my outer office, he added, “With Burmese and Indian policemen here you can’t think that your official correspondence escapes me.”

Suddenly the tone changed. The fierce demeanour fell away. I realized his eyes had been shining with insincerity, not anger. Throwing wide his arms, Hlang said, “You’re a beamish boy, Blair. I enjoy these visits. The YMBA can afford them. I’m on my way to Rangoon. I came to invite you to breakfast the next time you are in Rangoon. I have a bungalow on the beach that you would enjoy. Breakfast is the best meal. We have it on the beach with my elephants, my horses, and my mistresses. You will enjoy it.” He wrapped his arms around me, embracing me as I had embraced him at the railway station. Then, reassuming his mock rage, he stormed through the outer office, and the Fiat roared to life. I stayed in my office. One has to have dramatic skills to be with U Tin Hlang in public. As to Mandalay: A telephone call came a few days later from a staff captain. I mentioned the Moffats’ role in the case, not in detail, not with any criticism, merely to say that MiYan had worked for the Moffats and that they had known of the baby’s illness so that some care was required in handling the case. No senior officer mentioned the matter to me until during a routine inspection, some months later, I was advised almost jocularly that I should avoid including uninvestigated killings in my regular reports—better they not be a matter of record, more circumspection perhaps. If in doubt, a private note to a senior English policeman, or a telephone call, not through channels, you understand. Still, all in all, considering the delicacy of the matter which was now understood, I had done very well indeed.

I had been pleased by my decision until I was commended for it.
Selected Annotated Bibliography

In The Watching Brief, Blair is confronted with three important issues. First is the question of MiYan’s criminal liability for the death of her baby. Second is the question of whether her cultural background or religious beliefs should provide a defense if it is determined that she is liable. Third is the question of the legal “cause” of the baby’s death. For those wishing to pursue these issues, the following is a short guide to the cases, constitutional and statutory provisions, and commentaries.¹

I. CRIMINAL LIABILITY FOR NEGLIGENT HOMICIDE

A. Case Law

1. Parents’ Duty of Care to Children


William Joseph Tabafunda, an infant seventeen-months old, died when an abscessed tooth became gangrenous, prevented him from eating and left his weakened body susceptible to pneumonia. William’s mother, a twenty-year old part Indian with an 11th grade education, and her husband, a twenty-four-year old full-blooded Sheshont Indian with a 6th grade education, did not understand how sick the baby really was; they thought that William merely suffered a toothache and treated him with aspirin in hopes of improving his condition. William’s parents feared that if they took the child to a doctor, the welfare department would take him away. Both parents worked during the day, and William had been cared for by the husband’s eighty-five-year old mother.

William’s parents were convicted of manslaughter, and the conviction was upheld on appeal. The court held that the parental duty to provide medical care is both a statutory duty and a “natural duty existing independently of statutes.” 484 P.2d at 1172. While gross negligence was required at common law before a breach of the duty could lead to a conviction for manslaughter, Washington statutes supersede the common law and require only simple or ordinary negligence. Id. at 1171 (citing text of relevant statutes subsequently repealed). William was sick for twelve days and might have been saved if he had received medical attention during the first five. The court concluded that sufficient evidence

¹ I am indebted to the staff of The University of Chicago Law Review for their assistance in the preparation of these appendices.
existed for the trial court to find that an ordinarily prudent person, seeing the swelling and discoloration of the baby’s cheek and observing the odor caused by the gangrene, would have sought medical care in time to save him.


Defendants were convicted of involuntary manslaughter for the death of their eight-week old son. The evidence indicated that the boy died of malnutrition; as a result of an underweight thymus gland, he had contracted pneumonia.

The parents argued that they had no legal duty to provide medical care for the deceased. The court, quoting Williams, found that parents have a common law natural duty to provide medical care which, because it was not specifically abolished by statute, remained good law in the jurisdiction. Id. at 1299, 1300. It also found a statutory duty “in the context of” D.C.Code, § 22-902 (1973), making a parent’s failure to provide “food, clothing, and shelter” to a child under fourteen years of age a misdemeanor. 413 A.2d at 1300. The court stated that “the traditional elements of parental duty [described by the statute] imply, in a contemporary context, the additional requirement of providing medical care.” Id. (Other courts have denied such a construction. See, e.g., People v. Mankel, 373 Mich. 509, 129 N.W. 2d 894 (1964)). The court also held that, as in the majority of jurisdictions, gross negligence was necessary for conviction. 413 A.2d at 1299.

2. Duty to Others (Criminal Liability)

Regina v. Nicholls, 13 Cox’s Crim.L.Cases 75 (Oxford Cir. 1874).

This early English case established the proposition that assumption of care for a child might lead to legal responsibility. The deceased child’s mother died and his grandmother, an extremely poor woman, undertook to care for him. During the day, a nine-year old boy watched the child while the grandmother worked. The court found that the grandmother had been careless of the boy, but it required “wicked negligence” for conviction, which it described as being “reckless and careless whether the creature died or not.” Id. at 76. The jury concluded that the grandmother’s inaction did not amount to wicked negligence and found her not guilty. Regina v. Instan, [1893] 1 Q.B. 450, 17 Cox’s Crim.L.Cases 602 (edited version).

Defendant lived with and was supported by her aunt. When the latter developed a gangrenous leg and was unable to move
about or to procure assistance, defendant failed to provide her with food or medical care and did not inform anyone else of her aunt’s condition.

In confirming a manslaughter conviction, the court emphasized a vaguely contractual aspect of the defendant’s relationship with her aunt: “[I]t was this woman’s clear duty to impart to the deceased so much of that food which was taken into the house for both and paid for by the deceased as was necessary to sustain her life.” 17 Cox’s Crim.L.Cases at 603-04 (edited version). For a modern version of *Instan* see *Davis v. Commonwealth*, 230 Va. 201, 335 S.E.2d 375 (1985). On facts startlingly similar to *Instan*, the *Davis* court found “an implied contract” which was sufficient to create a legal duty for the defendant to care for the deceased. 335 S.E.2d at 378.


This frequently cited American case limited the conditions under which a duty to provide medical care for others would be required. When defendant Beardsley’s wife left town for several days, he arranged to spend the time in his apartment with another woman, decedent Blanche Burns. Beardsley and Burns drank steadily for three days; on the third day, Burns swallowed several morphine tablets as well. When she lost consciousness, Beardsley had a third party carry her to a bed, as he was too drunk to help. Burns died later that evening.

In reversing Beardsley’s conviction for manslaughter, the court stated that, for criminal liability to be imposed, there “must be a duty imposed by law or by contract, and the omission to perform the duty must be the immediate and direct cause of death.” 113 N.W.2d at 1129. No contract existed between Beardsley and Burns, and while a man in his legal role of “protector” has a duty to his wife or his child, the duty does not extend to his paramour. Id. at 1129, 1131. The court concluded that neither the peculiar circumstances nor any applicable moral duty were sufficient to create a legal duty.


Defendant Mary Jones was convicted of involuntary manslaughter for the death of ten-month old Anthony Lee Green, who was living in defendant’s house at the time of his death. The Court of Appeals reversed the conviction and remanded because the trial judge had failed to instruct the jury that it must find a legal duty of care in order to convict the defendant. The court identified four situations in which failure to act would amount to a breach of legal
duty:

One can be held criminally liable: first, where a statute imposes a duty to care for another; second, where one stands in a certain status relationship to another; third, where one has assumed a contractual duty to care for another; and fourth, where one has voluntarily assumed the care of another and so secluded the helpless person as to prevent others from rendering aid.

308 F.2d at 310 (footnotes omitted). On the facts before the court, whether or not a duty existed was unclear. Jones was not Anthony’s mother, but a friend of the mother’s family; while she had received some money from Anthony’s mother, the evidence of a contractual relationship was inconclusive; Jones appeared to have assumed voluntarily the care of Anthony, but it was unclear whether she had secluded him from the care of his mother. Further, there was no evidence of an explicit statutory duty to care for the child.


Edward Stone, a sixty-seven year old retired mineworker who was of “low average intelligence,” partially deaf and almost totally blind, and his mistress, Gwendoline Dobinson, who was much younger but “ineffectual and somewhat inadequate,” were convicted of manslaughter for the death of Edward’s sister Fanny. Id. at 357. In 1972, Fanny Stone came to live with defendants as a lodger and paid Edward a nominal rent for a small room with no ventilation or facilities. She was eccentric, suffered from anorexia nervosa, and would stay in her room for days on end. As Fanny’s health deteriorated, she never complained, and refused to give defendants the name of her doctor for fear she would be “put away.” Id. at 358. Defendants were advised by others that Fanny needed medical attention, and made several unsuccessful attempts to find a doctor for her; they were not capable of managing a telephone.

The court found that defendants had assumed a duty of care for Fanny. Along with their ineffectual attempts to find medical help, the court pointed to several other factors in support of its conclusion:

Whether Fanny was a lodger or not she was a blood relation of the appellant Stone; she was occupying a room in his house; . . . Dobinson had undertaken the duty of trying to wash her, of taking such food to her as she required. There was ample evidence that each appellant was aware of the poor condition
she was in . . . It was not disputed that no effort was made to summon an ambulance or the social services or the police despite the entreaties of [neighbors].

Id. at 361. The court concluded by defining "recklessness" as either "indifference to an obvious risk of injury to health" or "appreciation of such risk, coupled with a determination nevertheless to run it." Id. at 363.


The stated ordered the defendant, a boarding house operator, to cease providing care and lodging to a ninety-eight-year old woman who was in need of professional medical attention. Refusing to comply with this order, the defendant hid the old woman in another building and placed a seventeen-year old girl in charge of her. The woman eventually died of starvation due to the poor care she received.

The court required a finding that the defendant owed a legal duty to the deceased, and agreed with the lower court that such a duty would exist even if the defendant "permitted a person under her control to provide care, shelter and necessities to [the deceased], knowing this person was unable to do so in the manner required to maintain" the deceased's health. 631 P.2d at 131. By finding duties cognizable at tort adequate to support a conviction for manslaughter, the holding suggests an area for expansion of the doctrine of criminal omissions.

B. Legislative Materials

India Penal Code § 304A, reprinted in Hari Singh Gour, 3 The Penal Law of India 2134 (8th ed. 1967), provides:

Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years, or with a fine, or with both.

Model Penal Code § 2.01(3) (ALI 1962) provides:

Liability for the commission of an offense may not be based on an omission unaccompanied by action unless: (a) the omission is expressly made sufficient by the law defining the offense; or (b) a duty to perform the omitted act is otherwise imposed by law.

Pennsylvania courts have held that the omission of a duty to act

(a) General rule.—A person is guilty of involuntary manslaughter when as a direct result of the doing of an unlawful act in a reckless or grossly negligent manner, or the doing of a lawful act in a reckless or grossly negligent manner, he causes the death of another person.


10 Okla.Stat.Ann. § 1130 (B) (West Supp. 1987) presents an example, in codified form, of a parent’s duty to his or her child:

Unless otherwise provided for by law, any parent or legal custodian of a child who willfully omits, without lawful excuse, to perform any duty imposed upon such parent or legal custodian by law to furnish necessary food, clothing, shelter or medical attendance for such child, upon conviction, is guilty of a misdemeanor. As used in this section, the duty to furnish medical attention shall mean that the parent or legal custodian of a child must furnish medical treatment in such manner and on such occasions as an ordinarily prudent person, solicitous for the welfare of a child, would provide; such parent or legal custodian is not criminally liable for failure to furnish medical attendance for every minor or trivial complaint with which the child might be afflicted.

C. Commentaries

Thomas B. Macaulay, Introductory Report upon the India Penal Code, Note (M) (1837).

This report is frequently cited for the argument that “the penal law must content itself with keeping men from doing positive harm, and must leave to public opinion, and to the teachers of morality and religion, the office of furnishing men with the motives for doing positive good.” Id. at 115.

Otto Kirchheimer, Criminal Omissions, 55 Harv.L.Rev. 615 (1942).

This article briefly traces the history of negligent omissions, then focuses on the existence of a legal duty to act. It criticizes the result in Beardsley because of the court’s failure to recognize the existence of mutual reliance, which should have been adequate to create a legal duty to act. The author predicts an increase the number of situations where affirmative action will be required.

This article traces the development of homicide by neglect and argues for an expansion of the duty to act. It criticizes the tendency of courts to hide real changes in the law behind the doctrine of undertaking a duty of care. The relationships wherein a duty will be found lack any discernable principle. The author concludes that where one may act to prevent harm without any serious risk to oneself, the action should be required.


The author discusses the implications of Stone and Dobinson for the law of manslaughter by omission. After a brief review of the relationships traditionally required to support an affirmative duty to act, he points to the absence of any such relationship between the parties in Stone and Dobinson and concludes that the court was expanding the duty of affirmative action. Also, Dennis criticizes the court's careless treatment of the definition of reckless negligence; the court appeared to be satisfied that a conviction could stand on something less than gross negligence. This, Dennis argues, results in the reappearance of the theoretically unsound doctrine of constructive manslaughter, which the Court of Appeal had previously rejected.


This article discusses the theoretical basis for the expansion of the duty to act in the common law. It argues that such a change would be consistent with the common law's understanding of liberty and its basic attitude of benevolence. For other views on the duty to rescue in tort law, see Richard A. Epstein, A Theory of Strict Liability, 2 J.Legal Stud. 151, 189-204 (1973) (arguing that the right to individual liberty precludes a state imposed duty to rescue) and Richard A. Posner, Strict Liability: A Comment, 2 J.Legal Stud. 205, 218-220 (1973) (arguing that in emergency situations there is no time for individuals to negotiate so that imposing a duty to rescue may be economically efficient).

II. CULTURE AND RELIGION AS DEFENSES TO A CRIMINAL CHARGE

A. Case Law

1. Religious Beliefs and the Duty to Care for Children
People v. Pierson, 176 N.Y. 201, 68 N.E. 243 (1903).

The defendant, a member of the faith healing Christian Catholic Church of Chicago, failed to call a doctor when his sixteen-month old daughter was suffering from pneumonia. The child died, and her father was convicted of failure to furnish medical care to a minor. The New York Court of Appeals held that faith healing was not included in the definition of medical care as used in the statute and affirmed the conviction. The court noted that it was "placing no limitations upon . . . the power of faith to dispel disease," 68 N.E. at 247, but was only requiring medical treatment by a duly licensed physician.

Bradley v. State, 79 Fla. 651, 84 So. 677 (1920).

The defendant’s daughter was severely burned. Because of the defendant’s religious beliefs, he refused to provide her with medical care for five weeks, after which time she was taken to a hospital. The girl died soon thereafter. Doctors testified that the girl’s life could have been saved if she had received treatment earlier. 84 So. at 680 (West dissenting). Nevertheless, the Florida Supreme Court reversed the defendant’s conviction for manslaughter because the causation requirement was unmet.


The defendants had been convicted of involuntary manslaughter after the death of their daughter. As members of the Church of God, the defendants treated their sick child according to the teachings of their faith but did not seek any medical assistance. The Maryland Court of Appeals reversed the conviction, holding that the state had not shown that the negligence of the parents was the proximate cause of the child’s death. However, the court also ruled that, if the state could prove causation at the new trial, the defendants’ religious beliefs would not be an adequate defense to the manslaughter charge.


Justin Barnhart died of cancer at the age of two years and seven months. In keeping with the teachings of their church, Justin’s parents had refused to seek medical treatment for their son. As a result, a jury convicted them of involuntary manslaughter and endangering the welfare of a child. On appeal, the Barnharts argued that the first amendment’s free exercise clause protected their conduct. The Pennsylvania Superior court rejected this contention and affirmed the involuntary manslaughter conviction.
2. Exemptions from Other Laws

Reynolds v. United States, 98 U.S. 145 (1878).

Reynolds, a member of the Church of Jesus Christ of Latter-day Saints (the Mormons), was charged with bigamy. He requested an instruction stating that if the jury found that he had married "in conformity with what he believed at the time to be a religious duty, . . . the verdict must be 'not guilty.'" Id. at 161-62. The court refused this instruction and the jury found Reynolds guilty. The Supreme Court of the Territory of Utah affirmed the conviction.

Reynolds appealed to the United States Supreme Court, which held that the statute forbidding polygamy was constitutional and that "the only question which remain[ed] [was] whether those who make polygamy a part of their religion are excepted from the operation of the statute." Id. at 166. The Court held that "while [laws] cannot interfere with mere religious belief and opinions, they may with practices," and that Reynolds's religious beliefs provided no defense to the criminal charge. Id.


In a case involving Jehovah's Witnesses, the defendant, Sarah Prince, was convicted of violating child labor laws. She and her nine-year old niece had distributed religious literature in pursuance of what they perceived to be a religious duty. Mrs. Prince based her defense on freedom of religion, but the Court concluded that the state's action was justified because of the substantial threat to society from child labor. In broad dicta, the Court noted:

Parents may be free to become martyrs themselves. But it does not follow that they are free, in identical circumstances, to make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves. Id. at 170.


Three members of an Amish faith were convicted of violating Wisconsin's compulsory school attendance law. On review, the Court first noted that "secondary schooling . . . contravene[s] the basic religious tenets and practice of the Amish faith, both as to the parent and the child." Id. at 218. The Court then held that the state's interest in compulsory secondary schooling would not be "adversely affected by granting an exemption to the Amish," id. at 236, and therefore reversed the convictions.

Respondents, who claimed to be divine messengers with extraordinary healing powers, were convicted of using the mails to defraud. The government had charged that they knowingly made false representations with an intent to defraud people of money and property through the mails. The United States Supreme Court held that the truth of one's religious convictions may not be submitted to the jury: "The religious views espoused by respondents might seem incredible, if not preposterous, to most people. But if those doctrines are subject to trial . . . then the same can be done with the religious beliefs of any sect." Id. at 87. The Court held that the only permissible inquiry is one into the defendant's good faith.


A group of Navajos were arrested for the use of peyote, a hallucinatory drug, in violation of California's Health and Safety Code. The defendants were members of the Native American Church of the State of California, which uses the drug for sacramental purposes. The California Supreme Court held that "the state may abridge religious practices only upon a demonstration that some compelling state interest outweighs the defendants' interests in religious freedom." 394 P.2d at 815. Noting that "the use of peyote incorporates the essence of the religious expression" for the defendants while "the use of peyote presents only slight danger to the state and to the enforcement of its laws," the court granted the defendants an exemption. Id. at 821. The court distinguished Reynolds on two grounds. The court said that, first, polygamy was not essential to the practice of the Mormon faith, and second, "the degree of danger to state interests in Reynolds far exceeded that in [Woody]." Id. at 820.


Timothy Leary was a member of a Hindu sect which used marijuana for religious illumination and meditation. He was convicted of illegal transportation of the drug in violation of federal law.

The Fifth Circuit, noting that "[t]here is no evidence in this case that the use of marijuana is a formal requisite of the practice of Hinduism," id. at 860, refused to follow Woody and upheld the defendant's conviction.


A Tennessee circuit court enjoined Liston Pack, Pastor of the Holiness Church of God in Jesus Name, and one church elder from
“handling, displaying, or exhibiting dangerous and poisonous snakes” in violation of a Tennessee statute forbidding such snake handling. Id. at 102-03. Subsequently, the defendants were fined for violating the injunction. As a defense, they argued that snake handling was part of their religion and thus protected under the First Amendment.

The Tennessee Supreme Court relied on the distinction drawn in *Reynolds* between acts and beliefs: “The right to believe is absolute; the right to act is subject to reasonable regulation designed to protect a compelling state interest.” Id. at 107. The court held that “a religious practice may be limited, curtailed or restrained to the point of outright prohibition where it involves a clear and present danger to the interests of society.” Id. at 111.


The defendant was a Hmong tribesman from the Laotian mountains. He was charged with kidnapping and rape after practicing a Laotian form of marriage called “zij poj niam,” a ritual that consists of marriage by capture and usually involves feigned resistance by the “bride.” At trial, the kidnapping and rape charges were dropped, and the defendant plead guilty to the misdemeanor of false imprisonment. After hearing the “cultural defense” evidence, the judge reduced the sentence from 180 to 90 days in jail.


In this case, a Japanese woman was charged with first-degree murder after she tried to commit “oyako-shinju,” a traditional ritual of parent-child suicide, intending to escape some personal disgrace or shame. The defendant had learned that her husband had been unfaithful to her and had been supporting a mistress for three years.

Prior to trial the prosecuting attorneys examined the “cultural defense” evidence and entered into plea negotiations with the defendant. As a result, the defendant plead no contest to two counts of involuntary manslaughter. She was sentenced to five years’ probation, psychiatric treatment, and one year in the county jail, with credit for the time she had already served.
B. Constitutional and Legislative Materials

U.S. Const. amend. I:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ."

Ill. Const. art. I, § 3 (emphasis added):

The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever be guaranteed, and no person shall be denied any civil or political right, privilege or capacity, on account of his religious opinions; but the liberty of conscience hereby secure shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of the State. No person shall be required to attend or support any ministry or place of worship against his consent, nor shall any preference be given by law to any religious denomination or mode of worship.

Mo. Const. art. I, § 5 (emphasis added):

That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no human authority can control or interfere with the rights of conscience; that no person shall, on account of his religious persuasion or belief, be rendered ineligible to any public office of trust or profit in this state, be disqualified from testifying or serving as a juror, or be molested in his person or estate; but this section shall not be construed to excuse acts of licentiousness, nor to justify practices inconsistent with the good order, peace or safety of the state, or with the rights of others.


In any prosecution for endangering the welfare of a child, pursuant to section 260.10, based upon an alleged failure or refusal to provide proper medical care or treatment to an ill child, it is an affirmative defense that the defendant (a) is a parent, guardian or other person legally charged with the care or custody of such child; and (b) is a member or adherent of an organized church or religious group the tenets of which prescribe prayer as the principal treatment for illness; and (c) treated or caused such ill child to be treated in accordance with such tenets.

Unless otherwise provided for by law, any parent or legal custodian of a child who willfully omits, without lawful excuse, to perform any duty imposed upon such parent or legal custodian by law to furnish necessary food, clothing, shelter or medical attendance for such child, upon conviction, is guilty of a misdemeanor. . . . Nothing in this section shall be construed to mean a child is endangered for the sole reason the parent or guardian, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination for the treatment or cure of disease or remedial care of such child; provided, that medical care shall be provided where permanent physical damage could result to such child; and that the laws, rules and regulations relating to communicable diseases and sanitary matters are not violated . . .

C. Commentaries


The authors first trace the history of the religious belief defense to the crime of manslaughter, focusing on cases in which religious beliefs have prevented parents from seeking medical care for their children. The article makes the interesting point that cases involving Christian Scientists are especially difficult. For Christian Scientists, spiritual healing is an integral part of their faith, so to deny them the right to treat illness by spiritual means "is in effect to deny [them their] religion." Id. at 211.

The authors then analyze the development of Pennsylvania law on the subject, concluding that a parent who in good faith treats a child according to the teachings of his or her religion would no longer be criminally liable in Pennsylvania. They offer this as an "enlightening example of how gradual public acceptance of a belief is reflected in the criminal law." Id. at 212.

Comment, Parental Failure to Provide Child with Medical Assistance Based on Religious Beliefs Causing Child's Death—Involuntary Manslaughter in Pennsylvania, 90 Dickinson L.Rev. 861 (1986).

This comment criticizes the Barnhart decision cited above and suggests that once a child has passed away, society has little inter-
est in punishing parents who refused to provide medical care for their child because of their religious beliefs. The author rejects the notion that punishment will deter others from engaging in similar conduct. The comment concludes that an exemption for faith healing should be added to the Pennsylvania Child Welfare Statute.


This comment treats the question of whether the criminal law should recognize a formal "cultural defense" and concludes that it should not. The author discusses the rule that ignorance of the law is no excuse and argues that

the "cultural defense" theory creates an unfair exception to criminal laws for newcomers by allowing their ignorance of United States laws to be an excuse for acts that long-term residents of the United States would be subject to criminal liability for despite their ignorance.

Id. at 340. The comment discusses four other problems with a cultural defense:

(1) defining which groups of defendants may assert the defense, (2) maintaining the deterrent effect of the criminal law on these groups, (3) maintaining fairness to the majority of Americans who cannot use the defense, and (4) upholding the principle of legality.

Id. at 345.


This comment argues in favor of recognizing a cultural defense in the criminal law. The author believes that neither traditional defenses nor discretionary procedures within the criminal justice system are adequate vehicles for dealing with individuals whose actions are based on their cultural background. Two important values would be furthered by recognizing the cultural defense: individualized justice and cultural pluralism. The author concludes by discussing the factors which might help define the proper scope of the proposed defense.

III. CONCURRENT AND INTERVENING CAUSES IN THE LAW OF HOMICIDE

A. Case Law

1. Negligent Medical Care

The defendant contended that the unnecessary surgical removal of his victim's appendix while the victim was still alive but dying from a mortal wound accelerated his death. He maintained that the surgeon's operation should be viewed as an intervening cause which relieved him of liability. The court rejected this argument, holding that "[m]ere contribution to the result of a mortal wound by a subsequent act of a responsible agency does not excuse the original act." 94 S.E. at 984. The subsequent act alone must be the "proximate cause of the death" before the first actor can be found not guilty. Id.

Hall v. State, 199 Ind. 592, 159 N.E. 420 (1928).

The defendant struck the deceased several times in the head during a robbery. The decedent died in the hospital ten days later from an infection (meningitis) following a fracture of the skull. The court stated that "[i]t is not indispensable for a conviction that a wound be necessarily fatal and the cause of death. If the wound caused the death indirectly through a chain of natural effects and causes unchanged by human action, he who inflicted the wound or injury is responsible." 159 N.E. at 425-26.


An American serviceman stabbed a man who died in the hospital of pneumonia eight days later. On appeal, two medical witnesses testified that, in addition to the knife wound, death was caused by the introduction of terramycin after the deceased man showed he was intolerant of it and by the use of large quantities of intravenous fluid which can lead to pneumonia. The court recognized that, despite the legal instructions on causation, the jury ultimately decides causation as a question of fact. However, the court held that in light of this new testimony which had not been available at trial, the jury would not have been satisfied that the stab wound was the cause of death. Thus, the conviction was quashed.


The appellant, a soldier, was convicted of murder for the stabbing death of a soldier in another regiment. After the soldier was wounded, he was dropped twice by the man who carried him to the medical reception station. Additionally, the medical station lacked the facilities for giving a blood transfusion, a procedure that would have given the deceased a "75 per cent" chance of recovery. Id. at 130. The appellant's counsel maintained that if the jury had been given instructions in accordance with Jordan, the intervening
causes would have necessitated acquittal. The court, however, refused to overturn the conviction, holding that "Jordan was a very particular case depending upon its exact facts." Id. at 131-32. The court held that "if at the time of death the original wound is still an operating cause and a substantial cause, then the death can properly be said to be the result of the wound, albeit that some other cause of death is also operating." Id. at 131. In order for the causal sequence to be broken, the second cause must "overwhelm" the first. Id.

2. Intervening Action that Hastens Death

State v. Scates, 50 N.C. 420 (1858).

In this case, a two year old child was murdered by burning and by a blow to her head. The doctor determined that the burning was fatal in itself, but that the blow had hastened the child’s death. The defendant had confessed to the burning but did not admit to hitting the child on the head. The court held that if a second actor was not acting in concert with the defendant and had delivered a fatal blow to the head, then the defendant was relieved from liability. The Scates case is known for the proposition that “[i]f one man inflicts a mortal wound, of which the victim is languishing, and then a second kills the deceased by an independent act, we cannot imagine how the first can be said to have killed him, without involving the absurdity of saying that the deceased was killed twice.” Id. at 423-24. The court ordered a new trial, presumably to determine the effect of the blow.


Here, the victim had already been mortally wounded by a first actor when the defendant struck him with a bottle. The court upheld the conviction, stating that it was not necessary that the second wound be sufficient to cause death alone, since the person who strikes the blow “will be deemed guilty of the homicide, though the person beaten would have died of other causes, or would not have died from this one had not others operated with it.” Id. at 796 (citations omitted).

People v. Lewis, 124 Cal. 551, 57 P. 470 (1899).

Lewis appears to signal a departure from the rule that an intervening actor who accelerates the death of the victim will be held solely responsible for the homicide. In Lewis, after the defendant shot the victim, the wounded man, while in great pain, took a knife and cut his own throat. According to the medical expert, the wound inflicted by the defendant would have caused death within
an hour. The court rejected the defendant’s contention that the victim’s decision to cut his own throat constituted an intervening cause, writing:

Drop by drop the life current went out from both wounds, and at the very instant of death the gunshot wound was contributing to the event. . . . A person dying is still in life, and may be killed, but if he is dying from a wound given by another, both may properly be said to have contributed to his death.

57 P. at 473.

3. Multiple Actors Causing Death

Bennett v. Commonwealth, 150 Ky. 604, 150 S.W. 806 (1912).

Joe and Maynard Bennett were jointly indicted for the shooting death of Lawson. Only Joe was tried, as Maynard could not be located. At trial, Joe claimed that his brother’s shot was the fatal one which caused Lawson’s death. The court rejected this argument and the case law on which it was based. It wrote: “Reason and justice have superseded these impractical and much abused rules of former days. . . . Whether one actually inflicts the fatal wound, or contributes to or hastens the death in some minor way, he is guilty of the crime.” 150 S.W. at 808.

For a case that follows the Bennett decision, see Jones v. Commonwealth, 281 S.W.2d 920 (Ky. 1955).

4. Causation and an Ongoing Duty of Care

i. Direct responsibility for the acts of another


The facts in this case are somewhat similar to those in The Watching Brief. In Palmer, the defendant’s paramour severely beat the defendant’s child, Terry, causing the child’s death. For this, the paramour was tried, convicted, and sentenced. His blows were clearly the direct cause of the child’s death, but the court held that they did not constitute an intervening cause which relieved the defendant of the responsibility she had to care for and protect her child. The court held that the defendant’s failure to remove her child from danger was “sufficient . . . to support a finding . . . that her gross and criminal negligence was a contributing cause of Terry’s unfortunate death.” 164 A.2d at 474.


The appellant’s boyfriend frequently beat her five-year old
daughter in the weeks preceding the child’s death. In the course of one of these beatings, the child struck her head on a piece of furniture and died shortly thereafter. Since the appellant had been aware of the abuse for several weeks, the court found that her failure to protect her child from her boyfriend’s beating (by discouraging him, evicting him, or notifying public authorities) showed a conscious disregard for the child’s safety and was a gross deviation from the standard of conduct a reasonable parent should observe. The court held that her failure to protect the child “was a direct cause of death sufficient to impose criminal culpability.” 402 A.2d at 677.


Appellant’s boyfriend kicked and struck her four-year old child for several hours until he was barely able to walk. After the injured child was put to bed, appellant left for work, returning home when her boyfriend informed her that the child was “sick.” The day after the beating, doctors performed extensive surgery on the child’s brain and abdomen in an attempt to save his life. After two additional surgical procedures, the child died approximately forty days after the beating. The court held that the defendant was properly convicted of involuntary manslaughter, pointing to “neglect of a dependent” as the underlying act. They wrote that “[w]e do not see that the qualities of meekness, timidity, or dependence could possibly have negated Defendant’s awareness of the dangerousness of the situation in which she was found to have placed [the deceased].” 408 N.E.2d at 619. For another view of the mental state required for “neglect of a dependent” see McMichael v. State, 471 N.E.2d 726, 731 (Ind.App. 1984) (disagreeing with Smith’s standards).

ii. Defendant found guilty as an aider and abettor


In this case the Victorian Supreme Court upheld the defendant’s conviction of manslaughter based on his failure to stop his wife from drowning herself and their two young children in a swimming pool. Instead of convicting the defendant as a direct actor, the court held that he was guilty of aiding and abetting the actions of his wife. Acting Chief Justice Cussen explained that in order to be convicted as a principal one must actively assent to an unlawful act, but that in certain instances, the “assent” required can be shown by “absence of dissent.” Id. at 66. Justice Mann agreed, writing that the physical presence of a parent amounted to “connivance” which had “a criminal significance not attaching to
the presence and connivance of the mere ‘passer by.’” Id. at 75-76.


In Walden, the court held that “a mother may be found guilty of assault on a theory of aiding and abetting solely on the basis that she was present when her child was assaulted, but failed to take reasonable steps to prevent the assault.” 293 S.E.2d at 782. The court stated that the general rule is that one must do or say something which shows one consented to a criminal action and contributed to its execution in order to be found guilty of aiding and abetting. If, however, the defendant has a legal duty to act (as parents do when their children are in peril) then an omission may constitute aiding and abetting.


In Williquette, the trial court had dismissed charges of child abuse filed against a mother who allowed her children to be physically and sexually abused by their father. The circuit court reversed, holding that the mother could be charged with aiding and abetting the abuse. The Wisconsin Supreme Court affirmed the circuit court’s reversal, but concluded that the defendant could be prosecuted as a direct principal. It found that the mother’s decision to entrust the children to their father despite her knowledge that he abused them “constituted a substantial factor which increased the risk of further abuse.” 385 N.W.2d at 150.

B. Legislative Materials

Model Penal Code, § 2.03 (ALI 1962) provides:

(1) Conduct is the cause of a result when:
   (a) it is an antecedent but for which the result in question would not have occurred; and
   (b) the relationship between the conduct and result satisfies any additional causal requirements imposed by the Code or by the law defining the offense.

(3) When recklessly or negligently causing a particular result is an element of an offense, the element is not established if the actual result is not within the risk of which the actor is aware or, in the case of negligence, of which he should be aware unless:

   (b) the actual result involves the same kind of injury or
harm as the probable result and is not too remote or accidental in its occurrence to have a [just] bearing on the actor's liability or on the gravity of his offense.

While following the Model Penal Code's language in part, the drafters of a proposed revision of the California Penal Code have sought to remedy the problem of multiple actors by excluding results which are "too . . . dependent on another's volitional act." California Joint Legislative Committee for Revision of the Penal Code, Penal Code Revision Project (Tent.Draft No. 2) § 408 at 52 (1968). The codes of New Jersey and Hawaii contain language similar to the proposed California formulation. See 2C N.J.Stat.Ann § 2C:2-3; 12 Hawaii Rev.Stat. §§ 702-215(2), 702-216(2).

The Wisconsin Jury Instruction for homicide by reckless conduct handles the difficulty of concurrent actors by using a "substantial factor" test rejected by the ALI. It states in part:

The second element of this offense requires that a relation of cause and effect exists between the death of and the reckless conduct of the defendant, if the defendant engaged in such conduct. . . . . Before such relation of cause and effect can be found to exist, however, it must appear that the conduct under consideration was a substantial factor in producing the death. That is to say, that it was a factor actually operating and which had a substantial effect in producing the death as a natural result.

Wisconsin Criminal Jury Instruction Committee, 1 Wisconsin Jury Instructions—Criminal § 1160 (1980).

C. Commentaries

Matthew Hale, 1 Pleas of the Crown *427.

Hale's principles govern the decisions in many of the early cases involving both treatment or mistreatment of injuries as well as subsequent injury by another actor.

If a man gives another a stroke, which it may be, is not in itself so mortal, but that with good care he might be cured, yet if he die of this wound within the year and day, it is homicide or murder, as the case is, and so it hath been always ruled. 3 Inst 47.

But if the wound or hurt be not mortal, but with ill applications by the party or those about him, of unwholesome salves or medicines the party dies, if it can clearly appear, that this medicine, and not the wound, was the cause of his
death, it seems it is not homicide, but then that must appear clearly and certainly to be so.

But if a man receives a wound, which is not in itself mortal, but either for want of helpful applications, or neglect thereof, it turns to a gangrene, or a fever, and that gangrene or fever be the immediate cause of his death, yet, this is murder or manslaughter in him that gave the stroke or wound, for that wound, tho it were not the immediate cause of death, yet, if it were the mediate cause thereof, and the fever or gangrene was the immediate cause of his death, yet the wound was the cause of the gangrene or fever, and so consequently is causa causati.

If a man be sick of some such disease, which possibly by course of nature would end his life in half a year, and another gives him a wound or hurt, which hastens his end by irritating and provoking the disease to operate more violently or speedily, this hastening of his death sooner than it would have been is homicide or murder, as the case happens, in him, that gives the wound or hurt, for he doth not die simply ex visitatione Dei, but the hurt that he receives hastens it, and an offender of such a nature shall not apportion his own wrong, and thus I have often heard that learned and wise judge Justice Rolle frequently direct.


This comment was primarily written in response to the decision in Stephenson v. State, 205 Ind. 141, 179 N.E. 633 (1932), in which the court held that the victim’s suicide did not constitute an intervening act relieving the defendant, who raped her, of liability for her death. However, the author contrasts the Stephenson decision with several others, 31 Mich.L.Rev. at 665-668, and cites many cases that deal with the effects of negligent treatment of major and minor wounds. Id. at 678-79.

Glanville Williams, Causation in Homicide, 1957 Crim.L.Rev. 429.

This article was written in response to the English court’s decision in Jordan, which, Williams states, departed from some of the earlier decisions regarding causation in homicide. Williams examines the subject of plural causation in the context of manslaughter by omission, rejecting the courts contention in State v. Scates, that it would be absurd to say that two persons are each responsible for the death of another. He summarizes a number of the early
nineteenth century English cases on the subject of improper treatment of wounds, and he then argues for the "clear and simple rule" that any negligent treatment which results in death which would not have occurred with proper treatment should result in the acquittal of the injurer since the law relating to wounding, as opposed to manslaughter, provides sufficient punishment in such cases. 1957 Crim.L.Rev. at 513.


The author examines § 2.03 of the Model Penal Code and argues that the Code's use of "but for" causation to establish cause in fact is insufficient in cases where several independent causes combine to produce a single result, each of which would have been alone sufficient to produce the result. The author argues that the standard of "substantial factor," while indefinite, is to be preferred since it can accommodate the harder cases. Id. at 1265. He suggests that below a certain level, the degree of contribution will not be sufficient to warrant punishment for the completed offense.


Hart and Honore's well-known book on causation includes one chapter specifically on causation in criminal law and another on causation and punishment. The authors point out the differences between tort law and criminal law, discuss negligence by physicians, and examine the Model Penal Code's definition of the relation between conduct and result.


The author argues for the desirability of abandoning the criminal law's rule of absolutism in causation, under which causal responsibility for a crime is not apportioned among various actors. The article examines whether a rule of partial causal responsibility would minimize disproportionality in causation cases. The author argues that a rule that apportioned liability would reflect the realities of the defendant's situation and insure a closer correlation between responsibility and punishment.