

# Early Forms of Landholding

Charles I. Elton

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Every one who is interested in the history of property should welcome the appearance of the new volume of essays by M. Fustel de Coulanges.<sup>(1)</sup> We all remember what a change in the study of early institutions was caused by the publication of *La Cité Antique*, in which he collected the traditions of the ancient world on the subject of primogeniture, and showed how it arose in the cult of the household gods, the deified ancestors to whom the father offered the prayers of the family and for whom the mother preserved a perpetual fire. His modesty led him to attribute his great success to the simplicity of the problem, or to the scantiness of the evidence, which made it impossible to draw more than a sketch in bold outline of the conditions of life in the distant past. He has now undertaken a more difficult task. He proposes to trace the growth of the medieval institutions which form the foundation of our modern life, and he has in particular been for some time past engaged in studying the development of that system of feudalism which Europe has found it impossible to endure and hardly possible to eradicate.

It is a work of enormous difficulty to trace the results of the rise of the German kingdoms on the ruins of the empire, and of the fusion of the civil law with a multitude of barbarian customs. The difficulty is increased by the fact that all the elements in the problem are both unstable and complicated. The German customs changed from time to time, and seem indeed to have differed according to the proximity of the nations to the boundary of a Roman province. The history of the empire itself reveals the existence of a number of domestic differences, originating in independent traditions and surviving the establishment of a central despotism. The feudal system, after centuries of slow development, exhibited a similar union of discordant elements. It may be said to have originated in an adaptation of the Roman notion of the double ownership of land to the theory of the personal tie between the German chieftain and his companions or military followers, who under the new system received the usufruct of a landed estate instead of the horse and sword and 'the blood-stained and conquering spear.' The rise of a nobility of service was rendered possible by the conditions of Roman agriculture, which assumed the existence on each domain of a home farm cultivated by half-free labourers established under hereditary tenancies. The spread of the doctrine of tenure and the eventual growth of the medieval manor, were insured by the constantly increasing necessity which forced the weaker landowners to accept the protection of the strong, and by the general confusion which destroyed the prerogatives of the crown and permitted the landowner to acquire the jurisdiction of the magistrate. Such was the

origin of a system which is said to have saved Europe by uniting all classes in bonds of service and defence, but which certainly so shackled in some countries all social and political institutions,

and so entangled with seignorial rights the life and death, the business and pleasure of mankind, as to generate those forces of destruction which have shaken and may destroy the fabric of our

existing society. M. de Coulanges has determined to trace the history of feudalism to its beginnings; but he seems for the moment to stand appalled at the difficulties of his task. He describes its final development as a monster, *un corps infiniment vaste*, a creature of a vision with multiple organs and changing aspect, and a complex life hardly to be explained in language or conceived by ordinary thought. Such a portent must be studied with unwearied industry and patience. The historian must clear the ground of a number of subordinate growths before he can hope to reach the object of his ultimate research. Whoever, for instance, would understand the feudalism of the tenth century, must be able to contrast the position of the German freeman with the mutilated liberties of the Roman farmer; and whoever would trace from the English to the Norman form of lordship must distinguish the privileges of a continental rustic from the denudation of the slaves and the liberty of the customary leaseholder in England.

M. de Coulanges has brought out a selection from his preliminary studies under the modest title of an Inquiry into certain Historical Problems.' He attempts in the first place to define the rights and liabilities of the colonus from the time of Varro and Columella to the completion of those monastic surveys of the ninth century which have been elucidated by M. Guérard with such

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extraordinary care. Some fresh evidence is adduced, and the old authorities are rearranged. The result is most valuable for all who wish to follow up Savigny's researches on the condition of the

German serfs, to find the true meaning of the French customs which M. Bouthors collected, or to elucidate the information as to our insular tenures which is contained in the 'Codex Diplomaticus'

and 'Domesday Books.' It is this portion of the work which will be of most interest to English readers, since it is here that questions are raised as to the nature of that system of dual ownership which has caused all the modern difficulties attending the enfranchisement of copyholds. The other parts of his inquiry are primarily connected with the history of Germany; but they all have an important bearing upon problems still unsolved in relation to the origin of our own institutions.

In one of the most interesting of these essays he discusses the judicial organisation of the Frankish kingdoms, and shows incidentally how the most tedious problems may be made attractive as a specimen of logical exactness in analysis. Its object is to show the scantiness of the evidence from which it has been inferred that the methods of medieval justice were survivals from ancient Germany. His whole work is in the nature of a protest against Montesquieu and his modern followers, who survey the complicated growth of eighteen centuries, and say, *Ce beau système a été trouvé dans les bois*. A German state, in the age of Tacitus, was divided into several territories, each of which was under the government of a chieftain or alderman; the country, as a whole, was under the control of a national assembly, which acted with original authority as a high court of justice, and also elected delegates to hold courts throughout the territories and villages. Each alderman chosen as a judge had with him a hunch'd companions, taken from the body of ordinary freemen, who are described by Tacitus as 'his council and authority.' This looks like a committee of the national assembly; and there is nothing to show that the plebeian assessors were more. We can easily conceive that the people might refuse to leave it to one person's unassisted judgment to decide on the facts and to declare the traditional law, when the lives of offenders and the property of their kindred were at stake. But the German jurists endeavour to carry the matter much farther. Dr. Waltz and his school regard these assessors as the local suitors sifting as judges in a regular hundred court. The institution of the hundred in our own country, which is now nearly obsolete, cannot be traced back beyond the laws of Edgar. The *centenarius* of the Franks appears in the Saxon law as the head of a territorial jurisdiction, and in some of the later records he is treated as a police officer in charge of a district; and this may or may not have coincided with a more ancient division of the kingdom. We cannot help suspecting that the continental writers have been too eager to discover evidence of the existence in the first century of judicial districts representing the area occupied by a hundred households, or composed of a hundred hides of land, or furnishing a hundred warriors to the host. The Bishop of Chester, to turn to an English authority, sees the difficulty of rounding any such system on the statement of the Roman historian. But he dwells on the prevalence of the numeral in every account of the constitution of a German nation, and concludes that it must be 'a certain vestige of primitive organisation.' He attributes special importance to the name of the 'hundred,' which, according to Tacitus, was given to the picked soldiers in the van of each contingent, without much regard to numerical accuracy; and the weight of his authority is given to the opinion that just as the district sent its 'hundred warriors' to the army, so it 'appeared by its hundred judges' in the local courts of the aldermen. This of course implies that the word *centeni* should not be taken in its numerical sense, but as representing some 'hundred' of tradition or theoretical symmetry, a view which seems to be the more forced and arbitrary when we remember the great size of the territories. M. de Coulanges points out that the German school must allow that Tacitus made a very strange mistake when he presented a territorial organisation under the form of a hundred deputies riding with the alderman on his assize. Here is a whole judicial system based on one supposed mistake in a word. *On ne possède aucun autre document que ce mot, sur lequel il faut que Tacite se soit trompé: s'il ne s'est pas trompé, toute la théorie croule.*

We now approach a more difficult problem. We must consider upon the evidence before us whether the Germans of the first century held land in private ownership. Was it all 'folk-land' or national property, as among the tribes described by Caesar in the 'Commentaries'? Was it the joint stock of a village community; and, if so, did it represent the settlement of a patriarchal family, or the domain of some rustic commonwealth such as those which fancy has seen existing far off and in a golden age of the world? Or again, may it have been divided among great lords and enjoyed after the Roman fashion? Were the tribes of the forest mere bondsmen, and, if so, what sense would there be in saying that 'there is more life among the free Germans than in all the realms of Arsaces'? Never was a debate conducted with such pertinacity as this long controversy, in which these questions are argued and re-argued; and never resulted from such slight premises. So surprising a variety of conclusions. The dispute after all turns mainly on a passage in the 'Germania,' so uncertain in its

readings and so obscure in its form that it has been abandoned as hopeless by some of the most learned scholars, and is cited with confidence in support of the most contradictory theories.

Tacitus has been speaking generally of the customs of the German nations, as Caesar also had done a hundred and fifty years before. Almost every chapter of the 'Germania' bears traces of a close study of the earlier work of the 'supreme authority,' who is now generally ignored by those who dislike his conclusions. Even where Tacitus differs from Caesar, he does so in words which call attention to the original statement. We may take as an example the description of the Suevi in the fourth book of the 'Commentaries,' where that 'most bellicose race' is shown to us as a semi-nomadic community. Of the men fit to bear arms in each of its hundred territories a thousand go out each year to war, and the rest remain at home to raise the necessary provisions. Next year the soldiers return to work, and the new regiment marches out 'in turn.' But, though agriculture is thus maintained, they have no private or separate ownership of land, and they may not even stay more than one year in the same place; nor do they live much on grain, but mostly on the produce of their flocks and herds, and they are much engaged in hunting. When Tacitus has occasion to describe the soldiers of the free companies, raised for private expeditions when a state was at peace with its neighbours, he points out the result of the changed conditions by reference to the words of Caesar. You would never get such freebooters as these to plough the land or wait for the turn of the year; when they are not in the wars they are not 'much engaged in hunting;' and 'the most bellicose' of these warriors will hand over the care of house and home and fields to the women and old men and the feeblest members of the household. (2) Again, is it not dear that in his remarks on the exceptional polygamy of the nobles he intended to make a direct reference to the marriages of Ariovistus, the one contracted in due course at home, the other imposed on the chieftain by motives of public policy? Another example may be found in a passage about the German settlements, the 'buildings and villages' so often mentioned by Caesar. They are usually called sedes by Tacitus, who was anxious to keep up the distinction between the Germans, who had houses of some kind, and the Sarmatians, who lived on horseback and in waggons. Every one knows, he said, that the Germans inhabit no cities, and cannot even bear their dwelling-places to touch each other. They dwell divided and apart, as a spring, a plain, a grove has attracted them; they set up villages, but not with buildings joined and standing together; every man surrounds his house with a space either as a safeguard against the chance of fire or because he is ignorant of building.' This is always quoted to show that the Germans had separate homesteads, which must have included granaries, cowhouses, and stack-yards, and probably a close of land sufficient to furnish hay for the winter, all in private and permanent ownership, and held 'to them and their heirs for ever.' But it is more likely that Tacitus had chiefly in his mind a saying of Caesar about the Germans of an earlier age, who were obliged to shift their lands lest, among other evils, they should learn to build houses too carefully and thus 'escape the cold and heat.' The Gauls, on the other hand, generally 'escaped the heat by seeking for their abodes the neighbourhood of woods and streams.' Now Tacitus had stated at the beginning of his treatise that the Germans were especially bad at hearing heat, and in the later passage he indicates that their discipline was so far relaxed that for this very reason they had adopted the old Gaulish fashion, and set up their comfortable abodes in a wood or on the margin of a stream.

There is one more point to be noticed before we discuss the chapter on which so many theories have been rounded. We are told that many of the cultivators serving under rich men or working on the public lands were members of subjugated tribes, living on in the position of hereditary farmers, and holding their lands on the condition of paying a fixed amount of corn, cattle, or clothing to their lord or to the public authority. 'Possibly,' says the Bishop of Chester, 'the more dignified and richer freemen cultivate all their lands by these means.' Now, of course, if the serf was an hereditary tenant, much more may his master be described as the owner of a private and separate estate. If we only go the first step with the learned writer we shall have to follow him to the end, and admit the existence of the subjugated nations, the private estates of the rich men at a time when even the chieftains had not sufficient corn or cattle of their own, and the growth in Germany of that complicated relation between lord and tenant which is usually attributed to a series of imperial decisions on abstruse points of Roman law. Certainly very little of this is warranted by the plain words of the 'Germania.' The historian has been describing the voluntary servitude of the gamblers who were sold off by the winners to avoid the record of a painful transaction. 'As to the rest of their slaves,' he says, 'they do not use them in the Roman way by assigning to them distinct domestic duties. Every one rules his own dwelling and his own house. As a master he orders a certain amount of corn, or beasts, or clothing, as he should from his tenant, and the slave's obedience is limited to this point. The rest of the domestic affairs are managed by the wife and children.' It is plain that the house and holding belong to the master and not to the man, and that the person who directs

his slave to work out of doors is the freeman whose own family looks after the comfort of his home.

Let us now suggest a rendering of the main passage in dispute. 'Lands enough for the cultivators are occupied by the whole of them in turns, and these they soon divide among themselves according as they are deemed to be entitled, and the wide plains render the division easy. They change their arable every year, and there is land to spare, for they do not strive with their rich and ample soil by planting orchards, or fencing meadows, or watering gardens; a crop is all that the earth is bidden to produce, and so they let not even their year pass into so many shapes; they understand and have words for winter, and spring and summer, but the name and blessings of autumn are alike unknown.' In other words, according to their system of rotation, the whole body of cultivators is provided with sufficient land: as soon as the land is taken up the cultivators divide it according to their respective allowances, and the extent of ground is so ample that no one need go short of his share.<sup>(3)</sup> Their method of husbandry is to change the tillage ground every year, and whole plains are available for this course in a country which has no orchards or gardens, and where even meadows are unknown.<sup>(4)</sup> They grow nothing but early crops of grain or flax, so that even the four seasons are not all required. Winter they know, and the charms of Spring and Summer; the figure of Autumn in his abundance to them is strange.

Is this the description of a tenure or of some barbarous system of agriculture, or a mixture of the two? May it not be a mere sequence of independent statements? The whole passage is preceded by a sentence about the employment of capital, and is followed by a paragraph about funerals. One part at least is a complaint against slovenly farming. A great part of the land was always wasted. The Germans, like their ancestors in Caesar's time, 'cared nothing for agriculture.' They were fond of the wild crabapples, but there was not an orchard among them, nor an inclosed garden for growing pot-herbs and fruit; their wealth was in flocks and herds, yet no one had seen among them a hay-field or a water-meadow. They were like squatters making an intake on the waste. They pared and burned the grass or heather to make a temporary field for the crop of flax, or of grain for their porridge and beer; but hunting was the real business of all except a few idle champions or armed retainers, and their chief sustenance after all depended on what they found in the woods. Nor could it well be otherwise among people who had not learned to manure the land; or perhaps, as they had very few sheep, they found the task too difficult. At any rate the fact remained that they changed the tillage fields every year, not merely because they selected portions for summer and winter crops and left some in fallow for an 'idle shift,' but because they also tried when possible to break up stretches of land which were not tilled before. Is not this very much what Caesar said of the great nation of the Sueyes, who had no 'private or separate lands,' and might not make their abode for more than a year in one place? Perhaps we can even find the true explanation of the more difficult passage in Caesar's sketch of the tribes. We have to account for several distinct operations all described in one highly compressed and almost illogical sentence. First, there is the selection of a portion of the national territory according to the number of available cultivators. Then, there is the fact that the selected portions of territory are occupied by the whole body of cultivators, not all at once, but 'by turns.' Next, we are told that 'they at once divide these lands among themselves;' and this must refer to the workers who are at that moment in occupation, and cannot include any out of the whole body who are merely waiting their turn. There is plenty of room for every one to have his proper share. How then are the shares determined? Certainly not according to their rank or wealth, if Tacitus is correct in using the word *dignatio*, which has an derive sense and implies a decision of one man with regard to another. When a boy was emancipated from domestic control, we are told, in the same way, that his high birth or the merits of his ancestors might we him *principis dignationem*, a high place in the consideration of the chieftain. In Caesar's time it was the chieftain of the territory who chose tenants for the national property at the annual gathering of the kindreds and families. He gave what he thought necessary to each association, but took care that at the next meeting they should be removed to another district. War was the normal condition of the Germans in Caesar's time, or at any rate of all the nations near the Rhine; and, in one ease at least, it was the custom to employ the grown men at home and abroad in alternate years. In such a case the lands selected for cultivation would be occupied by the whole body by turns in a two years' rotation. If, on the other hand, the tribe were at peace, still the aggregations of kinsmen might be said to occupy all Together, but in turn, considering that each set would be shifted, if Caesar's system continued, every year and sent to break up new fields.

It is probable, therefore, that Tacitus was describing in his ornate phraseology what had already been stated in simple language by Caesar. If this is so, the consequence will be somewhat important, since there will remain no direct evidence that landed property existed among the peoples described in the 'Germania' before their establishment within the limits of the empire. They

were so far settled that they occupied well-defined districts, and inhabited houses and villages; but they can hardly be said to have held private estates in shifting allotments of uncertain amount; and they resembled the nomads in the ease with which they could change their quarters as often as the occasion required. We may conjecture that property in land began for them when the chieftains and bodies of kinsmen received allotments of conquered soil; for they must soon have recognised the inconvenience of redistributing old areas of cultivation. Even this comparative stability of estate must very soon have led to an improvement in agriculture, especially in places where the arable fields had long been separated from the pastures. The joint ownership of the new village community might be maintained for a considerable time by a system of constant redivision; but there must always have been a natural tendency to allow the co-partners to acquire a permanent estate in the lands which they had enriched by their personal labour. Applying these remarks to our own country, we shall find reason to believe that the English settlers distributed a great part of each conquered territory into townships, each held by a body of kinsmen who at first were the joint owners of all the arable land as well as of the pastures and wastes. There is but little documentary evidence for this conclusion. But as regards the original relationship of the settlers we are entitled to draw an inference from Bede's use of the same word to indicate a kindred and a district, and from the patronymic form of many of our commonest place-names. There are also traces of a custom giving certain interests to the neighbours when property in a village became vacant. The edict of Chilperic, on which M. de Laveleye laid stress, as showing that the *vicini* were at one time preferred to the children by the Frankish law, indicates at least that they were regarded as having some contingent claim or title to the land. Professor Nasse mentions a custom of certain German villages, only lately abolished, by which the neighbours had a preference over strangers in the purchase of land. There is a well-known case in 'Brownlow's Reports' where Chief Justice Coke described similar customs at Ham in Middlesex and at Gloucester: 'If any copyholder will sell, the next clevenor (which is he that dwelleth next unto him) shall have the refusal, giving so much as another will, and he that inhabits the east part first, and the south and west, and last the north, shall be preferred.' As regards the partition of arable land, it is said that the inclosure commissioners found instances of tillage divided by lot, like the dole meadows to which we are more accustomed. The arable in the common fields of a manor near London was formerly described as *terra loftsibilis*; and there are traces in several parts of the country of the tenancies called '*malmanni*' and '*molemen*,' and of fields called '*molland*,' which must have some connexion with the Dutch *malen* or partible arable lands, distributed until lately among the *maalmannen* by lot.

Even more importance may be attached to the curious similarity of the rules by which in the English and German villages the proprietors fixed the rotation of the crops, the temporary fencing of the fields, and the opening of the whole domain at certain seasons for pasture. In many German instances the arable lands were certainly the subject of distribution by lot. In East Friesland, as is well known, the lands were owned by the whole community of '*theel-boors*,' and were continually divided into fresh allotments, of which the bare usufruct was allowed to the individual farmer. The works of Meitzen, Hansen, Nasse, and De Laveleye are full of examples of the division by lot which was so common in the middle ages that it was known as *mos Theutonicus*. Professor Nasse pointed out in the *Contemporary Review* for May 1872 that there were districts in Germany where until quite lately there was an annual repartition of land among the villagers; 'and even now,' he adds, 'there are cases in which one portion is private property and another is periodically allotted to or used by the members of a community in a certain rotation.' M. de Laveleye collected instances of this kind from the valleys of the Saar and the Mosell, from the other districts round Trèves, from Nassau, and the hill country of the Eifel. In some cases the partition was annual, even within the last few years; in others the division was postponed from time to time to suit the convenience of the proprietors. The whole evidence points to the existence at some early time of a similar state of things in England. It is true that, when our written history begins, the township appears either as a community of proprietors with separate ownership of arable land and a joint use of pasture, or as the estate of an owner whose tenants occupy the lands of the village under a similar system. In either case we see the signs of an earlier phase of agriculture in which the arable, like the pasture, was the subject of joint ownership and collective possession. We cannot be sure when the stage of joint ownership was reached. We conjecture that it was developed from an earlier set of institutions, such as those described by Caesar, under which the land was the property of the state, occupied yearly or periodically by shifting groups of kinsmen. Perhaps joint ownership was not attained until portions of a conquered territory were allotted to associations of this kind. It may be that in the time of Tacitus the township was organised as a landholding community; and this opinion will prevail with those who follow Dr. Waltz in reading *vicis* for *vices* at the beginning of the disputed passage. Another set of inquirers will be content with the statement of the Bishop of Chester, who holds that the village

settlements were permanent, and the homesteads substantial and extensive; but the arable land is occupied by the community as a body, and allotments, changed annually, are assigned to the several freemen according to their estimation or social importance.' Some will agree with Mr.

Seebohm that Tacitus was referring to the migrations of the tribe: others will follow Mr. Denman Ross in supposing that the description relates to the distribution of servile holdings on a private estate. M. de Coulanges himself is very much attracted by the last-mentioned theory. He hesitated a long while before abandoning the idea that the historian might have been merely describing the methods of common labour imposed by the rich on their dependants. The explanation is tempting in its simplicity; but we must remember that a very obscure statement is easily adapted to any one out of a number of hypotheses. If we once assume a particular historical fact, as that the houses could not be moved, that the tribes were in a state of migration, that land was the subject of inheritance, or the like, all difficulties will disappear, except the initial task of reconciling the words of Caesar and Tacitus. M. de Coulanges takes up no very decided position. He is against the opinion that the land was owned by the state or by any smaller community, and in favour of the view that estates so far belonged to the family that the inheritance could not be alienated by its limited owner. But he takes the disputed passage as referring only to the current system of agriculture, and throws some light on the problem by pointing out that all the words of Tacitus may be taken in a highly technical sense. In his opinion it is as if a practical farmer complained that with an ample extent of ground the soil was taken up in small parcels by too scanty a body of cultivators; that they joined in preparing the soil for a crop, and divided it *pro rata* according to the size of their private estates; and that, after all, they never got the full advantage of the arable land, to which their efforts were confined; whereas, if every man had cultivated his own estate in a proper way, there would have been no need of falling into this shiftless plan. It will, however, be observed that this explanation implies the existence of separate properties, thrown for convenience into a common stock, and then only partially cultivated.

It is difficult to see how private ownership can ever have preceded the system of common possession. The evidence points rather to a gradual development of the notion of separate property in the house and herd, in rights of pasture, in the right to a lot in the field or a share of the crop, and in the right to retain the parcels which have been improved by individual industry. Mr. Denman Ross, who collected a very useful body of evidence in his 'Early History of Landholding among the Germans,' has lately propounded a new solution of the difficulty. His theory, to use his own words, was that the holding of land among the early Germans was vested in individuals and not in communities; that it was a holding in common, but not a 'communistic holding' and that there was individual ownership of land long before there was any division into severalties or separate estates. But how, it may be asked, was the ownership vested in individuals before any actual division had taken place? If the land was possessed in common, how is there room for the conception that the property was separate? Mr. Ross answers these questions in an essay on the 'Capitalisation of Land' which is printed among the 'Proceedings of the American Academy of Arts and Sciences for 1886.' In his view the possession of a certain number of slaves or cattle carried with it the right to a corresponding share of the lands belonging to a community of kinsmen, the amount always depending on the quantity of stock or capital which was ready for application to the soil. This theory seems upon the whole to be less complicated than that which M. de Coulanges has adopted. The general opinion will probably be that neither of these hypotheses affords an adequate explanation of the facts.

It is clear, at any rate, that they are both in direct opposition to the views of those who believe in the 'mark system,' even in the modified form which it has assumed since it was introduced by Von Maurer and too eagerly accepted by Kemble. The name of the 'mark' is used to denote very different things. It may mean either a society founded in ancient times for agricultural purposes or the territory which its members held in partnership; and it has been applied indifferently to those powerful and extensive communities which must be regarded as sovereign states and to the insignificant bodies of landowners who regulated the affairs of our villages and hamlets. It is a favourite opinion, perhaps rather a general article of doctrine, that England and Germany alike were at one time covered by a multitude of miniature commonwealths founded and maintained with a view to the operations of agriculture. Instead of the pirate hordes and the wild sea-kings described by Sidonius, we are taught to find our forefathers in a sober crowd of yeomen reclaiming the marshes and clearing the forests with a patience that used not to be attributed to the children of Woden. *Frumenta patientius quam pro solita Germanorum inertia laborant.* Kemble thought that he could trace the existence of such 'marks' in England even in the ages which preceded the Roman occupation. He pictured each colony as a great family union, united by the ties of a real and theoretical kinship, standing together as a self-governing body independent of every external

authority: its members differed among themselves in rank and wealth, but they were all deemed to be of one blood and one name, 'all governed by the same judges and led by the same captains, all , sharing in the same religious rites.' Each mark is assumed to have been a voluntary association of free men who had laid down for themselves a plan of agriculture' by which the produce of the land might be fairly and equally secured for their service and support.' It will be remembered that it was not the independence of the little state or the common ownership of land which gave its special character to the mark. It must be taken as an essential part of the scheme that all the colonists should be working members of an agricultural association. We may believe, if we please, that meritorious commonwealths of this kind were scattered, before history begins, in Old Anglia across the sea, in the Saxon islands, or 'along the salt pools of the Frisian shore;' that they turned their peaceful keels towards the west in search of more fruitful farms, without fear of British tribes or Roman legionaries, like the wanderers of romance, as the wind filled their sails singing

Alva beats,

Petarena arva, divites et insalas.

But surely these fancies cannot be accepted as having any real foundation in history. We know too many stories of those long and bloody wars in which the Welsh were smitten 'with fire and the edge of the sword,' when Cerdic passed through the land ' in his dreadful might,' and his mightier son took unnumbered spoils, 'and wrathful returned to his own.' Kemble himself could never have kept his theory alive if he had not rejected the words of the English chronicle, and accepted an absurd delusion about the population of the Saxon Shore. There were commonwealths and kingdoms enough through all that time when, in the words of the old chronicler, 'many and frequent were the expeditions from Germany, and many were the lords who strove against each other in the regions of East Anglia and Mercia.' Many a group of soldiers may have received allotments of conquered lands on which they might found their villages and exercise their co-operative industry. But we cannot find any trace among them that the state or republic was organised on an agricultural system. The very differences which we note between the customs of village and village are evidence against the existence in England of the 'mark' as an independent republic.

Nor will the supporters of the ' mark system' in its widest sense fare much more successfully in Germany. If Caesar and Tacitus had not described the institutions of the ancient tribes, it might have been possible for us to believe that the genius of the people was agricultural, and that the country was laid out in a number of independent settlements inhabited and worked by a thriving and industrious population of farmers. We have seen that the facts point the other way. But- in the course of the long discussion we have all become as familiar with the ' markman' as we became, under Pictet's guidance, with the members of the primitive Aryan household. We know all the rights and duties of the 'athel-bonde,' dwelling in the 'athel-by,' with tort and croft and a place in the moot, and a parcel of corn ]and to serve as the 'attestation, type, and embodiment' of his civic and political rights. But since the doubts about his existence have been more strongly developed, the 'atheling' has been banished from the region of authentic history and relegated to a time when the kindred formed its original settlement ' in one of the great plains or forests of the ancient world.' The Bishop of Chester has dealt tenderly with the matter, and somewhat after the manner of Euhemerus. The 'Constitutional History' shows us archaic communities, very like the tribes of the 'Germania,' and yet considerably more civilised. We see them legislating in the council, and allotting the fields and meadows among the 'mark families,' or arranging for the equal use of the public pasture; new members are admitted in solemn form to a share in the public property; new farms are carved out for those who love to dwell by the spring, the grove, or the plain. We are told that the system was necessarily 'short-lived in its integrity,' though it has left and abiding traces on the succeeding forms of society. We feel that such a community might have existed at some time, although its history seems to have been pat together from very slight materials; but it has been removed into such a shadowy distance that we must despair of finding it in action on this aide of the Oxus or Jaxartes.

So far as England is concerned we my refuse to believe in the mark, if it implies the existence of a multitude of parochial republics, each with a parliament or alehouse council of farmers that judged and legislated and settled questions of peace and war. But the readers of Sir Henry Maine's works will not require to be told that the 'mark,' in a more limited sense, existed not only in this country, but in many other parts of the world. In mediaeval documents the word

means a limit or boundary, and also the district which is limited by that line. In one of the earliest

instances of its use we are told that a certain patrician fled to Avignon 'in Childebert's mark.' It

is often used to denote the boundary of a province or kingdom. In the eighth century it was applied to the frontier lands under marquis or margrave, just as we speak of the mark of Brandenburg or the marches of Wales. Both before and after that time almost all words of boundary and limitation were used to describe such districts as the parish and the village on a private estate. M. de Coulanges, who has collected all the evidence, points out that the same property is not unfrequently described in different clauses of the same deed as the villa and the terminus of such a name. The word 'mark' seems to have been used to denote a domain or

territory without any implication as to the nature of the ownership, being equally applicable to an allodial estate and to the property of a village community. After a time the term seems to be specially applied to commons and waste lands, the estate being conveyed 'with all marks' or with a particular reference to the 'wood mark' belonging to the domain. In the twelfth century the word is almost confined to the woods in which the people of the neighbourhood have rights of common. The term, which originally described the belt of forest round a settlement, without reference to its use for grazing purposes, has now come to mean a place of common pasture, without reference to the question of boundary. M. de Coulanges complains that too much stress has been laid on this last development, as if the use of an ancient word for a special institution was evidence of the antiquity of the institution itself. Our English instances throw very little light on the matter. The disputed term occurs among the local names collected by Kemble; but the documents are so far ambiguous, that the word must be treated as applicable either to a real village community or to a township of the later kind. The 'marks' of the early settlers may have been the lands set out in allotments to groups of kinsmen; but, even if this be admitted, the word has been used in so many senses that it might be desirable to find a mere colourless term in order to avoid mistakes.

It used to be said that the chief problem of medieval history was to show how the manor grew out of the mark. But it is plain that the question can no longer be stated in this simple form. We have nothing to show that the lord represents the successful headman of the village or the chief of a household which has usurped its neighbours' privileges. Nor can it be properly said that the manor is a form of the township, though the two institutions were closely connected by such facts as that private estates were often organised on the model of the free villages, and that public lands already laid out in townships were constantly granted to churches or noblemen in private ownership. When the Norman chronicler wrote of 'those villas, which we call manors, à manuendo,' he seems to have been making a mere mistake in etymology. He meant to say that a *manoir* was so called in Normandy because it was a gentleman's residence; it would have been more correct to state that the common word for an estate was borrowed from the *mansus*, the territorial unit, the name of which was equally applicable to the lord's home farm and the rustic holding of the serf. The manor is undoubtedly very like that form of estate which Abbot Irmino depicted in his celebrated register, and which we may briefly describe as a district with special customs, treated as a separate fiscal division, and divided into the lord's 'manse' or demesne and the 'manses' of the hereditary tenants of various degrees. Mr. Denman Ross, in his work on the German system of landholding, and Mr. Seebohm, in his 'English Village Community,' have collected a vast quantity of evidence showing that this was the usual form under which estates were constituted in England before and after the Norman conquest and in all parts of France and Germany. The 'book land' of the English thane was divided into two parts: the demesne or home farm was cultivated by the farmers and labourers, and they were allowed in return to occupy portions of the 'out-land.' Among the Normans of the Duchy we find the same state of things prevailing. Throughout M. Delisle's gear work upon their provincial agriculture we see that every estate is assumed to be divided into a demesne kept in hand and a portion distributed in *vilainages* and *bordages* among the labouring tenantry. The estate of a Frankish noble was distinguished on the same principle into the 'salic land' round the hall, and the 'manses' reserved for the *coloni* and other dependent cultivators. If we go back to the days of Gregory the Great we shall see that the masse of the church estate was laid out in exactly the same way; and even in the earliest times of the empire we find that the villa of the great proprietor was managed on a similar system. M. Guérard, in his disquisitions on the registers of the abbey of St. Germain, gave us an account of the *colonus* of the ninth century, in which we discern the true position of the hereditary cultivator of the demesne at the moment when his disabilities were being removed, and when he began to rise into the class which we may now call by the general name of *roturier*. M. de Coulanges has devoted his great power of research to examining the condition of the *colonus* at the time when he began to fall away from the status of a farmer holding under contract. He has traced the degradation of the class from the days when the tenants, unable to pay their rents, submitted to an informal obligation of paying in kind or in dues of labour, to the time when this

sort of tenancy was accepted by the squatters on public lands or was forced upon prisoners of war. lie has shown, moreover, how the pedantry of successive emperors insisted on treating the *coloni* as slaves of the soil and fixtures of the farm, until they were only distinguished from the slaves by slight privileges with regard to marriage, and a somewhat greater chance of escaping the rack and the scourge. In course of time the serfs and the *coloni* attained to the same fixity of tenure, chiefly through the operation of the revenue laws, which made it convenient that the farm of the occupying taxpayer should always be entered in the same column of the collector's book. After the imperial system of taxation had disappeared, the old method of registration was maintained in the *polyptyques* or surveys of the great monastic houses and the managers of the royal domains; and we may trace in their fiscal arrangements the beginnings of the manorial district, of the local customs of tenure, and of the court rolls which became so important in a later age.

Even in England there may have been some direct imitation of this system as soon as it became usual to fall in with the continental fashions. It appears, at any rate, from the documents in the 'Codex Diplomaticus' that the 'folk-lands' of the national property were arranged in districts occupied by tenants owing rent to the king in the form of produce and labour; and that these men were called by the same names and were in many respects in much the same condition as the tenant of a *colonica* or a *mansus servilis* in a continental estate. It is not surprising, therefore, that the question should often be asked whether either the French or the English manor differed essentially from an estate managed as in Pliny's time or in the age of the Antonines. The suggestion or implication is, of course, that the mediaeval tenures in both countries were survivals or modifications of the Roman serfdom. In one respect, at any rate, these institutions differed in each country from anything which had been known under the empire. When society fell to pieces in France under the third dynasty, and in England after the feeble reign of Ethelbert, the greater landowners began to acquire jurisdiction in legal matters over their own tenants and such of the neighbouring freeholders as were anxious for personal protection; and this kind of territorial magistracy was in familiar use on both sides of the Channel some time before the Norman conquest. But the civil law knew nothing of any such legal entity as the French lordship or the English soke, or of any such relations as existed between the seigneur and the vavassor, or the lord and his tenant in socage.

This is not the occasion for discussing the whole history of the English manor, for distinguishing between the serf and other customary tenants at will, for showing how tenant-right appeared before the Conquest and was gradually extended to estates for life and for terms of years, and even to the estates which were originally intended to be terminable at pleasure. We have shown that there is reason for thinking that the resemblance of the English lordship to the Roman 'villa' is not due to any identity of origin, but was rather caused by a natural imitation of continental usages, by the adoption of legal forms which the Franks had first borrowed from the civilians, and chiefly perhaps by the Norman practice of describing the native tenures in terms which disguised their character. The *villani* of 'Domesday Book' included tenants of many different classes to whom the name was hardly applicable in the strict Norman sense. So the *coliberti*, or 'boom,' of the western counties were found by legal trial to be free tenants of the manor, whereas the continental tenants of that class appear to have been bound to the soil and subject to forced services of husbandry; and so, again, when Bracton was describing certain 'privileged villeins' in terms borrowed from the Italian law books, he was forced to find a new meaning for the current phrase, and to explain that 'bound to the soil' implied in this instance that the tenants were only bound to stay as long as they pleased. The final solution of these problems will only be reached after long discussion and by means of the comparison of a vast and intricate mass of authorities. But we may be sure, in any case, that from the first step to the last all who take a part in that debate will be compelled to study the method and admire the industry and mental force which have been displayed by M. Fustel de Coulanges in his admirable series of essays.

#### NOTES:

1. *Recherches sur quelques Problèmes d'Histoire*. Par Fustel de Coulanges. Paris: 1885.
2. Tac. *Germ.* c. 15. The passage is often misread, as if it applied to all the freemen. The difficulty thus caused is evaded by leaving out the negative, as being too directly in opposition to Caesar's statement.

3. Tac. *Germ.* c. 26. 'Agri pro numero cultorum ab universis in vices occupantur, quos mox inter se secundum dignationem partiuntur. Facilitatem partiendi camporum sparta priestant.'
4. Ibid. 'Arva per annos mutant, et superest ager: nec enim cum ubertate et amplitudine soli lahore contendunt, ut pomaria conserant, et prata separent, et hortos rigent; sola terrae seges imperatur.'

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