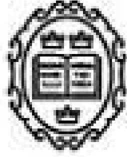

The Origin of Property in Land

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THE ORIGIN OF PROPERTY IN LAND

FROM the time when Montesquieu derived the medieval constitution from the primitive forests of Germany up to the last quarter of the nineteenth century those who spoke or wrote of the origins of institutions lived tranquilly. The matter was relatively simple. The stream of Germanic invasion swept over the decaying Empire, annihilating the old systems and introducing the principle of freedom and democracy, contained in institutions more or less rudimentary. This system, despite its varying destinies in different lands, possessed a unity and a sanction in natural law that enabled it to emerge again in the great days of 1848. It was under the influence of the political ideas then current that Waitz,[1] Kemble,[2] and the Maurers[3] began to unfold the details of primitive German democracy. The kernel of this system was the mark, the free, self-governing village, with its little political assembly and its communistic agricultural arrangement, under which the title to the land was vested in the community. The mark was the typical form of Germanic settlement, and was reproduced wherever the German invaders found permanent homes. But under the corrupting influences of civilization and new economic conditions the free mark community gradually fell into dependence upon some one of its members, who, or whose successor, became manorial lord, the proprietor of lands which others occupied and worked. And as he had inherited the lordship, so did he also the jurisdiction of the earlier community. In this fashion the manorial system of the Middle Ages was readily accounted for. This doctrine was widely and enthusiastically received. In England Green[4] and Freeman[5] swallowed it whole, and even Bishop Stubbs[6] gave to it a qualified assent.

[1] *Deutsche Verfassungsgeschichte*, Bd. 1–4 (Kiel, 1844 ff.). Waitz was under great obligations to the earlier writers of the Germanistic school, notably Möser, *Osnabrückische Geschichte* (1768); Grimm, *Deutsche Rechtsalterthümer* (1828); Eichhorn, *Deutsche Staats- und Rechtsgeschichte* (1808–1823).

[2] *The Saxons in England* (1849).

[3] Konrad Maurer, "Angelsächsische Rechtsverhältnisse," in *Kritische Ueberschau der Deutschen Gesetzgebung*, I.–III. (Munich, 1853–1856); G. L. von Maurer, *Einleitung zur Geschichte der Markverfassung, etc.* (Munich, 1854); *Geschichte der Markenverfassung in Deutschland* (Erlangen, 1856).

[4] *Short History* (1893), 3–4; *Making of England* (1898), 175–188.

[5] *Norman Conquest*, I. (2d ed.), 83–84, 96–97.

[6] *Constitutional History*, I. (1897), 88–91.

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The reaction against the ideal calm of this Germanic dispensation began in the seventies. Fustel de Coulanges in a work[1] published shortly after the Franco-Prussian War sounded the first note of controversy. But his doctrine was so generally opposed that he undertook to develop it in greater detail in a series of volumes, the completion of which was destined to be entrusted to the pious labors of his disciple M. Camille Jullian.[2] In America and England, meanwhile, Mr. Denman Ross[3] and Mr. Seebohm[4] were working along the same critical lines marked out by Fustel. In 1885 Fustel dealt searchingly with the mark in an essay which may fairly be held to have relegated that institution to the limbo of unwarranted hypothesis.[5] In 1891 Professor Ashley ranged himself under the banner of Fustel.[6] These writers have been described, in contrast to their Germanistic predecessors, as a Romanist school, and this is just in so far as they all ascribe a certain importance to the influence of Roman elements in the formation of medieval institutions. But their common bond and their great contribution lies rather in the rigor and sanity of their critical method. The enduring part of their work, it is coming to be seen, has been destructive. They have dissipated errors such as the mark, and everywhere they have imposed caution and suggested doubts of hypotheses that were fast hardening into axioms. On the constructive side, they share an opposition to the doctrine of primitive German democracy, tending instead to represent early German society as aristocratic in its structure and to attach great importance to the survival and influence of Roman institutions in the lands conquered by the Germans. In this regard it is necessary to make due allowance for the reaction against the earlier and exclusively Germanistic doctrine.[7] The attempts, for example, to show that the early Germans knew full ownership in severalty or to derive the English manor direct from the Roman *villa* have not in the long run proved successful.

In the last decade of the last century the pendulum began to swing back again toward primitive freedom, though not indeed to-

[1] *Histoire des Institutions Politiques de l'Ancienne France* (1875).

[2] 6 vols., 1888–1892. The work retains the same general title, but each volume has also a title of its own. The first and second volumes appeared in M. Fustel's lifetime.

[3] *Early History of Landholding among the Germans* (Boston, 1883).

[4] *The English Village Community* (London, 1883).

[5] "De la Marche Germanique," in *Recherches sur quelques Problèmes d'Histoire.*

[6] *The Origin of Property in Land*, translated from Fustel's essay in *Revue des Questions Historiques*, April, 1889, by Mrs. Ashley, with a valuable introduction by Professor W. J. Ashley (London, 1891; 2d ed., 1892).

[7] This whole question, it will be remembered, had been raised in the eighteenth century for the purpose of justifying the privileges of the noblesse in France. See Boulainvilliers, *Histoire de l'Ancien Gouvernement de la France* (1727), and Dubos, *Histoire Critique de l'Établissement de la Monarchie Françoise dans les Gaules* (1734).

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ward the mark. M. Flach argued strongly for the early existence of the free village.[1] Then Professor Meitzen put the Germanistic doctrine on a new and more secure footing.[2] He abandoned the mark theory and put forward a new reading of the twenty-sixth chapter of the *Germania*. But his most important contribution was the introduction of the idea of a typical form of Germanic settlement. A Germanic people, Professor Meitzen believes, will normally settle in a nucleated village, a Keltic people in isolated homesteads. This conclusion he reached after a minute examination of the rural economy of western Europe as it exists to-day and is recorded in maps and surveys of various dates. Professor Meitzen's system has wanted neither opposition nor support. In Germany Professor Hildebrand[3] put forward a very different view of the condition of the primitive Germans. In England, meanwhile, Professor Maitland accepted Meitzen's doctrine and argued for the existence from early times of free villages with ownership in severalty.[4]

Thus a question which is essentially historical, which really needs to be decided before the adoption of any system of medieval or indeed of modern history, is seen to be one in which jurists and economists, archæologists and philologians, must come to the help of the historian and must receive his respectful attention. But the literature of the subject is very large, and much of it is special or local in character. To see the bearing of all these contributions, to determine, approximately at least, how at the present moment the main question stands, is no easy task. The attempt, however, has recently been made by a Russian savant whose equipment and experience ensure a careful consideration of his views.

Professor Maxime Kovalevsky has long been known for his erudition and for his sturdy belief in the comparative method of the study of institutions. As a young man he lived after the strictest sect of the Germanists, a pupil of Gneist, Brunner, and Nitzsch. He was in relation also with Fustel de Coulanges and had the honor of exciting the august wrath of that great scholar, who described him as one of those most responsible for the dissemination of Germanistic heresies with regard to the origin of property in land. Since then he has been active as teacher and writer in the departments of legal history and economics. Now he has undertaken to treat on a large scale the economic development of Europe

[1] *Les Origines de l'Ancienne France*, II. (1893).

[2] *Siedelung und Agrarwesen der Westgermanen und Ostgermanen, der Kelten, etc.*, 3 Bde. (Berlin, 1895).

[3] *Recht und Sitte auf den verschiedenen wirtschaftlichen Kulturstufen*, Pt. I. (Jena 1896).

[4] *Domesday Book and Beyond* (Cambridge, 1897).

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in the Middle Ages.[1] The first volume of this work is devoted to the Roman and German elements in the development of the medieval estate and village community, and it provides a synthetic treatment of the whole subject which is of distinct value.

In harmony with the prevailing mental attitude, which moves men to look for truth on both sides of a controversy, Professor Kovalevsky offers a compromise. The problem, manifestly, is not so simple as it used to be. To assign an exclusively German or an exclusively Roman origin to all medieval institutions connected with the ownership or occupation of land is no longer possible. Such institutions are seen to be the result of a mingling of Roman and German elements. The nature of these elements, the proportion of their commixture, the forces that served to fuse the mass, these are the questions with which Professor Kovalevsky deals. It is the purpose of the present paper to pass in review some of the main points of his system with occasional comment or criticism.

From the foundation of the Principate until the end of the Western Empire, the Roman estate underwent various changes in respect to its outward form as well as its internal economy. It is important to realize that the *villa* of the age of Augustus differed in many ways from the *villa* of the age of Augustulus, for some writers, notably Fustel de Coulanges, have assumed that they were the same. At the earlier period a considerable number of free proprietors of small and medium-sized estates existed side by side with the rich owners of large estates cultivated mostly by servile labor. In the course of four centuries the great estate, absorbing those of small and of moderate size and reducing their proprietors to dependence, appears as the prevailing type of landholding in the Italian peninsula. This change was due to the working of several economic forces. The provinces, burdened with a heavy land-tax, applied themselves to more intensive forms of agriculture and began to export corn. The small proprietor in Italy found himself unable to compete with this influx of cheap provincial corn, on the one hand, and with the servile labor employed by the owners of great estates, on the other. Accordingly he drifted into debt and from debt into dependence, his farm going to round out the estate of his more fortunate neighbor. Then later the Church comes forward as a landlord on a large scale, building up great estates partly by gift or bequest, partly by bringing new land under cultivation.

[1] *Die ökonomische Entwicklung Europas bis zum Beginn der kapitalistischen Wirtschaftsform.* Mit Genehmigung des Verfassers aus dem Russischen übersetzt von L. Motzkin. In 6 Bdn. (Bd. I., Berlin, 1901.)

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Within the estates another set of changes was going forward, from the beginning of the second century of our era. The chattel slave was becoming a predial serf, attached to the soil and owing his master certain fixed services and returns in kind. This was due partly to the falling off in the supply of prisoners of war, partly to the provincial competition which turned Italy to forms of agriculture for which the predial serf was better suited than the chattel slave. Then, owing to the decrease in population much land had fallen to waste. This was taken up by the government, by the municipalities, and by the Church, and let out either on long leases or by emphyteusis, and the latter system was made competent to private owners by the Emperor Zeno. There was a tendency to reduce tenants on these terms to the condition of *coloni*, persons bound to the soil, indeed, but protected against their lords by the determination of the rent and contributions which might be exacted of them.

These changes were of course not universal, and various forms of rural economy are to be found in the documents of the sixth and seventh centuries. As a general rule the estate fell into two unequal parts, the *curtis* of the lord, cultivated by his slaves under his personal supervision, and the shares allotted to tenants, whether free or dependent, upon varying terms. Within the latter the tendency was to normalize the condition of all tenants, assimilating them to the *coloni*. This was facilitated by the law of the Emperor Anastasius providing that the freeman who occupied the land of another should *ipso facto* be regarded as bound to the soil.

Thus the Roman *villa* as a legal and economic fact was by no means fixed and immutable. Rather, it changed as the economic conditions of Italy changed. When the Germans entered the Empire as conquerors, the *villa* had already assumed many of the external and internal characteristics of the great medieval estate.[1]

Turning from the agrarian conditions of the Romans to those of the primitive Germans, all hope of definite or final results must be renounced. We must be contented with a scientific hypothesis. Nothing is to be gained by a rehandling of the text of Cæsar and Tacitus. Still the situation of the Germans as known to those authors must not be left out of account. The population was in all probability extremely scanty, according to a recent conjecture amounting to some three millions of souls within the area roughly bounded by the Rhine, the Alps, the Elbe, and the North Sea, a

[1] Dr. Brunner, in a stimulating passage in his *Deutsche Rechtsgeschichte*, sec. 59, has already pointed out the striking similarity of the economic and social conditions amid which the Roman and Frankish Empires went to pieces. Both had to face extreme economic inequality, a powerful official aristocracy, private military arrangements, personal dependence, and the power of the Church.

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region, for the rest, abounding in forest and marsh.[1] There was, therefore, plenty of room for hunting and grazing, and no occasion to turn from these congenial occupations to the difficult task of agriculture, and where that was attempted it would be in coöperation. Under conditions of this sort there would be little or no economic development.[2]

The life of a Germanic folk (*civitas*) would be centered in some kind of a fortified place surrounded by waste or forest in which, when occasion demanded, men and cattle alike could find refuge.[3] The arable land would naturally be situated far from such a center. The folk itself would be composed of a number of clans (*gens*, *Geschlecht*) themselves consisting of families (*cognatio*, *domus*). These last, however, are not the small family of modern times, but the house communion, a large, impartible family occupying and cultivating land in common.

This arrangement of clans and families is the keystone of M. Kovalevsky's system as far as the Germans are concerned; but he has unfortunately left it somewhat vague. By the clan he seems to understand that kinship-group known to the German legal historians as the *Sippe*. Now there is no doubt that in the time of Tacitus kinship was traced through the mother as well as through the father, for maternal uncles were called to the inheritance.[4] It will be seen, then, that the clan would be a shifting body differing for all persons who did not happen to be the children of common parents, and incapable accordingly of having a local habitation.[5] M. Kovalevsky does not meet this difficulty, but is content to describe the clans as close associations of relatives dwelling in common, "gentes . . . qui una coierunt." Still, in view of the brilliant suggestions afforded by Mr. Seebohm's recent works,[6] the matter cannot be dismissed lightly. For the house communion the principle of cohesion is double, consisting of the exclusion of women from the in-

[1] Kovalevsky assumes the general scantiness of population without defining the extent of Germania, and relying for the nature of the country on the Hessian material brought together by Arnold, *Ansiedelungen und Wanderungen Deutscher Stämme*. On the boundaries of Germania given above see Meitzen, *Siedelung und Agrarwesen, etc.*, I. 33–42; on the population, Delbrück, in *Preussische Jahrbücher*, 1895. Cf. W. H. Stevenson, in *English Historical Review*, XVII. 626.

[2] For a brilliant, if somewhat erratic treatment of this aspect of the subject see Seeck, *Untergang der antiken Welt*, I. 179–221, a work which M. Kovalevsky seems to have neglected.

[3] In confirmation of this view see Müllenhoff, *Deutsche Altertumskunde*, IV. 282.

[4] Tacitus, *Germania*, cap. 20.

[5] See this point well brought out in Heusler, *Institutionen des Deutschen Privatrechts*, I. 258–262; Maitland, *Domesday Book and Beyond*, 349; Pollock and Maitland, *History of English Law* (1st ed.), II. 237–245; cf. below note.

[6] *The Tribal System in Wales* (1895); *Tribal Custom in Anglo-Saxon Law* (1902).

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heritance, and the impartibility and inalienability of the family land occupied and cultivated in common. On this point especially Mr. Seebohm's work throws light, by bringing out the distinction between the strictly agnatic land-occupying group reckoned to the fourth generation, and the wergeld-paying group reckoned through father and mother alike to the ninth generation.

The *gentes* and *cognationes* of Cæsar, then, reappear in the *propinquitates* and *familiæ* of the line of battle as described by Tacitus, and in the *genealogiæ* and *faræ* of some of the Folk Laws. Now, in what relation to the land which they occupied and cultivated did these kinship groups stand? The answer to this question involves an exegesis of the terrible twenty-sixth chapter of the *Germania* of Tacitus. The *cultores* are the heads of individual families. The dilemma of *vicis* or *in vices* is met by a step aside into the tempting path opened by Meitzen when he suggested the slip of a copyist.[1] *In vicis* is no more than an incorrect extension of a contracted *vicinis*, and these *vicini* are the kinsmen, the members of the clan.[2] *Dignatio*, finally, is personal distinction determined by nearness of relationship to the common ancestor. Under these conditions a periodic redistribution of the arable land without any attempt at equality was made. The head of each household received a share proportionate to his *dignatio*, the size of his family, and the number of his cattle. The object of this allotment, it should be remembered, was not a specific area of land, but the right to occupy, that is, to clear and cultivate a certain proportion of the district of the clan.

Two characteristics of this arrangement should be emphasized. The agricultural system was purely extensive, a field-grass shift. The question of the ownership of land, in the Roman and modern sense of the word, was not raised. There was plenty of land, *superest ager*, and it probably never occurred to any one that it could have any value except in use. Under these conditions settlements might take the form either of villages or of isolated homesteads. The system of free occupation just now described and the convenience of having the plow-beasts near at hand would produce isolated homesteads; the danger of attack, nucleated villages. Any attempt to set up a typical form of settlement based on race psychology will prove unsuccessful.[3]

[1] Meitzen, *op. cit.*, III. 574–589.

[2] Even in the pursuit of an hypothesis one boggles at this, particularly as the reading *vicis* occurs in but one manuscript, and of that the original is lost. See Müllenhoff, *op. cit.*, IV. 365.

[3] M. Kovalevsky, on the strength of what he himself describes as a scientific hypothesis, vehemently rejects Meitzen's theory of the nucleated village as the type of Germanic settlement.

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Thus at the close of the first century of our era the Germans, thinly scattered over a wooded and marshy country, lived mainly by hunting and grazing. Their tribal organization, their primitive rural economy, and the abundance of land, all conspired to postpone until a later period any questions about ownership. But an increase in population, and the greater attention paid to agriculture in consequence, was destined soon to raise that question.

The way being prepared by an examination of Roman and early German conditions, we are presented with a formula that is designed to solve the problem of the origin of property among all the German peoples. It may be somewhat baldly stated as follows: the primitive Germans knew no ownership of land, only free occupation conditioned by tribal-family organization. But when they received royalty and the Church they were brought into contact with new ideas which kings and clergy, for reasons of their own, had drawn from Roman sources. The kings as successors of the Roman fisc in conquered provinces, and the clergy seeking an endowment for the Church introduced among the Germans the idea of the perpetual appropriation of land to the exclusive use and disposition of individuals or corporations. For a time this system and the elder Germanic arrangement of family occupation with no question of ownership existed side by side. The task is now to bring into this frame what we know or have inferred about the land systems of the various Germanic peoples who settled in, or were influenced by the Roman Christian Empire.

The Lex Salica and the capitularies connected with it as the eldest monuments of Germanic law [1] are to be considered first. These are not to be studied in isolation or interpreted by themselves. They should be brought, rather, into relation with what we know of the environment under which they came into being. The sparseness of population, the predominance of the pastoral life, the lack of sharp economic and social contrasts, as in wealth and status, the progressive absorption of, or fusion with the Roman provincials in Gaul, are facts which must be considered in interpreting the Lex Salica. It will be necessary to show that the Franks at the close of the fifth century were living under essentially the same legal and economic conditions as the early Germans, free occupation, namely, by family groups now fastened to the soil in villages, lordless, it is true, but not necessarily either self-governing or landowning. To do this at all, two points will have to be established:

[1] Euric's laws are probably older than any form of the Lex Salica that we possess, but in Euric's time the Visigoths had been for more than a century under the direct influence of Roman civilization. See Schröder, *Lehrbuch der deutschen Rechtsgeschichte* (3d ed.), 233, and the literature there cited.

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first, that it was in movables only that the Lex Salica knew private property; and second, that village communities held together by a bond of kinship and occupying land in common actually existed.

The proposition so stated can scarcely be maintained. Part of the evidence establishes at least a very strong presumption for the existence of some form of individual ownership in land. The law authorizes a man to appropriate arable surfaces and to enclose them from seed-time to harvest, protecting him against injury to his enclosure or to his crop during that period.[1] In the face of these conditions expressed in such phrases as *campus alienus, messis aliena*, etc., it is hard to see how the complete absence of private ownership can be proved. The degree of ownership is a different matter. When land has value only in use, its subjection to the will of an individual during the period of its chief usefulness may well be called a mode of ownership.[2] Again, Mr. Seebohm has been showing us recently how to look at these questions from a new angle, namely, that of an undivided family occupation of land which in respect to house and curtilage will not exclude ownership in severalty, and which under certain conditions of tribal readjustment will admit the possibility of a distribution not *per stirpes* but *per capita*.

The existence of free villages at this period is more credible than the complete absence of private ownership. The word *villa* in the Latin of the Lex Salica and other documents of the time must not be restricted, as Fustel was inclined to restrict it, to the sense that it bore in the first two centuries of our era. The Roman *villa*, as we have seen, had itself altered in the intervening time. Then, too, the thing hidden under the word in our texts[3] will not square with what we know of the Roman *villa*. For one thing, the communities here contemplated seem to be too large to be settled on a single proprietary estate. The *vicini*, again, who are mentioned as oath-helpers in a dispute between two *villæ* suggest the settlement of groups of kinsmen. Finally, the formidable title *De Migrantibus*, the subject of such abundant and contradictory exegesis, may be most readily explained by supposing that the single voice able to exclude a would-be settler is that of one member of a community having equal rights in the lands of a village

[1] Lex Salica, titles XVI., XXVII., XXXIV. (ed. Hessels and Kern, London, 1880).

[2] On this point cf. the somewhat fine-drawn remarks of Blumenstok on the dualism of the legal subject in respect to land at this time. *Entstehung des Deutschen Immobiliar-eigenthums*, I. 250–266. (Innsbruck, 1894.)

[3] Lex Salica, titles III., VI., XLV., LXXIII.

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settlement.[1] Here again Mr. Seebohm tends to reach the same result by a different path, suggesting that the objectionable intrusion was not so much that of a new member of the community as of a new idea, individual appropriation.[2]

These conditions, it seems, were transitional. With a growing population and an increasing interest in agriculture this system of free occupation might pass into one of common occupation, and eventually perhaps common ownership, or it might dissolve into private ownership, or these forms might coexist in varying proportions; all would depend upon the environment. As it happened, the environment of the Frankish conquerers of northern Gaul furnished a strong solvent for the old system of free family occupation. First there was the king already, as heir to the Roman fisc, a great proprietor in the Roman sense, and authorized under certain conditions, as where a crime had occasioned forfeiture, to take the place of a dead man's kindred and put the idea of individualism into direct competition with that of family possession. Then, too, fiscal lands were granted to the Church and to private persons, who were holding them just as the great Roman estates had been held. The Church, finally, was concerned to spread the idea that title might be acquired by prescription, and found a response in the common human instinct toward the hereditary transmission of property.

Thus the primitive German system transplanted into Gaul began to unfold, and at the crisis of its development was given an impulse that sent it in the direction of individualism. This impulse came originally from Rome and was transmitted to the Germans by two institutions to them relatively new, namely, the Church and royalty.

The transition from the common occupation of land in the Lex Salica to the private ownership of the Folk Law of the Carolingian period may be illustrated from the Lex Ribuaria. Take, for example, the alienation of land. By the elaborate process of *affatomia*[3] a childless couple could convey their personalty (*fortuna*) to a stranger, but they were forced to adopt him and convey the property at once. A capitulary of A. D. 819 assimilated this clumsy method, half-way between adoption and testament, to the *traditio*[4] of that time, which was commonly used in connection with realty. Between these extremes stands that title of the Lex Ribuaria[5] which

[1] *Ibid.*, title XLV. See the literature cited in Schröder, *Lehrbuch der Deutschen Rechtsgeschichte* (3d ed.), 205–206. Fustel's explanation (*Revue Générale du Droit*, 1886) has been accepted by Hildebrand, *Recht und Sitte, etc.*

[2] *Tribal Custom in Anglo-Saxon Law*, 150–163.

[3] Lex Salica, title XLVI.

[4] Capit. Leg. Sal. add. an. 819, c. 10 (ed. Boretius ap. Behrend, Lex Sal., p. 115).

[5] Lex Ribuaria, title XLVIII. (ed. Sohm, M.G.H., LL., V.).

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permits a childless couple to dispose of the whole of their property to the heir of their choice, either by a written document or by a *traditio* in the presence of witnesses. From this and from two other regulations,[1] which provide respectively for the arrest of a man on the land of another, for the punishment of those who encroach on the land of a neighbor, and for the purchase and sale of realty, it may be inferred that already in the first half of the seventh century men were holding land in private ownership under the Folk Laws.

Three categories of ownership in severalty may now be distinguished among the Franks: first, that deriving from the Roman law and including whatever lands the Church held; second, that deriving from the royal authority and including clearings either made with the king's consent (*conquisitum*) or subsequently authorized by him (*adtractum*) (in the possession of such property the holder would be protected by royal law); finally, that limited form of ownership deriving from the Folk Law (land held in this fashion—the *terra aviatica* of the Lex Ribuaria—was still subject to certain restraints on alienation, and enjoyed only a restricted legal protection).

The period between the codification of the Folk Laws and the general legislation of the Carolingians may be illustrated from the formularies that were composed in regions where the Salian and Ribuarian laws obtained. These are Marculf's book, those bearing the names of their original editors Lindenbrog and Merkel, and the collections made at Angers, Tours, and Sens. These documents are to be regarded as Roman in substance as well as in form, with the exception of Marculf's book.[2] They illustrate the action of the royal power and the Church on the Folk Law, in legalizing certain dispositions of land not authorized by that law, such as the admission of daughters to the inheritance, representation of deceased heirs, and grants of real property. Here again we may trace the differences in degree and kind of ownership back to three sources, clearing, royal grant, inheritance.

We turn from the Franks to their Germanic neighbors. The nature of the settlement of the Burgundians in Savoy (A. D. 437) and the Lyonnais (A. D. 456) was such as in a great degree to obliterate their earlier habits in relation to the land. They came rather as guests than as conquerors invited for the special purpose of correcting the decrease in the population. Private owners, accordingly, were glad to share their lands with the new-comers who

[1] Lex Ribuaria, titles LIX., LXXVII.

[2] This assumption is contrary to the conclusions of Brunner, *Deutsche Rechtsgeschichte*, I. 403 ff.

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were willing to take over part of the burden of taxation. In this way the Burgundians received two-thirds of the land and one-third of the *coloni*, and proceeded to settle in communities (*faræ*) composed in all probability of groups of kinsmen.

But this land had come as the direct gift of the Empire. It is not surprising, therefore, that when under King Gundobad (474–516) the Burgundian law was written down many norms of the Roman land law found their way into it. Thus the Burgundian Folk Law, as we have it, allows free disposition of property in immovables, and gives legal protection to such disposition. Still, traces of earlier conditions may be found in the common occupation of mountain, forest, and pasture-land. Then the single formulary of Burgundian origin that we have, the *Collectio Flaviniacensis*, shows the triple division of landed property into *alod* (inheritance), *adtractum* (clearing), and *comparatum* (purchase) which we have already met with among the Franks. The Burgundian kings also had fiscal lands from which grants could be made. Finally, the *alod* held under the Romanized Burgundian law was a much less restricted form of ownership than the *terra aviatica* of Frankland.

In dealing with the Visigoths, we must consider first the influence of their long sojourn in the Empire before they were permitted to make permanent settlements in Gaul and Spain, and then the twofold division of their law itself. The Antiqua, whether made by Euric (486) or Reccared (586), is a record of Visigothic law at a time when the Visigoths were separated from the Romans by a difference in creed and by the existence of a code of Roman law—the Breviary of Alaric—intended to be observed in the Visigothic kingdom. Under Recceswinth (649–672) these distinctions had vanished and his law-book, therefore, illustrates different and later conditions.

As in the case of the Burgundians, the nature of the Visigothic settlement, and the strong infusion of Roman civilization to which they had been subjected have obliterated most of the Germanic traits of their land laws, even in the Antiqua. The idea of private ownership is already well developed. Land may be alienated either by document or by witnesses, and freely devised ; sisters inherit with brothers, and wife from husband or husband from wife, failing heirs to the seventh degree. As for Recceswinth's book and the formularies which illustrate the legal practice of the time, they are in substance, although retaining some Germanic qualities, royal and Roman law respectively.

The nature and organization of the proprietary estate from the time of the Frank settlement in Gaul to the fall of the Carolingian

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line is to be derived from an examination of chartularies, polyptycha, and other documents illustrating agrarian conditions. In southern Gaul ; where the provincial population stood thick, the Roman estates seem to have been undisturbed, but in the north they were considerably restricted to make room for the new settlers. In the course of four centuries of Frankish rule, however, these great estates underwent certain modifications owing largely to Germanic influences. The system of administration set forth in the *Capitulare de Villis* is probably a counsel of perfection. Private owners lacked, as appears from the chartularies, any such articulated system of administration, and contented themselves with a steward (*villicus*, *cellarius*), who had the general management of the estate and under whom the heads of tithings (*decani*) chosen by the tenants performed certain special functions.

The whole estate fell into two unequal parts. The former of these comprised the lord's house with the adjacent arable in three, four, or six fields and the appurtenances of vineyard, meadow, and forest. All that remained was generally occupied by the *mansi* of free and dependent tenants. As a rule the number of *mansi ingenuiles* exceeded that of *mansi serviles*, but the former were held by persons of varying status. Freedom was personal, the amount of service required of slaves, *coloni*, and free dependents varied with the size of their holding, not with their status, but the tendency was to confound all distinctions by normalizing services. On many estates there were also two classes of persons not included in this scheme and having personal freedom although enonomically dependent. These were *hospites*, who received land in full ownership against stipulated services, and precarists, who occupied the land of another upon special terms. These from the eighth century were commonly freemen who had commended themselves with their land.

The system of coaration which required all tenants to contribute their beasts and their labor to work the lord's demesne, had its origin in the neighborly practice of mutual help. Later it hardened into a manorial custom, just as within the community of a great estate the principle of dependence triumphed over that of freedom. But the plan of coaration was not uniform. Sometimes the whole demesne was ploughed by the full team of the peasants' beasts, again some portion of the fields would be allotted to each peasant house to be worked separately. There is, accordingly, no organic connection between coaration and the open-field system, nor is the size of a peasant's holding determined by the number of beasts he can contribute to the common team. The system of

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coaration, indeed, was confined to the demesne, and even there it was not the general rule. The peasants worked their own land with a light plow drawn by a single yoke of oxen. Thus the number of beasts a peasant could contribute to the common team was determined by the size of his holding and not, as Seebohm argued, contrariwise.

It will be seen, then, that the personal dependence of the eighth century had not been stereotyped into a system of caste. No hard and fast line could be drawn between free owners and unfree tenants. The whole complex consisted rather of many elements, free and unfree, having Germanic as well as Roman origins.

The evidence of the Alamannian laws and documents has next to be considered. It should be remarked that the Roman population by no means disappeared in the region appropriated by the Alamanni. In the ancient Rhætia, particularly, the survival was very considerable. In the Lex, or later recension of the Alamannian law, accordingly, both Roman and Christian influences may be discerned. The latter were reinforced by the subjection of the Alamanni (496) to the Christian Franks.

This ecclesiastical influence shows itself in the Lex in several provisions tending to individualize the ownership of land and so to facilitate its conveyance to the Church. All opposition to land grants in favor of the Church is forbidden, and in order to promote such grants the law directs that family inheritances be divided among the heirs. Again, it is provided that where the right to land was questioned, title must be defended by the production of written documents, a way, of course, not open to those who were holding under Folk Law.

The classification of ownership according to its origin into *alod* (inheritance), *adtractum* (clearing), and *conquisitum* (grant) recurs in the Lex and in the Alamannian documents.[1] The Church, clearly, is largely, if not wholly, responsible for the existence of the third of these categories. Now if the responsibility for the second can be fastened on the Roman law, and if it can be shown that the limited ownership of the *alod* grew out of a primitive family possession, passing, as the family tie loosened under the play of new forces, into some form of individual ownership, then an important step will have been taken toward the establishment of Professor Kovalevsky's thesis. The attempt is gallantly made, but is not, I think, altogether successful.

[1] These are to be found in Wartmann's collection, *Urkundenbuch der Abtei St. Gallen*, 4 Th. Zürich, St. Gallen, 1863–1892.

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A clearing of new land, it is contended, since it involves after all an appropriation from the common stock to the use of the individual, and since the notion of title acquired by prescription was strange to Germanic law, would secure for the pioneer only the right of occupation, the title remaining in the community. The influence of Roman legal ideas will be required to convert such a right of occupation into title of ownership. But this argument is open to two grave objections. The attempt, in the first place, to vest the title to land in a primitive community is hazardous. He who makes it must face the dilemma of regarding the community either as a company of joint owners, which is a mode of individual ownership, or else as a true corporation, a *persona ficta*. The first alternative contradicts the hypothesis, the second involves, to put it mildly, a serious anachronism.[1] Again, there is reason for believing that Germanic law recognized the principle that ownership is the reward of labor, which, in the present case, would produce the same result as the Roman idea of title by prescription.[2]

It remains to be seen how the hold of the kinship group over the land was relaxed, permitting land that had originally been held in common possession to pass into the full ownership of a limited number of proprietors. The original settlement may be supposed to have been made by a clan[3] (*gens*, *Geschlecht*) rather than a fam-

[1] See on this point Heusler, *Institutionen*, I. 258–262; Flach, *Ancienne France*, II. 43 ff. Cf. Maitland, *Domesday Book and Beyond*, 340–348; *Township and Borough*, 20–24; introduction to Gierke, *Political Theories of the Middle Age*, xx. ff.

[2] Schröder, *Lehrbuch der Deutschen Rechtsgeschichte* (3d ed.), 205; Brunner, *Deutsche Rechtsgeschichte*, I. 205.

[3] One searches in vain for a satisfying definition of the clan from those even who have most to say about it. The family, on the other hand, may be regarded as a group bound together by the will of a common ancestor, living or dead, within a degree near enough to secure a certain unity. Thus, although few of a group of second cousins may have seen their common great-grandfather face to face, yet his memory will be preserved to them by their fathers, who have seen and known him. Such a group, whether living in undivided house communion or not, will still have a natural unity. But if we suppose that the clan consists of the whole group of kinsmen reckoned outward to the degree at which mutual responsibility ceases, there will be no such natural unity, unless indeed we make the further and unwarrantable assumption of a strictly maintained system of endogamy. Mr. Seebohm's distinction between the group of land-occupying kinsmen, extending to the fourth degree, and the group naturally responsible for wergeld and oath-helping, extending to the ninth, has been very helpful in the difficulty. But the clan remains, I think, an idea too vague to be operated with in Professor Kovalevsky's summary fashion. The evidence brought to support the theory of clan settlement among the Alamanni consists of the use of the term *genealogia* in the Pactus and in the Lex Baiuwariorum, interpreted by the patronymic form of many Swiss place-names and by the survival into the late Middle Ages in parts of Switzerland of the blood-feud responsibility extending beyond the household to the entire kinship group. In regard to the former point Mr. Round's essay on the "Settlement of the South-Saxons and East-Saxons," in *The Commune of London*, 1–28, has opened the way for the critical study and classification of patronymic place-names. The second point loses much of its force

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ily or household. But in the course of the seventh century, under the influence of family divisions, the clan gave way to the family in relation to the arable, retaining, however, its control over all the remaining land of the settlement. Then the fusion of the two races, the introduction of the Rhæto-Roman into the rank of possessors, some as owners, but the majority as *coloni*, tends to loosen the kinship bond. The clan-group of kinsmen becomes the mark-group of *vicini*, without losing, however, the common use of all but the arable lands of the settlement.

But this mark community of the ninth and tenth centuries lacked that internal equality upon which von Maurer and his school laid such emphasis. There was, on the contrary, a small number of free proprietors holding "ideal shares" of the mark land while a crowd of dependents enjoyed a usufruct of these lands deriving from the *jus* of their several lords. This "ideal share" was capable of realization as soon as the Germanic law under which it was held had been sufficiently subjected to Roman influences. The great proprietary estate rose rapidly on such a foundation to realize the ambition of a land-hungry Church and aristocracy. Grants of immunity from the central power were converted by the beneficiaries into local jurisdiction. The voluntary assumption of a dependent relation by freemen burdened with fiscal and military obligations, or embarrassed by failure of crops and famine, increased the number of justiciables. In this fashion from above and from below the process was hastened. Thus the old thriftless communal system gave way to the more profitable rural economy known to the Roman law and practised by the Church. But the resulting economic advantage was attained only at the cost of a serious restriction of personal freedom.

The conditions under which, at this period, land was held in the Italian peninsula must be considered next. Here the influence of the successive Germanic occupations upon the Roman agrarian system turns out to be even more insignificant and external than has generally been supposed. The Ostrogoths frequently contented themselves with a division of the produce rather than of the land. In the Exarchate, where the imperial tradition survived longer than in any other part of northern Italy, and immediately about Rome, where much land was held by churches, living Roman law, the old conditions, even the old terminology survived with very little change.

if Mr. Seebohm's distinction between the land-occupying and blood-feud groups be accepted. On the subject of the clan cf. Jenks, *Law and Politics in the Middle Ages*, chs. III., V., VI.; Ashley, *Surveys*, 144–146.

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The Germanic occupations, however, had served to increase the population and to weaken if not entirely to destroy central authority. These changes are reflected in the internal relations of the great estates; and by the eleventh century the predial serf has almost wholly given way to the tenant holding by lease but standing in a relation of personal dependence to his landlord. The increase in population created a need for land, which was met either by clearing or by some other means of taking new land under cultivation. This broke up the old uniform relation of groups of dependent cultivators to the land which they worked. Meanwhile the breakdown of the central administration shifted to those private persons whose means allowed it the responsibility for, and by consequence the control over a large part of the population. This transformation of the Roman *adscriptus glebæ* into the medieval dependent peasant was also furthered by the growth of a body of local custom, which tenants were always ready to use in self-defense against their lords.

In the Po valley, where the Lombard settlement was comparatively dense, both status and modes of ownership were deeply affected by Germanic influence. The curt sentences in which Paul the Deacon describes the Lombard settlement have given rise to a controversy similar to that which still rages over the twenty-sixth chapter of the *Germania* of Tacitus. Two stages of settlement are recorded. After the fall of the Lombard kingship at the death of Klepht (574) the Roman proprietors were forced to divide their property with the Lombards at the rate of one-third of the gross profits. Ten years later, when the royal power had been reëstablished by Authari, a new division was made. This has been regarded either as a further application of the principle on which the Lombards had already begun to fit themselves into existing arrangements or as the introduction of a new principle upon which the land and *coloni*, rather than the profits, were made the subject of division.

Status was affected by the weakness of the central government. The Germanic principle of personal protection was largely substituted for public authority. This protection was sought even by free Romans, although it involved a measure of dependence. Free men, too, were holding unfree land. Then the Lombard *aldio*, who although economically dependent was personally free, was assimilated to the Roman *mancipius*, and the two gradually fuse into a new class — the medieval *rustici* or *contadini*.

The Lombards, finally, are supposed to have introduced a system of communal possession, the use of undivided land with occasional readjustment. This contention had already been made

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by Schupfer[1] but without much success, and has recently been rejected by Professor Vinogradoff.[2] Professor Kovalevsky holds the view of Schupfer, which may be supported, he thinks, by new arguments. The communities in question were formed, he supposes, by settlements on unoccupied land. These would be taken up at first on hereditary leases and would pass, either insensibly or by direct purchase, into the ownership of the community.[3]

The question of land-owning among the Anglo-Saxons, as having an especial interest for English and American students, may be allowed to detain us at some length. It can no longer be said that the Anglo-Saxon conquest made *tabula rasa* on which the conquerors wrote a purely Germanic constitution. Nor, on the other hand, can any general survival of Roman institutions be proved. Due allowance must be made for both elements. Since our authorities do not mention any division of land between the conquerors and the conquered, it may be inferred that none took place, particularly as there is reason to believe that a great part of Britain was still uncultivated. The country was not covered with a network of estates worked on the three-field system. It may be inferred rather that most of the land was cultivated on the extensive two-field system as late as Ine's time.[4] This would imply either that it had been cleared by the conquerors or that they had not maintained the earlier arrangements.

On the other hand, Professor Kovalevsky believes that the Roman clergy that had taken no direct part in repelling the invasions were left in undisturbed possession of their land, and so carried over from Roman to Saxon-Christian times the Roman law idea of private ownership. This somewhat startling doctrine he derives from a passage in Eddi's *Life of S. Wilfrid* and a notice in Elmham's *History of the Monastery of St. Augustine at Canterbury*. Eddi relates that Wilfrid, at the dedication of his church at Ripon, publicly announced its endowment, consisting of the gifts of vari-

[1] This view seems to have been advanced in a work published in 1863 under the title of *Istituzioni Politiche Langobardische*, which I have not been able to see.

[2] *Entstehung der Feudalbeziehungen im Langobardischen Italien*, cited in Kovalevsky, 346, *et passim*.

[3] The text cited in support of the statement that a village or union of villages held such leases seems scarcely to bear that sense. "Et si minime fecero ad redendum vobis sic, me distringere debeatis, sicut alios colonos vestros" (Troya, *Cod. Dip. Lang*. ann. 777, p. 99). If a man fails to meet his obligations to his lord, he may under the local custom be distrained like any other colonus; what could be more individualistic?

[4] See Ine, caps. 64–66, in Schmid, *Gesetze* (2d ed.), p. 52, providing that those who wish to leave their land must show that more than half of it is under cultivation *gesettes*, which could not be under the three-field system. Mr. Seebohm reads this passage very differently, understanding *gesettes* as let out to tenants. See *Tribal Custom in Anglo-Saxon Law*, 417–436, and particularly p. 422.

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ous Northumbrian kings "et ea loca sancta . . . quæ clerus Brytannus aciem gladii hostilis manu gentis nostræ fugiens, deseruit."[1] These *loca sancta* are supposed by Canon Raine, the editor of the *Life*, to be ruined Roman churches which Wilfrid restored and rededicated. Now, it is somewhat difficult to make out how the existence of ruined church fabrics deserted in the sixth century by the British clergy proves that in the seventh century the successors of those clergy were in undisturbed possession of their land. The statement in Elmham's book is to the effect that before Augustine's coming the Benedictine rule was not observed in England, although there, as elsewhere, congregations of monks *sub regula institutæ* had existed from the foundation of Christianity, as the reader may remark *in diversis chronicis*.[2] Now this proves nothing to the question; it is the expression by a fifteenth-century churchman of the official view of the history of monasticism, but it is not, as every reader of church history knows, historically true. It can not, therefore, be taken as evidence that British monastic communities survived the Germanic invasions of Northumbria in undisturbed possession of their land.

Finally, this point is not essential to the general theory of the mingling of Roman and German elements in the system of landownership. The Roman idea of full ownership may equally well have affected Anglo-Saxon land tenures whether it touched them as a survival from the Roman occupation or was reintroduced by the Church in the seventh century.

The Anglo-Saxon kings came into possession of such lands as had formerly been held by the British rulers and the Roman aristocracy, of whom the majority may be supposed to have been killed. These lands were held as *terræ regis* in hereditary proprietorship. Whatever land, cultivated or uncultivated, was not held by the king or the Church was originally *folc land.* It was held, that is, under the Folk Law, which permitted neither alienation nor bequest. At the time of the settlement such land would seem to have been held rather by families than by individuals. Professor Kovalevsky seeks to establish this point in connection with the phrase "ethel land." *Ethel* and *adel*, he argues, following von Maurer, have the same root, and *adel* originally has the sense of family (*Geschlecht*) and only by derivation that of nobility. Again, the patronymic character of many English place-names would point to an original settlement by a group of kinsmen.[3] The word *mægburg* in *Beowulf*

[1] *Vita Wilfridi Episcopi Eboracensis auctore Eddio Stephano*, in *The Historians of the Church of York* (ed. Raine, Rolls Series), 25.

[2] *Historia Monasterii S. Augustini Cantuariensis* (ed. Hardwick, Rolls Series), 199.

[3] Cf. on this point Mr. Round's essay in *The Commune of London*, 1–28.

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and the Anglo-Saxon laws indicates a fortified place to which a group of kinsmen might resort for protection.[1] Such a settlement would be made by a large undivided family (*Hauscommunion*) which by the seventh century had broken up into small individual families under the resolvent action of Church and State. Thus the Anglo-Saxon *ethel land* is essentially the same as the *terra aviatica* of the Ribuarian law.

The difficulties of reaching this point by the path Professor Kovalevsky has traveled are very grave. For one thing, the word *ethel* in the sense of land held by groups or individuals is not used in Anglo-Saxon documents. When the word occurs it has the sense of fatherland, *patria*.[2] Von Maurer's argument, therefore, falls. Again, in assuming a common settlement and possession of land by family groups Professor Kovalevsky has not met the weighty objections of Professor Maitland,[3] nor Mr. Round's argument tending to show that patronymic place-names may in many cases point to the original settlement of an individual in an isolated homestead rather than in a family group.[4] There is, however, another path by which somewhat similar conclusions may be reached, and this Mr. Seebohm has been pointing out in his two works on tribal custom. By distinguishing between the family as wergeld-group reckoned to the ninth generation, and as land-occupying group reckoned to the fourth, Mr. Seebohm has shown how Professor Kovalevsky's difficulty may be avoided, particularly as the narrower group was for the purposes of inheritance strictly agnatic.

It may be reasonably supposed, then, that the social development of the Anglo-Saxons, like that of other German peoples, began with the predominance of the family, and that Church and State coöperated to weaken and at length to destroy that predominance. This is illustrated by the learning of recent years with regard to the *land boc*. By means of such a document the king conveyed to the Church or to a private person the right to take the royal tribute in a certain district. This right was not at first hereditary, nor did it authorize the receiver to dispose of the land at his pleasure. It was rather, indeed, the conveyance into private hands

[1] This definition is also given by Müllenhoff, *Deutsche Alterthumskunde*, IV. 282. Is it not equally possible that *burg* may have here the abstract sense of the protection afforded by the family connection? Certainly it would seem to be so used in the laws; cf. Ine, cap. 74, §1; Alfred, cap. 41, in Schmid, *Gesetze*, 56, 94.

[2] Schmid, Gloss., *s. v.* ethel; Lodge in *Essays in Anglo-Saxon Law*; Stubbs, *Const. Hist.*, I. 80–81; Vinogradoff in *English Historical Review*, January, 1893; Maitland, *Domesday Book and Beyond*, 256.

[3] *History of English Law* (1st ed.), II. 237 ff., particularly 240–241; *Domesday Book and Beyond*, 341–350.

[4] *The Commune of London*, 1–28.

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of the authority of a public functionary.[1] Two sets of rights over the same tract of land thus appeared simultaneously, the right under the *land boc* to take tribute, the right under the Folk Law to occupy the land and to transmit it under the rules of inheritance laid down by that law. Those who enjoyed the second set of rights might be either free or dependent. Dependent tenure would be the rule where persons had been settled on the land by the king or by his officers, free tenure where the settlement represented a free land-occupying community.

Professor Kovalesky then makes a gallant attempt to show that land was originally held by communities in communal ownership.[2] There is no organic connection between open-field husbandry and the system of coaration, for the Anglo-Saxons ordinarily made use of a light plow and a single yoke of oxen. Accordingly the argument for the survival of the Roman *villa* which Mr. Seebohm based on such a supposed connection falls.[3] We are left to find some other explanation for the distribution of the acre-strips and for the equality of the holdings under the open-field system. The unquestioned existence of private ownership in the time of Ine, and perhaps even earlier, is still no proof that it was primitive. Then the fact that the nature of peasant holdings under the open-field system excluded the possibility of periodic redistribution constitutes no difficulty; such redistributions are not necessarily primitive, nor an essential condition of communal ownership.[4] Again, whatever freedom of alienation the Anglo-Saxon laws ascribe to the peasant proprietor may be referred directly to the influence of the Church, and can not, therefore, be primitive. Then, the survival until recent times of certain peculiarities of landholding in northern Russia is introduced as an argument from analogy. Under that system the family (*Hof*, *mansus*), and not the individual, was the holder of a share in the land of the community. This share was adjusted to the size of the family and was not a specific allotment of land, but rather a right to a proportion of all the possessions of the community. A single possessor might take up several normal shares or be reduced to a fraction of one, and this the more easily since it

[1] Seebohm, *Tribal Custom in Anglo-Saxon Law*, 419 ff.

[2] "Unter freiem Bodenbesitz verstehe ich hier den Besitz von Gemeinden, nicht den von Privatpersonen," p. 508. The translator seems to use Besitz and Eigentum as convertible terms (cf. pp. 85, 91), but the latter appears to represent the author's idea in this context. If Besitz be taken literally *cadit quæstio*.

[3] *The English Village Community*, especially chs. IV.–V. Mr. Seebohm seems to have receded from this position; see *Tribal Custom in Anglo-Saxon Law*, 425.

[4] See this point clearly brought out in Meitzen, *Siedelung und Agrarwesen, etc.*, III. 574 ff. The whole subject has been recently dealt with by A. Tschuprow, *Die Feldgemeinschaft* (Strassburg, 1902), a work which I have not been able to see.

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was the house, not the individual, that was reckoned the possessor. An arrangement similar to this Professor Kovalevsky discerns in Anglo-Saxon England, and by it accounts for the twelve-hynde and six-hynde men of the laws.[1] But it may be remarked that even if the land-owning unit were the house and not the man, the notion of individual ownership is not thereby excluded. A group of such units occupying an area of land to an "ideal share" of which each is entitled does not, at the last analysis, differ from a group of coöwners holding *pro indiviso.* This, indeed, will be the only possible explanation of their position unless the inadmissible idea of a corporation be introduced. The same reasoning will apply to the group of individuals forming the household and will find corroboration in the fact that the size of the share varied in direct ratio to the number of souls composing the household. The share, then, is the share of the individual whether or not it be allotted to him in severalty.

Under the Anglo-Saxon principle of equal division of the inheritance among the sons the large undivided family broke up. A new arrangement had then to be made involving a permanent allotment of arable land to the small families created by this subdivision. In order to secure strict equality this allotment was made in the scattered acre-strips of the three-field system. As the population increased new land would be taken up and new villages planted, and these in turn would undergo the same changes as the elder settlements. These latter under ecclesiastical influence began to admit the possibility of the sale of a share, and this principle, once introduced, worked in England, as it had on the continent, to transform a group of kinsmen into a group of neighbors. The villages of later settlement, on the other hand, retained their rights in the common lands of the elder communities. By this fact we are enabled to account for the village marks (inter-commoning villages) which meet us toward the close of the Anglo-Saxon period.

The great proprietary estates seem to have grown slowly. The documents of the seventh, eighth, and ninth centuries give rather the impression that small holdings of from twelve to twenty-four *manentes* were the rule. By a consolidation of these the great estate was formed. The *geneats*, free members of a free community, formed the majority of the population; at the other extreme stood the *geburs* bound to the soil. Between the two were the

[1] This is scarcely less than fantastic as far as the hynde men are concerned. These terms refer either to status as determined by wergeld, or to one's ability to produce a complement of kinsmen as oath-helpers. See Schmid, Gloss.: Seebohm, *Tribal Custom in Anglo-Saxon Law*, 409 ff.

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cotsetlas, personally free indeed and having house and curtilage, but without a share in the open field, answering in many ways to the *hospes* of the Frankish estate. The depression of this free population was accomplished in England, as on the continent, by the consolidation of great estates, the failure of the central government, and the conversion of public into private law relations.[1]

Professor Kovalevsky's system is not of course final, but it commends itself by two striking advantages. The first of these is a broad reasonable hypothesis, freed from the preoccupations of the Romanist and Germanist alike, and *prima facie* very probable. The second is the temperate application of the comparative method, by means of which conditions in Anglo-Saxon England are brought into relation and compared with those obtaining at the same time in other parts of the Western Empire in which Germanic peoples had settled.

GAILLARD THOMAS LAPSLEY.

[1] All this has been and still is the subject of dispute. The word geneat, for example, has been regarded as the equivalent of ceorl and gebur, as a general term for gebur and cotsetla alike, and as denoting a specific form of tenure. See Seebohm, *Village Community*, 137–142; Allen, *Essays and Monographs*, 240–256; Andrews, *Old English Manor*, 145 ff.; Maitland, *Domesday Book and Beyond*, 59, 327.

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