

## Chapter 2

### **The European Background**

When the early colonists came to America, they brought with them the burden of European laws, traditions, and customs that existed at the time in their former localities. These constituted a maze of legal and technical entanglements regarding landownership and land tenure that had come down through the centuries. Despite changes in political and economic conditions, many obsolete and harassing restrictions, inherited from the feudal era, were still observed and enforced.

Yet it was a time of revolutionary changes. For the colonists, coming as they did to a territory of primeval environment, where individual ownership and exploitation of the soil were largely unknown, there existed opportunities to cast aside the old laws and traditions and reconstruct new systems of property allotments, ownership, and transfer. How these opportunities were utilized or were almost completely ignored will be told in following chapters, but in order to understand fully the underlying conditions which influenced and activated the early settlers in establishing their institutions of landownership and land distribution, a brief survey will be made of the development of land tenure in Europe, particularly as it relates to the island of Great Britain.

#### **The Feudal System**

Despite the scholarly researches that have been made on the development of primitive property ownership, particularly as it relates to land, there is, as already stated, considerable controversy as to both its origin

and nature. The growth of feudalism during the Middle Ages and the conditions that laid its foundations have already been told in numerous studies during the last two centuries and need not be recounted here. But as stated by Professor Hawtrey,<sup>1</sup> "Feudalism is in principle the identification of sovereignty with landownership. To own a region and to rule over it are indeed not easily differentiated."

This accounts for the widespread prevalence of feudalism throughout the world in different areas and at varying periods, and in such isolated and distinct regions as Japan and Ethiopia. The basis of feudalism is a hierarchy of ownership and control. Its fundamental concept is political rather than economic. It is for this reason that feudalism involved not only proprietorship of the soil but also of the inhabitants living on it. Political power could be maintained only by control of the population and by attaching the population to the soil and thus making them part and parcel of the land on which they resided. This created a species of slavery as a means for sustaining the political power of the sovereign.

All this does not mean that economic factors in the system were not present and did not play an important role in its development. Military power, the prime support of political power, can be sustained only by economic resources, and as feudalism was primarily a means of marshaling military forces, it had an economic as well as a political foundation. As time went on, the economic foundation became stronger than the political foundation.

### The Introduction of Feudalism in England

The origin and causes of the growth of feudalism in Great Britain have been a field of scholarly controversy. Some authorities ascribe it to the Norman Conquest. Others contend it existed in the Roman era, which lasted for several centuries, and, already firmly established, was strengthened after the Anglo-Saxon invasion of Britain. As an English economic historian states it: "The great mass of the population [in the Saxon era] was engaged in agriculture, and every man had, so to speak, a stake in the land and belonged to a manor or an overlord. A landless man was altogether outside the pale of social life. Land, in fact, was the

<sup>1</sup>R. G. Hawtrey, *Economic Aspects of Sovereignty*, pp. 4-5.

basis of everything and it is for this reason that it is so important to understand the conditions of tenure and the whole-land system of that age."<sup>2</sup>

The boldness of this statement of the universal prevalence of feudalism in Britain in the Anglo-Saxon era is, however, refuted by other authorities, notably the Russian economist, P. Vinogradoff,<sup>3</sup> and notably by Sir Henry Maine,<sup>4</sup> who states in his work, *Ancient Law*, that "property once belonged not to individuals, not even to isolated families, but to larger societies."

Whatever the situation actually was regarding land tenure in the Anglo-Saxon era, it is generally agreed that the feudal system became predominant in the period following the Norman Conquest. As stated by Sir Frederick Pollock in his concise treatise, *The Land Laws*: "The Norman Conquest was the means of introducing great and systematic changes in the government and laws of England, and not least in the law governing the tenure of land." And he follows this up by the statement, "And to this day, though the really characteristic incidents of the feudal tenures have disappeared or left only the faintest of traces, the scheme of our land laws can, as to its form, be described only as a modified feudalism."<sup>5</sup>

### The Progress of Feudal Land Tenure in England

It has been said that the changes in the system of land tenure in Britain have been so gradual that, as important as they have been, they have passed largely unnoticed, and only patient research has brought their true nature to light. Sir Frederick Pollock remarks in his study of the English land laws that by the first half of the thirteenth century feudalism was at its most perfect stage in England, and from the latter part of that century onward the system underwent a series of grave modifications, but "the main lines of the feudal theory were always ostensibly preserved."<sup>6</sup>

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<sup>2</sup>H. B. Gibbins, *Industry in England*, p. 46.

<sup>3</sup>*Villainage in England*, *passim*.

<sup>4</sup>*Ancient Law*, 4th American ed., p. 261.

<sup>5</sup>*The Land Laws*, 3rd ed., London, Vol. I, p. 53.

<sup>6</sup>*Ibid.*, p. 53.

Among the features that persisted were the laws and customs pertaining to rents and inheritance. The features that were relegated or abandoned were the military requirements and the menial services of the lords and tenants. Primogeniture and its corollary, the entail, inherent in the military phase of feudalism, were preserved and retained, and continued to be a tradition in English land tenure almost until the present day. It was a legal and customary harassment which perplexed the population and, as shall be pointed out later, was rather speedily repealed by the American colonists when they were given the liberty to do so.

Following the Peasants' Revolt of 1381 in England, villeinage, meaning serfdom, gradually declined and through several centuries became extinct. This was accomplished through the commutation of labor services of the tenants into money rents. It did not give the serfs, bondsmen, or tenants a right of ownership in the land, but it released them from attachment to the soil and enabled them to become free men and move from place to place. But this, in itself, created the problem of "the landless man" and led to the evils of vagabondage, which, when further intensified in the period of "inclosures" of the sixteenth and seventeenth centuries, became a harassing social problem in Great Britain and ultimately led to enactment of the notorious English Poor Laws, a series of legislation that has been universally condemned by most British economists and historians during two centuries.

The advantage of feudalism was that it gave every capable person some right to the use of some land. Thus the basis of subsistence was present. The individual was thus protected against starvation, vagrancy, and even poverty. Contrast this with our existing institution of fee landownership, under which the privilege of land use and occupation can be denied the individual and forces him to seek other means of subsistence or become a "dispossessed freeman." The renowned British economic historian, Thorold Rogers, in his notable work, *Six Centuries of Work and Wages*, contends that the "golden age" of the British laborer was in the fifteenth and the early sixteenth centuries, when the feudalistic system of land tenure still persisted. This could reasonably be ascribed to the automatic right of the individual, whether as serf or

peasant, to the use of some land by means of which he was assured both employment and a domicile.

Perhaps the most potent cause of the breakdown of the old feudalism was the growth of cities and towns during the Middle Ages and the rise of manufactures and trading. Feudalism, with its essential characteristic of attaching the individual to a specific piece of land, could not be applied to city or town residence. Moreover, the cities and towns received royal charters and privileges, which were outside the scope and jurisdiction of lords and overlords. Thus a class of "freemen" was formed, and landownership or land tenancy relieved from feudal dues and services was created or later enlarged. It is mainly from this class that the great political leaders of Great Britain from the time of Elizabeth were drawn. Not only did they assume political power, but in time they became the potent promoters of British colonization throughout the world. Though they created for themselves a dominant influence in political affairs, they were not particularly interested in changing the systems of land tenure or the laws relating thereto. In many cases, because of affluence and the desire for social and political prestige, they themselves became large landowners and sought to maintain the position of their families by receiving titles of nobility and by building up landed estates for their posterity. Thus they assented to the traditions underlying primogeniture and entail.

This may be one of the reasons why land reform made such slow progress in Great Britain. It was not until the reign of Charles II that the original character of the old feudal system in England was changed by statute, and the theory of the feudal hierarchy, based upon military service and the adage that "title to all land lies in the Crown," was ostensibly abolished. This act, abolishing the military tenures and their incidents, was passed in 1660, although a previous act of the Commonwealth, passed in 1656, enacted the same provisions "in a rather more elaborate form."<sup>7</sup>

According to the statute of 1660, all freehold tenures were reduced to the one type of "free and common socage"—socage was land held by free tenure but without military service. Although this did not abolish

<sup>7</sup>Pollock, *op. cit.*, p. 130.

the tenant system that long prevailed, it enabled tenants in fee simple to dispose by will of their lands; and thus, as stated by Sir Frederick Pollock, the whole of the fee-simple land in the British Kingdom became disposable by will. Nevertheless, primogeniture and entail still prevailed, and thus land cultivated by free tenants who paid quitrents became the predominant system of landholding during the period of colonization of America. It continues in Great Britain until this day. It is a system of "landlordism"—an evil that has hindered the economic progress of agriculture and urban development on the British Isles for the last three centuries.

Speaking of this English "landlordism," George Brodrick, writing in 1881, states:<sup>8</sup>

The law of Primogeniture and the custom of Entail have erected great landowners into a privileged caste, admission to which is the highest aspiration of the English plutocracy, while the disappearance of a true middle class from English counties has removed the main counterpoise to their undue weight. They hold in their gift that social promotion which is the most seductive of bribes to English minds of the common order, and they are treated with a deference out of all proportion to their merit by men, and still more by women, eagerly struggling for this promotion.

This inordinate respect for great landowners, as such, was not equally characteristic of rural England in earlier times and would probably not survive the modernized feudal land system to which it owes its origin. It is wholly distinct from the spirit of clanship and military alliance which attached the feudal retainer to his lord, and enabled the most powerful barons to impose their will on vast tracts of country. Even in those days, a sturdy undergrowth of independent yeomanry and freeholders continued to flourish under the vast shadow of baronial suzerainty. The greatest landowners of all were greater than any now found to be on the roll of the Peerage; but great landowners, as a class, did not tower, as they now do, above the smaller gentry, then a far more numerous body. . . . Even after the institution of the unpaid magistracy had withered the spirit of self-government and consolidated the power of the landed aristocracy within each county, it is

<sup>8</sup>*English Land and English Landlords*, pp. 412-13.

clear that rural society in England presented a much greater equality of fortunes and conditions, with a much greater community of habits, and tastes, than it does in the present day. . . . It was rapidly impaired as the English Land System matured itself under modern conditions, and for the last hundred years the landed aristocracy has approached more nearly to a social oligarchy than it ever did before.

Another English writer of the same period as George Brodrick, T. H. S. Escott, describes the trend toward landownership concentration in Great Britain toward the end of the last century as follows:

The total area of the United Kingdom is 76,300,000 acres, of which 26,300,000 acres consist of mountains, rough pasturage and waste, while 50,000,000 are crops, meadows, permanent pasture, and woods and forests. Most of this land is in the hands of large landowners; excluding the proprietors of less than one acre, one-fourth is held by 1,200 persons, each averaging 16,200 acres; another fourth by 6,200 persons, at an average of 3,150 acres; another fourth by 50,770, at an average of 380 acres; while the remaining fourth is held by 261,830 persons, at an average of 70 acres. The cultivation of this land is mainly in the hands of tenant farmers of whom there are 561,000 in the United Kingdom, each holding an average of 56 acres. The tendency is for land to become concentrated in the hands of large landlords, small proprietors being bought up. Thus the small squire is becoming gradually extinct, while the yeoman, or small landowners farming their own land, have almost entirely disappeared. How rapidly we in England have passed from an agricultural to a manufacturing people may be judged from the fact that whereas fifty years ago a fifth of the working population of England were engaged in agriculture, those now occupied in this manner are less than a tenth.<sup>9</sup>

A logical development of this land concentration was the British land-reform movement, first sponsored by the pioneers of land reform, notably Thomas Spence and William Ogilvie, and taken up by Richard Cobden, John Stuart Mill, Lord Addison, Francis Neilson, and a host of other British statesmen, philosophers, and economists. Their work has been bearing fruit in the recent British legislation relating to land use and ownership, of which we shall speak later in this volume.

<sup>9</sup>*England; Her People, Polity, and Pursuits*, new and revised ed.