Works by the Same Author.

THE
FIRST TWELVE CENTURIES OF BRITISH STORY

12/6 net

"We can recommend this book to teachers and advanced students of our history.

"It takes an independent and thoroughly personal view of the twelve centuries between the Roman Invasion and Henry II.'s reign. . . . His views arrest attention and enforce a reconsideration of received opinions which will be all to the good for any real student."—*Athenæum.*

LONDON: LONGMANS, GREEN & CO.

THE MANUFACTURE OF HISTORICAL MATERIAL

Crown 8vo, 6/- net

"Mr Jeudwine writes with freshness, frankness, and obvious sincerity; he is possessed by many right ideas; he has some real insight as to the task and methods of the historians, and has accumulated a fine store of miscellaneous information. In his pleas for the study of social history, in his dislike of the 'constitutional' and modern point of view, in his enthusiasm for Brehon Laws, Scandinavian Sagas, and the Year Books, he will have many sympathisers. . . ."—*English Historical Review.*

TORT, CRIME, AND POLICE IN MEDIÆVAL BRITAIN

A Review of Some Early Law and Custom

Crown 8vo, 6/- net

"Some shrewd comparisons are made between the customary law of early times and the law of our own day."—*Times.*

LONDON: WILLIAMS & NORGATE

Digitized by Google

THE FOUNDATIONS OF SOCIETY AND THE LAND

A REVIEW OF THE SOCIAL SYSTEMS OF THE MIDDLE AGES IN BRITAIN, THEIR GROWTH AND THEIR DECAY: WITH A SPECIAL REFERENCE TO LAND USER, SUPPLEMENTED BY SOME OBSERVATIONS ON THE CONNECTION WITH MODERN CONDITIONS

BY

J. W. JEUDWINE, LL.B., F.R.HIST.S.

OF LINCOLN'S INN, BARRISTER-AT-LAW

LONDON

WILLIAMS & NORGATE

14 HENRIETTA STREET, COVENT GARDEN, W.C. 2

1918

Digitized by Google

CONTENTS

PAGE

PREFACE xiii

EXPLANATION OF TECHNICAL WORDS . . . xxvi

Part I. : The Links with the Past

CHAPTER I. SOCIAL IDEALS AND HISTORICAL FACTS 1

CHAPTER II. THE TWELFTH CENTURY. LOOKING BACKWARD 13

The Islands in the Day of Henry II., 14. The Position of Henry II., 16. The Angevins and their French Possessions, 19. John and the Islands, 20. Tracing the Foundations, 22. The Pastoral Life, 24.

CHAPTER III. THE ACCOUNT OF THE COMMUNAL SOCIETY BY TACITUS 26

The Kingship, 26. The General Assembly or Folkmoot, 27. The Chief's Bodyguard, 28. Food-rents; Military Organisation; The Hundred, 29. The Priest Judge—The Brehon; Money Payments for Crime; Family Responsibility, 30. Marriage; Inheritance; The Common Pasture—Cattle, 31. Pastoral Villages; Allotment of Arable Land, 32. Corn-growing; The Unfree Farmer; Hospitality; The Characteristics of Tribal Society, 33.

CHAPTER IV. THE EARLY TRANSITION STAGES. . 38

The Beginnings of Agriculture, 38. Division of the Land, 39. Meadows; The Waste or Forest, 40. The Cultivation of the Common Field, 41. The Social Community in Early Britain, 42. Intertribal Warfare, 43. The Unfree and the Waste, 44. The Unfree and Legal Custom; The Effect of Conquest, 46. The Effect of Famine, 48. Individual Ownership of Land, 49.

419828

Digitized by Google

Part II.: The Social Systems of the Middle Ages

PAGE

CHAPTER V. THE CUSTOMS OF FEUDAL SOCIETY . 51

Early Society based on Kinship, 51. England and the Feudal System; The Causes of Change, 53. The Kingship, 54. The General Assembly, 55. The Increase of Absolute Power, 56. The Contrast of Military Organisation, 57. The Variation of Feudalism in England, 60. The Feudal System the Basis of our present Land Laws, 61. The Mercenaries, 62. The National Militia, 68.

CHAPTER VI. THE CONTRAST OF THE COMMUNAL SOCIETY 69

Common Ownership of the Soil, 70. Feudal Society rests on Individual, Tribal Society on Communal Land Ownership, 71. The Federal Authority, 73. Territorial Divisions, 74. The General Assembly, 76.

CHAPTER VII. THE CONTRAST OF THE COMMUNAL SOCIETY (*continued*): THE CHIEF AND HIS GIVING OF STOCK 77

The Chieftain Class, 77. The Loan of Cattle, 82.

CHAPTER VIII. THE COMMUNAL SOCIETY (*continued*): THE UNFREE 88

The Unfree Tribesman and the Villein, 88. The Common Use of the Waste, 92. The Increase of the Lord's Power, 93. The Villein, 95. Slaves, 96.

CHAPTER IX. THE COMMUNAL SOCIETY (*continued*): COMMON RIGHTS AND COMMON DUTIES . . 99

The Common Usufruct, 99. Bee Law, 100. Contract and Conveyance, 102. The Simplicity of the Communal Society, 106. Fosterage, 107.

CHAPTER X. THE PRIVILEGES AND DUTIES OF THE CHIEF 113

Cosherings, Coyne, and Livery, 114. The Misuse of the Communal System, 117.

Digitized by Google

Part III.: The Holding and Transfer of Land in Mediæval Society

PAGE

CHAPTER XI. FOREIGN EXAMPLES. INCORPOREAL RIGHTS. VARIOUS ENGLISH TENURES . . 121

Foreign Instances of dealing with Land, 121. The Change to Feudal Custom; The Transfer of Incorporeal Rights, 125. Examples of English Tenure of Land, 127. Land Tenure in the North of England, 128. Other English Tenures—Ancient Demesne, Socage Tenure, Borough English, Gavelkind, 130.

CHAPTER XII. THE NORSE TENURES. THE UNFENCED WASTE. EASEMENTS 131

The Odal Lands of the Orkneys and Shetlands, 131. The Common Ownership of the Unfenced Waste—Easements, 135. Federal Antagonism to Communal Landholding, 138.

CHAPTER XIII. ALIENATION AND INHERITANCE . 139

The Right of Redemption, 139. The Fourfold Division of Land, 143. Individual Ownership gradually breaks in, 149. The Geilfiné, 151.

CHAPTER XIV. ALIENATION AND INHERITANCE (*continued*) 153

Gavelkind, 153. Variations of the Custom, 156. Alienation under the Feudal System, 157. Scottish Feudal Holding, 159. All Transactions Verbal; The Church, Writing, and the Will, 160. The Executor and the Chattels, 162.

Part IV.: The Use of the Land by the Community

CHAPTER XV. WASTE OR FOREST. WILD ANIMALS . 167

Methods of Stockbreeding, 169. The Waste, 170. The Forests, as having their "Origin in Sport," 172. The Forests as a Range for Wild Creatures, 177. Wild Species of Tame Animals—Close Time; Wild Swine, 185.

Digitized by Google

PAGE

CHAPTER XVI. THE WASTE. TAME ANIMALS. DOGS AND HAWKS 187

The Range for Cattle, 187. The Rule as to Ranging Stock, 190. The Range for Swine, 191. The Range for Sheep and Goats, 193. Dogs and Hawks, 195.

CHAPTER XVII. THE WASTE. TIMBER. THE BY-PRODUCTS. THE REGULATIONS OF THE WASTE 198

Timber, 198. Charcoal, 200. Fuel and Repairs, 201. Minerals and other Matters, 202. The Small Products of the Forest, 203. Bees, 204. The Regulations of the Waste or Forest, 205.

CHAPTER XVIII. THE DEALINGS OF THE CHIEF WITH THE WASTE 215

Parks and Warrens, 217. The Interests of Stockbreeder and Cultivator conflict, 218. Decline of the Forests, 220. Examples of Forest Law, 221. The Forest as a Reserve for Cultivation, 224. The Power of the Chief, 226. Strangers, 227.

CHAPTER XIX. MEDIÆVAL AGRICULTURE 230

Arable Farming, 230. Monastic Farming, 235. Meadows and Stinted Pastures, 236

Part V.: The Rights of the Small Holder in the Waste

CHAPTER XX. STOCK-BREEDING AND CORN-GROWING CONFLICT 239

The Two Kinds of Farms, 239. The Yardland Theory, 240. Arable Cultivation modifies the Social Use of Land, 241. Rainfall, 242. Fencing, 247

CHAPTER XXI. DRIVING OUT THE SMALL FREEHOLDER. EASEMENTS 250

Copyholds and Customary Freeholds in England, 250. The Grantees of the Monastic Lands; The Northern Tenures, 253. The Ulster Tenant Right, 254. Common Rights between Co-owners, 257. Examples, 260. Rights of Way and Water; Easements, 261. Examples, 260–263.

Digitized by Google

PAGE

CHAPTER XXII. ENCLOSURES IN ENGLAND . . 264

Enclosures of Waste by the Lord, 265. The Labourer as a Landowner, 266. Early Enclosures, 267. The Statute of Merton, 268. The Change in England Economic, 272. The Large Farmer and the Small Holder, 273. The Value of Currency; Bridges and Roads, 274. The Effect of Enclosures, 275.

CHAPTER XXIII. THE COMMUNAL SOCIETY IN SCOTLAND. THE TOWNSHIP FARM 281

The Orkneys, 282. The Western Highlands and Islands, 287. The Township Farm, 289. The Western Islands, 291.

Part VI.: Scotland, Ireland, and Wales: a Historical Retrospect

CHAPTER XXIV. SCOTLAND AND IRELAND TO 1170 . 297

The Course of Change in Scotland, 297. The Struggle between Norwegian and Scot, 304. Somerled, 305. Ireland to 1169, 308.

CHAPTER XXV. WALES, SCOTLAND, AND IRELAND TO THE CAPTURE OF WILLIAM THE LION . . 314

The Norsemen of Wexford, 318. The Norsemen of Waterford; and Dublin, 319. Henry's Expedition, 320. Continental Feudalism in Ireland, 321.

CHAPTER XXVI. THE ISLANDS FROM THE CAPTURE OF WILLIAM THE LION TO THE DEATH OF THE MAID OF NORWAY 323

Galloway, 324. The Bruce Family, 325. Moray; The Isles and Man, 326. The Orkneys, Isles, Man, and Ireland; The Isles and Ireland, 327. Man; Moray; Sutherland, 328. The King of Scots and the Tribesmen of the Isles; England and Scotland, 329. England and Wales, 330. Scotland and England, 331. Scotland, The Isles, and Norway, 332. The Fight at Largs, 333. Norway sells the Isles and Man, 334.

CHAPTER XXVII. THE BARONS' WAR IN SCOTLAND 335

CHAPTER XXVIII. COMMUNAL AND FEUDAL SOCIETY IN IRELAND TO 1367 349

Digitized by Google

Part VII.: The Affairs of Britain, France, and Flanders in the Fourteenth Century

PAGE

CHAPTER XXIX. FEUDAL SOCIETY AT MATURITY. THE WARS OF EDWARD III. THE WAR OF THE THREE JOANS 358

The Decay of the Feudal System, 359. The Influence of Trade, 360. Wars of Succession, 362. Pedigree of the Combatants, 363. War with Scotland, 364. Feudal Warfare in France, 365. Waging Feudal War, 367. The War of the Three Joans, 368.

CHAPTER XXX. THE SUBJECT CONTINUED 373

The Affairs of Ireland, 373. Edward in Flanders and France—Crecy and Calais, 375. The War of the Three Joans, 377. The Mercenaries, 378. Brittany in the Treaty of Bretigny; The Jacquerie in France, 379. The War of the Three Joans, 380. The Statutes of Kilkenny, 381. The Effect on the English Colony, 384.

Part VIII.: The Decay of the Communal Society. Political Causes

CHAPTER XXXI. THE RUIN OF IRELAND 387

Ireland's Prosperity in the Thirteenth Century, 387. The Causes of its Rapid Decay, 388. The Successive Famines, 390. Testimonies to the Capacity of the Soil and to Irish Industry, 392. The Reasons of the English Failure in Ireland, 393. The Influences against Communal Society mature in the Sixteenth Century, 396. Language, 397.

CHAPTER XXXII. THE RUIN OF IRELAND (*continued*): THE TRIBAL CHURCH. COMMERCE. INTERMARRIAGE 399

The Tribal Church, 399. Its Independence of Rome, 402. The Friars and the Reformed Clergy, 404. Commerce, 405. Intermarriage and Fosterage, 407.

Digitized by Google

PAGE

CHAPTER XXXIII. THE RUIN OF IRELAND (*continued*). SCOTLAND FROM ROBERT BRUCE TO JAMES VI. AND I. 411

A Summary, 411. Plantation as a Commercial Adventure, 412. The Breach with Rome, 413. The Position of Elizabeth, 414. The Separation of West and East in Scotland, 415. James I., 417. James II., James III., 418. James IV., 419. James V., Queen Mary, James VI. and I., 420. The Effect of the Discovery of the New World, 421.

CHAPTER XXXIV. THE PLANTATIONS 424

The Plantations of the Island of Lewis, 425. Irish History — The Plantation of Ulster, 428. Proposed Plantation of Connaught, 434. The Rebellion of 1641, 435. The Cromwellian Plantation of Ireland, 437. The Irish Sold as Slaves; The Broken Pledge of the Anglo-Scot, 439. Why Ireland and Western Scotland differ, 441. The Treatment of the Waste in Plantation, 443.

Part IX. : The Decay of the Communal Society. Economic Causes

CHAPTER XXXV. THE CHIEF INFLUENCES OF CHANGE. THE INTERFERENCE OF POLITICS 446

The Effect of Increase of Population, 449. Leases, 450. The Competition Rent, 452. Other Causes of Change, 453. Ireland and Economic Causes, 456.

CHAPTER XXXVI. ECONOMIC CAUSES IN WESTERN SCOTLAND 461

The Danger of Over-population, 463. The Chief becomes Absolute Owner, 464. The Successive Steps in the Change, 467. Game and Deer Forests, 472.

CHAPTER XXXVII. A CONCLUSION. SOME OBSERVATIONS 477

A Russian View of Society, 479. The Vesting of the Waste in the Local Community, 481. Things necessary for Improvement, 483. Poor Land, 485. Game Preserving, 489.

Digitized by Google

APPENDICES

PAGE

A. Folkmoots 492
B. The Ogaire Chief 494
C. Town or Township 495
D. Milling and Fishing 495
E. The Laws of Galloway 497
F. Government in Gascony 498
G. Baronial Combinations 499
H. The Kinship of Mother and Child 499
J. Ireland of To-Day 500

INDEX 506

MAPS

The Irish Sea and Western Scotland 299
The British Isles and their relation with the Trade of Europe in the Middle Ages, designed by Joan Kingsford, engraved by Emery Walker, Ltd. . . . . *in pocket*

A FEW ABBREVIATIONS USED

	CITED AS
Ancient Laws and Institutes of England, edited by Benjamin Thorpe	Thorpe.
Ancient Laws of Ireland . .	*A.L. Irel.*
Ancient Laws of Wales: Venedotian, Gwentian, and Dimetian Codes, and Anomalous Laws, edited by Aneurin Owen .	*A.L.W.*: Ven., Dim., Gwent., Anom.
Leges Henrici Primi, from Thorpe	*L.H.P.*
Orkneyinga Saga (Rolls Series) .	*O.S*
Pollock and Maitland's *History of English Law* . . .	P. and M.
Records of the Earldom of Orkney, edited by J. Storer Clouston .	Clouston.
Select Pleas of the Crown, Forest, and Manorial Courts, Selden Society's Publications . .	*S.P.C., S.P. For., S.P. Man.*
Le Tres Ancien Coutumier de Normandie, edited by M. Tardif	*T.A.C.N.*
The Year Books of Edward I., II., and III.	*Y.B. Edw. I., II., and III.*

Digitized by Google

PREFACE

We are promised by the Minister of Education new movement in the instruction of young people; revision of methods; rearrangement of subjects. One likes to think of the possibilities: better payment of teachers, though that is unlikely; a general destruction of school manuals for the benefit of publishers; English and Spanish and Tamil to be taught in our Universities; Greek to be brought into the elementary schools in view of a possible strike from neurasthenia and the prevalence of the cinema; such a general advance, in fact, that after the war our young people will capture, by their knowledge of languages and their commercial fitness, the German trade in South America and East Africa.

I wish to enter a plea for one little neglected corner of this field of instruction, the teaching of history. I must define what is generally meant by history as it is taught in our schools. You may remember that Parson Thwackum, arguing with Philosopher Square that there was no honour antecedent to religion, undoubtedly a true proposition, was driven to admit that by religion he meant the Christian religion, by Christian the Protestant religion, and by Protestant the religion of the Church of England. In like manner, by "history" as taught in our schools is intended British history, by British almost always English history, and by English Constitutional history, and by Constitutional the account of the changes in the course of development of one particular form of government peculiar to England alone, which have been found convenient or which have resulted from the struggle of opposed interests in past days. This study is enlivened by language culled from anonymous writers on kings, priests, and others whose actions do not

Digitized by Google

fit in with the growth of the form, and by assumptions of motives derived from similar sources.

There is a very great difficulty which faces anyone who criticises the teaching of such matter in our schools, namely, that for the most part the writers who prepare the books from which the young are taught are not free agents. They must write to meet certain syllabi upon which examinations are founded. It is useless for the compiler to insert anything which is not part of the syllabus, as that would mean enlarging or improving the minds of the pupils instead of enabling them to answer the questions on the examination paper.

The evil is especially noticeable in historical teaching, and is a very great one, many-sided. I wish to point out some aspects of this evil, which I will illustrate from two histories which, to avoid personalities, I will call A and B. A is an exhaustive higher history, not dealing exclusively with England, a history universally praised, holding a first rank among the best modern school-books. I quote from the eleventh edition in 1912. B, published also in 1912, is a work on English history, written by a professor in a university, and, what is really important, put forward by a most progressive firm of publishers.

The various forms of government are an instructive study; a survey of their varieties, of the philosophy of rule, would be a liberal education in itself, though the mind solely occupied by such a study would lift only one corner of the curtain. But no such study is put forward here. English Constitutional history, as it is taught in our schools, presupposes an absolute, unyielding superiority over all others of the one form of government which, as a compromise from time to time of opposed interests in the economic progress of the people, has fortuitously come about. It concerns itself with the glorification of that one form, imagining it to be an attribute of race, an importation made from Germany by a mythical people called the Anglo-Saxons.

These books do not offer to lay open to discussion, they make no effort that their readers should understand, the claims which might be made for government by one heredi-

Digitized by Google

tary ruler on the ground that almost all well-balanced government in the world's history has in the end rested, especially in stormy times, on sole authority; or to consider government by an elective body, on the ground that, as the foundations of society are constantly shifting, any attempt to form a system of authority which would not move with such shifts was valueless. These are claims which must have been present to past minds as new forces or varying circumstances caused alteration in the unwritten custom which goes by the name of the British Constitution.

B, in fact, begins with what looks like a joke. Before proceeding to the inevitable Anglo-Saxon, who was to introduce us all to the blessings of constitutional government, it says of the Romans, "There was no attempt to form a British Constitution, or weld British tribes into a nation; for Rome brought no birth to daughter States, lest she should dismember her all-embracing unity," which was very unkind of Caracalla.

From this lopsided view of political history several false conclusions follow.

The stages of development, as the society expands, are often predated several centuries as the compiler imagines the king who has pleased him intending in his mind some nineteenth-century conception of party politics. The "lords of the council and all the nobility" become in very early days a paid House of Commons. It is often assumed that forces were operating before there is a trace of their existence, if they existed at all. Characters are drawn of rulers of extreme goodness or badness according as they were supposed to be assisting a growth of the later centuries of which they must have been wholly unconscious, or as they were really resisting the revolutionary tendencies which threatened their own existence. "John," says A (p. 99), "was oppressive; Henry was feeble; both alike were unsatisfactory": an epitome of press estimates of our modern statesmen. B (p. 66), after discoursing of the effects of the discovery of gunpowder and the development of artillery, etc., tells us that "Edward I.'s greatness consists mainly in his practical appreciation of these tendencies"; while Edward II., who

Digitized by Google

was not successful, is dismissed in the words, "the miserable reign of his worthless successor."

But even this view of politics and social institutions very early ceases, as England expands into the United Kingdom and later into the Colonial Empire, to cover any part of historical fact. Though we may be thankful for the old body of unwritten custom declared by the people, called Magna Charta, as at least some rule of political life, some sort of social code, yet this and subsequent developments of the kind have little relation to the wider history unless we study the early story of the peoples who adopted them or those on whom they have been forced. The outstanding weakness of this teaching is that it breaks down absolutely even before the Geraldines reach Bannow Bay. English becomes very early British history, though the fact is hidden from the student by the teaching which ignores what will not fit in with the Anglo-Saxon constitutional history theory. As the Islands all come under one government and carry the British Empire with them, the compiler falls on the horns of a dilemma: he must either ignore the early history of the nations other than the English who have become parts of the whole, treating them as inferior races to whom the Anglo-Saxon has carried his love of justice and freedom and so forth, and continue the story solely from Westminster, which he generally does; or if he goes back to the early history of Scotland and Ireland, he must remake the constitutional part, bring in the Scandinavian and French influence, and leave the mythical Anglo-Saxon to one side.

Our difficulties with Ireland now rise in very large part from the total ignorance by instructed Englishmen of the history of Ireland. One can illustrate its source from A and B. B is negligible. In B, Ireland only enters into English history at the time of the Spanish Armada, and the treatment of it is of the slightest. A is a little better. Patrick and Columba are even mentioned by name, but the debt of Christianity owed to these Islands through the Irish missionaries is left to one side. The long struggle between the Irish and the Scandinavian, the temporary dominance of Ireland and the more permanent dominance of Scotland

Digitized by Google

by the Norwegians (who are called by English writers the Dane), Clontarf, the whole history of Scandinavian Scotland, Somerled, Angus, Largs, is omitted. The author impresses Adrian's grant of Ireland to Henry, which does not appear to have played any part in the Conquest; but the Geraldine invasions, the wars between the English invaders and the Scandinavians of Dublin, Waterford, and Wexford, John's second expedition, the rule of John de Grey, the great Marshals in Ireland, the Statutes of Kilkenny, the marriage of Clarence and the Burke heiress, the relations of Ireland with Scotland, Aquitaine, and Wales, all the events which connected the two countries up to the seventeenth century, are left untold. Richard II.'s expedition, of which we have almost firsthand knowledge through Castide's narration to Froissart, is mentioned as "Richard went off to Ireland. During his absence, etc."

Bannockburn cannot be avoided, and is an opportunity to lay blame on the king. But there is no mention of one of the most important events of that time which brought all the nations of the Islands together and had a lasting effect, the invasion of Ireland by Edward Bruce. It was an invasion which ended the hope of a United Ireland under the English Ardri, drove the English back into the Pale, but caused such fearful slaughter and famine that it gave rise to a pæan of joy by the Irish annalist over the death of the Scottish invader.

Later events are treated in much the same manner. The writer does mention the destruction of the Irish cattle trade by the English Parliament in 1666, and of the Irish wool trade by William III. in 1699; but the little mention that is made of these remoter parts is from the English point of view only, the view of the superior Anglo-Saxon, the author and giver of all good things, who can explain or justify questionable acts; it is not balanced with or correlated to events in other parts of the Islands or made use of for example of commercial methods or as instances of good or ill government.

There is yet another point of view from which to regard this school-history teaching. It is not only deadly dull,

Digitized by Google

but it is wholly without moral atmosphere, without any perception of higher aims than a conflict about money. Surely if this stuff about the Anglo-Saxon has to be taught, it could be made, in spite of its dullness, to point to something higher. I do not mean merely the noble adventures of narrative which are almost always omitted from our histories, such as the defence of Gibraltar or of Rorke's Drift or the blowing up of the magazine at Delhi, but the ideals which cluster round the conception of good government, the bettering of society.

"The central position," says B, "of English constitutional progress has always been the control of the purse by Parliament." If this were all a thousand or two thousand years of history can teach us, we are indeed bankrupt of ideas. God forbid that it should be true. But it is not. The House of Commons, wrote Sir Henry Craik, M.P., on June 17, 1917, has never been a very secure check on lavish expenditure. Each interest there represented is apt to be much more keen about obtaining assistance for its own particular object than imposing a curb upon general expenditure. Mr John Bright said much the same thing forty years ago. And it goes without saying.

The "central positions" of the British Constitution are (1) that it is unwritten custom easily modified to suit changing conditions; (2) that its success is dependent on a due adjustment of hereditary and elective elements, on perpetual compromise between naturally opposed forces; (3) that the checks by either on the other have hitherto proved so effective that with rare exceptions neither element has dared to put the other to final trial; and (4) that eternal vigilance is the price of liberty.

It still goes on growing, and it is not necessary, every time it puts out a new leaf or a new twig, to suppose that there is going to be a revolution. If the improvements to result from a shift of administration are to be of any value, the mind of the young must no longer be "hortum instructum antiquissimis statuis."

The defect which lies at the bottom of all this English-history teaching is that it has no foundation; it never goes

Digitized by Google

back to first principles. The historian begins in the middle in transition time with a ready-made feudal system, taking it for granted that the transition age is the normal condition of the world. Mr Phipson Beale, K.C., in an essay in 1867 on the origin of commons, has put the position admirably. "The Norman invasion of England," he says, "has held nearly the same position in the popular history of English institutions as the Flood used to do in palæontology. The so to speak antediluvian customs and traditions of the English were too generally regarded as mere curiosities, and not as a fundamental formation in the strata of English institutions." In fact, although we interminably talk rubbish about the Anglo-Saxon, we have never troubled to take seriously his system of living.

My object is to delve into the so to speak antediluvian strata, to discuss their relation to the past and to the present, to contrast them with the transition feudal stage, and to point out that they are not English institutions but fundamental instincts of the human race. I propose a slight essay in Foundations.

One of the chief characteristics of the so to speak antediluvian strata is the prominence of the personal tie between chief and freeman in the place of the tie of land. But as the pastoral life begins to give way to agriculture, and Rome breaks up the society of kinship, the land becomes the centre round which all the social problems of the time revolve. No writer who dares to treat of it but must expect stormy criticism and disagreement. Yet in any account of the foundations of society the treatment of the land is a subject which must be faced throughout. Owing to the very strong German influences of the nineteenth century, and the ability of writers such as Nasse and Maurer, the question has been approached generally from the wrong end, agriculture being treated as the first consideration, and the unenclosed pasture or forest, which is the basis of all historical treatment of the soil, being spoken of as if it were a matter of no importance.

The use of the land is a perennial subject for conflict of ideas. It is most usually written or spoken over as a matter of party politics. In what I have written on this subject

Digitized by Google

I do not expect to have pleased anybody; but I may have helped Master Peasblossom to scratch.

A large space is taken up by Ireland in this book. This was not the result of any desire to stir in party politics or to exalt Ireland at the expense of other parts. The cause of Ireland's prominence is this. Ireland is a chief authority for early communal conditions, and I believe the neglect of its records to have led to a great deal of wrong historical perspective. In its later history it is a unique example of the ruin and degradation of one nation by another from pure ignorance, from theological hatred, from misrepresentations of the facts of history, from commercial jealousy, from want of firm government, and from the evils of party politics. It would not appear as if the Anglo-Scot even now understands the problem before him or is willing to confess that he is at fault. It is so easy to put the fault on someone else. In consequence, as I believe this to be one of the most important of present political issues, and the most dangerous if dishonestly handled, I have written of the horrors of Irish history more fully than I should otherwise have done, and have felt constrained to express opinions very strongly in an Appendix on modern Ireland for the reasons there given. Ireland, apart from the political issue, is a great and little-trodden field for social, agricultural, and commercial example. But it has a most horrible and most sad history, and to any Englishman who has studied it away from theological venom and party politics a most humiliating and painful story.

I have put in Appendices (I would like to have called them Tails, but it sounded too precious) a variety of matter for which I had no convenience in the text. I take it that the necessity for such gleanings shows slovenliness of thought, a want of mental clearness in the writer, a want of power of condensation and arrangement. But it rids the text of personal opinions which would create confusion, and it gives opportunity for the reader to initiate new branches of thought which may lead to some purpose.

There is undoubtedly a great deal of repetition. In some degree this is unavoidable. Where it is not, it is not wholly an evil, if the matter treated of is unfamiliar to the reader,

Digitized by Google

that it should be impressed upon him by repetition. Otherwise the writer has no excuse except that of the difficulty of handling a mass of matter drawn from a variety of sources.

No one knows better the want of power and defects of learning and style in this book than myself, for I have read it more than once. But if a man who thinks that he has something to say worth saying were to stop to trip over his own faults, he would, unless he were thickheadedly conceited, never write at all. The book may help somebody, and some bookseller may make something out of it. If I have not mentioned the names of friends who have helped me, especially in Ireland, it is for the reason that I do not wish to associate their names with my errors.

Where I have considered it advisable to express my own opinion I have not professed that it should be impartial. A historian, whatever his opinions, should try to state *facts* accurately. But no one who is not idiotic can read and carefully consider masses of material on past events without forming a strong judgment, and if he expresses himself at all it is far more honest that he should express his own judgment as such than that he should pretend an impartiality which he cannot feel. I note as the worst example which I know in historical literature the two accounts by the professedly impartial historian Gardiner, in his elementary history largely taught to children in our schools, of the eviction of the clergy of the Church of England, men of the stamp of Hooker and Herbert, in the Cromwellian time, and their reinstatement to the detriment of the mixed horde of usurpers at the Restoration. I have no intention of imitating such historical slander.

The natural increase of population may be said to be the potent cause of the change of the social system, but there are two other most prominent influences which should figure freely in this book, but which are hardly touched on.

One is the influence on the social life of the Christian Church of Western Europe, deepening the moral sense of society, widening the field in which it can act, teaching a brotherhood of alien peoples. But this appears in history only to a very limited extent.

Digitized by Google

The political side of the Roman Church, the fulminations of Popes against persons who dared to think, the struggles for money and power between them and kings—this you will find in histories. But it has no reference to the moral aspect any more than constitutional history. Sometimes it is even amusing, as when Giraldus excommunicates the Bishop of St Asaph; or as when William the Lion, the only king who ever permanently got the better of the Popes, kept John Scot for a generation out of the diocese assigned to him by successive Holy Fathers. It has no bearing on the change of society. Of the real pervading influence, the work of the parish priest or monk-missionary, which goes on at all times, to-day as ever, unheeded or despised, modifying men by insisting on and exampling self-sacrifice of the individual for society, there is seldom any story which can be continuously told.

The other influence—commerce, the individual life of adventure, the picture of man as he is in his naked selfishness, if untouched by the moral sense of a responsibility for society enforced upon him by the Church,—this is of all subjects of history the most picturesque, the most apt for narrative, the most daring in its unexpected shiftings of scene and action, the most capable of emulating the sudden surprises of the *Adventures of Five Hours* or *Midsummer Night's Dream*. It is liable to be immoral, of course, so far as all attempts of one man to get the better of the other unchecked by social advantage are so liable; just as a woman who, having five children, may send them into five different queues to get margarine and so sin against the higher life. But in my view it is not nearly so wholly without morals as constitutional history, and it lacks that atmosphere of class hatred, of evil speaking of the man who tries to order society, which hangs round that study, the wealth of reckless abuse borrowed from the mediæval Benedictine. The commercial traveller or the merchant seaman may drink a good deal, he may even wear carpet slippers, but, like Shakespeare's barrister, he strives mightily but eats and drinks as friends with his opponents of the samples and the ships.

Beyond all, it is never dull. It comes sliding into a con-

Digitized by Google

tinuation of the fairy stories of childhood, another Crusoe or Sindbad. It is hard to draw the line for interest and excitement between the real adventures of the Norse or Eastern trader and Crusader and the semi-facts of fiction; between the Gildmaster's young friend who finds a dead mouse and makes a fortune, or Hans who rolls a grindstone for his savings into the river, and Harold Hardrada breaking the boom at Constantinople, Marco Polo visiting the petroleum wells at Baku, or Benjamin of Tudela telling of the glories and defencelessness of Constantinople; between the Norseman sailing the Atlantic to Wineland and the Mediterranean pilgrim very sea-sick, with mouldy rations, invoking saints in expectation of the pirate.

It goes into all worlds; it tells tales, true tales and fancy stories, of new races, wonderful cities, strange fruits, animals, weapons, monsters, marriage customs; the study of it would open a new world to the school child (and to the school teacher) as strange to them even as the world which came to the men of the sixteenth century.

It is not only the delight and interest of the story, but the education of the mind, which such a study would bring, the best of all studies to put before island children, taking them out of the island away from Westminster.

Such a study draws out all the most virile qualities of the young, encouraging an eager outlook on the world and, what our islanders so much need, the humility which comes with knowledge of many other peoples; it is a perpetual incentive to struggle and supremacy over the forces of nature, a training in courage and quick decision and ready wit in hard places, in resource and judgment and self-restraint in words and actions, in endurance, in the good-fellowship which comes from the sharing of a common danger. It can be made to include easily so many other related studies, geography and all the kindred branches of science which cluster round lands and peoples unknown, their products and their wants. All the ologies from Archæology to Zoology can be learnt with it; it need not disturb present studies, for, if the teacher knows, they can be related to it. Perhaps the incipient hairdresser or milkman's-boy might give up wood-

Digitized by Google

carving for the new study, but otherwise there need be no interference.

It might enable us (who knows?) to regain some of the trade which the German, better taught, has wrested from us. But to have a good influence, which such a study can have, it must be read and impressed side by side with the moral training of the Church. Otherwise you may become a Prussian.

Is there any subject upon which the British man, his eyes fixed on his Historical Memorials with which he is interned at Westminster, is so supremely ignorant, and I may add so contemptuous, as of his own external trade and of the men who make it? He will find nothing in his history of the merchant seamen who made the first beginnings of English commerce, who fought at Sluys, who discovered Newfoundland, who manned Elizabeth's little ships against Spain, the men who have never feared to engage enormous odds, who have carried our arms and our trade and our ideals of freedom around the world, who have given us command of the sea by ceaseless hazard and stern endurance, who have taught us and all the world except the German what we have of humanity in warfare, the men who now stand between us and famine, between us and the horrors of a German invasion, who represent all that is best in British manhood. It will take more than a new Minister of Education to teach the Briton what he owes to the seaman and the merchant, unless hunger should become the Minister.

I regret deeply that I have been compelled to leave this delightful subject to one side. I had looked forward to the time when I could let myself loose on Commerce; I had picked over many bulky and discursive volumes, the Fœdera, and Lindsay, and Anderson, and many others of like kind. But when I looked in the Subject Index of the London Library, by far the best catalogue of books in these Islands, it seemed to me easier to understand why the German is outstripping us in trade. This is all that I found:—

Trade—*Mediæval.*—*Écoles des Chartes, Bibl.*, 1839– ; Häpke, R., *Brugges Entw. z. mittelalt. Weltmarkt.*, 1908;

Digitized by Google

Heyd, W., *Gesch. d. Levantehandels im M.a.*, 2 B., 1879; tr., 2 t., 1885–6; Lehmann, C., *Kauffriede, etc.*, 1893; Mas Latrie, *Rels. comm. de l'Afr. septent., etc.*; Ropp, G. v. d., *Kaufmannsleben z. Zeit. d. Hanse*, 1907; Schaub, F., *Kampf gegen d. Zinswucher, etc.*, 8–12 c., 1905; Schaube, A., *Handelsgesch. d. roman. Volker d. Mittelmeergebiets*, 10 c.–1250, 1906; *Gesch. d. m.alt. Handels, etc., West Deutsch u. It.*, 2 B., 1900; Stephan, H., "Verkehrsleben im M.a.," in *Hist. Thet.*, iv. 10, 1869; Stieda, W., *Üb. d. Quellen d. Handelsstatistik im M.a.*, 1902; Tomaschek, W., *Z. Kunde d. Hämus-Halbinsel*, 1–2, 1882–6.

Such books as Häpke and Ropp have not been thought worthy of translation.

The perusal of that catalogue made it clear that until an elementary manual on the subject has been written it might be dangerous for the general reader if an author with so little real acquaintance with the subject treated in any detail in such a work as this of mediæval commerce. I have contented myself with Miss Kingsford's splendid mediæval map at the end of this book, showing how the trade of the world ran through the Dover Straits.

The idea that we occupy our proud position as the first nation of freemen because of any quality of race is, I believe, wholly untrue. We are a very mixed people. We lead the world in freedom because we lead in commerce; the two act and react on each other, making the greatest danger connected with our present immense armies not any peril of military despotism, but that our fleet and merchant service, and with them our wealth and freedom, may be sacrificed to the popularity of the land forces, the fate which overtook France in the eighteenth century.

All this is not so remote from my subject as it might appear to be.

Wealth begins by the sea. The sea is the greatest agency of true civilisation, the highway which carries from the one people to the other the interchange of human endeavour, the materials for and results from the industry of the whole world. The conception of true freedom begins by the sea. The weakest feature of the communal life, the narrowing

Digitized by Google

of friendly relations to those connected by kinship or close boundaries, gives way to the interchange of thought, as the merchant and the traveller bring home the knowledge of other men and other manners. But as the sea helps to destroy this sense of jealousy of the neighbour society, it builds by the same means larger societies, confederations of peoples who may be willing to live in peaceful co-user of the products of mind and body. It is the mother of confederation; it is responsible for the framing of the British Empire. Thus it becomes the explorer of new forms of government, new modifications of the art of ruling.

In fact, in every new direction of human endeavour the sea promotes advance and conciliates opposing interests. It is the exponent of individual effort in self-reliance and daring; it is the stern daughter of the voice of God controlling the social life, calling for discipline, asserting mutual co-operation. If sea power is not dealt with in books of history, islanders should remember that it has always been present exercising the unseen pressure on current events which is the more effective because it is unseen.

J. W. JEUDWINE.

February 1918.

EXPLANATION OF TECHNICAL WORDS

1. *Agist.* To admit to pasturage the beasts of other persons for money.
2. *Aillt.* A Welsh term corresponding to the English *villein.* P. 45.
3. *Aire* (Irish). A noble; one privileged. *Boaire,* a class of chiefs who have a qualification in cattle.
4. *Alltud* (Welsh). A stranger, who has no rights in the community, but is under the protection of the chief.
5. *Assart.* (Strictly) the clearing of woods by pulling up trees from the roots. Manwood speaks of it as the greatest trespass to be done in the forest to vert or venison, as it contains in it waste or more, as the trees cannot grow again from the stump. See p. 42. The word is also extended to other forms of damage.
6. *Birlawmen* (Scot.). Neighbours appointed or elected to take notice of local complaints and to make local regulations or bye-laws Special constables.
7. *Boll* (Scot.). A dry measure (Jamieson)

Digitized by Google

8. *Brewy* or *Brugaidh* (Irish). A class of chiefs who attended to the exercise of hospitality for the community.

9. *Cain* or *Can* (Scot.). A duty paid by a holder of land or possessor of property to a chief or owner in kind. A customs duty. P. 120, note 3.

10. *Caupes* or *Cauipes* (Scot.). Equivalent to the English *heriot*, the taking by the chief on the death of the clansman of his "best aught," an ox, horse, or cow, or suit of armour.

11. *Chalder* (Scot.). An obsolete dry measure; in Scotland, 16 bolls or 64 firlots of corn, making nearly 12 quarters Winchester measure.

12. *Ceile* (Irish). Companion, associate. *Saer*, meaning "noble," and *daer*, "degraded" or "unfree," are used with *ceile* as expressing the social relation of the borrowers of stock in Ireland.

13. *Colpach* (Irish). Heifer or yearling heifer.

14. *Commendation* (Latin). The relation between two persons in feudal society by which for good consideration one puts himself under the protection and acknowledges the superiority of the other.

15. *Commonty* (Scot.). A common. Common property in moorfield and outfield, the waste of the township.

16. *Conveth*. The Scottish equivalent of *coshering*.

17. *Coshering* (Irish). The practice of the Irish chief receiving entertainment for himself and a fixed number of attendants from the tribal dependants. From Irish *cóisir*, "feasting."

18. *Coyne, coigne*, etc. (Irish). The billeting of soldiers and attendants by the Irish chiefs upon tribal dependants. From Irish *coinneamh* or *coinnmeadh*, "billeting."

19. *Cwide* (Saxon). A word meaning what is said, a statement, a judgment, a testament. See P. and M., vol. i.

20. *Dairt* heifer (Irish). A young cow ready for breeding.

21. *Effeir* (p. 262) (Scot.). To become, to fit (Jamieson).

22. *Enfeoff*. To put a person in possession of land by delivery.

23. *Erw* (Welsh). A drive, a day's ploughing, an acre.

24. *Estovers*. P. 257, last three lines.

25. *Feacht* or *feachd* (Gaelic). An army, forces, a levy.

26. *Feoffment* (law French). A gift or grant of lands or tenements by delivery of possession of the thing granted.

27. *Ferm*. The English equivalent of *coshering* in early times. The rents reserved to the lord in victuals and other necessaries arising from the land, consumed by him on progress.

28. *Feu rent* or *few dewtie* (Scot.). The yearly payment of rent for a feof. See pp. 157, 158, as to "subinfeudation."

29. *Finé* (Irish). Translated in Brehon laws "tribe." But probably the term more correctly expresses the sept, clan, or group family

30. *Flaith* (Irish). A prince or lord.

31. *Fuidhir* (Irish). A stranger, a person not of kin to the community, having no rights as such. Equivalent to Welsh *alltud*.

32. *Fyrd*. The English levy of the people for war.

33. *Gabhail-fodagniat* (p. 230). "The first word should perhaps be *gabla*, 'branches' (of kinship); the second means 'which serve them or her'; perhaps one should read *fodregniat*, 'which serve him' (from an Irish authority)."

Digitized by Google

34. *Gavelkind*, see p. 153. A custom by which land was equally divided among sons, or from a brother among brothers.

35. *Geneat* (Saxon). Equals *villein* in Anglo-Norman law

36. *Gwestra*. The Welsh equivalent of *coshering*.

37. *Gyrde* lands. The fourth part of a hide of land. Kemble, *Cod. Dipl.*, iii. 260, 32. Quoted, Bosworth and Toller's *Anglo-Saxon Dict.*

38. *Heriot* (see *Caupes*). The right of the lord to the best beast or to some valuable personal property on the death of a tenant.

39. *Lawing* of dogs. See p. 195.

40. *Lea*. Land not ploughed, used only for pasture

41. *Livery of seisin*. Delivery of possession, either actual or symbolical.

42. *Pannage*. The payments made to the lord or owner for the feeding of swine on the mast (acorns, beechnuts, etc.) in the forest.

43. *Purprestures*. Enclosures, buildings, or acts of nuisance which may work to the detriment of the forest, either for pasturage or for the support of animals.

44. *Sed* (Irish). A jewel, wealth, a cow.

45. *Sluaged* or *sluagh* (Gaelic). A host, an army.

46. *Soum and roum* (Scot.). See p. 262.

47. *Steelbow* (Scot.). The hiring to the tenant on entry of goods which remain the property of the landlord. See p. 91.

48. *Swanimote*. A court held before the verderers, to inquire into acts of officers of the forest and offences against vert and venison.

49. *Tack* (Scot.). The lease of a house or farm.

50. *Tathing* (Scot.). The dung of black cattle. So the luxuriant grass which rises in tufts where it has been deposited.

51. *Tanistry* (Irish). See pp. 143, 148, 154. The devolution of a definite specified share of the common property on division to the chief, his successor (called the *tanist*), and certain others.

52. *Thanages*. The thane was the equivalent of *maermor* or great chief, the ruler of a great tract of country, equivalent to a sheriffdom or earldom. The highest title of honour, says Jamieson, known in Scotland before Malcolm Canmore.

53. *Toisech, Toschach, Toiseac*. A chief, a leader. The equivalent of Thane. "Ane office or jurisdiction not unlike to a bailliarie especially in the Ilcs and Hielandis" (Skene, *de Verb. Signif.*).

54. *Vert*. Everything that beareth a green leaf within the forest for cover or food. "But herbs and weeds though they be green, our legal vert extendeth not to them" (4 *Inst.*, 327).

55. *Villein*. See p. 45. The Anglo-Norman name for the holder of land who is not a complete freeman.

Digitized by Google

THE FOUNDATIONS OF SOCIETY AND THE LAND

PART I

THE LINKS WITH THE PAST

(*See* EXPLANATION OF TECHNICAL WORDS, *supra*, p. xxvi)

CHAPTER I

SOCIAL IDEALS AND HISTORICAL FACTS

BEFORE we begin to describe the bodies politic which were commonwealths in the past, it would be well to recall to mind some of the essential requisites for their existence.

It is of the essence of a political society that its members should have a common bond of union and a common aim.

In the first instance, in the distant past this will only be the combination for defence or attack and for the acquisition and control of the means of living, and it assuredly will rest first on kinship of the members. But as the society grows and wars, and by war learns to estimate its aims at a true value, there comes to it as a social aim more than the bare conception of material gain or loss. The education of war teaches its members that there are things worth fighting for which do not materially benefit them as individuals. Men do great deeds, not for themselves but for the advantage of their community; they risk their own welfare to lead the society to victory; they sacrifice their all for it; they die for it.

Very soon, then, there comes home to the members of the

Digitized by Google

society a conception of immaterial gain in which all that counts for the satisfaction of the individual, wealth and life, is risked for higher benefits for the community: gains which are not temporal, which are not even a benefit to the men who fight for them, the results of which rest in the future.

The community makes heroes of such men and worships them. Those who are descended directly from them rule, and all the society claim to be kindred in blood with the men who have given themselves for men.

Some societies, the elder ones, get little further in non-material aims than this past hero worship. They stay at home with the ancestor, while the younger son of the nations, going out to waste his patrimony and to endure the hardships that ensue, comes home in later times to the wider knowledge of what worship means. For this ancestor worship of the great men of the past means that in addition to the material bond for self-defence there has arisen for the society a further bond of unity through a common recognition of higher aims for which the State should stand—aims handed down and enlarged on to each generation by the builder of the lofty rhyme which keeps in mind the devotion of the members, the great deeds and great failures done and suffered by them. It becomes the wealth of the community which cannot be estimated in money's worth, but which it is essential, if the society is to progress, should grow by accumulation and enlargement.

The society acquires an ideal, a definite political expression of the ultimate objects of the society, beyond and above its material gains—an expression of the higher aims which it is inclined to regard as characteristic of itself as a peculiar people, apart from or opposed to material results of work or war of which it shares the benefits or the losses with rivals.

It is soon clear to the society that this aim can for the most part only be imperfectly realised in full; but it remains something to be striven for, a beacon lamp which lures to the goal towards which the members press, an ever-fixed mark which looks on tempests and is never shaken.

The ideal of a community so formed operates in a double sense. It takes a chief part in formulating a political creed

Digitized by Google

by directing attention to the benefits resulting to the society from specific features in political movements; so that in the end, though the ideal may be partly based on false deductions from past history, though it may be distorted by ignorant and self-interested teaching, the political system of the society will be formed upon it. If the estimates of past actions are false, if they have been distorted by the recorder of events, the falsity will be purified and idealised by the social instincts of the community as a whole. As the result of struggle and discussions during long periods of time, it will assume high motives in accordance with the desired ideal, and will adapt the facts to the desired aim.

Secondly, the ideal expresses and sums up the moral tendencies which have strengthened in the society through admiration of the sacrifice shown by individuals, formulating an instinctive morality, the loss of which leads directly to the anarchy of revolution and the certain military tyranny which succeeds revolution.

Political progress, as it is called, does not so much matter, except in so far as it helps or injures the ideal as a moral force. Government is an evil necessity; all forms of it are very much alike in their characteristics; whether it is of the one or of the many, all forms of it are subject to the same defects of human nature—defects left out of sight by the political party agitator, the constitutional historian, and the revolutionary: all are liable to the same deterioration, to be countered only by the same unceasing vigilance on the part of the people governed.

What the ultimate form of government will be for any community will depend to a certain extent on the ideal which grows up before the people to be governed—the ideal which will be proportioned to their surroundings and be the result of their historical development.

If the form of government so grows in accordance with an ideal and is not the result of a political catastrophe, which can never produce a good form of government, it will shape its form according to the needs of the people who require it, whether as of the one or of the many. If it has grown it will have adapted itself to its conditions, not otherwise.

Digitized by Google

To quote Lord Acton, the best government devised by reason is less free than a worse government bequeathed by time; or again, giving an example from the people then suffering the catastrophe of revolution, he says, people were quite resolved to be oppressed no more by monarchy or aristocracy, but they had no experience or warning of oppression by democracy. The classes were to be harmless, but there was the new enemy the State.

This view of the value of different forms of government, however, only applies, as they affect communities, to those cases where a people govern themselves. They have a very different effect where a people, having a very definite national ideal, come to possess the corporate political soul of another people, who have a contrasting view of what is suitable for their conditions. To quote yet another writer: the most evil of all forms of government is the rule of a nation by a nation. Such a rule is of all others the most tyrannous and intolerable, and leaves the people under it more helpless for resistance and more emptied of hope than any other system: in the rule of one nation by another all natural safeguards in effect are swept away.

A nation has a soul whether it is ruler or ruled. And it may as easily lose it in the one case as in the other. I will express it by adapting a great saying: What shall it profit a nation if it gain the whole world and lose its own soul, or what shall a nation give in exchange for its soul?

When such conditions arise, so far from democracy spelling liberty, it is the most oppressive form of government which one people can impose upon another. It is possible that a single ruler governing the countries may have sufficient sense and honesty to balance the material interests of both to their mutual benefit, but it is in the highest degree unlikely that any nation ruling over another by a popular government will do anything which is in the slightest degree injurious to its own social instincts. Here the social instinct meets with a very powerful current which not only requires a very high standard of self-sacrifice to stem, but which calls for a course of action in the men who hold office straining their duty to those who elected them against their personal ideals.

Digitized by Google

As an example of such evil influence I would cite the suppression in the Austrian Empire of Bohemian, Slavonic, and other forms of national life by the gerrymanderings of a minority of Germans through the means of "constitutional" forms. The same evil applies in different and even greater measure to the treatment of Ireland.

The evil which results from this rule of a nation by another nation, where the ideals and requirements of national life are not identical, will be that in both, but especially in the one ruled, the sense of national life and of political proportion becomes distorted and becomes atrophied from want of use.

Having no opportunity for free expansion of the national life, the weaker nation either exhausts itself and irritates its rulers by fruitless efforts to free its political being from a domination which is hateful, or it addresses itself to an idealism in political life, weaving dreams of Utopia or Arcadia which lead to no path of practice, accompanied by offers of forcible resistance to present conditions. This is a habit dangerous in itself and expressed in language which misleads at once both user and hearer; as when the Irish Sinn Feiners proclaim a geographical impossibility, Ireland a separate Republic, as the expression of their will to obtain the utmost limit of freedom from control of the political Rump in Ulster which by its party influence at Westminster continues to strangle all effort at unity.

Where, as in Great Britain, popular government is a reality, a natural growth to be carefully nursed and followed, the nations controlling the other suffer from the consciousness that their treatment of the weaker people is at issue with all their own historical ideals, inconsistent with the course of political growth which they have laid down for themselves, and a treatment for which no other nation will admit justification at the Conference Table of Europe.

The form of government, then, and the checks to be used to meet its deficiencies, are only the expression of the ideal of the society. But this differs both in kind and degree. If the chief fact in the life of the society is that it has had to struggle for advantage with others who were

Digitized by Google

stronger, that the soil occupied has been poor and the opportunities for expansion small, as with Prussia ; or if the society has in the course of its growth, in addition to its dangers from powerful hostile neighbours, acquired a dominance of various other societies unsatisfied with its rule, as with Austria or Turkey, its chief desire will be for efficient preparation for war, and the community will acquire a habit of subordinating all moral issues, all forms of individual freedom, and all other social essentials to the one necessity for military strength. This is intensified where, as with Prussia and Turkey, expansion has come mainly by military success. An ideal in the sense of a higher aim can hardly be said to exist here. Military power is the only bond of union of such a society.

Another form of political ideal, an extreme contrast to this low social instinct of military organisation, is that of the United States. Protected while a colony by the mother country from danger from outside, and asserting at her rebellion the right of unlimited freedom of thought and action by the individual as against the society which protected her, she has given priority over the interests of society to the so-called rights of the individual. The war between the States was fought, not, as some Englishmen think, over slavery, but on the logical issue of the right of the Southern States to secede from the Union as the colonies had seceded from the mother country. As usual in a struggle with facts, logic got the worst of it.

The British ideal, as it has grown in our history, is a much higher one than either ; it is an ideal of duty to the society, combined with the utmost freedom of individual action and thought—an ideal which has grown, not from the immediate necessity of organising military force, or, on the other hand, from carelessness of defence, but largely from the tradition of the sea, which asserts both discipline and freedom, and from her advantageous position with regard to commerce.

England (not the British Islands) is one of the few countries in the world in which popular government has been a healthy natural growth, and therefore consistently beneficial to the community. The only elements of freedom in the

Digitized by Google

American Republic are the forms of those institutions which have been borrowed wholly from England.

The influence of the ideals of the people on the moral issues is very remarkable. Not only is no moral progress possible away from the ideal of the nation, but the moral advance will correspond to the ideal which the community has set itself, and it will go no further. If the ideal is low, it will be more likely to be attained, and will have a stronger influence by the ease and uniformity with which people may attain to it. If the ideal is high, it will never be quite reached, and the strong contrasts of success and failure from the struggle by the thinkers of the community to reach it, and the criticism and depression caused by their want of success, will place such a society sometimes at a disadvantage in the national struggle with others.

But for its own advance upwards, for its own safety from revolution, the higher ideal forms a sure guarantee. To give a modern instance of political safeguards: in this war we have, to ensure victory, given up the greater part of our political freedom, and have so far likened ourselves to the Prussians. Some people on that account fear revolution. But as the Prussian has behind him the long tradition of obedience to military discipline, regardless of any moral issues, so have we the long tradition of social duty adequately combined with a wide range of individual freedom. It would be as great a revolution in time of peace for our rulers to deprive us permanently of the mortgaged liberty as it would be for the Prussian to obtain the unusual freedom, or to return to the moral sense which he has lost. It is very unlikely that our moral sense should sink so low that we shall not peacefully work back to popular government when the necessity for which we gave it up has passed us by. The Prussian will hardly obtain it without revolution, and then it will not be a natural growth. We of all the peoples have come nearest to the negative of that proverb quoted by Machiavelli, "Chi fonda in sul populo fonda in sul fango."

It is for this ideal that to-day we are fighting. Our splendid men, our true and brave women, who are protecting our homes by gift of blood or labour on sea and by land the

Digitized by Google

world over, have for the most part ownership of no part of the land for which they work, fight, and die. But they own the high ideal bequeathed to them from the past, fixed and moulded through the system of morals in which the nation has for centuries been trained; they fight and work not for themselves but for the society, that what they do and suffer may result in better life for those who are to come. Woe to those who for their political purposes degrade the ideal!

Speaking of the influence of ideals on morality, one touches at once the religious beliefs of the community. These for good or evil control all its social instincts; without a religion there can be no society, and the closer the union in religion the greater strength is given to the social frame. No greater catastrophe has ever overcome the European world than the Reformation. And yet to all appearances it was inevitable, when those who were responsible for the morals of the Western world set up as an ideal a theocratic despotism which claimed, as the German Empire of to-day claims, to rule the bodies, the right to rule the minds of the world, compelling either to a stagnation of thought or to a breach. The Reformed Churches made moral and material progress where and where only they were able to combine due subordination to the authority of the society with the development of the mental and moral sense of the individual. Where these were not effectively combined there was failure and social deterioration.

Many of those who in the present day despise religion and decry the Church are unaware that the progress of any society is dependent on the subordination of the interests of the individual, which would be his first rational care, to the interests of the social organism—a subordination which can only be effected by the instinctive belief in a power superior to and adverse to his reason, in obedience to which he submits to give up to the society what his reason would compel him to keep for himself.

To every Christian, even of the meanest form of religious organisation, there is held up as the incentive, the only means to social progress, the prize and triumph of self-sacrifice. It is that and not mere mechanical inventions

Digitized by Google

which carries us forward, which gives us the superiority over other faiths; it is that and that only which can save the poorer and weaker of the people from falling under the terrible tyranny of the strong, and bring us safe out of revolutions.

Only those societies survive in the stress of the unceasing struggle, which goes on throughout the ages, which have realised this fact; only those which in consequence combine the most perfect social ideals with the highest political efficiency of the age. So severe is the struggle that no community which moves forward can afford to allow any qualities of intellect or of morals, whether of men or women, which can tell in favour of the moral forces by which a community wins the victory, to be excluded from the general sum of social efficiency. The individual may succeed without morals, the society can only succeed by them. It is, wrote Benjamin Kidd years ago in a spirit of prophecy, upon just the same qualities (humanity, strength and uprightness of character, and devotion to the immediate calls of duty without thought of brilliant ends and ideal results), and not upon any ideal schemes for solving the social problem, that we must depend to carry us safely through the social revolution which will be on us in the twentieth century, and which will put to the most severe test that it has yet had to endure the social efficiency of the various sections of Western Europe.

. . . . . .

The sands of time over which the historian toils are strewn with the wreckage of extinct social organisms which have failed to satisfy the needs or longings of their changing users. And yet not wholly extinct, for still some, such as the Papacy or the Holy Roman Empire, from time to time perform the dances of the sheeted dead; while others, such as the feudal and communal forms of society dealt with in this book, have not wholly lost their influence on the enlarged forms of empire and federal unity. Imperial federation, federal empire, a confederation of states—what are they but an interlocking feudal system, looking only to the king who unites them, who, as lord of the feud, the tract of land, protects

Digitized by Google

the holder, the colony, who derives title through him, the man in possession in return acknowledging the lord's ownership? A reversion to the communal life under the personal tie of the king is ever imminent, a good exploited always for evil by that most pestilent quack, the political idealist, who will organise revolution on the assumption that his intellect and his moral sense are superior to that of all the community in which he lives. Of one such character, responsible for a great deal of evil in the French Revolution, Lord Acton kindly says: he understood politics as the science of the State as it ought to be; and he repudiated the product of history, which is things as they are.

Things as they are. The historian, if he intends to draw a true portrait of the past times of which he treats, takes patient note of things as they are; of their social systems, and of the ideals which appealed to them; of the relation of their leaders to the conditions of their time. He walks warily among the wreckage. Dealing with historical facts, he considers their handling by the men of the past in the light of the aims for which their age allowed them to strive or to attain, and not by his own standard of political excellence or convenience, of what would count as political perfection in his own time—a perfection to be thrown away as the next generation revises the faith of its fathers.

The product of history is things as they are. The historian weighs the ideals; he considers the systems; but his chief duty is with facts. He judges the characters of past times with the knowledge that the great leaders were those who accepted the conditions in which they worked, and did their best in the harness fitted on them.

The instinct of self-preservation tends to point the worship of men who merely represent successful force in organising conquest—Robert Bruce, Cromwell, Frederick the Great, Napoleon, Lincoln—men who were not by any means good examples of dealings with society. But as a set-off to the dedication of successful force the names will also be held in remembrance by more thoughtful people of those who have suffered failure from the sacrifice of self for the community as a result of the part taken in moulding the ideas

Digitized by Google

of the nation, as well as of those who have taught unselfishness as a social doctrine to individuals. That great Englishman William Marshal will be noted as a patriot of the twelfth and thirteenth centuries. Wallace will be remembered with Bruce; Sir Edmund Verney and Falkland will outweigh Cromwell; and those who have studied history away from the political enthusiasm of man worship will put that most perfect of all English-speaking men on any continent, Robert E. Lee, on a far higher plane than the man who camped outside the Constitution.

Whichever class he takes for the hero of his story, the historian might with very little deviation from historical justice adopt the language of Disraeli when speaking on political consistency: "The truth is, a statesman is the creature of his age, the child of circumstance, the creation of his time. A statesman is essentially a practical character; and when he is called upon to take office, he is not to inquire what his opinions might or might not have been upon this or that subject—he is only to ascertain the needful and the beneficial, and the most feasible manner in which affairs can be carried on."

This was the dictum of an opportunist politician, and of one subject to the degrading influence of the party system. It is well to support it by another weighty utterance of a former age from a man who could by no dreams of possibility use language approving departure from the highest ideals from self-interest or low motives, as showing the difficulties which in all times accompany the efforts of those who seek to mould or lead or combine the atoms of a society:

"He that goeth about to persuade a multitude that they are not so well governed as they ought to be shall never want attentive and favourable hearers; because they know the manifold defects whereunto every kind of regiment is subject, but the secret lets and difficulties which in public proceedings are innumerable and inevitable, they have not ordinarily the judgment to consider. Such as openly reprove supposed disorders of state are taken for principal friends to the common benefit of all, and for men that carry singular freedom of mind: that which wanteth in the weight of their speech

Digitized by Google

is supplied by the aptness of men's minds to accept and believe it."

. . . . . .

This volume deals for the most part with the changes within the society, often of a violent character, which go on without cessation; sometimes very slowly, at a pace almost unnoticed, at other times at great speed, so long as a society exists. Such changes occur as the ideal which the society has acquired progresses or decays. They are in great part connected with the user of the land by the community as by different classes of an unequal society, but this does not by any means exhaust the subject, which deals with other social relations beyond the land.

Whether or not we have now any society in any sense or any national or historical ideal I forbear to inquire here. The question may be raised elsewhere in this volume; but I would point out that, as an essential ground foundation for any society, there must be a bond of union, an ideal which calls for common effort, common sacrifice, and that no society can long exist without visible degradation, in which the rights of the individuals are not accompanied by corresponding responsibilities to the society.

The communities of which this volume treats have little or nothing in common with the modern forms of political society. Their political shaping, as well as their social frame, was broad-based upon the morality expressed in unity of Christian faith as it was understood in those days; even where those who acknowledged it disputed, when Rome claimed a temporal authority, the political results of her claim, or refused to conform to her discipline, or acted in contradiction to her precepts.

All European society was founded on the faiths of the Christian religion, which were accepted by all.

Such communities had nothing whatever in common with the modern theory of State Socialism; on the contrary, the struggle by each little community to free itself from the absorbent power of federal authority, to hold to its local customs formed for its own convenience, to exert its own

Digitized by Google

private authority over its members, was in direct opposition to the modern idea of the State enforcing an authority, resting on superior force only, from outside.

Their weakness in war came from the lack of obedience to a federal power, their local authority being only progressive when natural conditions favoured progress or change.

They were democracies in the only true sense in which democracy can exist, small self-governing communities with a close bond of union presided over by a local aristocracy —communities in which all in their several stations took part in the management of the common property and acknowledged common responsibility for the public good.

The whole community (as the population was small, an essential for such a condition) had a common interest in the soil, while admitting private ownership of land for cultivation or for improvement by individuals or by families.

It is not needful to dwell on all the drawbacks. Such societies suffered from all the forces which promote decay and degeneracy, and felt fully the weakness of human nature, which disturbs all the calculations of the theorists. I doubt very much if their people were any more disorderly or less thoughtful than we are. Possibly something may be learnt from a study of their character for ourselves. There is a likeness in some particulars between the relations of these mediæval societies to their federal powers and of our colonial possessions to the king, which may be instructive.

CHAPTER II

THE TWELFTH CENTURY. LOOKING BACKWARD

THE story of the social and political conditions of the British Islands from the first Roman invasion to the accession of Henry II. to the throne of England in 1154 has been briefly sketched by the author.[1]

Digitized by Google

The Islands in the Day of Henry II.—The subject is now resumed at a time when Europe was in a ferment of mental activity resulting from the First Crusade. The rediscovery of the East, with the accompanying outburst of trade and travel, had led to a reconsideration by thinkers of the accepted facts which had hitherto formed the basis of social and political theories of the age. The British Islands had been brought, through Henry's marriage with Eleanor of Aquitaine, in contact with all that was most attractive and most valuable in the suggestions of this contemporary thought, and of the political consequences which arose from and accompanied a vigorous naval and commercial empire in close touch with the trade of the Mediterranean and the East and with the fast-growing authority of Rome. Besides its political and material effects, the connection with Aquitaine influenced England by turning the eyes of all definitely and permanently to France as the country of alliance and example, while the close connection with the highest form of national literature then existing, apart from the classical tongues, assisted in making French for two centuries the official tongue and the literary language of England, in the place of the Saxon and Scandinavian dialects which had hitherto struggled to hold their own against the Norman French. When Henry comes to the throne the Saxon Chronicle expires as a monastic record. For a very slight sketch of the conditions of affairs at the accession of Henry II., the reader is referred to chapter xxix. of my former work. It is sufficient here to restate a few necessary links in the story.

In May 1152 Henry had married Eleanor, formerly the wife of Louis VI. of France, a woman eleven years older than himself. She had obtained from the Pope a divorce from Louis, on the pretext that as his fourth cousin they were within the degrees of kinship in which marriage was prohibited by the Church. As a matter of fact, apart from the inter-connection of their territories, neither party wished the continuance of the marriage, and they parted with mutual consent.

As Eleanor was possessed of the greater part of Southern France, and as Henry inherited Normandy, Anjou, Maine,

Digitized by Google

and Touraine through his mother Matilda and his father Geoffrey of Anjou, he became possessed of about a third of France, including practically all the eastern seaboard and the mouths of all the great rivers.[2] When on Stephen's death he became in addition King of England, a situation was created which amounted to a revolution in the balance of power in the Islands and in Western Europe. The King of England suddenly became not only the most powerful ruler, naval and military, but what was even of more importance, one of the richest kings of his time.

His position as controller of the seaboard on both sides of the Channel had a far-reaching effect which cannot be estimated by documents or incidents of history. At that time of swelling trade the tramp merchant ships which carried the world's merchandise to the West, both those from the Baltic and those from the Mediterranean, timidly hugged the indentures of the shores, sailing only with the most favourable winds which filled their turgida vela, always on the look-out for the Norse or Barbary pirate who was in waiting round the next promontory for a heavy, slow-sailing ship with a rich cargo. As a result it was hardly possible, in the short set season for sea travel from late spring to early autumn, for the men of the Baltic to bring raw material by sea to the Mediterranean ports of Spain and Italy to be exchanged for the riches of the East, the valuables which came by way of Arabia and Asia Minor. Still less could the Southern trader reach the North.

Flanders formed a convenient halfway house where both could meet and exchange products; Bruges grew into the greatest of wholesale markets and exchanges; the towns along the coast on both sides profited by the compromise; Bordeaux and Caen and Southampton and Winchelsea and London had the benefit; and the king who controlled the whole seaboard on both sides of the Channel south of Bruges as far as Spain, and the island seaboard to the north, who made his disposition of the wines of Gascony and the corn and wool of England, and of the cattle and other products of Normandy and Anjou and Ireland, was a power out of all proportion to any other Western king or group of kings.

Digitized by Google

As a result Southern England from this day sets out on a different course altogether from the other parts of the Islands. Commerce and corn culture (for she was and is pre-eminently a corn-growing country beyond all others, though the politicians of our day have succeeded in making her dependent on less favoured peoples) turn her to a development of individual enterprise, of which no other part of the Islands show any expression. The great enterprises of the Norsemen to the north-west, Iceland, Greenland, and Wineland on the uncharted ocean, had drawn commerce in the direction of the Orkneys and the Western Isles until Henry's time. But these bold voyages into the unknown were barren of result, and this, coupled with the increased influence of Rome, drew mediæval commerce back within the narrow limits of the Mediterranean. The new world was left to be discovered by later men; the Orkneys and Shetlands, losing their advantage by the change of sea route, became mere islands in the far north-west, whose user of land and social institutions had been modified by the traditions of former adventure. And meanwhile all the trade of the known world ran past the mouth of the Thames and drew England to commerce and agriculture and Rome. (See Map at end of volume.)

Scotland was at that time weaker than usual. St David had died in 1153. His son Henry had predeceased him, and he was succeeded by a boy of twelve years old, Malcolm the Maiden. Ireland, still not recovered from the slaughter of Clontarf, was the scene of ceaseless civil wars; the disunited princes of Wales were no more than a thorn in the side of the kings of England; the Norse colonies in the north and west of Scotland were losing their powers of offence, as increasing sea-borne trade made piracy more obnoxious to the money-maker, and the better armed merchant ships made it more dangerous and less lucrative to the pirate.

The Position of Henry II.—Henry had had a special training for his position, for in his youth he had had the great advantage of seeing life from other points of view than from those of the throne or the field. Not directly responsible for any part of the wars of Stephen's time in

Digitized by Google

England, he was yet, by his connection with them, brought into contact, as an onlooker, with the men who managed the finances, with the Churchmen and Jews who maintained the diplomatic service, and as an onlooker he undoubtedly learnt many things affecting the kingship which were not generally disclosed to the man in authority.

As Stephen's justiciar in the last years of the reign he witnessed the disastrous effect of the want of a strong central government to repress the disorders of which the results were present in anarchy, and it is very likely that the conditions which then faced the kingship may have opened his eyes to the possibilities latent in the extension of the powers of the king's court; he became acquainted with the dangers arising out of the employment in England of the mercenaries who had overrun the country; he met men of letters and conversed with them; he learnt the strong and weak points of the Papacy; and he had the great advantage that he was in close touch with two strong-willed masterful women rulers of great ability—his own mother, the Empress Matilda, and his wife Eleanor.

From both, from the experiences of both, the young king could learn lessons which were to stand him in good stead in times to come—the feminine arts of opportune delay, of seeming submission until ready to strike, of daring defiance of a foe who may be frightened, regardless of cost. They could both warn him of the danger of the careless handling of Papal affairs; both no doubt impressed upon him, in the then changing condition of feudal Europe, the urgent need of saving and accumulating money, the necessity of avoiding wars, costly but not productive—a lesson which in those days he could hardly have learnt from men. Both of them could teach the art of the weaker, the art of playing off one strong foe against another.

Walter Mapes, a half-Welsh Archdeacon of Oxford, who followed the Court of Henry and was employed by him, tells us,[3] as much to her discredit, that it was the advice of Henry's mother that he should put off all men's business, holding whatever came into his hands as long as possible, and reaping the benefit of it; that he should keep in suspense

Digitized by Google

of hope the anxious aspirant, clinching, Mapes says, this advice with "a cruel parable, this forsooth: the saucy hawk is made more eager when the meat is often shown to him and then withdrawn and hidden, and presently becomes obedient and will stay by you." He goes on to say that she taught him that he should resort much to private audience, and not make himself too common in public, and that he should not bestow anything on any person on the recommendation of another, until he had verified the reference.

Whether he learnt these lessons from his mother and his wife, or whether they were the outcome of his own early experience, or of some extraordinary ability and prescience, Henry certainly carried them out in practice. He was learned in all the arts of delay, and although frequently unsuccessful, or barely holding his own, as a fighter, he won his way in Britain by diplomacy, and administered it as a master of the intrigues of peace. During his reign the whole of the administration of justice and of finance in connection with it were reorganised in accordance with the new ideas of central government which had developed in Western Europe as a result of feudalism; he was able to take advantage of the changing conditions of military service, the regular employment of paid mercenaries in the place of the old feudal levies, in a way which was a benefit to his exchequer as well as to his military power.

It is difficult to see how this young man of twenty could have held his own either in England or Normandy without the support of his wife Eleanor, through whose personal influence alone he could hope to have the armed force of Aquitaine. The love of a Norman for an Angevin resembled that which the French Canadian of to-day has for the politician of Maine or Massachusetts. Born in Angers, living in his youth in France, not even half a Norman, and not at all an Englishman, Henry could have hoped for nothing but disaster unless he had been able to play off the solid South of France and its great naval power against the pride of the Norman conquerors of England. The jealousies and hatreds of the races colour his continental wars from first to last. When in 1188–89 he is crushed, it is because his

Digitized by Google

son Richard, the traitor who stole his treasure and seduced his mercenaries, joins forces as the ruler of Aquitaine with Philip of France to defeat and humiliate the ruler of Anjou.

When John lost Normandy he could still have held Poitou if his Anglo-Norman barons would have assisted him to save it, had not their own interests been better served by separation from a land they hated.

The Angevins and their French Possessions.—One of the matters about which the contemporary chronicle tells us little or nothing is the amount of authority which Henry and his sons possessed over their various continental possessions and the value of the revenue which they extracted from them.[4] The sale of patronage as a source of revenue they certainly had; the appointment of all officers, clerical or legal, who bought their office from the king; escheats and the other feudal profits from land; fines and penalties from proceedings in the king's courts, and profits from his crown lands. He could command his tenants for feudal service against one another or against his perpetual enemy and lord the French king. He could make a show of empire, as Richard did, by carrying them with him to the East to waste their treasure and his in the game of war with the Moslem conquerors.

But the cost of holding and defending them—was it ever repaid? Was the game ever worth the candle, except as making a wider outlet for the passion for war, enabling the king to play for a larger stake and on a larger stage, giving him a high vantage in the struggle which throughout these three reigns goes on fitfully between France and England?

One other cause there is, unmentioned by the monk of St Albans or Newburgh or Peterboro', which may unconsciously have been felt by the Norman baron as cause for holding to the connection—the advantages to be gained for commerce. The possession of almost the entire French seaboard made the English king the greatest naval power of the day, and one of the richest.

At the present day we draw no revenue from New Zealand or from Canada; few colonial offices are filled to the political

Digitized by Google

advantage of these Islands; no lands bring profit to the Crown; their tariffs exclude our commerce. Only very recently has any feeling awoken causing our colonies to offer force for imperial defence. The British Isles have far less cause to wish the union between them and their colonies to continue than had the Angevin kings to hold the land which was their birthplace, speaking their tongue. Yet an instinct teaches us to hold to the union, even where no political advantage is apparent.

The Plantagenets were born on the Continent; they spoke the language of the troubadours; all their ideas of social life were those of Central and Southern France. England, at least to Henry and Richard, was a conquered land in which they and their nobles lived as a conquering caste, apart from the people, joined to them only by that wonderful agency of democracy, the Church of Rome. Great as were their opportunities, this call of the French home drew all the energies, which might have been employed in Britain, into waging wars in France. Though Henry joins all except Man and North-Western Scotland under his sceptre, the quarrels which led to his conquests were none of his seeking; the attack made by William the Lion, which ended in his capture, was an uncalled-for offensive against Henry at a most inopportune time; the conquest of Ireland was only undertaken after two expeditions of Welsh and Flemish marchers had forced his hand; even then he stays but a short time in the country, and only retains in his hands the Norse seaports. Wales always courted punishment for border forays, calling for his generally unsuccessful expeditions. Richard shows the poor value which he put on these conquests by selling back the overlordship of Scotland for 10,000 marks. It is not until, in John's reign, the continental possessions are lost or separated that the English king turns his attention in earnest to his destiny: the welding in one piece of the British Isles.

John and the Islands.—Of all Henry's sons the despised John would appear to have been the only one who had sympathy for or insight into the imperial capacities of the Islands. He is the first who takes the title of King of

Digitized by Google

England, in place of King of the English. Throughout his reign he is closely connected with Wales, and until the Welsh princes are released from their allegiance in the time of the interdict his relations with them are peaceful and even cordial, and his authority as overlord admitted.

After the first year of his reign he was on good terms with William the Lion; in 1209, while England was under the interdict, William made a treaty with John giving John his two daughters to be married by him, with a sum of £13,000, and the sons of nobles as hostages for the fulfilment of the treaty; in 1212 Alexander II., William's son, received knighthood at John's hands.

For Ireland John did much, reducing the occupied portion to order, conciliating the Irish kings (Cathal Crovderg, King of Connaught, "came into his house," F.M.), dividing that part of the country which was under English rule into shires, and arranging for the administration in these parts of English law.

When he went back to England, John left behind him one of the greatest rulers of Ireland in early times, John de Grey, Bishop of Norwich, who had been John's nominee for the Archbishopric of Canterbury, and had been set aside by Innocent for Stephen Langton. John de Grey built churches; he guaranteed quiet by the erection of fortresses in the centre of Ireland from which the king's authority could be quickly enforced in every direction; he united the Anglo-Irish against the chiefs of the West, and, like his master, encouraged commerce by every means.

I would ask readers to remember, when considering the occurrences of the times when the Angevin kings of England, Henry II., Richard, and John, reigned, that governing is a trade. A man who inherits the trade, and has been brought up to follow it, will generally try to do his best at it, and have a pride in his good management. It is not needful to think of either of these kings as earnestly desiring the welfare of their people, as being in the least influenced by theoretical moral considerations, or as being selfish or inhuman tyrants. They were fairly good workmen, with all the imperfection of view which came from not being able to see the events

Digitized by Google

of their time from the standpoint of the Whigs of the Victorian era.

It is very convenient, no doubt, to adopt the belief of former times that plagues and misfortunes were the direct results of the wickedness of the leaders of the people, the belief that a people may through a scapegoat[5] free themselves from the consequences of their own wrong. But such a belief bars the way to our seeing the natural causes of which misfortunes are the result.

* * * * * * *

The death of John may be said to mark the end of this period of swift transition, which is well worth study from all points of view. As the thirteenth century progresses, the leaning again of the English kings towards France and Flanders ever widened the chasm between the communal system which obtained in Ireland and in the West of Scotland and Wales, and the social organisation which followed the establishment of centralised government on the basis of what is known as the feudal system in England and South-Eastern Scotland.

* * * * * * *

Tracing the Foundations.—The object of this volume is to describe these two systems and to trace some of their effects then and in later times. An explanatory narrative will accompany the description from time to time.

In most aspects of the subject called History we are compelled for convenience to assign a definite date for the beginning of any social or political change. This putting of a period is frequently misleading, as we may be deceived as to the agencies responsible for the early growth. To use an agricultural figure, the historical plant makes masses of roots underground before growth shows above, forming unseen fibres necessary for germination, which may decay when their work is done and mix with the soil unseen.

The object of this book is to trace these fibres: to set out shortly, and in as simple language as possible, the conditions relating to social life which in the light of what we know or of what we may conjecture from the past we may

Digitized by Google

believe to have obtained in the British Islands from the twelfth century onwards.

It is necessary for everyone to use common sense to correct false conclusions, as in dealing with these early times a great deal of the story is argument from the known to the unknown, and any writer's statement of social conditions, though he may call it history, may be to some extent guesswork, or the enlargement of local and special inquiry to a general principle.

One difficulty in treating of the social history of all parts of the Islands is the wilderness of local terms in which the historians of each nationality have embedded its institutions. It is necessary often either to use one general word to express a dozen, all of which may have slightly different shades of meaning and slightly different historical devolution, by which one is laid open at once to the charge of inaccuracy, or to coin or employ some word not used in early days which may express the essence, if not the exactitude, of all.

Inaccurate general terms always are; but they are inevitable with our limited language, and for the general reader more useful than a learned disquisition on the exceptions; he must learn the exceptions as he would learn them when he has been impressed with the rule as to leading trumps.

As an example of this difficulty, there is an unfree class in all parts of the Islands, a class comprising broken men, criminals, vagabonds, debtors, captives in war, outlaws, bankrupts, as well as strangers from across the stream or other boundary, and slaves by inheritance, men who cannot be trusted with arms. In the sane days of human society it was only the freeman to whom was given the privilege of defending the country which he owned. All this disconnected collection of men, who for some reason or other had lost caste or never acquired it, is not only differently named in each part of the Islands, but has a varying and an uncertain history in each part. The class includes the Scandinavian trader and the Jew, who would in Welsh story be called alltud, the foreigner who had no tribal connection entitling him to a share of the tribe land, but was dependent on the king or some chief

Digitized by Google

for land and for protection, as well as the more slavish labourer called the aillt and the tæog, the steelbow tenants of Eastern Scotland, the daer ceiles of Ireland and the Western Isles, and the class called by the Norman monastic lawyers by the general term villani or villeins.

If one were to take one of these names to express all the varying history of each grade of the class, it would require frequent explanation—for each grade has a different development. As commerce breaks into the stationary society the trader gradually becomes more important and his status improves; he goes always armed in bands and must be treated with respect. The Jew's position varies with the necessities of the king and of the great church corporations and the opportunities for raising money without his assistance, and the position of the general body of men not wholly free varies as they fall under the influence of feudalism or retain their rights as members of a tribal society. I have used as far as possible for this class in all parts the clumsy term the unfree. Further references will be found to this class below.

The Pastoral Life.—We refer all our history of very early times to the Roman Empire, as it is only through Roman records that we have any knowledge of the movements across Europe of other peoples. As each wandering horde of tribes moved across the plains of Asia to seek new homes in the forests of Northern Europe, or on the shores of the Black Sea and the Mediterranean, they took with them droves of horses and herds of cattle, which were to them both food and motion and means of barter. By its promise of advantage to their cattle (which was their substance, their capital, their money), as much as, or more than, to themselves, their place of settlement was decided. When they came to good pasturage, sweet water, wood for shelter and fuel, they rested; sometimes settling as abiding occupants of the land, sometimes as a respite for a year or two before they again pressed forward, urged on sometimes by hope, the great emigration agent, to some spot represented by fancy as more fertile, but more often by pressure from behind of others as hardy and as warlike as themselves, fighting for the spot on which they had rested.

Digitized by Google

In these pauses, whether for a breathing space or for a longer time, the horde probably grew some small crops of breadstuffs. They must have been very small for several reasons. Unless the land had been cultivated before their arrival, corn was grown under two very great disadvantages: they had to do the pioneer work of forest clearance with a few primitive tools among trees and stumps and interlacing roots and growths of weeds, as pioneers do now in colonial outposts—work which would ensure very partial and costly crops, even with the unpaid labour of women and slaves; and they had to carry the seed with them, no small matter when the yield was seldom sufficient to allow a surplus, apart from seasons of distress and famine. It is most improbable that on the march they carried with them tools to be used in a science of which they knew little or nothing, on the chance that they might be wanted. The parable of the knight in *Through the Looking-Glass*, who rode through the forest with a knife and a plate at his saddle bow in case he might meet with a cake, though highly applicable to our present "education," was out of place in a society in which self-preservation was an instinct, and in which the morrow took thought for the things of itself. It is unlikely that at first they knew or practised any system of farming. Their knowledge of the management of land, of rotation of crops, of the value of manure, of the admeasurement of fields, of tools, of the breeds of seeds and animals, must have been learnt either, as Mr Seebohm suggests in his *Village Communities*, from their neighbours the Romans, or from Babylonian or Phœnician farmers whose lands they had crossed on their way.

NOTES.—[1] *The First Twelve Centuries of British Story*, by J. W. Jeudwine. Longmans, 1912. [2] See Map at end. [3] *De Nugis Curialium*, Camden Society's Publications. [4] See the notes and prefaces of M. Bémont to *Rôles Gascons*, par Francisque Michel, transcrits et publ. par Charles Bémont. [5] Leviticus, chap. xvi.

Digitized by Google

CHAPTER III

THE ACCOUNT OF THE COMMUNAL SOCIETY BY TACITUS

TACITUS,[1] *circa* A.D. 98, gives an account of the tribes settled in the north of Europe in the country between the Rhine, Danube, and Vistula, confirmed by the commentaries of Cæsar writing of Germans, Gauls, and Britons—an account which we may take as a generally accurate description of any primitive people living under tribal conditions in early times. It is singularly instructive as bearing on the conditions of many parts of the British Islands in the twelfth and thirteenth centuries.

In some particulars the general description given of these people is such a counterpart of the conditions obtaining at this later time in parts of Britain, that some memoranda of extracts are here inserted which, it is suggested, should be kept in mind for comparison. Whatever may be the opinion of the merits of Tacitus as a historian, there is no reason to believe that in this account he invented anything or set down aught in malice.

The most interesting feature of the description given by Tacitus is this: that it is not applicable so much to the population in the south and east of England in later times, to whom these people are supposed to have been by race allied, as to the peoples of the western part of the Islands, who are supposed to have been of Celtic and Scandinavian blood.

The Kingship.—The king who governs this community has, he says, limited powers (c. 7), only enlarged to a dictatorship in time of foreign war. He is elected by the whole body of freemen, but birth is taken into account: the most democratic of all constitutions, and the safest.

As the society described is one resting on kinship (c. 4), the king is one of a chosen family of the nation, related by race and blood to the people over whom he rules. That a people should be ruled by one alien in race and blood was impossible in any society founded on tribal lines.

Digitized by Google

As all society in the twelfth century was in part on these lines, the Norman and the Angevin, though alien in race and blood, made the most of the slender ties of marriage which connected them with the previous dynasty. Henry I. owed his safety against his brother Robert in great part to his marriage with the Saxon Matilda, and it is not improbable that a good deal of the power which enabled Henry II. to extend his authority in the Islands came from the double influence of two opposing forces: the support which the anti-tribal church and the Normans and Angevin barons would willingly give to a king who represented federal authority by the blood of a foreign conqueror, and, on the other hand, the stretching of tribal custom, which could view him as the grandson of the Saxon Matilda, and the possible remembrance of the connections of Alfred and his family with Baldwin of Flanders, whose direct descendant was the Flemish Matilda, the wife of the Conqueror. It is difficult to estimate the great part paid as to respect and loyalty to kings by the traditional genealogies handed down from memory for many generations. Harold's chief weakness was his want of the royal blood of Alfred.

"The community," says Tacitus, "choose leaders in battle for valour. They confer the dignity of chieftain on young lads, whose fathers had been pre-eminently illustrious," thus leading easily from choice by the people to hereditary honours.

The General Assembly or Folkmoot.—"The chiefs consult over small matters; on great the whole community decide, the matter being first discussed by the chiefs. To these assemblies they come armed" (c. 11). This is the folkmoot, the general council of all early societies, which remained to hamper the military proceedings of the tribal leaders long after it had been replaced under feudal government by a select body of king's officers for purposes of administration. Spenser tells us of the survival of the folkmoot in Ireland in his days. The divisions frequently created by the debates in the assembly during a campaign were a prominent cause of the success of the English over the tribal levies of other parts of the Islands.

Digitized by Google

The Irish Senchus Mor[2] gives us an example of such a deliberative and administrative assembly in Britain. Three kinds of assembly are mentioned: by a king, to make laws or interterritorial regulations; of the synod of the Church, to request a visitation; of the laity, for services of attack and defence. The law refers to two territories making laws to be obligatory on both. It provides for the recovery by distress, with a three days' stay, of the food tribute supplied to the assembly, assuming the provision by one member of a family who is entitled to recover it from the others; and on p. 175 a similar distress for disturbing the meeting hill.[3]

In the Orkneys and the Isle of Man the whole people assembled in the open to attend the Althing, the Tynwald, and the Head Court. In August 1547, we find in the Orkneys the sheriff sitting in judgment in such a primary assembly in the open air; and there were gathered together "all and sundry the inhabitants of the country of Orkney for the most part as the custom is." The actual work was done, as it always is, by a committee, a logretta or selected jury appointed by an official, the lawman, or an appointee of the earl. It is at all times a great difficulty to prevent this assembly of the people from degenerating into a cabal, which is neither representative of the nation nor efficient for any kind of work.

The Chief's Bodyguard.—"The chiefs compete," says Tacitus, "which shall have the most and bravest companions, for whom the chief finds horses, arms, and provisions" (c. 13, 14). This bodyguard will be found in attendance on chiefs and barons in all parts of the Islands from early times. It is prominent in the Welsh customary laws under the name of the teulu; the Scandinavian kings throughout the Sagas draw towards them as such men of service any who were prominent either in arms or poetry;[4] the relations of the Irish chief and men of his sept (ceiles) were throughout of this character, the ceile following the chief not only for defence, but "the head of every family is to go upon the plundering excursion, and with the king to make laws or interterritorial regulations."[2]

In each part of the Islands, as the federal authority grows

Digitized by Google

stronger, this bodyguard of relations and dependants is put down as a political evil: Henry VII. in England forbids and disperses the crowds of retainers which had been the support of the factions of York and Lancaster; throughout Irish history the English war against the gallowglasses and numerous followers for whom the Irish chiefs find food; James I. and VI. in 1609, in the Statutes of Icolmkill, insist that the Highland chiefs should disband the men of their name and clan who were ready to fly to arms at the order of the chief. Similar provisions were made in 1715 and 1745.

As the society was founded on kinship, the chief's followers would be, in the first instance, his kinsfolk, it being an innovation which would soon occur that he took into his service or under his protection men connected with the group family by adoption or by marriage, and also unfree men to whom he would give his protection in return for services of all kinds. The entry of this last class into the community is one of the chief causes of the break-up of the tribal system.

Food-rents.—"It is the custom for the states to present cattle or grain to their chief as an honour and for providing him with necessary supplies" (c. 15). This provision of food and supplies for the chief was common to all early society before commerce led to the use of money and to the convenience of exchange. It is found in Domesday and other very early documents. As the custom continued much longer in Ireland and the Western Highlands than elsewhere, under the name of coshering, the Jacobean writers condemn the usage as one of the most evil of the customs which they imagined were peculiar to Ireland.

Military Organisation.—"They go into battle by families and clans (c. 7), the women accompanying them to encourage them and dress the wounds. The infantry in war is mixed with the cavalry (c. 6); chosen youths selected for strength and speed mix with the horse." This order of battle by families is inevitable, so long as the family or group family remains the unit of society. When it gives way to the individual, it is replaced by the territorial principle, so that the man may always fight next to known friends.

The Hundred.—"The number is fixed; a hundred 'comes

Digitized by Google

ex singulis pagis' (from each township (c. 6)). They are called centeni. What was first a number is now a name and honour." This last sentence is the best and only definition of the hundred to be found in any book. It is and has always been, in all parts of the Islands (in Wales and Ireland under the name of cantrev), a division for administration. Its origin is disputed. Canon Taylor (*Domesday Studies*, p. 69) points out that a Hundred has been held to be a district settled by 100 warriors, which furnished 100 men to the fyrd, which contained 100 hides of land, which was occupied by 100 free families (see Cæsar, *D.B.G.*, iv. 1). People who learnt to count more than five, like ourselves and the Scandinavians, increased the hundred, the Norse hundred always being 120, as our hundredweight is 112 lbs. It is a test of progress in civilisation.

The Priest Judge. The Brehon.—"It is," he says, "an indispensable duty to adopt the enmities of a father or a relative as well as their friendships" (c. 21). In a nation of freemen, who acknowledge only an authority limited by their free will, punishment of offences must avoid the appearance of personal revenge, which would lead to perpetual family retaliation. So the priests, like the Druids mentioned by Cæsar, judge and punish for all offences as a religious sanction from the gods, using, as Cæsar says, the power of excommunication, "neque animadvertere, neque vincere, ne verberare quidem nisi sacerdotibus permissum" (c. 7). Both in Ireland and in the Scandinavian colonies we find a caste of priest lawyers who profess to declare custom with a semi-divine origin, and have a monopoly of the declaration.

Money Payments for Crime.—"They hang for treason or desertion, but smaller offences, such as murder, adultery, or theft, are satisfied by money fines of horses and cattle, part to the king or to the community, and part to the injured person or his family" (c. 12). This custom, which was common to all early societies, in use in England in the thirteenth century and later, is condemned by Spenser as an exclusively Irish habit, "in many things repugning both to God's laws and man's."

Family Responsibility.—"Homicide is atoned for by a

Digitized by Google

fixed number of cattle or sheep, and accepted by the whole family"—universa domus. This custom was universal over the Islands up to the twelfth century, and for long after in all parts except in England and South-Eastern Scotland.

Marriage.—They are generally monogamous, except in the case of persons of great rank. "The wife brings no dowry, but receives one from her husband. On marriage she becomes 'laborum periculorumque sociam,'" to suffer and to dare equally with him in peace and in war, a contract on fairly equal terms (c. 18). The Scandinavian kings indulged in polygamous marriages (it does not appear from the Sagas that others besides the kings did so) greatly to their political disadvantage, and the Irish laws contemplate a chief taking a number of wives with the consent of his sept. But apart from these exceptions, the chapter is in accordance with the customs of all parts of the Islands in the twelfth century, except in England, where the relations of husband and wife were subject to feudal rules and the canon law. The equality of contract and the dowry given to the wife by the husband is in close agreement with the Irish and other tribal law, including that of England in the day of Henry II.[5]

Inheritance.—They have no wills. The children succeed the parents, though this is not said in any connection with the ownership of land. In case of failure of issue, first the brothers inherit, then the paternal and maternal uncles (c. 20), showing that they were used to individual ownership of property, in addition to that held in common.

His account of their uses of the land is especially interesting.

The Common Pasture. Cattle.—They live, he tells us, in a country covered with forests or widely extended marshes. They have plenty of cattle; they are proud of their number; they are their only and most prized source of wealth. They do not use gold or silver, though those who are nearest the borders of the empire know its convenience for commerce. Apart from this, they exchange products. Payment in barter was common until quite a late date to all parts of the Islands except England. In 1554 the Earl of Kildare received pay-

Digitized by Google

ment in cattle, an eric of 340 cows, for the death of his foster-brother Robert Nugent.

Pastoral Villages.—They did not live in towns, nor did they have houses contiguous to one another. "They have villages, but not with connected houses (junctas sedes). Each house stands alone, with a vacant space surrounding it" (c. 16): a description of a pastoral people who, not being engaged in agriculture, preferred some isolation for themselves and their cattle, like those parts of the Islands at the present day in which stock-raising is the main industry. I would suggest that a comparison of modern Ordnance maps would show the same conditions in those parts of the Islands which are by nature devoted to stock-raising, as compared with such districts as the vicinity of Hitchin, corn-growing parts, though the completeness of enclosure has diminished the force of such comparisons.

Allotment of Arable Land.—"The land," says Tacitus, "is occupied by townships (per vicos, or by turns, per vices, the allotments being shifted from time to time), in allotments proportional to the number of cultivators"—a description which is confirmed by Cæsar, who says:[6] "Nor has anyone a fixed quantity of land or his own individual limits; but the magistrates and the leading men each year apportion to the tribes and families who have united together as much land as, and in the place in which they think proper, and the year after compel them to remove elsewhere." "And," says Tacitus, "it is partitioned among the individuals of the district in shares according to the rank and condition of each person." In Ireland, in the seventeenth century, in *Le Résolution des Justices touchant le Irish Custome de Gavelkind*,[7] the division which then took place only on a death is thus described: "The can finny (ceann finé), or chief of a sept, who was commonly the most ancient of the sept, made all the partitions at his discretion; and after the birth of any tertenants who had a competent portion of land, assembled all the sept, and, having thrown all their possessions into hotchpot, made a new partition of all; in which partition he did not assign to the son of him who died the portion which his father had, but he allotted to each of the sept,

Digitized by Google

according to his seniority, the better or greater portion. These portions or properties being so allotted and assigned were possessed and enjoyed accordingly until a new partition was made"—a description applying to all parts of the Islands where the use of the land was common to the community, the parts cultivated being appropriated either to families or persons at set times.

Corn-growing.—"The arable lands are annually changed and a part left fallow. They do not plant orchards, enclose meadows, and water gardens. Corn is their only product." So much was this the characteristic of the parts of the Islands devoted to pastoral pursuits that Sir John Davis, writing to the Earl of Salisbury (1610), says of the tribal Irish of County Cavan, that "as these men had no certain estates of inheritance . . . they never did build any houses, nor plant orchards or gardens, nor take any care of their posterities."

The Earl of Selkirk, writing in 1806, says[8] of the farms called touns or baile: "The lands in tillage are sometimes cultivated in common, but are more usually distributed among the tenants in proportion to their shares; seldom, however, in a permanent manner, but from year to year."

The Unfree Farmer.—The care of the household and the fields is left to the women, the old men, and the weaklings of the family (c. 15).

Hospitality.—They must not refuse to anyone hospitality, whether stranger or friend, a characteristic of all undeveloped uncommercial society.[9]

The Characteristics of Tribal Society.—These accounts of the peoples dwelling in the north of Europe in A.D. 98 are confirmed by the so-called barbarian codes of the peoples who settled in the Roman provinces, the Salic, Ripuarian, and other laws. Before we carry them across to the British Islands in 1154, it is well to consider the essential features of the society so presented.

The chief characteristic which underlies this and other accounts which we have from time to time of the hordes who pressed upon the borders of the Roman Empire is that the whole nation, from the king to the poorest tribesman, was united by ties of kinship; that the unit of society for

Digitized by Google

war, law, and agriculture was not the individual but the whole family, father, mother, and children; and not only this: the family does not necessarily cease to be the unit for these purposes on the death of its head, but survives for several generations in the form of a larger family or sept of several families, all connected by descent from an ancestor lately dead. The Welsh gwely, undivided for three generations, is an example; the Highland Scottish clans; also, so far as one can make anything of it, the Irish geilfiné: in fact, the group family which held land for cultivation in common.

The horde went into battle by families and groups of families, septs, or clans; the land for cultivation was apportioned not to the single family but to the group; it is the group (universa domus), not the family or the individual, who pay or receive the fines for damage or for injury.

A number of these groups of families, all descended, or assumed to be descended, from a remote ancestor, such as the Hy Neill of Ulster or the Hy Many of Connaught, or the Camerons or Gordons of the Scottish Highlands, formed the tribe.

The tie of adoption into a tribe, sometimes of a whole tribe very much weakened by war, broke very early into the genuine blood connection, much as the remains of a regiment nearly exterminated in battle have been sometimes incorporated in one of another name. Adoption was a most convenient way of admitting to the lands of the tribe the sons of a daughter of a tribe who had married into another tribe.

The hordes which for centuries crossed from Asia to Europe consisted of many of these tribes related by some real or supposed connection and forming a nation under a war leader.

The acceptance of money penalties for crime (c. 21), which is a standing feature of all early society so long as a common ownership of the soil by freemen enabled money penalties to be imposed, called down fifteen hundred years later in Ireland the condemnation of the Elizabethan English as "repugning both to God's laws and man's."

In all such early societies the criminal as such was un-

Digitized by Google

known. The freemen saw no benefit to society in a prison system; they could not afford to lose a good fighter by death as retaliation for murder or theft; what we now regard as crimes were generally either looked upon with approval as showing courage, or as torts to be settled by fighting or by a payment in cows or women.

The Pagan faith did not of necessity look upon killing as evil; the men who went into the Pagan heaven were men who had broken every law of the Christian faith; the killer was a good warrior; the thief, provided that the stealing was done outside the tribe, often also in the Scandinavian Sagas, an admired man. It was only a matter of compensation to prevent a blood feud.[10]

At the risk of introducing contentious matter, I would point out that the difficulties experienced in checking and punishing the criminal promotion of European wars, and in regulating the amount of licence of murder and plunder that accompany them, results only from this, that while we have substituted death by hanging for ordinary murder between man and man, we still retain the tribal money penalties in the case of organised murder by some half-crazy ruler, as between nation and nation, so that the penalty for unsuccessful aggression is borne as an indemnity by the political family of the criminal, who personally escapes free, and if successful (as Frederick the Great) goes down to posterity as a hero. Hang the criminal responsible and you would go far to get rid of wars of aggression, and of wars of retaliation.

But if liable to become dangerous to society, torts might be punished by depriving the freeman of his right to the use of land and degrading him to a slavish position under the protection of a chief or the king, as if he were a member of a foreign tribe.

The account given by Tacitus refers only by slight reference to agriculture. It is a description of a people living a purely pastoral life, dependent for existence on stock-raising and hunting. Land as such has no value as the basis of their life; they live in a country covered with forests and widely extended marshes; land is not the source of any of

Digitized by Google

their social relations; it is only by way of exception individual property; cattle and other stock are their only "capital," their chief substance and wealth. It is true that they cultivate, by their women, children, weaklings, and slaves, some fields of corn, as much for beer as for bread (c. 15). The ownership of land by the family in the smaller sense must have come as soon as the head of it had enough slaves or freemen to cultivate more than the share allotted to him in appointment of conquered territory.

The fighting men would not degrade themselves to work in the fields so long as there was hunting or fighting to be done, or cattle to be attended to; the actual work of tillage was done, as such work is generally done, by women, children, captives, and slaves.

But agriculture is no part of their wealth; it is a necessity, like clothing or firing, to be delegated to inferiors, and to be dealt with carelessly and lightly.

As a consequence, while their cattle are, as we should say, "personal" property held in severalty by individuals, the land is common to all the stock of the community, without as yet reserve or stint, except that the use of the land set apart and fenced or watched for corn cultivation is regulated as an exception to the common ownership; it is, as I read Tacitus, allotted out in tracts to each group family according to their numbers, and by them subdivided among the heads of families by the council of the community according to the rank and condition of the persons. See quotations from Sir John Davis' *Reports*, p. 154 *infra*, and his account of the new partition made by the chief of the sept of all the lands belonging to that sept in his *Discovery*.[11]

The process is very similar to the account of the division in the Mir in Wallace's *Russia*, vol. i. This particular custom of early societies varies as to time and unit of division according to the amount of arable cultivation compared with pastoral pursuits. Arable cultivation leads to individual ownership.

Rank and condition were in the tribal system the elements which present the chief opportunity for disturbance in the social life of a community united by common interests, and

Digitized by Google

organised on an assumption of the equality of freemen. War brought with it multitudes of slaves, for whom the captor had to provide a living out of the soil which the slave cultivated for his master.

Although freedmen are mentioned (c. 25), slaves are at present practically the only class contrasting with the freemen. There is little sign of the large class dependent on the consent of others for their use of the common land of the nation: the daer debtors, steel-bow tenants, aillts, villeins, with whom we meet later in British agriculture, a class to which, as the tribal system breaks up, the poor free tribesmen, who have lost their common pasturage, tend to descend. But the slave class tends to increase, and with it the inequality of the freemen.

With the increase of slaves and cattle the great men want and obtain the use of more land; land is of no value and easily granted; wealth in cattle, and with it increased usufruct of land-giving power to reward followers, becomes, equally with or even more than birth, the test of the fitness for chieftainship; throughout the Irish records, for instance, wealth is shown as making fitness for freemen and for chieftainship; throughout the *Song of Dermot and the Earl*,[12] Dermot is spoken of as "the wealthy king." Money is given only to chiefs. The increased demand for land gives it an increased value, especially as men turn from meat and milk to beer and bread for food; *and in the end land becomes in place of cattle the basis of the social frame.*

When Henry goes into Ireland, bringing with him a system of agricultural land-ownership, influenced largely by Roman law and by the fitness of Eastern England for corn-growing, it is effectively contrasted with a pastoral system under which cattle are still the chief wealth, and the pasture land common to all. The same contrast is effected probably in a lesser degree when Edward conquers Wales, and when and as the king of the corn-growing south and east of Scotland in each succeeding reign down into the eighteenth century extends his authority over the north and west.

NOTES.—[1] Tacitus, *Germania*, cc. 1–28. [2] *A.L. Irel.*, i. 157. [3] Folkmoots, see Appendix A. [4] E.g. *Olaf Trygvasson Saga*,

Digitized by Google

Laing, cc. 88–90. [5] In Glanvil (VI. i. 8; VII. 1), Dower in the sense in which it is commonly used means that which any freeman at the time of his being affianced gives to his bride at the church door. The woman demands her dower in the words, "I demand such land, etc., of which my husband endowed me at the door of the church the day he espoused me." Dower in the Roman law means the portion given to a man with a woman. See Cæsar, *D.B.G.*, vi. 18. [6] Cæsar, *D.B.G.*, vi. 22. [7] Sir John Davis, *Reports*, p. 49 *et seq.* [8] *Observations on the State of the Highlands*, 1806. [9] And see Cæsar, *D.B.G.*, vi. 23. [10] As to the want of distinction in early times between murder and manslaughter, justifiable homicide and accidental slaying, see my *Tort, Crime, and Police in Mediæval Britain*, pp. 29–35. [11] P. 136, edit. 1788. [12] A contemporary account by a Frenchman of the Geraldine invasion of Ireland, edited by G. H. Orpen, 1892.

CHAPTER IV

THE EARLY TRANSITION STAGES

HITHERTO we have dealt for the most part with the political and social structure of these tribal communities in a pastoral state, either nomadic or when the permanent settlement on the soil had lately taken place. We may now turn to one of the greatest agencies of social change which preceded the revolutionary influences of commerce, namely, the cultivation of the soil.

The Beginnings of Agriculture.—As the vast hordes of horsemen, whether the Huns of the fifth or the Moguls of the thirteenth century, poured over from the East into Europe, the woods and the plains in which they found forage for their horses were of far more importance for their advance than the small enclosures of corn. When, for instance, the descendants of Genghis Khan attacked Poland and Hungary in the thirteenth century, they must have been checked as much by the difficulties of finding forage as by any resistance of the Europeans. The Goths who took possession of the Ukraine were satisfied with a very fertile country, with abundant pasturage, fine timber, large rivers, and plenty of game and fish.

Digitized by Google

When, however, the advancing horde was checked by the disciplined power of Rome in front, or ceased to be driven on by fresh emigrations from behind, or was tempted by some specially fertile soil, or was settled by Rome as an outguard on some block of land on the frontier, agriculture became of greater importance. The woods were still of prime necessity, not only for forage, mast, and fuel, but for building material and fencing for the enclosed ground, yet at the same time the grain crop both for beer and for bread became a larger factor in the life of the community. When once the tents of a marching army were exchanged for permanent huts, it could not have been long before common sense taught them the necessity of some system for cropping land.[1]

Those who lived on the edge of the Roman authority and in touch with it undoubtedly moulded their farming on Rome, a State which, passing beyond the tribal stage of society, dealt with land by reference to the status of the individuals; others followed a system of common cultivation of the soil by the group family on the basis of equal division among freemen. This last is the picture given to us by Tacitus in his *Germania*.

Division of the Land.—Equitable division of the plough land was no easy thing. The weak point of *Domesday* is that, being a financial and not a historical document, it gives no hint as to how this equitable division has been reached or varied, but for taxation treats the acre as an acre without any notice of its value for farming. Given two pieces of land of equal size, one sloping to the north-east, another to the south-west; one with a heavy clay subsoil, the other on gravel; one lying level, the other on a sharp slope; one warm and clear of water, the other boggy and ill-drained; one a deep loam, the other shallow soil, the possibility of equal division would be only in the long-drawn arguments and pleadings of the interested parties. All apportionment of land among the different families and clans must have been hammered out, as it was until very recently in Russia, by the Mir, the general assembly of the community, meeting under the presidency of its elder, each family trying to get as much of the good land as possible, and to throw the poor

Digitized by Google

part on others, the powerful man getting the best and no more than he wants of the best land, and the poor widow with young sons being forced to make her contributions to the chief from a greater amount of poor soil than her family could cultivate.[2]

To obtain equitable division the portions allotted were scattered about in the common field under one fence. The assignment of portions did not convey to any member of the family, or to any family, property in the land, but a usufruct only, and even that was subject to the rules for cultivation laid down by the community. There could be no need for any redistribution of land so long as land was plentiful enough to change yearly to a fresh common field. Redistribution came as the population increased.

That the cultivation and fencing of the crop was done by a community, and not by individuals or by families, goes without saying for economic reasons: the combined use of stock and of such tools as were in use and of the labour of the different families was necessary under the conditions if the work was to be done at all; moreover, the land tilled must be protected from cattle and from wild animals by fencing or by watching—an impossible task if each family, whose first duty was to defend its borders from outside enemies, made and fenced its own clearing. It is clear that the whole cultivation of each unit of the horde was comprised in a common field.

Meadows.—Tacitus tells us that they did not enclose meadows; *Domesday Book* shows a very small proportion indeed of land enclosed in grass, other than wild pasture. A meadow in the Welsh laws is defined as land appropriated for hay only and enclosed by a fence.[3] It would be odd if it were otherwise. The seeding down of land with tame grasses, though very likely well known to the Romans, is a very modern art indeed, and meadows to be cut with the sickle must have been pieces of wild growth chosen for their heavy yield.

The Waste or Forest.—All beyond the tiny fenced or watched portions was a common hunting ground and pasture for the whole community. This was by very far the most important

Digitized by Google

part of the land both then and in the twelfth century, most valuable for food, since the horses and cattle, and also the wild beasts and birds, were dependent upon it for pasture and mast; supplying timber for all necessities and containing minerals and stone. If we are ever to have any acquaintance with mediæval agriculture, it is from this waste or forest, and not from the enclosed corn-fields, that the subject must be approached.

If in these very early days the common field was ever fenced at all,[4] as soon as the crops were harvested it was thrown open to the stock of the community and to wild beasts by making a gap or gaps in the fence. The crops had to be harvested at nearly the same time, so that there should be no delay in turning in the stock. Such a process enabled the community to kill wild animals, the gap in the fence being in the nature of a trap for deer and other game.

The Cultivation of the Common Field.—Rye, or rye and wheat mixed, was the most usual and safest crop of grain, as rye will give a yield on rough and uncleaned and wet land on which it would not be safe to sow wheat. But the grain crops no doubt varied according to latitude and soil, oats being grown in more northerly regions, and barley on light lands.

As arable culture became more general and systematic, an alternation of crops was adopted, or a fallow for the land. Either one-half of the field lay fallow (two-course), or one crop was followed by another, and the field fallowed the third year (three-course), or after a few years of grain-growing the natural grasses were allowed to grow in the field, and a fresh enclosure was made, the original field then becoming an enclosed home pasture. Until the seed sprouted the stock was probably allowed to pasture on the sown crop to clean the land and "roll" it, and to eat off the sprouts from the tree stumps with which such fields abounded, unless on boggy land, where the cattle might not only unduly poach the soil but might injure themselves. On the fallow the stock cleaned the land and left manure for the forthcoming crops.

In the *Inquisition in Rutland, 1269,* the presentation against Peter de Neville the forester in fee charges, *inter alia,*

Digitized by Google

that the king had ordered a clearance in which the trees had been cut to be enclosed so that they might grow again from the stumps, but that Peter agisted animals to eat the shoots on the stumps and underwood, and then dug them up for charcoal.[5]

Which of these different methods was adopted would depend to a great extent on the capacity of the land to grow wild grass. Where, as in the west of England and Scotland, there is a great rainfall, and grass in consequence grows easily, it is not surprising to find in very late times a handling of land in which a wild grass rotation takes part.

The Social Community in Early Britain.—It may seem a far cry from the generalisations of the Roman correspondent to the bare chronicles of the monastic writers of the twelfth century. But this dull notice of the ancient tribal system is not necessarily time wasted when we come to follow the westward movement into the British Isles, and then see how far the conditions described by Tacitus apply in Britain some eleven hundred years later.

Since Tacitus described the German or Scandinavian peoples of his time, a nation of freemen divided into clans, headed by chiefs, living a pastoral life, but cultivating corn in a common field, various disturbing influences have been at work to modify the simplicity of the early society. These were: (1) the perpetual intertribal wars; (2) the wars of conquest, where the confederation of tribes, such as the Angles or West Saxons, invaded the territory of a wholly alien people and conquered it; and (3) the effects of famine.

We must therefore expect to find, and we shall find, marked differences in the structure of the social community in different parts of the Islands, according to the degree in which they have been exposed to all or either of these influences. Leaving to one side, for the present, any consideration of the uses to which the land may be put for agriculture or other purposes, our object will be to inquire how far, and to what extent at certain periods, such as the invasions of Ireland in 1169–71, or the invasions of Wales and Scotland by Edward I., the destruction of the clan system in the Highlands after the wars of 1745, the elective kingship, the great assembly of the people,

Digitized by Google

the atonement for homicide and other crimes by fines, the customs as to marriage, descent, and so forth, the relations between the chief and his followers, and the gifts of food from them to him had been modified or had disappeared ; how far the society which vested all property in the land in the freemen of the tribe as a society, had been broken into by personal ownership of land and by the power of a central executive overriding the tribal organisation.

Intertribal Warfare.—So far as wars between the tribes were concerned, they seldom affected the actual possession of territory, but resulted only in changes which marked physical superiority. One of these might be an acknowledgment of overlordship, accompanied by a tribute or the giving of hostages for good behaviour. When, in the struggles in Ireland which preceded, and were part of the Norman Welsh invasion, either O'Neill or O'Conor make war on their revolted sub-chiefs, they do not take the land into their own hands, but re-grant it to the same man on submission or to one of his kinsmen.

In the earlier wars of Louis with Henry II. in France, although from time to time each tried to seize some strategic point, there was little alteration of territory. Henry did not attempt to disown the suzerainty of Louis or renounce his feudal duties, nor did Louis try to drive Henry out of Normandy. But after Philip Augustus in 1188 had cut down the elm of conference at Gisors, the fight gradually became one of conquest in which the king of England was treated as an alien power to be deprived absolutely of all rights over the soil. The development of this aspect of the struggle was slow, but it was sufficiently advanced in John's time to make it possible for Louis to refuse him as a vassal, and to seize John's territory into his own hands. It is possible that the idea of the Roman dominion underlying this influenced Langton in refusing to allow John to reconquer Normandy and the barons in refusing to follow him. But at the bottom of the change is the decay of the personal relation between a people and their ruler, which conceives of the ruler as either himself of the same blood, or as connected by marriage with the blood of the people ruled over, as when Henry I. married the Saxo-

Digitized by Google

Scottish Matilda, Strongbow Eva the daughter of Dermot of Leinster, Llewellyn of Wales John's daughter Joan, and Alan of Galloway and the Normans Balliol, Comyn, and le Brus, the daughters and grand-daughters of David, Earl of Huntingdon. When this decay takes place the idea of nationality as attachment to the soil replaces personal attachment to the chief. John appeals to the blood instinct when he marries his cousin Hawisa, the daughter of the Earl of Gloucester, but he allows himself to be divorced from her to marry for a strategic land settlement, and, unlike all his predecessors, he calls himself king of England instead of king of the English.

Another result of intertribal war might possibly be the acceptance by the defeated of a foreign chief as viceroy for the victor, as when Athelstan, Edmund, and Edred forced their nominees on to the throne of North Humbria. It was certain that it would result in the capture of a number of cattle and of many prisoners.

The Unfree and the Waste.—This brought into the tribal society a fresh class of people on the land—the unfree. So far as domestic labour went, the freemen were still served by slaves. Simeon of Durham, 1119–29, of a raid of Malcolm's in 1070, says, "Scotland was therefore filled with slaves and handmaids of the English race; so that to this day I do not say no little village but even no cottage can be found without one of them." It was more profitable and more convenient in every way to tie the captive by giving him some of the waste land to cultivate at a rent than to try to control his actions as a slave. This unused land is generally spoken of by modern historians as if waste meant devastated land. Sometimes, no doubt, it was lying waste because of devastation (as for instance parts of Yorkshire at the time of Domesday, though even in this instance the amount of land under cultivation must have been very small), but there would seem to be no reason for thinking that *terra vastata* means generally anything more than land not under arable cultivation. In this sense an unmarried young woman on whose marriage a fee was paid to the king was in the Welsh laws called the king's waste.

Later, in ordinary language, and in law, waste acquired a different meaning. If a raiding army destroys all growth upon

Digitized by Google

the surface, the land in six months, if unused and unoccupied, will grow something on its own account, grass for instance. Land that has any value for ordinary use can never be said to be waste in the sense of lying idle for more than twelve months. It takes no holidays.

The captor had to feed the captive, and, as only freemen were given the privilege of fighting in defence of the common soil, the unfree and the slave were put to till the soil whilst the freeman fought. Hence a class arises of the unfree, who till land as holding it, *not of the tribe but of the chief or of some other person*, the individual to whom they belonged. They could under certain conditions rise to be freemen, and their marriage with freemen is contemplated.

Such a class are responsible to the person from whom they hold, and he is responsible for their actions to the society, acquiring a judicial power not only to regulate their relations to him with regard to the land, but their torts and other acts affecting the society. These unfree men were called in Ireland and Western Scotland daer ceile, in Southern Scotland steel-bow tenants, and in Southern England villein, in Wales aillts or alltuds, alltud denoting the foreigner who had no tribal connections entitling him to a share of the tribe land, but dependent on the king or on some chief for land and protection, and therefore unfree. But query—had villein at that time the servile meaning which under the influence of the court lawyers and the Roman law it afterwards acquired? Was it not rather a word which, like boor, rustic, churl, have become words of contempt only because they voice the slavish quality of the farm labourer of all time? In Pipe Roll 16 Hen. II. rusticus is used as equivalent for villein. In *S.P.C.*, p. 2, nativus is translated villein. In the Latin version of *T.A.C.N.*, rusticus is used as the equivalent of vilain. Isidore, xv. 7, uses rusticus as the man whose life is on the waste. "Rura veteres incultos agros dicebant, id est, silvas et pascua, agrum vero qui colebatur. Nam rus est quo mel, quo lac, quo pecus haberi potest. Unde et rusticus nominatur."

Undoubtedly the greatest breach in the social system of early Europe must have come through the personal relations of the chief or other great man with the captive in war who

Digitized by Google

had no tribal standing and no relations. Until the Roman law through the Church broke down the tribal barriers, the alien tribesman living on the other side of the brook was a natural enemy not related by blood, and therefore permanently outside of the benefits which resulted to the circle of freemen of the tribe, and liable at any time, by sexual relations with the women of the tribe, to create confusion in the ownership of cattle and the usufruct of land.

The Unfree and Legal Custom.—The first beginnings of the English manorial courts lie in the necessity that the foreigner and the unfree man, who were not members of the tribe, should be under the jurisdiction of someone in local authority.[6]

Nor was this status of the unfree a matter only relating to the use of land. If a man were accused of crime, he brought his relations and friends to the court as compurgators to swear that they did not believe that he had been guilty of the offence. As they were persons who, in the event of his conviction, would have to contribute to the amount of the fine exacted from him, we may be sure they swore stoutly in his favour. The prosecutors' kin who would share in the money paid swore as hard. The matter was decided by the value of the oaths sworn. Custom regulated the value of the oath by the amount of the man's property, and his status in the tribe. The bigger man had the more to lose. But common sense must have thrown into the scales reputation.

The alien prisoner had no kinsmen and no friends in the tribe. His owner must stand for him or pay his penalty. It was all to his interest, all possibly to the interest of the community, that a jurisdiction over him should be given to the man who was in the first instance responsible for him. The protector could not afford to swear, or to pay others to swear, to a man's innocence after repeated crimes, and for his own credit he would be careful to see that his client walked in the straight path.[7]

The Effect of Conquest.—Wars of conquest affected the social community in another way.

The effect of war is always that for the moment absolute

Digitized by Google

power is given into the hands of the man who heads the fighting. If he is successful, it becomes a difficulty for the community to resume the authority which has previously rested with it. At the moment of victory the chief distributes the spoil among his chosen men, and in a successful war of conquest the spoil means, besides slaves and cattle, the authority over and the profits from land.

As head of the tribe or clan the property of the community rested in the chief as (if I may use an inaccurate term) trustee for the community. There must always be some responsible person or persons to represent the community, to deal with their property, and to guard their interests. The great break comes when, after successful war, the chief gives or keeps his spoils, not as heretofore as the representative of the tribe, but as personal owner. War tends to introduce the Roman dominium.

However, I am inclined to believe that famine exercised a greater influence than war in modifying the basis of life in tribal society. In any settlement after war the victor must always take into consideration the chances of future fortune in war, and of the effect on his own people of his dealings with other freemen. But he need not so much consider the effects of famine, which, as the act of God, a force unaffected by human endeavour, does not of necessity impose on man any responsibility for other men's misfortunes, as, so far from being a victor in the struggle, he may be a fellow-sufferer.

We leave the tribal society in a phase of free communal simplicity; we pass through a period of darkness in which we have no record of change; when we can again view society with any certainty, the face of it, at least in England and South-Eastern Scotland, is wholly changed. The freeman has to a great extent become a half-free man, who has ceased to own the soil, a tenant paying rent to a lord; the allodium, the share of the common land, which was every freeman's right, has sunk to a beneficium or feud received from the Church or from a lord; and the chief as trustee for the tribe has degenerated, at least in England and Southern Scotland, into the owner of the land, the lord of the manor, who controls

Digitized by Google

the waste, the uncultivated land, and exercises an increasing judicial power over those who are subject to him. The difficulty of discerning the process of modification is great, as the scanty chronicles of wars and famines do not correlate their effects on society.

The Effect of Famine.—That this has come about through war and famine seems fairly certain. But how? I have pointed out above how war affected the position of the chief men and introduced a large class of unfree. Famine acted as a modifying influence by putting the smaller freemen under an increasing economic obligation to the chief men.

The freeman who had no food and had lost his oxen by the effect of famine or murrain had no option but to accept help from some man more fortunate on terms of relinquishing his position as freeman, and subjecting himself and his family to the performance of services on the land which, so long as war was the chief and only occupation, were degrading to the freeman.

Wealth formed the only aristocracy in tribal times: the king is always the wealthy king; wealth, the power to give, is a necessity for his continued power. When famine comes, the rich become richer and the poor poorer.

Let us take as an illustration of the wholesale effects of famine on tribal society the events in Egypt described in Genesis xlvii. 13–26. Expecting a famine, Pharaoh, by his Jewish overseer, had made what is called a "corner" in corn, buying up and laying by in the cities, fortresses which could be controlled by the king, all the wheat in the land (Gen. xli. 47–49). The famine comes, and the Egyptians come to Joseph to buy corn. As long as they had money they paid for the corn in money; but when money failed in the land (xlvii. 15), they exchanged their cattle for corn wherewith to feed themselves and the stock. The famine continuing, the people give their land and the service of their persons for food, becoming Pharaoh's villeins. Pharaoh apparently (v. 21) shifts the population from one part to the other, so as to destroy any sentiment of attachment to a particular locality. "His Majesty doth in this," says Sir John Davies in 1610 of Ireland, "imitate the skilful husband-

Digitized by Google

man who doth remove his fruit trees, not with a purpose to extirpate and destroy them, but that they may bring better and sweeter fruit after the transplantation."[8] Like the Germans of to-day in Belgium and Serbia.

But Pharaoh does not take cattle or land into his absolute possession. It becomes a beneficium; the property in the land passes to the king, but the people are permitted to retain the usufruct of it subject to a payment of the fifth share of the returns of the land to Pharaoh as the king's "ferm." Their position is that of a landowner who, in the twelfth century, handed his land to the Church or to a lord for protection, to receive it back as a benefice for his life, subject to a yearly rent of corn or labour. The priests did not sell their land—"for the priests had a portion of Pharaoh."

Individual Ownership of Land.—This conception of personal ownership of land, slowly making way, has a very long conflict with the instinct which vests the property in the land in the community as the basis of life, the common wealth of all, the instinct which has coined the word patriotism. Personal ownership of land conquers in the end. It receives force not only from the result of war, but from other sources.

There is, in the first place, the introduction of Christianity from Rome, with the causes of change which it brought with it, the art of writing which accompanied it, and the disturbing influence of monastic land-holding of men alien to the tribe in tribal communities; the introduction through these of the knowledge of the Roman social framework and theories of land-ownership, the conceptions of the Roman law which henceforth colour all dealings in landed property, from the *dominium ex jure Quiritium* to the meanest easement, and in England from the leaning towards individual ownership of the English common lawyers who, insensibly influenced by Roman law, exalted the power of the king and chiefs at the expense of local and social authority. Another cause reacting on all of these is the increase of population, the consequent greater acreage put under tillage, which the monastic bodies largely promoted, and, later still, commerce and the usages of monetary exchange, the economic change which replaced farming to satisfy home needs by raising

Digitized by Google

crops or manufacturing goods to supply the foreign market of another near-by village.[9]

NOTES.—[1] On the other hand, how long a community can remain a pastoral one in spite of every inducement to take to agriculture is shown by the history of the American Indian. [2] See for such an apportionment made by careful arbitrators in the Orkneys in earlier times, *Records of the Earldom of Orkney*, by J. Storer Clouston, p. 114, line 22, etc. [3] *A.L.W.*, Ven. III. xxv. 27. [4] *A.L.W.*, Ven. III. xxv. 1. [5] *Inquisition in Rutland in 1269*, S.P. Forests, Selden Soc. Publ. [6] This is a very large subject, which general readers will find fully treated in Prof. Vinogradoff's works; in Maitland's *Special Pleas in Manorial Courts*, Selden Soc.; in Mr Pike's *Prefaces to the Year Books of Edw. III.*, and other authorities of like kind. [7] See my *Tort, Crime, and Police*, pp. 92, 93, 202. [8] Of the removal of the natives of Cavan County, Sir John Davis to the Earl of Salisbury, 1610. [9] The jealousy by the boroughs of the religious houses as tending to disturb and limit the power of the municipal authority is very striking. They disliked alienation of land to a religious house. "The reason is," say the Customs of Waterford (1300 *circa*), "that when the houses of religion have once entered they give nothing and render nothing and do nothing for the town like the neighbours and others" (Bateson's *Borough Customals*, Selden Soc., vol. ii. p. 201).

Digitized by Google

PART II

THE SOCIAL SYSTEMS OF THE MIDDLE AGES

(*See* EXPLANATION OF TECHNICAL WORDS, *supra*, p. xxvi)

CHAPTER V

THE CUSTOMS OF FEUDAL SOCIETY

BEFORE we enter on a consideration of the different systems of life which obtained in the British Isles in the twelfth century, one thing should be thoroughly understood. All early social systems, wherever we find them, appear to be founded in the first instance on a communal unit, the tribe, the sept, clan, greater family, group family, or joint family, and finally on the family in its smallest and most precise form, the rights and responsibilities of the individual being decided not by his independent personal value, but by his status as a member of the communal unit. All relations of life are social, whatever the form of society.

Early Society based on Kinship.—Underlying all these groups is the idea of kinship, either real or fictitious, between all the members, from the highest to the lowest; as the unit, tribe, group family, or family, settle definitely on a certain tract of land, every member of the kinship becomes *ipso facto* entitled to a share in the use of the land and in the other things acquired by the community, in proportion to joint responsibility for the debts and liabilities of the kinship. All persons outside the conception of the kinship have no rights at all, except as dependants of the community, who act through the chief, and in the first instance through the general assembly.

It is the early form of pure and real democracy and socialism, the chief being no more than *primus inter pares*,

Digitized by Google

his rights strictly limited and defined. He has a larger share appointed to him of the use of the common land, but he has no individual right except that of customary superintendence over other men's possessions.

Very soon indeed individual avarice, individual energy and ambition, individual fitness for leadership and supremacy, modify the conditions of this primitive democracy. The different communities vary in government, landownership, contract, legal procedure, morals.

At the date of Henry's accession in 1154, Northern and Western Scotland, Ireland, Man, and in some respects Wales, had been but little touched by Roman or outside European influences, except so far as Western Europe and the Isles themselves had been affected, by receiving Christianity from the tribal churches of Ireland and Wales, and by the Scandinavian invasions of the ninth to the eleventh centuries. We may expect to find in these parts various modifications of the ancient tribal community as described twelve centuries before by Tacitus and Cæsar.

We shall find at least three distinct phases of it in the Islands: Irish, Welsh, and Scandinavian of Man, the Orkneys, Shetlands, and Western Isles.[1] This archaic form of community co-exists in its fullness only with the pastoral life, and dies or develops in proportion to the degree in which the pastoral life gives way to arable land cultivation and commerce.

With this archaic condition, the earliest historical type of society of the early world, the type to which all political and social institutions tend instinctively to revert, it would be most natural, and it would seem imperative to begin this account of mediæval societies. It is in fact extremely inconvenient not so to begin.

But I shall not follow this course, for any history of the Islands ought to begin with England, whose story has been throughout of so much greater importance to the world than that of the rest of the Islands. We shall begin, therefore, with a very slight notice of the later modification which, adopted very early by the rulers of England from the Continent, has in one form or another, military, political, or

Digitized by Google

legal, throughout the centuries been in conflict with and has for the most part driven out and destroyed the older form of society.

England and the Feudal System.—Unlike the other parts of the Islands, England and, under her influence, South-Eastern Scotland and the eastern borders of Wales, had been moved by 1154 a very long way from the society described by Tacitus and Cæsar. We find here, superimposed upon the other earlier types, a new and late type of community, a society not based on kinship, in which there is little or no community of landownership, of profits and losses, of rights and responsibilities, in which the powers of the chiefs were held in check by no social customs observed by all, but by the strong arm of a federal authority which created them, an authority often alien to the people ruled—a society founded on war and conquest, which we are in the habit of calling the feudal system; a society bound together, in the first instance, by military duties owed to a superior landowner from whom, and not from the community, the user of land is granted in return for military services. This form of society in the twelfth century is also being very speedily modified by many causes, and its military aspect is ceasing to be of primary importance.

The Causes of Change.—The pivot of change which brought about the introduction of this society, the change which turned the chief with his limited powers into an absolute king, destroyed the power of the general assembly, and gradually substituted individual for communal responsibility, was, I take it, military necessity. But the agent of the change was the influence of Roman models, the constitution of the Roman state and of the Roman church, the international, interdependent pyramid of which the Pope was the head, and of which the feudal system was an offgrowth. Where Rome comes the pastoral life gives way to corn-growing, and the tribal to the feudal system.

As each horde of barbarian invaders poured down on Europe in the early centuries, their nomadic course came to an end with their contact with corn-growing Rome. In their successive conflicts with the great military power the

Digitized by Google

weakness of the tribal formation showed itself, as the absence of unity among their independent units nullified the effect of their victories, pointing them to the necessity for unity and better discipline in war. The two forces, the tradition of imperial Rome and the needs of ceaseless war, react on one another to produce the effect: an imperial federation, a federal empire as from without; an interlocking local responsibility as from within; a system under which the lord of the feud or tract of land protected the man who derived title from him, and the man in turn acknowledged the ownership of the lord, and followed him to battle; Germanismo, as the Italian historian calls it—a growth, like all human institutions which modify natural instinct, born of the necessity of self-preservation.

The first result of such necessities, a unity which only comes with conquest and only co-exists with war, is that for an organised army in the place of an argumentative horde, some one person shall be in command, responsible for action and freed at the moment of action from the deadly influence of need to consult all the people. In every period of peace the tendency asserts itself to resist federal authority, each independent clan splitting up and breaking off into an independent force, isolated with its own particular head, its own customs, and its own separate military authority. War alone shows the necessity of unity, with the result that in the end safety is found only in an organisation which pre-supposes the continuance of armed force, recognising the secret of military strength in unity of design and swiftness of execution.

Under these influences, which culminated in the alliance between Charlemagne and the Roman Church, the greater military powers of the West gradually replaced the lateral social organisations of the tribe by a system which subordinated local authority to a central one, taking little account of tribal kinship, and at the same time strengthening the powers of the local authority in proportion to its dependence on the federal power.

The Kingship.—The warfare with the peoples of the European continent, which, owing to his continental possessions, always threatened the English king, called for a

Digitized by Google

military system more effective than the levy of the tribal community, and enforced by more potent sanction than the distraint of cattle, an army which could be used for offensive war out of the Islands. In adopting such a system, which was coming into use for military purposes[2] before William made his little expedition in 1066, the English king only imitated continental models, which had long existed and which had already affected the English kingship and English society. Onwards from the Domesday survey of 1088, the feudal units of political and social life, the manor and the shire, replaced in England gradually the sub-kingdom, the tribal divisions, and the sub-divisions of the clan and sept.

As a consequence of the change, though nominally elective, the king took office not so much as the result of genuine election or of priority of birth as of superiority of force, his authority being limited only by his military power. After the Conquest, in the instances of William Rufus, Henry I., Stephen, and John, though there may have been a pretence of a submission of the king's claims to the people, the pretender really becomes king by virtue solely of his military superiority, his possession of the king's treasure, and through the support given to him by his consecration from the Church.

The General Assembly.—As a result of this military framework the great assembly of the tribes, called to decide matters of great moment, the Witan, the Althing, the Folkmoot, fell utterly into disuse. The tendency of all large assemblies of freemen, whether a Parliament of talkers, a Witanagemot of administrators, a municipal body of free burgesses, or an assembly of the people of a local division, is to delegate to smaller and more convenient committees of their number the actual work to be done. Hence we find Parliament frequently giving itself up to the tyranny of a Cabal, to the control of a few men whose sole qualification for office is their careful manipulation of technical rules and their power to play on the good instinct of the populace, the Witan delegating its authority in work to the few business advisers of the king, the body of free burgesses allowing their powers to pass to the close hereditary corporation, and the shire moot to the officers and nominees of the central authority.

Digitized by Google

England went quicker, earlier, and further in this direction than any other part of the Islands, owing to the wars of invasion and conquest which affected her from the beginning of the ninth to the middle of the twelfth century. War or foreign invasion, whether successful or not, lessens the influence of those who advise action. The prestige of the chief with the community which he represented counted for a great deal. If in dealing with foreign powers the king was hampered by the necessity of consulting his inferiors, it was a weakness of position of which his neighbours took full advantage; nor did friendly foreign powers, especially the popes, desire any such popular interference as might tell for national unity. Where through defeat or other cause the king was reduced to dependence, even theoretical, upon a foreign power, as when England became dependent on the papacy, or Scotland or Wales on England, he was largely relieved from the necessity of popular support and so from popular control.

The Increase of Absolute Power.—If the freemen had had real power the king might not have been able to make compacts with other sovereigns which were not consistent with the freemen's safety. As it was, when the king and Church acted together, as they generally did, the whole social system under which the authority of the king or chief was limited by unwritten customary law, unwritten law very closely defined and very jealously guarded, went altogether by the board.

It was not at once replaced by written law. Whatever exceptions there may be, the writing down of customs only begins in earnest in the twelfth century, though the Church often tried to get from a king at his accession a written charter tying him indefinitely to vague promises of good government. In some respects such charters abolished or modified the tribal customs which they declared. Otherwise all that happened was that the limitations on absolute authority ceased to exist. In consequence the absolutism of the English kingship, and through it of the Scottish kingship, increased until the king alone, with the assistance of a few permanent officials appointed by himself, decided all questions of political importance, all military and naval matters, all matters of finance and general administration. Still further by his control of money, and by

Digitized by Google

the military force at his disposal, his power continued to increase, until it had eaten out local self-government, had assumed the regulation of all local judicial and fiscal authority, and with it the supervision of the whole system of agriculture and matters relating to land. The king's officers decided questions between the king and those who owed services to him, and they were also judges of the more serious offences liable to lead to the disturbance of order.

The system, as it pervaded all aspects of social and political life, eventually strengthened immensely, at the expense of the lesser men, the kingship, with the assistance of the Church, which, as it acquired large tracts of land and many privileges, grew very wealthy under the new conditions and very powerful, the abbots and bishops taking the position of great feudal chiefs to whom many knights were subordinate tenants.

To counterpoise the power of the barons or lesser men who might always combine against the king, the supreme chief, the Crown made many grants of land to church communities and dignitaries, on condition of military service. A roll taken in the year 1200 shows 52¾ knights' fees of land as subject to the abbot of St Edmund's as their feudal superior, the Church hiring land to lay fighters on condition of the performances of the services due to the grantor, and in most cases additional rent to the Church.[3]

The Contrast of Military Organisation.—So far as military conditions were concerned it was a most evident advantage that, instead of a perpetual subdivision among members of a family of the right to joint user of the land, the users paying small dues in kind to the local chief, and rendering an unwilling military service as members of the kinship in default of which there was an imperfect sanction by distraint of cattle or a threat of outlawry, there should be one individual responsible for the rendering of military service to a military superior, and that his holding and use of the land should be dependent on the due performance of the military duty. Such a system led by consequence to preference of the eldest son, the best fighting man, as sole holder of the soil from the lord.

In any ancient tribal society, although the land was not

Digitized by Google

held by tenure of military service, no man was exempt, or considered himself to be exempt, from the elementary duty of defending his possessions and his kinsmen, who with him jointly occupied the land. The monastic chronicler would have you believe that as age approached, the great fighter was suddenly seized with a sense of contrition for his past acts; convinced of the emptiness of this world and forsaking its vanities, he sought to prepare for another in the more spiritual atmosphere of the monastery. The truth was the opposite. It was not that he did not want the world, but that the world did not want him. Men unfit for fighting were not fit to share in the social life; the chief with a blemish went compulsorily into a monastery; the man too old to fight contracted with his son or with some church to support him for the rest of his life. In all the disputes, for instance, between the kings of Norway and the Orkney earls, chiefs of the Western Isles or kings of Man, there is no suggestion that the people were not liable for military service or for scatt or land tax to the king. How far, for the purposes of defence, a man could be called on to serve away from the land he owned or sat on was warmly disputed in all times, depending on the value of the plunder which appealed to his desire, and on the power of the chief to make it uncomfortable for him if he did not go.

The laws of Wales forbid the king to go on a hosting out of his own territory except once a year for six weeks, though he has freedom to make predatory expeditions within it.[4] "The head of every family," says the Irish MS., "of the lay grades is to go into battle, and every shield to plunder, *i.e.* everyone who has a shield to shelter him and is fit for battle is to go upon a plundering excursion." The freeman, they go on to say, owed services "of attack against pirates, strange tribes, and wolves," and of defence "to defend the promontories that bound the territories of strangers," "the lonely passes that lead to any territory whatsoever of the strangers." He might be distrained on for "allowing the cattle of the territory to be driven away past the men watching on the boundaries."[5]

The weakness of such a system, as in all cases where it is left to the individual to decide for himself how far it is for

Digitized by Google

his interest to do his duty to the community from which he makes a living, lay in the slight provision made for enforcing the penalty. This was either by distraint of the offender's cattle,[6] a sanction which might very easily develop, apart from the interventions of the Brehon, into an irritating private war, if the chief were not very strong or if he had to deal with several stout passive resisters at one time, or by a modified form of outlawry, the reduction or refusal of the customary compensation which would be due to the offender for an injury or to his kinsmen for his death, leaving him to defend himself without protection against all attacks.

The tribesman paid penalties, to be so enforced, for not going to a hosting of his chief or for coming away, the chieftain grades being penalised more on the ground that their presence was the more necessary,[7] or for not helping in the building of fortifications.[8] Military service was so far attached to the possession of the land, that, as women were exempt, on the death of a woman one-half of her land reverted to the tribe.

Thus the necessities of war replaced the loose personal relations of the chief and his comites, and the order of battle by families and clans (which continued even to the eighteenth century in North-Western Scotland), by an armed force of picked men, a system of which the essence was that each man below the king held his land not as a freeman entitled as such to share in the use of the common lands, doing service in the interests of the community, but as the individual possessor of land granted to him by an individual superior, to whom alone he was bound to perform services, to whom he pledged his faith, a possession which he might forfeit if the services were not performed for his feud. Such a system substituted individual authority, supported eventually by mercenary forces, for the common interest and the common liabilities.

As the years passed by the very existence of the earlier society seems to have been forgotten.[9] The responsible offices of the tribal chiefs to the community became the absolute rights of the king, the source of all power from God through the Church, or of the manorial lord, and the election of the king by the assembly of the people, though it might continue as a form, became a form only, and subordinate to

Digitized by Google

the religious ceremony of his consecration. The change in this direction was made easier and more natural for England from its suitability to corn culture, with the resultant enclosures and the subsequent speedy change to individual ownership.

But, apart from any corn culture or convenience to trade, England had always been driven, with the shiftings of Western Europe in the many storms of invasion and conquest which beat on her, under the ever-pervading influence of Rome, first of the Empire, then of the early Church, and lastly of the revived and rediscovered Roman law of the East, in this direction of a closely knit Federal Government and of land held in severalty as the connecting link between the Federal State and the community.

The Variation of Feudalism in England.—The change in military efficiency was not in the first instance so great as it might seem to appear. The conditions which in tribal armies enabled a chief to upset all the plans of a campaign at a critical moment,[10] operated under the feudal system as it obtained on the Continent almost as effectively. Each landowner or castle-owner, however petty his holding, was an independent prince in his territories (as Henry himself illustrated in his wars against his immediate superior, the king of France), subject only to the customary obligations of his feudal tenancy and to the ultimate argument of brute force, which, apart from any custom, held him in line.

It is assumed sometimes that when John made a great levy to recover Normandy the barons refused to follow him because the tenants of the Norman and English feuds had become separate either by purchase or forfeiture. It is not necessary to go out of the way to invent any such cause. Philip, like John, could only extort the customary aids and feudal dues, and he would most certainly walk delicately so long as John was watching him from the other side. The baron in Normandy had nothing to gain by an invasion from England except risk and the destruction of his property; Philip was on the spot, strong and ready to ravage the duchy before John could get there. The holder in England of Norman feuds had no reason to help to strengthen the hands

Digitized by Google

of a king who was already too strong for his convenience, who was trying, in following out his father's system, to make his little finger thicker than his father's loins. It had always been a moot point whether the obligation of feudal service could extend beyond the seas—service which might result in the tenant who owed forty days being hung up by contrary winds for a much longer time. What profit could there be to them in helping to raid their own possessions to put John over them instead of Philip?[11]

The most brilliant successes in feudal war were often made a nullity by the king's followers finding some excuse to refuse means to carry on the war or to serve in their own persons. But in England, as the result of conquest, the king acquired immense military strength, which stood him in good stead for centuries in the squabbles with continental kings through a modification of feudal tenancy introduced by William I. in 1085 on Salisbury Plain. He compelled all military tenants to swear fealty to him as well as to the immediate lord of whom they held. This enabled him to call out not only his immediate tenants but their sub-tenants, *ad infinitum*, upsetting altogether the balance by which he was only the lord of the richest and most powerful barons. William's change hindered a baron, who had some personal grievance against the king or some hope of personal gain, from marshalling his tenants in war against the king or from refusing to follow him, as in this case the forfeiture of the lands held by military service would affect not only the tenant in chief but the under tenants who had sworn fealty to the king. From this difference between English and continental feudal land tenure introduced by William has grown gradually that habit of unreasoning submission to the most arbitrary police regulations, especially characteristic of England, which we confusedly call a "love of liberty."

The Feudal System the Basis of our present Land Laws.—We have a considerable knowledge of the society which this system of land tenure affected, through the agency of Domesday and other surveys for taxation or inquisition in England.

It is the basis of our landed system to-day, and colours

Digitized by Google

all our ideas of social life. Although devises by will are the normal usage, and there is no *law* (apart from very rare cases of intestacy) by which the eldest son takes land to the exclusion of others, the influence of this antique system is so strong that most land in these Islands is tied up by arrangement between the father and the eldest son, by which the land becomes the property of the eldest son for life only, to the exclusion of all others, he handing it on to his eldest son in his turn by a like settlement. The land is generally by such a settlement heavily burdened with charges for the benefit of the other children and kinsfolk of a past generation, and with sums raised for debts of past owners and other matters, starving the land and diverting its resources from the legitimate needs of agriculture. The tradition of the demesne of the lord results in very large areas of park land, objects of beauty, but otherwise put to very little use. The lord of such domain is a startling example of the unfree man of modern life. He is tied to the land.

Every little commercial speculator who has made money tries to "found a family" by buying land and making a settlement, assuming the position of the real fighting men of past times. The supposed superiority of this as a social system has so blinded the eyes of the Englishman that he affects to despise the inhabitants of other parts of the Islands who still incline to a belief in the common ownership of the soil by the community. Every revolutionary proposal and every reaction of selfish denial which cobbles our social system has greater advantage for evil owing to the ignorance which prevails of the previous system of communal life, which contrasts with the feudal land tenures of to-day. It is not possible to-day that everyone should have a cultivator's interest in the land, but the political dealings with it would not be so fatuously dishonest if the communal system, which formerly existed, were better understood.

The Mercenaries.—The military defects of the tribal levy had, long before the introduction of feudalism, very early led to the employment of professional soldiers. One reason for the success of the Northmen was the constant employment of them as mercenaries by different chiefs of the communities

Digitized by Google

in whose territory they found themselves (communities which the mercenaries might easily attack afterwards when they had gauged their weakness), as against the neighbours of such peoples. After their appearance in Britain in the eighth century we find them constantly so employed in Wales, Ireland, and Western Scotland. The warring earls of the Orkneys employ the men of Eastern Scotland or the men of the Isles against their rivals, and the Wessex kings hire them as a defence against the attacks of other Norsemen.

So no feudal lord depended entirely on his levies of tenants, who, being called out for a set period only,[12] might fail him at an exceptionally critical time. It became increasingly the custom, in imitation of tribal practice, to use professional paid soldiers, either by calling out the feudal levies, and after their time of service had expired paying them as mercenary troops, or by hiring professional soldiers, who were known as Flemings or Brabanters, employing as light-armed troops the less wealthy peoples such as the Welsh and Irish. It was to the advantage of the feudal lord, and possibly to the advantage of his feudal followers, that in any extended campaign, or in any operations undertaken in a distant part of his dominions, such as war in Wales (11 Hen. II.), Toulouse (2 Hen. II.), Ireland (20 Hen. II.), or Galloway (33 Hen. II.), personal service should be commuted for a money payment in its place called scutage, from *scutum*, a shield—money which the leader could apply to the payment of mercenaries whose term of service was only limited by the opportunities for plunder.

This change, which went on very speedily in Henry's reign, had further revolutionary effects. The king was enabled to prolong operations far beyond the time for which the tenant was bound to serve; he could strengthen his position as against his great barons by attaching to himself for pay those men of influence among them who were willing to fight for him as paid soldiers; he obtained an army on which he could rely so long as he had the money to pay it, and so long as the plunder which he could offer was more attractive than the pay of his opponents; and he could save money and weaken the forces of disorder by employing

Digitized by Google

the more disorderly border tribes, such as the Welsh, less accustomed to money payments, at a lower rate.

The new system operated to the decay of feudal service, and to the increase of discontent among the baronage, as those who came out without pay for their set term served side by side with the men who were paid in money. The continuous withdrawal of the more troublesome elements on the borders from Britain to France, and the exemption of the farming and trading population from distant military service, not only encouraged peace and order in the Islands, but made possible a steady advance in trade and agriculture, which without better security for the results of work could never have come about. The employment of the keen fighters of the borders, in the king's absence abroad, led to Wales being gradually drawn within the circle of national life and strong rule. The king with a permanent force of mercenaries had a great advantage when dealing with tribal levies.

Further and far-reaching effects of the change were, first, that the king handled a great deal of money in days when money meant military strategy, building up a tremendous organisation of the exchequer, and through the exchequer of the administration of law; secondly, that there being someone always at hand with money wherewith to buy the labour of the unemployed, the market so created centred in the town, and the money being spent there tended to the increase of its wealth and importance.

A class of contractors for mercenary soldiers arose who became men of importance in the twelfth and following centuries, through whom the king with money hired a permanent army. Such were Fulk de Breauté in the reign of John, and Marcades in the reign of Richard.

Though the king might make himself unpopular by the employment of these mercenaries, only the contractor could be held responsible for the acts of his men. When Marcades and his men spoiled the merchants at a fair, as they did in France in 1196, or robbed an abbey, or took ransom from a bishop, as John's men did in England and Wales, the sufferers had no remedy unless they could catch the scoundrel and hang him, which they did without mercy on occasion.

Digitized by Google

The mercenary, apart from the Welsh or Irish or Highland Scots, who were bred in intertribal war, was the broken man of every nation, the questioner of every religion, the disturber of every social agreement, held by no tie except that of obedience to a leader who might always fear assassination at his hands; no motive of humanity restrained him (at least so says the monk) from any act of cruelty. When we read in history of the king or baron being forced to disband his mercenaries, we understand that he has been driven by the force of circumstances to support his position by employing men who were outlaws to all civilised society. At least so says the monk.

These troops were recruited largely from Flanders and from the south of France. But they were also recruited largely from all parts of Britain, Wales especially contributing large numbers. Like the Northmen, they looted the abbeys on every opportunity, so that it is hardly fair to their memory to treat as immaculate truth the description given of them by the monastic historian of the time. They must have included a very great number of British levies of good condition and decent habits. Those who stay at home often speak ill of the soldier without any knowledge of his hardships and his temptations.

The king who employed mercenaries was looked at askance by the Church, and the king who was at odds with the Church had no difficulty in finding mercenaries, as the plunder of the places of the religious was a main source of their sustenance and profit. John, on this account, in his struggle with the barons met with unpopularity and misfortune; he imported into England mercenaries from Poitou, an unusual act from which his father had refrained—an act which ranged the merchants of London and the towns, and the peaceful men of substance, in opposition to him; and when he had made his peace by submission to Rome, he was unable to secure the loyalty of his mercenaries by offering the free plunder of the abbeys, while his opponent Louis, under the ban of the Church for invading England, could safely turn a blind eye to anything done in this direction by his men. The employment of mercenaries was a two-

Digitized by Google

edged sword except to a king with a full pocket, as these men knew no principle of loyalty to their employer.

As time went on, other far-reaching effects were produced. While the defence of the English borders was left more and more to the baronial levies and the local militia, operations on the Continent became less fitful, making war more of a game. Philip Augustus does not give back to John at a truce, as his father did to Henry, the territories taken in the campaign, for money or as an exchange. The master of mercenaries could not afford to be idle; he must arrange for a prolonged campaign, and must manage that his paid levies should live upon the country in which they fought, and that he had money in hand with which to pay them.

Henry fought two wars, in 1173–74 and 1188–89, against an alliance of the revolted baronage in England, backed by his own sons and the king of France, and in 1173–74 the king of Scotland. In the first of these he won against very great odds because he had 20,000 Brabant mercenaries in his pay on the Continent, and had the money wherewith to pay them. In the second he went down in the dust, because, trusting in the professions of his son Richard, and looking forward to peace, he economised by disbanding his mercenaries, and committed great part of his treasure to this son, who turned traitor. This enabled Richard and Philip of France to employ Henry's mercenaries against him, and to pay them with the money which his son had stolen from his father.

Richard, who, unlike his father, sought opportunities for war and quarrel, spent his life as a leader of continental mercenaries, using England merely as a bank from which to draw their pay. John, says Richard of Devizes, in 1193 hired numbers of Welsh mercenaries to forward his attempts against Richard, and Gervase tells us that they were left quartered near Reading without food or pay, and plundered the country around for a living.

If Richard had continued to develop Henry's system of government, the Crown might have maintained its power through the changing conditions of society. But in this, as in everything else, his expedition to Palestine threw to the winds all Henry's system.

Digitized by Google

John, at his accession, with an empty exchequer, met great feudal landowners, bitterly discontented, clamouring for *sua jura*, and in many cases heavily indebted to the Crown.[13] They had been ousted from civil authority in England in favour of a class of men bred for official duties, men with smaller landed possessions and less local authority, and had been supplanted by mercenaries for warfare on the Continent by Henry. They had then been left to fight among themselves under Richard, except where he had led them personally to war abroad. On these men John, a bankrupt king, was compelled to rely for all operations at home or abroad, except so far as he could wring from the abbeys or the Jews or from the use of the courts money with which to pay his Poitou mercenaries. The barons sulked and refused to follow him either to Normandy or Anjou. It is hardly surprising that he was unpopular with the monks.

It is difficult to see what was the advantage to the great baron of this change to scutage. He might very likely collect from his tenants, especially if he were sheriff, a good deal more money than ever found its way into the king's exchequer. Apart from this, unless he had a war of his own on hand with a neighbour, he himself followed the king in many cases with his personal retainers for prestige and plunder, acting as contractor for the services of such of his tenants as wished to go to the war.

A certain proportion of the barons gradually settled down as great farmers and stock-raisers, paying personal attention to their vast estates. But the baron, unless he followed the king, found himself gradually deprived of the usual occupation of war for his followers, whose pockets he touched every time he satisfied the king's demand for feudal service. It is not surprising that he in his turn watched his opportunity to take advantage of the difficulties of his feudal superior, with the result that from the end of John's reign to the accession of Henry VII., England was the scene of recurring civil wars between the king and his barons about money, of which the commercial classes who had the money gained the advantage always open to spectators with hard cash. The imposition of scutage gave them their right to decide matters of taxation.

Digitized by Google

The National Militia.—As the third line for national defence or for border warfare in that part of the Islands which was subject to the feudal system, the heads of the families of the whole people were called into the field as the "fyrd" or national militia, each man having to provide himself with some sort of arms.[14] By the Assize of Arms (1181) the whole free population was to arm for defence, descending to those who possessed ten marks in chattels, including all burghers and freemen. This national militia, the parish priest with all his parishioners capable of fighting, formed a great part of the force at the battle of the Standard, and were largely responsible for putting down the insurrection of 1173. This was really the old levy of the tribes by families. Very naturally there gradually came about a division of social status between the swagger feudal soldier of the first line, who takes money as a mercenary, and the home-staying freeman of the farming class serving in the fyrd. The one becomes a knight or squire, the other sinks to be a villein.

NOTES.—[1] This does not mean that England had departed altogether from communal custom. Far from it. But by the influence of agriculture, the dominance of the Roman Church, and commerce with the Continent, the custom was overlaid and hidden by feudal law. [2] It would appear from various provisions of the Tres Ancien Coutumier de Normandie that, apart from military purposes, the customs of the communal society held in most social relationships and coloured all the administration of the law. [3] *The Chronicle of Jocelyn of Brakelond.* An account of the Abbey of St Edmundsbury in the twelfth to the thirteenth century. A good edition is in the King's Classics, edited by Professor Gollancz. [4] *A.L.W.*, Ven. II. xix. 7. [5] *A.L. Irel.*, i. 159, 161, 189. [6] *A.L. Irel.*, iv. 183. [7] *A.L. Irel.*, iii. 495. [8] *A.L.W.*, Ven. II. xix. 8. [9] Coke (*Reports*, part vii. p. 59) reported Sir Miles Corbet's case in 27 Eliz., where a claim for common, locally called shack, was made for the beasts of the neighbourhood after harvest on land in Norfolk which had long become possessed in severalty and was enclosed. The like intercommoning, says a note to the case, is in Lincolnshire, Yorkshire, and other counties; and in Mich. term 18 Chas. II., B. R. Twisden Justice said that this common called shack was but common *per cause de vicinage*. But it was a case, says Coke, I thought fit to be reported, because it is a general case in the said county, and at first the Court was altogether ignorant of the nature of this common called shack. [10] Even so late as the year 1745–46, when the Chevalier Charles Edward, by way of making an example, caused a soldier to be shot for desertion, the Highlanders, who composed his army, were affected as much by indignation as by

Digitized by Google

fear. They could not conceive any principle of justice upon which a man's life could be taken for merely going home when it did not suit him to remain longer with the army. Such had been the uniform practice of their fathers. When a battle was over the campaign was in their opinion ended; if it was lost they sought safety in their mountains; if won they returned there to secure their booty. At other times they had their cattle to look after and their harvests to sow or reap, without which their families would have perished for want. In either case there was an end of their services for the time; and though they were easily enough recalled by the prospect of fresh adventures and more plunder, yet the opportunity of success was in the meantime lost and could not afterwards be recovered. [11] See as to Continental feudalism in Scotland and Ireland, *infra*, Chapters XXVII., XXVIII. In 1649 the English army were mutinous at being ordered to Ireland, denying the right of the Government to send them beyond seas. The officers, failing to satisfy them by a "solemn seeking of God by prayer," cast lots as to which regiment was to go. This was no more successful; the men were still mutinous. [12] The period of knight service was forty days. The tribal levies do not seem to have been bound by any definite period of time, it being assumed, I suppose, that when the plunder was exhausted the men would go home. [13] Geoffrey of Mandeville was indebted to the king in 19,000; Egidius, Bishop of Hereford, in 9000 marks. Geoffrey of Mandeville and Eustace de Vesci, says Walter of Coventry, "pro parte magna causam dederunt hujus tumultus regis Angliæ." Giraldus (*De Instructione*) asserts that where Edward the Confessor had 60,000 marks of revenue, Henry II. had only 12,000, because Stephen and others had given away so much. Henry and his sons, he says, trusted to contingencies. [14] See ordinance of 14 Hen. III., Close Rolls Membrane 5 d., and other authorities quoted by Professor Vinogradoff in *English Society in the Eleventh Century*.

CHAPTER VI

THE CONTRAST OF THE COMMUNAL SOCIETY

As we quit England, and Scotland south and east of the Grampians, largely peopled permanently by Saxons and Normans, in which, owing to the English marriages of the descendants of Malcolm and St Margaret, the feudal system had begun early to drive out the social community, we leave behind us this later system of military obligation and the resulting individual tenure of land from military chiefs. We

Digitized by Google

return, whether in Wales, Man, Ireland, Northern or Western Scotland, and the adjoining Islands (even in some measure in the northern counties of England) to a condition of society in many respects very like to Tacitus' description of the dwellers in the German forests. Some of the main features which accompanied feudal land-holding, the increase of federal authority, the more military organisation of society, the decay of popular assemblies and of popular courts, the increasing practice of commendation to obtain protection, may be seen here as a development natural on increase of population, on military necessity, and on the steadily advancing influence of Roman ideas. But we must take especial note of some deep-seated agencies of difference then existing between England, even South-Eastern England, and the rest of the Islands—differences which have divided off Henry's dominions from the other lands, which have not wholly, I think, lost their influence to-day.

Common Ownership of the Soil.—The so-called Englishman of the twelfth century, Saxon, Norman, Flemish or Angevin, recognised as the primary tie between man and man, both social and political, *the holding or tenure of land by one individual from another as a partial temporary ownership*, an *estate* in land, or a *tenancy* of land for services to be rendered to or for the individual owner, mostly military services, the actual residuary ownership of all the soil resting eventually on the king as chief military lord of the nation. The rest of the people in the Islands recognised as such primary tie, in the first instance, *a common ownership of the soil* by all persons within a certain circle, the tribe, the sept, or the family, only alienable to a very limited extent beyond that circle. How wide the circle, how complete the communal ownership, depended according to my views almost entirely on geographical and economic causes: the extent of land available for cultivation, the convenience to large rivers and to the sea, the mountain ranges, the moisture, the nearness to markets and trade routes; the only influence, apart from these natural causes, which defined or modified the form of the communal society was that of Rome, the great corn-grower and exponent of feudal authority.[1]

Digitized by Google

In Ireland the unit would appear to have been the larger circle, the tribe; on the west coast of Scotland, where the seafaring people were broken up into small island communities, or separated in the dales by rough ground and mountain ranges, the chiefs rule over a smaller unit, the sept, clan, or group family, while in the Orkneys and Shetlands the society is based on the family in its ordinary sense.

Feudal Society rests on Individual, Tribal Society on Communal Land Ownership.—The change, then, to feudalism resulted in the creation of a society organised on the individual ownership of land, a qualified ownership resting ultimately on a grant from the king as absolute ruler of all, an ownership which we might describe as an estate or as a tenancy, the system in use at the present day. This system gradually ousted the society constructed on a common usufruct by the whole community of freemen of soil of which they were common owners, as contrasted with the basis of their wealth, the cattle of which they were owners in severalty, the system described by Tacitus and still in full operation in all parts of the Islands where the English influence did not extend.

Let me again explain that I am not suggesting that land was not held in severalty for cultivation under the tribal system. That was inevitable as soon as corn culture invaded the pastoral life. On the contrary, it is most important to keep in mind the power of the chief to grant the waste or forest of the tribe (in the first instance with the consent of the community) to individual owners for military or other service, or to a separate community for a church, or to put on it as squatters his own unfree dependants, or foreigners, who for trade or other reasons were resident in the district. Only by this means can it be understood that the forest, which was also the waste, was not a preserve for the king's sport, but a reserve for the people's wants. Two of the latest writers, Mr M'Kechnie and M. Petit Detaillis, have recently solemnly repeated the old absurdities about the forests being preserves for the king's game, instead of being, as they really were, the great national reserves for timber, then far more important even than it is now, for minerals, and for food for all animals, tame as well as wild.

Digitized by Google

But there was a difference of principle. Under the tribal system it was acknowledged that every man had a right to a share in the common land. If land was held in severalty, held as fenced land for cultivation or "in right of urine or manure," *i.e.* in return for improvements or for special services to the community, it was in the nature of an exception, however wide, to that rule. Under the feudal system, especially as it grew in the hands of the Norman and Angevin kings of England, the acknowledgment was the exact opposite. The land is the king's and in his gift in the first instance, and the user of it only comes to any individual through his favour.

Under the tribal system the chief as one of the community, bound to it by kinship, and sharing its rights and its responsibilities, administered the customary law relating to the land for the benefit of the community. The tendency, no doubt, was in favour of his acquiring the proprietary rights of the people in it, as he eventually did in Ireland, the Western Highlands, and elsewhere. But, even so, it was long before he forgot his kinship to the ruled, his customary duties to his kin, or his place at the head of the family. After 1745, when the power of the Highland chiefs was destroyed, by degrees the proprietors began to exact a rise of rent. But little alteration seems to have been made until the generation of old proprietors was extinct.[2] In the earlier times, apart from the mensal lands which descended from ruler to ruler, the chief only held his share of land as a member, a very powerful and prominent member, of the community for which he was in a sense a trustee.

Under the feudal system the king administered the land just as the pope administered the estates of the Church, as the superior lord of a community whose interests in the land vested in him, he undertaking to do or to pay for doing all those matters of national, judicial, and social work which under the tribal system were done or left undone largely by the people themselves.

The tribal chief was of kin either really or fictitiously to the people over whom he ruled. The English under feudal law have been ruled with the rarest exceptions by kings almost wholly of foreign descent.

Digitized by Google

It need not be assumed as a consequence of the change that the individual in those parts governed by feudal custom had entirely taken the place of the family as the unit of the society. But the tendency was constant in the direction of the individual ownership or tenancy of land, especially as the English connection with Rome grew stronger, and as the crusades and the continental possessions of the English kings stimulated trade; the family, the group family, continuing as a unit to affect many aspects of life, to control farming, to colour judicial evidence, to influence trading, and the status of monastic corporations, appearing in many technicalities of law, and influencing in a hundred ways social and political ideas.

The Federal Authority.—In a society bound together by kinship in which each family had its share in the use of the common property, it stands to reason that any exercise of authority from outside the communal unit would be keenly criticised and checked. Each group family or collection of group families resented interference with the management of their affairs by the leader, however powerful, of another group from beyond. We find that in these parts of the Islands the federal authority was for the most part non-existent, or where it did exist was held in check and nullified by local influences. Any king of Wales, who for the time obtained a predominance over the whole country, did so with the assistance and at the instigation of the king of England.[3] But in Wales there was no recognised over-king as such. Constant war between the princes of North and South Wales prevented any king from obtaining more than a temporary supremacy with opposition. The kings of Man were drawn sometimes from the ranks of the Irish kings and sometimes from the chiefs who ruled in the Western Islands, which, with the north and west of Scotland, were still subject to the king of Norway. Even these Western Islands gradually became divided into two parts, those north of Ardnamurchan, and those south of that point with Man, neither acknowledging the supremacy of the other, and both at constant war. Ireland alone had a recognised overlord, the Ardri. Until Brian Boru, in the eleventh century, seized the supreme power for the Dalcais of Munster, the

Digitized by Google

Ardri had generally been selected alternately from the two branches of the Hy Neill of Ulster and Meath, so that the successor to the reigning over-king was known and generally acknowledged.

In all ancient society, in England, as well as in the rest of the Islands, the successor to the reigning king was in his lifetime nominated or defined, so as to avoid the certain conflict and confusion which would arise on death. Thus Henry II., who had himself been nominated by Stephen in his lifetime, had his eldest son Henry crowned in 1173 as his successor. The Welsh "edling," as he was called, was generally the son or nephew of the king; the Scottish "tanist" was formerly the brother or nephew.

After Brian's usurpation there was no regular succession or generally acknowledged nomination of a tanist in the lifetime of the Ardri, with the result that the death of the over-king was followed by a fight for the mastery between the kings of different parts of Ireland, and the successful one was never fully acknowledged, but reigned "with opposition." It opened the way to the conquest of Ireland from England. At the time of the "Saxon" invasion of the twelfth century, the Ardri, who corresponds to Henry II. in England, is Roderick O'Conor, king of Connaught, Ardri "with opposition," that is to say, obeyed only so far as he can enforce his authority, and not strong enough to take effective notice of every act of disobedience. In this respect his power does not much differ in proportion from that of Henry of England or William the Lion of Scotland, kings who found it necessary to use patience and diplomacy to restrain chiefs in Aquitaine or Sutherland, whose military power was little inferior or even superior to their own. But in each case, in Ireland as much as in the other countries, the office of overlord served a very useful purpose in checking intertribal war. The fear that the over-king, who represented the whole community, would be supported in his attack by other sub-kings, the certainty that in any event there would be great loss of cattle and devastation of good land, often resulting in the worse enemy, famine, kept many a chief from raiding his neighbour.

Territorial Divisions.—It is not necessary to go at length

Digitized by Google

into the matter of divisions of territory, which, I take it, are always the result of accidental growth, aided by earth formation, wars, the uncertain increase of population, arrangement for fiscal and military convenience, and many other agencies of change which contribute to vary any standard of division which may be set up from time to time. To take Ireland as an example. Under the Irish Ardri were five kingdoms or divisions of tribe communities of Ulster, Leinster, Connaught, and North and South Munster; Meath, which was under his direct authority, forming a separate district. (See below, Mensal Lands, p. 143.) Subject to the payment of federal dues, and to the general interterritorial jurisdiction of the Ardri, these sub-kingdoms had the same absolute self-government or Home rule as the French provinces subject to Henry II. of England. Each of these kingdoms in their turn contained further divisions or provinces subject to kingly authority. For instance, before the date of the Senchus Mor, Ulster had been divided into Uladh, the parts east of Armagh, Oirghialla or Oriel, the parts south and west, and Ailech, now Derry, north and west. "He is not a king of territories who has not three kings of territories under him."[4] These divisions again in their turn were divided into tribal units called tuaths, cantrevs or cantreds, like English shires, occupied by the different tribes under their chiefs or kings, subject to the king of the province, and as varied in size as English shires. The tribes were composed of group families or septs, and the septs of families. Neither tribe nor sept is an Irish word, the general word in use being "finé," variously used. But we take our historical phraseology from English writers, and the English take all their terminology from Rome.

At the time of the invasions the territorial divisions were not necessarily identical with the family groups or tribes, but they were probably to a very great extent identical. This, so far as I can see in the present state of the authorities, is all that can be said. I would suggest that there was very likely as much difference between the west of Ireland and Leinster or Ulster in progress towards a society based on individual land-holding as there was between Somerset and Kent, or between Argyll and Kirkcudbright.

Digitized by Google

In the first instance there can be no question but that these divisions of territory, whether Saxon or Irish kingdoms or English shires, Irish tuaths or Welsh cantreds, represented tribal divisions which became, from various causes, unequal.

Continuing with Ireland as an example, the tuaths or tribe territories were of varying size, from very small to very large, like the English shires, which very likely followed the lines of former tribal divisions. Many are said to be represented by the modern baronies, which retain the ancient names. But the divisions now either are or incline to become territorial; the real or supposed tie of blood conflicts with the local habitation, connected with long residence within a definite territory; the boundaries are unwritten traditions marked and known by a stream, the crown of a range of hills, or a notable old tree, or a stone set up as a mark from which the line of hill or river boundary would run easily. This was a place where negotiations between the different tribes could be effected, where agreements could be made and trading carried on. The only really important division for administrative purposes was the hundred, the division mentioned by Tacitus (*Germ.*, c. 6), a division which formed the basis of local government, as the cantrev, cantred, or hundred, all over the Islands.

The General Assembly.—No doubt the Althing or Folkmoot, the trading fair, the Court of Justice, the Synod, was held in such places, of which evidences are dotted about all over the Islands.[5] But I suspect that long before Henry's day the general assembly of the tribes, except so far as it was a military council, had surrendered its powers into the hands of the chiefs, just as the popular assembly in feudal England had given way to the king's officers and the manorial courts.[6] The Things in the Orkneys would seem to have remained a reality until a later day, owing to the limited space in which the family society was packed, and the inclination of the community to assert its independence of Norway, and sometimes of its earls. But even here, so far as we can judge from any surviving records, it acted mainly as a military council, a place of settlement of disputes between rival earls, and possibly as a place for declarations of outlawry. Not infrequently when the king called a Thing in Norway for a levy

Digitized by Google

of men or to collect scat, the bondes came armed to oppose him and to proclaim grievances.

NOTES.—[1] These views, I am aware, are not in keeping with those of our historians generally, who, following very closely the German writers on the tenure of arable land from Nasse onwards, have imagined a racial variation of land use and tenure due to Teutonic and Celtic characteristics, though they never attempt to explain what they mean by Teutonic or by Celtic, except that the good things, such as improvements in the mechanism of war, are supposed to have originated with a superior race called Teutonic, and evil habits, such as fosterage, with an inferior race called Celtic. [2] *Observations on the State of the Highlands*, by the Earl of Selkirk, 1806. [3] *E.g.*, Rhys, King of South Wales, was in the last quarter of the eleventh century Henry's justiciary and deputy. [4] *A.L. Irel.*, iv. 381. [5] A man out of every holding, of chieftain grade, is to go with the king to make laws and interterritorial regulations (*A.L. Irel.*, i. 159). The law provides recovery by distraint of the food tribute supplied to the assembly by one person for another (*ibid.*, 160). The assembly is mentioned iii. 241. See Appendix A. [6] How completely the Commune concilium had passed out in Angevin days is shown by the provision of Magna Charta, c. 14, for summoning specially the greater barons and "omnes illos" for assessing an aid or scutage.

CHAPTER VII

THE CONTRAST OF THE COMMUNAL SOCIETY—*continued*

THE CHIEF AND HIS GIVING OF STOCK

The Chieftain Class.—Let us put to one side for a time the office which we inevitably view from the Roman standpoint —the king—the king, who seldom or never in his rounds for plunder or for exhaustion of supplies may happen to come through our district; the king, who is to the ordinary tribesman merely the distant supreme director and organiser of warfare not always sought or appreciated by the subordinate unit, a leader whose dues, whether the food of tenancy or the ferm of one night's entertainment, are paid to him through the local chief or lord of the manor; and let us leave with him the general assembly of the people, at which the local chief

Digitized by Google

may only occasionally require the presence of his tribesmen to support him in disputes with the chiefs of other districts or in his bargains with the king or with the Church. Let us consider the chief as local representative and as local ruler.

Much of what is said in every relation about the chief applies to the king, who is only a glorified chief, whether we are speaking of law or land tenure or finance, of Henry and John or Roderick and Dermot, or Alexander; but the chief as such is a larger figure in the daily life of any mediæval society than the king. Away from politics, which under customary law may be said to be non-existent, or at any rate confined to the Church, and away from foreign war, which was ever fitfully imminent unless the invader could be persuaded to restore the cow or the woman or assisted to attack someone else, mediæval society centres round the chieftain class.

All such society, governed by unchanging custom, whether it was a communal society resting on the sept or a feudal society resting on the manorial unit, was aristocratic; the grades were various and distinct; there was no pretence to the paradoxical absurdity of equality which was incompatible with liberty; the gradations of rank with their privileges and duties are as strictly defined in the early feudal society as in the society governed by the tribal chief from which feudalism developed.

Although the customary law minutely covers the whole community, guarding and regulating all men's lives from the cradle to the grave, although it recognises that in true democracy the unfree man of to-day may be the freeman of to-morrow, the freeman a chief, the chief a king, yet, like our law to-day, it concerns itself for the most part with the rights, privileges, and duties which pertain to those who in a society regulated by status stand for and speak for the community, those who exercise the leadership, the families of wealth and breeding who are able to pay the fees for the support of their rights in the courts.

Though there are many scattered references to this subject in Welsh, Scandinavian, and other records, the Irish Brehon law gives us the best picture of the gradations of the chieftaincy in detail.

Digitized by Google

Good birth, apart from wealth, was a necessity. Nobility in a society bound together by kinship rested in the first instance on long descent and purity of blood; society fully believed in the transmission of qualities of leadership from parent to child; the Irish aire or non-noble chief could become a flaith or noble only if his father and grandfather had been non-noble chiefs. But wealth was also a necessity. Given the necessary purity of blood, he could become a flaith only provided that he had the property qualification, the wealth in cattle necessary for chieftainship.[1] Wealth is viewed as the capacity to give and to protect,[2] the tribal chieftaincy only differing from our commercial rich men in that they claimed, and were proud of, their kinship with the poor.

An interesting type of chieftain, whose position would appear to have depended solely on his wealth, was the brewy or brughaidh, a chief who exhibits to us the social side of the community. He was the innkeeper of the tribe, whose business it was to keep a place of public entertainment for travellers at the meeting of roads. He must have roads to his house, must keep a light burning at night, and employ a number of men to guide travellers. He must not warn off or refuse anyone. For this purpose he had provision made for him by the community, was in the nature of a magistrate, and ranked as a person of very great importance. He was entitled to the same privileges as the king.[3]

It must, however, be remembered that this evidence of the social side of tribal life did not extend to a member of the tribe or sept across the creek, who might be an enemy, unless he was vouched for by some freeman, or unless he were a trader or other under the protection of the chief or king. It was the provision for the social amenities only in the small community itself, subject to a common law of hospitality exercised by all early communities towards the stranger "that is within thy gate" if he is passing swiftly by, or if he stays safely under the protection of the chief for a longer period.

All the relations of life, social, political, legal, group themselves round the local chief, and as we consider each in turn

Digitized by Google

we find him as the pivot on which society moves. He must be of the purest blood of the tribe, and he must have wealth and must be willing to part with it. The true chieftain in all times spends himself for the community in the place of living on it; his power rests upon his willingness and his ability to give, and, like Pitt, he dies poor; until recently the echo of this best feature of early society was with us in an unpaid and non-political county magistracy and an unpaid legislature, who gave freely of their energy and wealth for the State.

The system of cultivation of the common land, the customary laws for its division among the community, the regulations for use of the pasturage, the whole system of joint responsibility for injury, rested on the assumption of the common possession of the soil by the group family. The chief was the head of the group family; he owed his position, his influence, in some cases perhaps the affections of his followers, to the fact that he represented to them the most distinguished living man of the descendants of their common ancestor; he stood for the traditions and the history of the group family in the past; as the representative of the group family in the present he accepted for them in the first instance the responsibility in all matters of contract and tort; it is he who distrains and is distrained upon for the family; it is he who is the hostage surety for members of the community, risking repayment from his often remote kindred. He was guardian of their rights of territory, arbitrator in their disputes; he was the leader of his own folk in war and peace. He ordered the cultivation of the common fields; he took his share as one of the kinsmen in the common pasture; he had been fostered by freemen of the family; his personal attendants, for whom he finds horses and arms, are of his kin; as he is responsible for the torts and contracts of the community, they in their turn who, by receiving stock from him, acknowledged that they took protection from him, shared in the responsibility for their kinsmen and paid him their share of the joint contract or loss.[4] In return for his services to them, the people of the group family fed him and tended him; as Tacitus says, they present to him cattle and grain as an honour and for providing him with necessary

Digitized by Google

supplies. But in all matters of claim, either on their services or on their customary gifts, he was obliged to observe closely the limitations which immemorial custom had put to the privileges and rights connected with his office.[5]

As the feudal system, which acknowledged no common ownership of the freemen in the land, drove out the social system founded on kinship, the lord of the manor in England and the feudal substitutes for chiefs in the other parts of the Islands, when the English arms penetrated beyond the borders, assumed all the rights of the chief so carefully controlled, but regarded few of the obligations. So far as the rights are concerned, it is an easy transition from him to the feudal lord. But they forgot that no society can survive the existence of rights without corresponding obligations, and when the inevitable Nemesis comes upon them, they lay the blame for the failure on the social system which they have destroyed.

As and when the tribal society developed into the closer form of feudalism the lord of the manor assumed the position of tribal chieftain, except that he claimed no kinship with the people whose lives he controlled and had no sense of communal responsibility for them beyond the observance of such customary rules (and they were many) as remained unconsciously or from tradition to limit his political or judicial powers—no responsibility to anyone but to his lord to whom he owed rent or military service.

Succeeding to the office and duties of the tribal chief, the lord who held land from the king became a potent factor of society in every way; he was the king's officer to recruit and marshal the feudal military force or to collect the scutage; he became the farmer of dues for the Crown, levied in the first instance on cultivation; he acted as the foreman of an unvarying system of farming carried on according to set rules which assumed the obligation of duties on the land for all when not fighting; he assessed and collected the fines for breaches of the rules of cultivation; and last, and by far the most important, he succeeded to the judicial powers of the tribal chieftain, and became an administrator of justice, both in his own person and as delegate to the king, collecting

Digitized by Google

and farming fines for offences, and dealing, at a time when all law was in a confused and transitional state, with a mass of feudal rules which had scarcely overlaid well-recognised immemorial local custom, and which conflicted with a rising tide of Roman and canon law. His position in this respect is of varied and far-reaching importance as of the essence of feudal life, and very interesting both in relation to tribal society and to modern development.[6]

The chieftain rank was graded according to wealth in moveables and cattle, and the privileges of each chief were according to his degree. According to his wealth and birth was the value of his oath, which was measured in cattle,—he swore up to a "dairt" or up to a "colpach" heifer—of his power to contract, of his suretyship, of his honour price for compensation in case of damage to him or his family, the refection due to him on his rounds and his maintenance in sickness, the extent of his "peace," the protection he could afford to fugitives, the amount of stock given to him by a superior chief to whom he had commended himself, and the food rent due to him from his inferiors. (See Appendix B, The Ogaire Chief.)

All such rights and privileges were proportionate to the power of the chieftain to give live stock, generally cattle, on loan to the men of their tribe or sept or to strangers.

The Loan of Cattle.—The primary tie of the social system, in which stock-breeding and dairying was the pre-eminent though not the only industry, and in which the land used for pasturage was with exceptions used by all the community in common, was the lending of cattle by one man to another, the regulated distribution of the stock on the common range by the king to his subordinate chief, by the more wealthy to the less wealthy chief, by the chief of the sept to the freemen of the sept. The richer man, the chief who had plenty of cattle, loaned them to the poorer. Such a loan was an evidence of his wealth, and so of his power, and an evidence that the borrower was his inferior. That thou mayest know, says the Brehon,[7] the right qualifications of a king who is wealthy and affluent, let him give much stock, *i.e.* let his stock to his ceilib (his followers) be great.

Digitized by Google

It was the chain which bound society together, the equivalent in communal society of the feudal ties of land tenure; it was a transaction which carried with it, in the first instance, the equivalent of commendation, the acknowledgment of the superiority of the lender—a transaction which was the core of a bundle of rights and obligations jealously guarded in the interests of the community on both sides.

One can illustrate the whole system best, I think, by quoting an extreme, possibly legendary, instance of this connection, one which illustrates vividly the tribal society of ancient times. The Senchus Mor[8] speaks of "the king of Erin without opposition, for which he received stock from the king of the Romans; or it was by the successor of Patrick (*i.e.* the abbot of Armagh) the stock is given to the king of Erin: *i.e.* when the seaports of Dublin and Waterford and Limerick (and the seaports) in general are subject to him: *i.e.* though he is supposed to give stock to the principal king, it is not to impose tenancy on him, but to show honour price." The meaning of this awkwardly expressed and enigmatical passage is that at some remote time an Irish Ardri was so completely master of the country and of the seas as to control the three principal ports which, from the opening of the ninth to the middle of the twelfth century, were always liable to be in the hands of the Scandinavians, as the Afghan sovereign would only be without opposition if he held Cabul, Candahar, and Herat. Under these conditions, the only conditions under which it would be worth while for the emperor or the pope to treat with him, he had concluded an agreement with one of them (the abbot of Armagh being treated as the pope's equivalent) on the terms of becoming his "man," acknowledging his superiority.

The symbol of the agreement was the supposed formality of a loan of cattle from the emperor or pope to the Ardri, given, as the text says, not as the ordinary transaction of lender and borrower, but to show honour price: that is to say, as an acknowledgment of superiority by the admission of the superior value of the life of the lender in case of injury,

Digitized by Google

judged by the compensation which was due to each person according to his status, and which he might calculate either by birth or by wealth.

This passage is spoken of by some as being an imaginary instance. I see no reason to think so. In the confused warfare of tribes the party which could have even the theoretical backing of the Church or emperor would have immense advantage. And the pope or the emperor, in the course of their struggles for the increase of imperial dominion, might well be willing to use the authority of any overlord of the Islands who had sufficient control of his underlings to be of value either for political or military purposes. The acknowledgment by the Ardri of a distant lord, generally believed by the world to be supreme, would not hurt him in the least. It was an alliance with a superior who might assist but was not likely to injure. There is a certain analogy with the modern Irish leaning towards the Italian pope as against government from England.

The only objection which men who lived a hard and real life, when the kingship was a reality, when everyone worked, and the king hardest of all, would make to any symbolic action which put them in a position of inferiority was that it might injure their prestige in the eyes of their own people. The king would only consider whether the return to be made for his subjection was worth the injury to his position. If it were, he would not hesitate to subject himself to get something good in return. If the Irish Ardri made such an agreement with the emperor or the pope, he did so in the expectation of receiving military assistance, commercial privileges, religious advantages, or some other good thing on his part. It is not suggsted that the ignominious flogging of Henry II. at Canterbury, of Richard at Messina, or John's submission to Pandulf, was not a reality. They suffered it because they expected value for it.

This acknowledgment of superiority was sometimes very unwilling, as when Brian, on Malachi's submission to him in the eleventh century, gives him a number of horses, which Malachi declines to accept for himself but hands to his followers. He has not the power to resist Brian, but he

Digitized by Google

will not take part in any symbolic act which may be construed as admitting superior honour price.

In the first instance undoubtedly this giving of stock was the equitable distribution by the head of the group family to its members of the herds of the community for pasturage on the common range. As the boy arrives at the early age of manhood,[9] the chief admits him to the tribe, taking fees for admission.[10] As a token of such admission, and as acknowledgment that he was a member of the community and that he claimed the rights and accepted the obligations attached to the position, he received the cattle and became the chief's man; where the society had developed to the distribution of land to the individual, he was put in possession of his erws or acres, and received the animals with which to cultivate them. This taking of stock and the consequent acknowledgment of the authority of the chief, so far from operating as a lowering of the young tribesman's status, was his title of admission to the community, the evidence that he was of the pure blood of the family, and as such was entitled to share in its common advantages. Until this age came when the youth could be so admitted into the community, he was fostered by one of his kin.

But on thus entering the community the young tribesman shared also its liabilities. He took part with the others[11] in supplying the food for the chief, the needs of the old people of the tribe and of hospitality, and he was jointly responsible for the compensation which might be payable for the wrong acts of his kinsmen.

The services and payments made by him to the chief are practically identical with those noted by Tacitus and Cæsar as due from the peoples with whom they came in contact: military service (called feacht and sluaged in Scottish custom), of offence against pirates, robbers, and wolves, and defence, helping to build the chief's fortress, attending him to the general assembly, helping to avenge the family quarrel or to pay the compensation for injury for which the chief had made himself hostage surety for one of the tribe, taking part in giving entertainment to the chief and to his company when on his rounds[12] (called in Scottish conveth or in Irish

Digitized by Google

coshering), and supporting him and his followers by contribution at home (called in Scottish cain or can, and in Welsh gwestva), as Tacitus says, giving cattle or grain to the chief as an honour and for providing him with necessary supplies.[13]

There was one additional service not mentioned by the Roman writers, called in the Irish laws serving God and assisting in the work of the Lord. After describing the acts of charity due through the Church, the Irish text says, the chiefs are bound to levy each of these upon their land—the commentary adding, to levy them from the laity for the Church, laying on the chief, as in England on the lord of the manor, the responsibility for the collection of tithe, first-fruits, and alms, and of moneys due to the king from the community.

Wherever we see the tribal formation, these services may be said to be comprised within the same categories: military service, right of entertainment, food contribution, and the share of the common liability for injury. As we see the communal system later in the written laws, the giving of stock to the tribesman has developed into a loan at interest from chief to followers, apart from his duties to the chief as the head of the family, just as the feudal tenant paid rent for land in addition to the military service which he owed. The interest paid for the cattle loaned [14] was a regulated share of the produce of the loan, one-third of the value of the original stock for seven years. He might pay this interest in young stock or in manual labour or in military or in other service, for the erection of the chief's dun fort, for reaping his harvest, or he could take out the one-third in giving the food and ale to which the chief was entitled as food rent.[15]

The free tribesman, who took stock from his chief or king, gave no security. He was obliged to take stock from his king only. If the king or chief had not sufficient stock to lend, he might take stock from an outside chief. But if he did so, a relation equivalent to commendation arose between them, which was disliked by his own people, as this would be putting on the common land stock not belonging to the community. The legal period of such loans of stock to free tribesmen was seven years, pointing very possibly to this term as the period

Digitized by Google

in early days for a general division of community property or a rearrangement of rights of pasturage.

The chief object in view, where the pasturage was common to all, was in the first instance that it should be used in just proportions by members of the sept; so that the richer men should not eat out the pasturage of the poor man by bringing in many cattle from outside. Fitzherbert, writing early in the sixteenth century, urges as an argument for enclosures, "Then shall not the riche man overeate the poore man with his cattell." The tendency is all to the accumulation of wealth in a few hands. Custom for this reason deterred the tribesman from accepting stock from an external chief without the consent of his own chief,[16] though he might do so if his own king or chief had not stock to loan to him. The act lowered the status of the man in the eyes of the community, as it was a danger from the selfishness of one to the common pasture.

This giving of stock, then, is the preliminary stage of feudalism, while the land is still in the possession of the community and not vested in the king. By acceptance of the cattle the member of the group family claimed his kinship to the chief and acknowledged his responsibility as member. The common freeman accepted the protection of the chief, who might himself, unless of a very high rank, be under the protection of a superior, and the act involved conditions on the part of a tribesman which are not so far from the relation of the feudal lord and tenant. But there are still very marked and notable distinctions; as Kemble puts it,[17] the service was incident to the possession of land; the land was not held upon condition of doing the service; for not doing it he no doubt was liable to punishment, but not necessarily to forfeiture; and the consequence of fealty, so far at least as the land is concerned, is wanting.

If the proper payments have been made,[18] after seven years, on the death of the chief, the stock became the property of the borrower; but if the borrower died after such payments, and the chief was living, he found a new borrower or divided the inheritance among those entitled,[19] taking payment from them: "for every dead man kills his liabilities."

Digitized by Google

The borrower could, except with his own king, throw up the contract when he pleased. He might always separate from king or chief on the grounds that these had given false judgment or false witness,[20] and he could always separate from an external king.[21]

The king, whose giving of stock was compulsory, could not take it back. The chief could always take away his stock from the freeman, but the borrower could check this by asking for more, so that he would become unfree by holding an excessive proportion. To this the chief was bound to agree. But the unfree borrower could not throw up his contract.[22]

NOTES.—[1] P. 89. With cattle every payment was formerly made. *A.L.W.*, Ven. II. xxi. 10. [2] *A.L. Irel.*, i. 43, 49; ii. 279, 281; iv. 37. [3] *A.L. Irel.*, i. 47, 49, 247–49; ii. 381; v. 77–79. [4] *A.L. Irel.*, iii. 113–15. [5] See Appendix B, The Ogaire Chief. [6] See my *Tort, Crime, and Police in Mediæval Britain*, chaps. xii. xiii. [7] *A.L. Irel.*, iv. 375, apparently from the instruction of a king, ascribed to Cormac Mac Airt, king of Ireland, A.D. 250. [8] *A.L. Irel.*, ii. 225. [9] Boys, fourteen; girls, twelve. *A.L.W.*, Ven. II. xxviii. 5; xxx. 2–3; xxxi. 10. [10] *A.L.W.*, Ven. II. xix. [11] *A.L. Irel.*, iii. 113. [12] *A.L. Irel.*, ii. 27. [13] See *A.L. Irel.*, iii. 23 *et seq.*, and *A.L.W.*, Ven. II. xix. [14] *A.L. Irel.*, ii. 194–341. [15] *A.L. Irel.*, ii. 197–207. [16] *A.L. Irel.*, ii. 307–9. [17] Kemble, *Codex Diplom.*, I. liii. [18] *A.L. Irel.*, ii. 269. [19] *A.L. Irel.*, ii. 271. [20] *A.L. Irel.*, ii. 323, 333. [21] *A.L. Irel.*, ii. 209. [22] *A.L. Irel.*, ii. 269.

CHAPTER VIII

THE COMMUNAL SOCIETY—*continued*

THE UNFREE

The Unfree Tribesman and the Villein.—It is in connection with this giving of stock on mortgage that we are brought into view of the class of tribesmen with qualified tribal rights, the daer or unfree men corresponding to the villeins of England and the steel-bow tenants of Scotland. A free man,

Digitized by Google

says the Brehon tract,[1] becomes unfree by selling his family land through extravagance, or his property or his body into servitude. An unfree man becomes free by buying land or gaining by some art, as law, poetry, or husbandry. A workman such as a smith may become free by his art.[2]

The word "daer," used throughout the tracts, would appear to have the meaning of servile, ignoble, as opposed to "saer," free, noble. The phrase saer ceile, daer ceile, is translated by the editors of the Brehon laws saer tenant and daer tenant. There is apparently no equivalent sense of tenant in the original Irish or any justification for the translation except the ingrained feudal tradition of land tenancy. As the words tenant and tenancy, as applied to loans of cattle, are liable to confuse a reader who has not realised that the personal tie, and not the feudal tie of land, save as the exception for a short time, was the bond of union of ancient society, and as it is so necessary that the loan of cattle, with its social and communal consequences, should be seen in strong contrast to a feudal system based on individual ownership or tenancy of land, I have used the words free and unfree tribesman for saer and daer ceile. The word ceile, meaning companion or fellow, no doubt gradually shaded into vassal and into tenant as the mortgaging of stock led to the mortgaging of land. But it has nothing to do with tenancy of land.[3]

A society which was based on the community of the materials for life could not afford that those who misused or neglected the advantageous use of the materials should be free to make disposition of them to the same extent as those who properly used them. Moreover, a society in which crimes, torts, and accidental wrongs were compensated by payment could not afford to allow those who had alienated or depreciated their means of payment to be free to commit further offences with the possibility that they might have no means to compensate others for debt or injury incurred, by which a loss would fall on the community responsible for their misdeeds.[4]

Hence there arises a class of persons in all societies, the daer tribesman, the geneat, the villein, the steel-bow tenant, and so forth, who, though nominally free, is so far from

Digitized by Google

absolute freedom that he is subject without remedy to the judgment in the local courts of his agricultural superior; he holds land or borrows cattle on onerous terms; he may transmit to his descendants his disabilities. Apart from such disabilities he is not necessarily unfree. In feudal society the status of such a man was shown by his position as an individual tenant of land; in communal society by his position as holder or borrower of cattle. The free tribesman is one who can borrow cattle on equal terms; the unfree tribesman one who does so under many disadvantages. But by increase of wealth, by purchase, by special service, the condition may be changed to one of complete freedom.

The contract between the chief and the unfree tribesman could be repudiated by the community if done without its knowledge: a real protection most likely for the common pasture, as in the case of a refractory chief the community could take a cowardly secret revenge on the offending cow.

The Law of Social Connections,[5] which deals with the relations between those who have a legal status and those for whom they are communally responsible, such as the father with his daughter, etc., quotes as one of the social connections the relations between the chief and his unfree debtor. They are treated in the contract as on an equality, their relations being those of individual contractors. The chief is to give the unfree debtor stock and returnable seds and protect him against every injustice that he is able, and the debtor is to render him victual and labour and respect and to return the seds to his heir where it is right, *i.e.* if the chief dies before the expiration of the seven years.[6]

The rents and the proportionate stock are most minutely regulated in the Irish laws, and every provision is made that no hardship shall fall on the debtor. But the unfree tribesman had to give security. He was greatly under the power of the chief from whom he had taken stock, in any proceedings, as his oath was of no value against the chief, any more than that of the villein would be in the manorial courts against the lord of the manor.

In these unfree stock loans the property did not remain to the borrower, but had to be returned at the end of the term.

Digitized by Google

The customs [7] appear to contemplate the daer tribesman taking stock from several chiefs in succession, giving, as it were, first, second, and third mortgages. But these later mortgages do not appear to have been favoured.[8]

The contract is found in many other parts, and it exists at the present day in the United States and in countries where there is unenclosed common of pasturage. In the "Rectitudines Singularum Personarum" [9] it is said—"On the same land where this custom holds it falls to the gebur that there be given to him at the setting of the land two oxen and one cow and six sheep and seven acres sown on his gyrde landes; when death befalls him let the lord take what is left." Formerly, says the Rent Roll of Kelso,[10] each husbandman of Reveden took with his land Stuht, namely, two oxen, a horse, three chalders of oats, six bolls of barley, and three of wheat. Stair describes them as goods set with lands upon these terms that the like number of goods shall be restored at the issue of the tack. The Code Napoleon,[11] after describing (1804) "La bail a cheptel simple," a loan of animals on shares, the lessor taking half the produce and supporting half the cost, and (1818) "Le cheptel a moitié," where each supply half the beasts, goes on (1821) to "cheptel donné au fermier aussi appelé cheptel de fer" (or steel-bow). It is a loan of cattle on the terms that at the end of the term cattle of equal value are to be left, the fermier taking all the profits in the interval.

It is not at all necessary to emphasise the slavish side of the daer man or geneat or villein or steel-bow tenant. He was simply someone who, through misfortune or misconduct or want of energy, or in most instances want of initial capital (he had lost his oxen by famine), had not been able to use his communal land without borrowing or renting on onerous terms. It might be (there were such men, and the Brehon law provides for them), that, being an ambitious man, he was not contented with his own stock or with his borrowings from the chief regulated by custom, but required more for speculation. If so, he had to pay heavily for the accommodation, and he fell in public estimation in a society where speculation of this kind was not admired, and he lost some

Digitized by Google

of the rights of onerous service, which were much prized in ancient social life.

Under this older system the poorest tribesman, even in the moment of his greatest difficulty, of his most extreme need, was the free co-owner of the common land, of which with the others he had the user. When feudal ownership of land, supplanting the communal society, put the lord in control of all lands not leased by him to tenants, and destroyed the ties of kinship upon which the communal ownership rested, the free as well as the unfree tribesman tended gradually to sink into the unfree condition, more and more dependent on the will of the lord, and, like the Englishman of the present day, more and more separated from the soil.

As society became better acquainted with the only written system of jurisprudence, the Roman codes of the Eastern emperors, as glossed by the legal ecclesiastics of the school of Ascursius, Vicarius, and Bracton, the initial definition of the Roman code, "summa divisio de jure personarum haec est quod omnes homines aut liberi sunt aut servi," helped to cause the daer man, and to great extent the poor freeman, to become associated with slavery. The causes which, under the older law before Justinian, operated to reduce a freeman to slavery *jure civili—addictio*, the reduction to slavery for debt, and *furtum manifestum*, theft detected in the act—became a means for depressing the unfree in mediæval society, until the unfree tribesman became that figure of semi-slavery, the villein of the English common law, to which the military necessities of feudal society reduced him.

The Common Use of the Waste.—The gist of the whole system, it must be remembered, was that the saer or daer debtor could range the borrowed stock on the waste or forest of the tribe, and could pasture them after the crops had been carried on the cultivated land.[12] The transaction did not of necessity carry with it any connection with land-ownership, and unless the dealing had been with an outside chief, it merely resulted in the transfer of stock on the common pasture from one member of the community to another. But it created as between the parties the equivalent of what

Digitized by Google

is generally known as commendation: *i.e.* the borrower became the "man" of the lender.

Such mortgages of stock might very easily lead to the overstocking of the common pasture on which they might graze to the detriment of the common right. So of the guarded rights and obligations which such a transaction, whether by king or by freeman, or by suspects and strangers, carried with it, one was that it should take place openly and be openly acknowledged, so that it should have the consent or approval of the community concerned.[13] A man could be compelled to accept a loan of cattle from his own king, a transaction which would be only the transfer of the stock on the common pasture from one owner to another.[14] Every person in the territory, says the Irish law,[15] accepts equal stock from the geilfiné chief (the head of the group family), who himself accepts stock from the king of the territory, or they accept it from the king himself. Otherwise members of the community, having nothing to do for the joint benefit, would become a burden on the tribe of which they were members.

But the amount was regulated, so that the pasture of the tribe should not be overstocked by the king putting on it a great quantity of cattle from outside; as when Samuel, representing the tribal Church, objects to Saul bringing in the cattle of the Amalekites and the slaves to herd them on to the common pastures of Israel. In a case of replevin[16] in the time of Edw. I. against a man who had seized beasts in a common pasture, the defence is set up that the defendant holds land to which is appendant a search of the common pasture for more beasts than ought to have been put there and for beasts of those who ought not to common there.

The Increase of the Lord's Power.—But it may be easily seen that the system leant in favour of the chief with wealth, and tended to slide gradually into individual ownership and feudal tenures. The common soil (for to all soil there must be some lord) vested in the chief as (to use an inaccurate term) a trustee for the community, which includes himself, for its distribution according to custom among the freemen of the tribe. But the chief took the largest share, and as

Digitized by Google

cattle were the chief personal property of those days, and as his cattle tended to increase in number, he became the predominant user of the land.

His power increased by every successful war, to which conditions encouraged him, and as all questions relating to disputes about the tribe lands came to him for decision, he began to be looked upon and to look on himself as paramount over the tribe lands, as owning them subject to certain restricted rights of the tribesmen.

The chief's claims in this respect were supported by various classes. In the first instance, he had a following of nondescript tribesmen, broken men, freed captives, respectable strangers from beyond sea, and traders, who, wishing to remain in the country among a people with whom they had no kinship, had been settled by the chief as his personal dependants under his protection as against the free tribesmen on the land. They formed a class of fuidhirs or strangers apart from the tribe, and made a wide breach in the common kinship.

The possibilities of complete freedom and amalgamation for this class by the acquisition of property, which would enable them to answer claims made upon them by the society of freemen or its members, is provided for by the Irish law.[17] If a group family of strangers under any one chief had five houses with one hundred head of cattle, they were considered as free tribesmen. In fact, the group family forms itself into two divisions: one of kinsmen of the original family, and one of strangers. These stranger group families were pledged to the chief, binding themselves to him for military service in return for land, and occupying in all parts the position of daer or unfree tenants. It is through this class first that the breach in kinship takes place, and the basis of life changes from the loan of cattle to the tenancy of land.

Another class were the grantees from the chief of land and rights over land by written title, men who had performed services, lay or ecclesiastical, to the chief or tribe, and who knew that they could get a good deal more out of him than out of the poor tribesman, and were in consequence ready to make themselves horns of iron to support any foraging expedition.

Digitized by Google

Lastly, there were the lawyers of later days, who exalted the crown at the expense of the people. As the Anglo-Norman and the Angevin and the Anglo-Scot, and then the Anglo-German, extended his dominion over the West and North, at an early date in Ireland, by 1290 in Wales, in the sixteenth century in the northern counties of England, and after 1745 in the Western Highlands, the chief began to regard himself as absolute owner subject to the limited rights of those whom he called his tenants. So completely did the idea of the communal society disappear that only in Ireland and in the Western Highlands has the tradition of it disturbed the current of commercial and political ideas in modern times.

The Villein.—How far the services rendered to the lord under feudal custom in England were rendered by freemen and how far by villeins or men whose will was subordinate to the lord's convenience is a subject which was apparently confused and indecisive to the legal writers of a few generations after Domesday. It is of no importance to the general reader, and has little bearing on social history. There will always be an unfree class, and it is very difficult after centuries to put ourselves in the position of those who tilled the soil, and decide how far they were free and in what sense of the word. For the whole subject as a legal and historical question I refer the reader to Pollock and Maitland, *History of English Law;* Pike's *Introductions to the Year Books* (Rolls Series); and see Thorpe, i. 43, "Rectitudines Singularum Personarum." The geneat right (*villani rectum*) is described in this record of Saxon customs as varying according to the custom of the land. In some places he must pay rent and a swine grass yearly; he must ride and carry and lead load; he must work and feed his lord (*i.e.* give a portion of the produce to him); he must reap and mow; he must hew deer palings; build and enclose the mansion; make new roads on the farm; pay church shot and alms fee; hold head ward and horse ward; go errands. The essentials of the position are formulated by Mr Maitland in *Domesday and Beyond.* "The rights of villeins in their tenements are sanctioned by manorial justice, but ignored by the king's courts." Even if the unfree

Digitized by Google

man had any rights in the king's courts, he would always have to consider the practical side of his position with the squire and ask himself whether it was worth his while to invoke shadowy rights of law against him. This is where constitutional history fails us.

Slaves.—A few words only on slavery. The south of England, so long subject to Roman influence, would seem always to have been more slavish than the rest of the Islands.[18] "Servi alii natura alii facto et alii emptione, et alii redemptione, alii sua vel alterius datione servi, et si quae sunt aliae species hujusmodi." Wales, also affected by Roman influence, deals to a considerable extent in its customary laws with serfdom, and we find them in the abbatial records of the Scottish monasteries.[19]

Though the Irish laws treat at some length of the daer ceile, the freeman who through improvidence or some other cause had become unfree as regards his dealings with land and cattle, he is still a freeman, and his rights and relations to his chief are treated of in the Law of Social Connections. In the Irish laws there are some references to slavery. Injuring thy son, thy slave, thy wife, is a subject of a distress with delay of three days. The commentary adds, "the injury done to thy wife or thy slave is a blot on thy honour."[20] The honour price of a foreign slave is stated as higher than that of an Irish slave (daer), on the ground that the Irish slave has a greater chance of becoming free.[21] The serf (mugo) would be freed and the daer person raised by receiving church grades.[22] But the daer person (decenal) only expresses the common man or feini as opposed to the noble.[23] There is an eric for a bond servant.[24] His value is considered.[25]

Although we know that there was in early times a very brisk slave trade from Wessex through Bristol to Ireland, Domesday shows us that where the Scandinavian, whether Dane or Norwegian, set his foot, as in East Anglia, the slave and the freedman ceased to be an important part of the community.

The Orkneyinga Saga and the Orkney and Shetland Records do not mention slaves or freedmen in connection

Digitized by Google

with land, or in fact in any connection, though it is occasionally mentioned in the Scandinavian sagas.

It is a fact which the inhabitants of the British Islands cannot too much or too frequently take to themselves that their freedom in the past did not come by any talking in Parliament, but from the fact that they were geographically a naval people, and that slavery in any form does not fit in with the life of the shipman, whether English or Scandinavian.

It is the life of the sea and not race which divides the Scandinavian odal institutions from the Irish system headed off from the sea. There can be no slavery among the democracy of seamen, "wherever they meet, on land or water, on ship or snow skate, on sea or on horseback; to share oar and bilge scoop, bench and bulwark if need be; even set with each other, as father with son and son with father, in all dealings together."

Slavery would appear only to be profitably employed at any time in agricultural operations such as the growing of corn, sugar, or other crops on large tracts of land, or in the work of manufacturing on a very large scale. For the easy pastoral life the slave was not wanted; for commerce, which required individual freedom of judgment and responsibility, he was unsuitable; and machinery has to a large extent ousted him from agriculture and manufacture, apart from minding the machine, with the exceptions of cocoa and rubber.

The chief's military strength and revenues were proportioned to his wealth in cattle. The number of his followers in war, whether offensive or defensive, were proportioned to his power to pay them in stock or its equivalent for the services rendered and the provisions supplied to him by them. By a resulting action and reaction his wars were undertaken with the object of obtaining cattle to supply his followers.

But note here that where the geographical position or the physical formation of the land or the convenience of trade routes led, as with the Orkneys, to the substitution of sea life, piracy or commerce for cattle raising, cattle, impossible as a basis of life on shipboard, are replaced by ships.

Digitized by Google

A military guild system, which expects naval service for a term as a militia force from the freemen in proportion to their interests in the home soil, takes the place of the pastoral system, and gifts of ships and armour take the place of gifts of cattle to the followers.

Where the land was largely level and fit for cultivation, where it had been cultivated for ages and had been long under the influence of Roman agriculture, as in England and Normandy, it was used for agriculture and shaded into the feudal system, the personal tie to the chief with the incitement to perpetual war giving way to the territorial relation to the land and the inducements of commerce; where, as in Norway or in the Orkneys and Northern Islands, there was little land fit for cultivation and the outlet for energy and means of livelihood pointed to the adventure of the sea, the struggle between the personal and territorial tie took a middle form, the personal tie remaining, but the predominance of agriculture over the pastoral life and the call of foreign commerce leading to the earlier substitution of individual for communal ownership; where, as in Ireland and the Western Highlands, level lands of great fertility or lands eminently suited for pasturage lay apart from the main routes of trade and were almost unconnected with Rome, the communal society in a very full form existed until a very late period, a period extended into the most modern times, owing to the deliberate attempts made from time to time to create a perpetual enmity between the two islands, and to the consistent misconduct since towards the weaker nation of both England and Scotland.

NOTES.—[1] *A.L. Irel.*, v. 21. [2] *A.L. Irel.*, v. 15. [3] In *A.L. Irel.*, ii. 223, cain aicillne is translated the law of daer stock tenure. The glossary gives service as the equivalent of aicillne. Cain aicillne the law of service? [4] *A.L. Irel.*, ii. 197–209, appears to relate to the case of the tenant who has absconded. [5] *A.L. Irel.*, ii. 345. [6] As I understand the old commentary in *A.L. Irel.*, iv. 23, last nine lines, it speaks of the renting of tribe lands to unfree debtors. [7] *A.L. Irel.*, ii. 231, 277. [8] *A.L. Irel.*, ii. 203, five last lines, speaks of the chief who had taken third security. [9] "Rectitudines Sing. Pers.," Thorpe, *Ancient Laws of England*, i. 434. [10] *Liber de Calchou. Reveden*, pp. xxxiv and 456. [11] Libre III., titre viii., sect. 2. [12] See note 9 of Chap. V. ([13], [14]) *A.L. Irel.*, ii. 217. [15] *A.L.*

Digitized by Google

Irel., ii. 28. [16] Y.B. 21, 22 Edw. I., p. 18. [17] *A.L. Irel.*, iv. 39, 43, 287. [18] *L.H.P.*, lxxvi., sect. 3. [19] *E.g.*, in the Kelso Chartularies we find a gift (No. 128, p. 98) by Walter Earl Omibz, translated Dunbar, of two serfs *et omnes sequelas eorum*, and (No. 124, p. 94) of one Walter, of Adam son of Henry of the Hogge, my native *cum tota sequela sua.* [20] *A.L. Irel.*, i. 233, 235. [21] *A.L. Irel.*, v. 111. [22] *A.L. Irel.*, iii. 31. [23] *A.L. Irel.*, iii., 31, commentary. [24] Comm. daoer, *A.L. Irel.*, iii. 183, 188. [25] *A.L. Irel.*, iii. 395.

CHAPTER IX

THE COMMUNAL SOCIETY—*continued*

COMMON RIGHTS AND COMMON DUTIES

The Common Usufruct.—Let us now turn from the chieftain class to the society itself.

This tribal system, the society of which the chieftain class was the aristocracy, was, in its most archaic form or in its fullest development, a society in which, while there was a large individual ownership of goods and animals, essentials which were necessary for the enjoyment of life as it then was were enjoyed in common, such enjoyment calling for corresponding obligations from members of the community. In this respect, in theory it was a perfect Apostolic society.

It was not only land that was enjoyed in common. From the Irish customs we learn that in Ireland there was a common right of turbary,[1] a wood common to all (*i.e.* the sacred wood at the common fort),[2] a common bridge over the stream, a common mill,[3] a common ferry boat,[4] a common measuring scale and sieve,[5] each being the property not of the lord of the manor, an individual not of kin representing an alien federal authority, but of the community itself as a unit.

All were responsible for the upkeep of the common property. The tribesman would suffer distraint on his cattle for leaving to another his work on the common fishing, in respect of his share in using or repairing the common net of the community, or for not helping to spear fish in the common weir.[6]

Digitized by Google

The sense of the common responsibility for the welfare of society is shown in many provisions of these customary laws. If a man was ill he was entitled to have a substitute found for him for this common work by the tribe; if he was wounded, a substitute provided by the man who wounded him. As another instance, where a beast is seen near a pit or river at nightfall (if it is likely that it be lost or carried off by thieves, killed by dogs, or drowned in sloughs and waters), anyone seeing it and not relieving it is fined.[7] The Brehon [8] considers the liability of a king for collision between horsemen on his race-course, or for injury from a hole on it which has not been fenced off.

The maintenance of the old was part of the tribesman's duty. Each occupier of land was liable to help to support the old people who had no children.[9] When, in the time of James I., the Irish customary law was swept away and no provision was made for the poor, the old Irish, whether kindred or old people without children, were supported by the people themselves under the old custom until 1838. The large remittances sent home by Irish and Highland Scottish emigrants, in contrast to the reluctance of English children to support their parents, testifies to the strength of this tradition.

The son supported his parents, a regular agreement being entered into for this purpose. A gift by the parent to the son on this account was held lawful by the group community or family. But the son need not maintain a father who had left a voluntary mortgage of unfree stock on the property. In case of such maintenance either had a check on the other. The son could annul previous contracts injurious to the family property, and the father could do the same by the after contracts of the son, both on the principle that the family property must be kept intact. There is a curious provision that if the son has not sufficient to support both parents he is to leave the mother to starve rather than the father. "Let him leave his mother in the ditch (grave or burying-ground) and bring his father on his back to his house." [10]

Bee Law.—The provisions of the customary law show a nervous desire to establish in every direction neighbourly

Digitized by Google

relations between co-owners of common land. It busies itself with little things of very small moment to us, but of great importance in a society where every freeman was the owner of land and the neighbour of another owner of like kind. The Irish custom regulates the distribution of the honey and wax taken from hives among the owners of the land upon which the bees might be supposed to feed, as well as the owner of the land on which the bees dwelt. Injury to the tree in which the bees have settled is provided against.

The division was made apparently every third year. As sugar-cane was only introduced after the Crusades, and wax was employed almost to our own day for the making of candles, the produce of the hives, in a country where there was much land in woods and many wild plants, was of great value.[11]

Bees were valued very highly in proportion to other stock. The adjoining owners must send a man to watch the bees in bright times when they were likely to swarm.[12] A woman separating from her husband has a third of the honey or of the bees if they have swarmed. Injuries effected by them have to be paid for, though the proof of ownership must have been extremely difficult. *A.L. Irel.*, ii. 121, sets out the mode of distraining for damage by bees. The tract mentions the first judgment passed concerning the crime of a bee in respect of Conall Caech, whom a bee had blinded. The king of Temhair came and removed him from his kingship. He charged the man who owned the bees with the injury, etc.

The Charter of the Forest,[13] in the reign of Henry III., enacts that every freeman shall have within his own woods eyries of hawks, sparrow-hawks, falcons, eagles, and herons, and shall have also the honey that is found within his woods.

By the laws of Wales,[14] the king may take the hives of his unfree men (aillts); the aillt may not sell without first offering for purchase to his lord a horse, swine, and honey; on whatever boundary a wild swarm be found, the law says it is right for the owner to hew the tree on each side, and he on whose land the tree may fall is to have the swarm.

In a paper on the Turkish Survey of Hungary, by Hyde

Digitized by Google

Clarke, he says of honey trees, they would be worth an acre of arable land and might be worth more, wild honey being used for home food and as a commodity for outside sale.

There are minute penalties for all kinds of personal trespass:[15] for sod-cutting, cutting rushes, burning land, using an animal, taking away stones and water, taking fish, cutting trees, stealing fruit and straw. Fines are carefully laid down for injury to or by a horse,[16] to an animal by a hound, to a dog by cattle,[17] for setting a dog on deer or other animals,[18] or for the careless tieing of a dog.[19] The hours at which dogs were to be tied up was settled by the grade of the owners.[20]

Contract and Conveyance.—But by far the most striking feature of this ancient society before it degenerated into feudal ownership was the large space devoted to contract, and its prominence in the customary codes as compared with its position in the Year Books. We are introduced to the strange conditions of a mediæval society in which violation of contract or of suretyship or false witness was a more serious offence than plundering or slaughter. False judgment or false witness are given as a cause of separation between chief and follower.[21] The world, says the Senchus Mor, would be in a state of confusion if verbal contracts were not binding.[22] This is the *nudum pactum* which the Roman ecclesiastic in England replaced by the hand-clasp pledge of faith over which the Church could have jurisdiction in the Court Christian.[23] There are three periods at which the world dies: the period of a plague, of a general war, of the dissolution of verbal contracts. The binding of all to their good and bad contracts prevents the lawlessness of the world.[24] Observing that contract breaks custom, the Ancient Laws of Wales lay down that although a contract be made contrary to the law, it must be kept.[25]

The system had its effects on legal procedure. We meet, no doubt, with an excessive technicality in the proceedings in distraint, that most ancient substitute for actual warfare; but the refined technicalities of the formal delivery of property which are of necessity in the English Year Books are replaced in the Brehon law by contract and the equities under it.

Digitized by Google

These equities the Irish law seems to have carried to a great extreme. Pollock and Maitland tell us[26] that it is a general principle of ancient German law that the Courts will not undertake to uphold gratuitous gifts or to enforce gratuitous promises. Whether the lack of consideration invalidates a contract or not outside of Germany, it was not so considered in the ancient Irish laws. They contemplate the possibility of the absconding of the free or unfree tribesman and the seizure of the goods of the hostage surety in compensation. But in the mind of the Brehon such a danger does not excuse the non-enforcement of the verbal contract without consideration.

The condition of legal usage is the more remarkable in that the society was one in which the capacity of the contracting parties to contract at all depended on status. The great majority of the people had no status to contract, and could not be bound by any without the consent of those who had the status to contract for them. And these latter held property for the most part less as individuals than as heads of a community or in some fiduciary capacity.

The contracts which would not be enforced, said the Irish laws, were those of a serf or fuidhir without his chief, of the base tenant of church lands without his abbot, of a son without the living father, of a fool or mad woman or of a childless concubine without her husband.[27] Only the head of the community could contract.

It is not easy to see how we may account for the finding of such an elaborate system of contract law embodied in a mass of archaic custom, unless we may suppose that the tribal church, shut out by its position from exercising the world pre-eminence in politics which came easily to its Roman brother, lent itself from the earliest days to soften the harshness of the customary law by introducing principles of equity; or may we believe that the connection, never wholly severed, whether in pagan or Christian times, between Greece and Ireland, lent some element of philosophic and speculative thought to the legal customs? It is not until the fourteenth century that contract, apart from questions of land tenure, plays any sensible part in the English Year Book cases.

Digitized by Google

It resulted from community life that a man could not bind his kinsman by his contracts in respect of the joint property unless they had publicly expressed approval. Death satisfied all debts of contract and ended them, "for every dead man kills his liabilities";[28] "no person is to make a contract for another, because a contract only continues during the lifetime of the person who makes it."[29] This was a rule which must have been broken into as soon as men were allowed to transmit individual property to descendants. But so long as they could not generally do so, it is easier in the light of it to understand the willingness of the tribesman to give up his property to a powerful man or to the Church as a beneficium, in return for protection, or to buy the annuities which went by the name of corrodies.

One of the most healthy features of the communal society as expressed in the customary laws was that a universal publicity attended all transactions. The community disapproved of secrecy, whether in acts of violence or in peaceful chaffering; it insisted on the public handling of property, so that there might be no doubt as to the propriety of either land or goods.

All contracts were made in public. They were made in the presence of and by consent of the chief acting for the community, which could impugn contracts of an unfree nature or in any way prejudicial to the interests of the community made by one of the members.

But the interests of the individuals were not of necessity overlooked in this public confirmation by the chief on behalf of the community. There are very careful and detailed provisions for ending contracts of stock borrowing with fairness to both parties, holding an even balance between the powerful chief and the borrower in such manner as to suggest extreme antiquity in the custom, if not of the MS.[30] The contract law was not by any means always in favour of the chief. For instance, a contract for stock is ended by lack of cattle on the part of the chief, but on the part of the borrower, if he has not the stock, he may render the amount in bodily service.[31]

Another provision which looks like the aim of the Brehon

Digitized by Google

to enforce equity in contracts is the law which treats of warranty of animals sold. The Corus Bescna lays down that where there is no warranty, diseased horses are to be returned, if they are suffering from one of certain specified diseases usual at that time.[32] The laws of Wales order a horse to be warranted against staggers, black strangles (editor suggests glanders), and farcy.

In this society of mutual co-operation and mutual responsibility each occupier of the land was liable for the other's contract made with such consent for fosterage liabilities, for crimes, and "land deeds" (deed in the sense of obligatory act), defined in the commentary as deeds of "attack and defence," "every deed due of the land and the support of the old members of the tribe who are without children."[33]

As contracts made by individuals were subject to rescission by the chief in the interests of the community, so the benefit of a contract made by any one of them enured to the benefit of all. Every transaction of profit, every contract of advantage, every contract for wages, every benefit of purchase or sale, was to be offered by a tribesman to men of his own tribe before it was offered to external persons.[34] The community had a claim on the profits accruing to a man by "the lawful profession of his tribe," the fees for the exercise of the hereditary profession of Brehon or bard. One of the chief's privileges was that if the community wanted to sell stock they must first offer it to the chief, who, if he wanted it, could buy it at a cheaper rate than in the open market.[35]

In short, the responsibility of the community for the payments due from any individual of the family rested on, and were co-existent with, its right to receive payment in the same degree,[36] to succeed to his property, and to share in the profits of his contracts; the right of the individual rested on his ability to pay out of joint property owned by the community. It followed that, as broken men from other tribes, strangers, merchants, churchmen (classed as fuidhirs in Irish, alltuds in Welsh), and Jews (in England at least), held no part of community property, their fines were paid by, and their property was at the disposal of the chief or king.

As commerce breaks into the communal society, and the

Digitized by Google

close corporation of the kindred family develops into the close corporation of the trading guild, we find this practice of mutual sharing of contracts transferred to the traders.

The Simplicity of the Communal Society.—In very marked contrast with this elaboration of contract law was the primeval simplicity of all this ancient society, its unrestrained enjoyment of the coarser pleasures, the simplicity of its occupations, the perpetual drunkenness, especially among the Norsemen, its avoidance of the comparative self-restraint and attention to external refinement which the Norman and Angevin kings imitated at some distance from the gorgeous ceremony of the East, which they borrowed from the Crusades. Its coarseness and primitive conditions come down to us in many picturesque little touches in the Welsh and Irish customary law and the Orkney Sagas.

To give a few instances :—

The occupations in the corus law of a king, given in the Crithgabhlach,[37] are very likely an apocryphal report of an ancient tradition, but they are consistent with a good deal which we know of this early society—Sunday for drinking ale, for he is not a lawful chief who does not distribute ale every Sunday (the possession of casks and caldrons for ale is mentioned several times as forming part of a chief's possessions) ; Monday for judgment for the adjustment of the people (the manorial court) ; Tuesday at chess ; Wednesday seeing greyhounds coursing ; Thursday at marriage duties ; Friday at horse-racing ; Saturday at giving judgments.

The footholder of the Welsh kings, an hereditary officer, who holds the king's feet at the banquet until the king goes to sleep, eats from the same dish with the king, with his back to the fire ; [38] the judge of the Court has for his pillow at night the cushion on which the king sits during the day ; [39] the queen's priest has the clothes in which the queen should do penance during Lent,[40] and her handmaid, who has her land free and her horse in attendance, has the queen's old clothes, her old shifts, her old bed-linen, her old bands, her old bridles, her old shoes, and her old saddles.[41]

Sweyn, Aslief's son, the Viking, who in 1157–58 attacked and killed Somerled,[42] is described : "Sweyn had in the

Digitized by Google

spring hard work, and made them lay down very much seed and looked much after it himself. But when that toil was ended he fared away every spring on a Viking voyage, and harried about among the Southern Isles and Ireland, and came home after midsummer" to reap and store the grain. When he died, his sons, with the families, continued to occupy the house which he owned in Gairsay, only making a party wall in the great drinking-hall.[43]

It was the fashion in Norway in old times, says the Olaf Kyrre Saga,[44] for the king's seat to be on the middle of a long bench, and the ale handed across the fire (from the bench on the other side, the fire being in the middle of the room). Olaf Kyrre first had chimney places in the rooms (*ann.* 1069 *et seq.*).

In 1153–54, in a war between rival Orkney earls, Earl Erlend is surprised at night: "Ufi jumps up and would wake the earl, and could not get him awakened, so dead drunk was he."[45]

In the fourteenth century, we are told, "When these (Irish) kings were seated at table, and the first dish was served, they would make their minstrels and principal servants sit beside them and eat from their plates and drink from their cups. They told me this was a praiseworthy custom of their country, where everything was in common but the bed."[46]

It is hardly surprising that the splendid court of the richest king of Western Europe, whose family, through the kings of Palestine, was connected with Eastern society, used to the disposal of great wealth, should have looked with contempt upon the primitive peoples of the other parts of the Islands whom they overcame.

Fosterage.—Keeping in mind that this society of joint user and joint responsibility rested on a supposed unity of kinship, even if very remote, it was united by a still closer and a still stronger tie, that of fosterage. Each member of the aristocracy sent his children to be brought up by his kinsmen in their households, to be educated and trained.

The English writers of the seventeenth century appear to have considered this custom as an evil and curious survival peculiar to the Irish, and to have been unaware that the system

Digitized by Google

of fosterage was equally in use in the Western Highlands, where James was trying to destroy the native population, as well as in many other parts. They would appear to have been wholly ignorant, in their Jacobean conceit, that it was founded on a wide and healthy blood relationship common to the Aryan world. Davis [47] says of it: "I did never hear or read that it was in use or reputation in any other country, barbarous or civil, as it hath been, and yet is, in Ireland, where they put away all their children to fosterers; . . . and the reason is because, in the opinion of this people, fostering hath always been a stronger alliance than blood."

Camden's account of it is: [48] "They that be of more noble parentage shall have a number of nurses repair unto them straightways from far, which make suit for the nursing of the infant; and of those foster children they make more account than of their own which they bear. . . . The foster fathers take much more pains, bestow more goods by far, and show greater love unto their foster children than they do unto their own children. . . . All those that have been nursed by the same woman love one another more dearly, repose greater trust in them, than if they were their natural whole brethren and sisters. . . . To conclude, the greatest corruptions of Ireland are thought to spring from these foster fathers and nurses and from naught else."

We need not confine our illustrations of fosterage to Ireland. To quote from the Orkney Sagas: [49] in the eleventh century, Thorkell, who has fallen under Earl Einar's displeasure because he spoke up for the freemen at the yearly Things, flew to Caithness and became the fosterer of Einar's competitor, Earl Thorfinn, who sent him into the isles to get his scatts and tolls. In 1139 another young earl, Harold, comes to the Orkneys to be fostered by Earl Rognwald, and to be joint earl with him. The tie of fosterage counteracted the jealousy which the self-interest of the older man created against the younger who aspired to share his rule. Throughout all the Scandinavian records the tie of fosterage implies a lessening of the evil results of the perpetual violence within the family.

The *T.A.C.N.* (chap. xi.) show us the tie of kinship giving

Digitized by Google

way to the feudal lord's wardship, but the reason given for the change is not adverse to fosterage as a tie. The mother, it says, is not to have the custody of the children, because she may marry again and have children, and these or her husband may kill the first children to have their property—nor the kinsmen for the same reason. Who then? The lord, says the law, the lord of the soil, who cannot have their heritage *in dominio*—the lord, who has evidently become at this time a stranger in blood to the people who held land under him. The child is to be brought up in the lord's house, the *T.A.C.N.* contemplating a tie less likely to lead to abuse than that between the wicked Uncle and the Babes in the Wood. They will love them *par noreture*, of love only, and will loyally care for their rights over the waste (*lor bois*), and their tenements, and will spend the produce of their lands upon their advancement.

But alas for the weakness of human nature, it goes on to say avarice "est orandroit si montée que li segneur gastent les biens as orfelins"; and but very little later, chaps. 3, 4, and 5 of Magna Charta try to provide against the excessive reliefs of the minor on coming of age, and the waste of goods or men by the lord during his minority.

These provisions of the *T.A.C.N.* only apply to military tenants, and not to the vavassors or tenants in socage, the burgesses of the towns, and the villeins (*rustici*), who were probably by far the larger part of the population.

In Scotland, as in Ireland, the fosterage system was a prominent feature of society, and remained as a part of it until a very late time indeed. The kinsmen of the chief fostered his children, taught and fed them, and made gifts to them of cattle and other things. It was a social privilege, or, if you like to call it so, a social burden, an acknowledgment that there was a common bond between all in the same community, through the head of the family from whom they professed to be descended. The foster parents were those who were within the closest degrees of kinship, the "geilfiné" relations of the family.[50] A "lawful tribesman by consanguinity" is defined as "the person so near him of his tribe as to foster the children which descend from him if he should require it."

Digitized by Google

But though fosterage as a part of communal life could be illustrated from very many parts of Europe and from Asia, it is from Ireland that we have the details of the system as a practical institution.[51] Here the respective rights and duties of the parties were as carefully guarded in fosterage as were those of the chief and the tribesman. The Irish fosterage was of two kinds, for affection and for payment,[52] the payment being according to a regular scale of price by rank.[53] Minute directions are given as to the clothes which the children are to wear, and the work to be done: "according to the rank of each man, from the humblest man to the king, is the clothing of his son." Stirabout was the ordinary food, for which the father provided the cow, with butter (salt for inferior and fresh for higher grades) for the sons of chieftains and honey for kings. Fosterage for daughters was of higher value than for sons. For the sons of the poorer men herding animals, kiln-drying, which shows that malting was well known, and wood-cutting was the work, and for daughters herding animals, the use of the quern, the kneading trough and the sieve. Chieftains' sons were taught swimming and horsemanship [54] (the son of a king was to have a horse in the times of the races), and chess playing, and daughters sewing, cutting out, and embroidery. The system of boarding out pauper children in cottages in England has been unwittingly borrowed from the fosterage customs of the despised Irish.

The foster father, when he was paid for fosterage, was responsible for the crimes or damages of the child; if the child was blemished by neglect of the foster father for payment, he lost his fee; and if he had no children of his own, he was entitled to his support in his old age from the foster child. On returning the child the foster father presented him with a gift called the seds of lawful maintenance. There is provision for fosterage by a literary foster father,[55] who instructs the pupil, prepares him for his degree, chastises, feeds and clothes him while he is learning: in other words, apprenticeship. The foster pupil, on his part, assists his teacher in poverty, supports him in old age, gives him the honour price or fee received on his degree, and all gains of his art while learning it, and the first earning of his art after

Digitized by Google

leaving. The age of marriage and of finishing fosterage was seventeen for boys and fourteen for girls.

When the invaders came from England, they adopted this fosterage system to their political advantage, wresting it from the healthy ties of kinship to an advantage of combination for internal quarrel and defiance of royal authority, making it immensely difficult for the Federal government over in England to suppress any rebellion of the semi-feudal baron, which, owing to distance and slow transit, had had means to grow to a head. "They made," says Davies, "strong parties and factions, whereby the great men were enabled to oppress their inferiors and to oppose their equals; and," he says, "they became more mortal enemies of the English name and nation than the mere Irish." So a natural and healthy growth, which was a close link of affection and interest between the chief and his people, between the rich and the poor, between the leader and the led, became an object of hatred and contempt to the Jacobean, who had forgotten the realities of life, and was living in an artificial world. And the power of wealth and the overpowering force of political success acted to destroy the close relations founded on kinship in the tribal chiefs themselves. When, in later days, they were tricked or cajoled by the feudal lawyers into the betrayal of the rights of their peoples, the Irish chiefs as a rule stood by and suffered with the communities which they represented; the Scottish chiefs after the '45, with some few brilliant exceptions, joined with the Presbyterian clergy to betray those over whom they ruled.

So it happened that when the Angevin Saxon came to Ireland, he found there a system of social living wholly opposed to the conditions then existing in England. It is unlikely that at that time the Irish social ideas from which the people in Southern England had parted had been so entirely forgotten as to recommend them as wholly foreign. The invaders of the first two centuries fell in with Irish customs, evil as well as good, and took all advantage of them.

But, as time went on, as the connection with France under succeeding kings of England grew stronger and more pressing—as the knowledge of similar conditions in Western

Digitized by Google

and Northern Scotland was hidden from the English both by their conceit and by the separation caused from the wars of centuries—as perpetual subdivision of communal society weakened all authority, from the King of Norway to the smallest chief—as their half-hearted occupation of Ireland resulted more and more in opposition and repression—the social system of the Irish, and in a lesser degree of the peoples in the west and north of the Islands, began to appear to the invaders living under feudal law and separated from them by a stormy sea as an evil influence peculiar to the Irish race, an evil to be abolished in favour of what appeared to them as a better form of life, by any means, fair or foul.

As this idea developed the two peoples grew apart as hostile nations; the king, who had been accepted as an Ardri, became a foreign invader. And neither people have ever moved from the standpoint of this idea.

NOTES.—[1] *A.L. Irel.*, i. 133. [2] *A.L. Irel.*, i. 135. [3] *A.L. Irel.*, i. 125, 141. [4] *A.L. Irel.*, iii. 209. But the same commentary mentions the boat which is private property and the boat of a church. [5] *A.L. Irel.*, v. 489. [6] *A.L. Irel.*, i. 131. [7] *A.L. Irel.*, ii. 59, 61. [8] *A.L. Irel.*, iii. 255–263. [9] *A.L. Irel.*, ii. 283, 287, who does not observe the necessary duties; Comm., *i.e.* both service for attack and defence and maintenance of the old; *ibid.*, 285, they support among them the "common senior." [10] *A.L. Irel.*, iii. 63. [11] *A.L. Irel.*, iv. 173. [12] See *A.L.W.*, Ven. III. xvi.; *ibid.*, 421. [13] Hen. III., 1217, c. 13. [14] *A.L.W.*, Ven. II. xix. 9; *ibid.*, Dim. II. viii. 6; *ibid.*, Anom., v. ii. 152; and see *ibid.*, VI. i. 42, 43; and *A.L. Irel.*, iv. 163–203. In the great hardwood timber reserve of the U.S., Western North Carolina, it is not uncommon for a tree where wild bees have built to be cut down for the honey. [15] *A.L. Irel.*, iii. 149. [16] *A.L. Irel.*, iii. 181. [17] *A.L. Irel.*, iii. 339. [18] *A.L. Irel.*, iii. 519. [19] *A.L. Irel.*, iii. 419. [20] *A.L. Irel.*, iv. 213 *et seq.* [21] *A.L. Irel.*, ii. 323, 333. [22] *A.L. Irel.*, i. 41; iii. 3. The unquestioning enforcement of verbal contracts is a strong argument in favour of the extreme antiquity of the laws, before conditions were modified by the more general use of writing. [23] Const. of Clarendon, 1164, Article 15. [24] *A.L. Irel.*, i. 51. [25] *A.L.W.*, Ven. II. viii. 10, 11. [26] P. and M., vol. ii. p. 211. [27] *A.L. Irel.*, i. 51, 53. [28] *A.L. Irel.*, ii. 271. [29] *A.L.W.*, Ven. II. viii. 8. [30] *A.L. Irel.*, ii. 313 *et seq.* [31] *A.L. Irel.*, ii. 341. [32] *A.L. Irel.*, iii. 7, and note. Reference to c. 297, 1038; *A.L.W.*, Ven. III. iv. 13; IV. i. 28, and V. i. 6. [33] *A.L. Irel.*, ii. 283. [34] P. 139. *A.L. Irel.*, ii. 282. This appears to be the general meaning of the text beginning (last line but three) "coru cach comra." [35] *A.L. Irel.*, ii. 219, line 4 and note 2. [36] *A.L. Irel.*, iv. 245, 247. [37] *A.L. Irel.*, iv. 335. [38] *A.L.W.*, Ven. I. xxxiii. 3 and 4. [39] *A.L.W.*, Ven. I. xi. 14. [40] *A.L.W.*, Ven. I. xxiv. 4.

Digitized by Google

[41] *A.L.W.*, Ven. I. xxvii. 2–3. He was probably a married priest. Celibacy came slowly to Wales. [42] O.S., 214, 220. [43] O.S., 224. [44] Vol. iv., c. 2, of Laing's *Heimskringla*. [45] O.S., 201. [46] Account by Henry Castide of the expedition to Ireland, temp. Rich. II., in *Froissart*, ii. 576, edit. Johnes, 1849. [47] Davis' *Discovery*, p. 144, edit. 1788. [48] Camden's *Britannia*, by Philemon Holland, 1610, p. 43. [49] O.S., 18. [50] The chief and the fifteen nearest to him in blood? or in seniority? See *A.L. Irel.*, ii. 285. [51] And from the Western Highlands, of which the traditions are embodied in Sir Walter Scott's novels, such as *The Fair Maid of Perth*. [52] *A.L. Irel.*, ii. 147, &c. [53] In Wales there would appear only to be fosterage for payment, and the consent of the lord had to be obtained. The Welsh foster son fostered by a bondman had the share of a brother in the bondman's land, or all of it if there are no children. *A.L.W.*, Anom. IV. i. 31; IX. xxxvii. 4; X. xvii. 41. [54] The account of Henry Castide in *Froissart*, ii. 580 (Johnes, 1849): "In riding they neither used saddles nor stirrups." [55] *A.L. Irel.*, ii., "Law of Social Connexions."

CHAPTER X

THE PRIVILEGES AND DUTIES OF THE CHIEF

In all early societies, in return for his protection, for his services as leader in war, as president of the general assembly, as arbitrator of differences and registrar and administrator of mutual rights and obligations of members of the community, the king or chief received various dues and perquisites in food and other matters provided for the support of his court, and by way of entertainment for himself and his followers when progressing through the country. This last, the right to have entertainment for himself and his followers as he moved about the country, was one of the most important of his rights and one of the most far-reaching in its effects.

The practice was not in any respect peculiar to Ireland, though the English writers of the age of Elizabeth and James fondly imagined it to be so, but was universal in early times. When all, or nearly all, payments were made in kind, this right of entertainment both as a right of the king and as a rent for land or as interest for a loan of cattle was a convenient

Digitized by Google

mode of taking payment on the spot. Besides its regular existence as a formal part of all communal societies, it figures in many places in Domesday, in the monastic records of England, and in the records of the Exchequer both of England and Normandy.

Cosherings, Coyne, and Livery.—As the means of communication, previous to the seventeenth century, did not admit of the transfer except by water of perishable things for long distances, the king or chiefs in all countries moved about with their courts and consumed their supplies in great part in the houses of those who owed them, living with each one in turn, eating and drinking with them the specified regulated food which by custom they provided for their men and horses, much as if the Prince of Wales now, instead of taking a money rent, was to spend part of his time living with and at the expense of the poor of London whose tenements form part of his property.

The ferm, the fixed contribution made to the king from each county and farmed by the sheriff, was very often, as shown in Domesday, entertainment for the king's household for a certain number of nights, as, for instance, for the county of Oxford for three nights. As the king with his enormous retinue passed through the country, the persons responsible for the royal manors and the counties managed that the rents in kind should be brought into the place where the king stayed. The confusion and difficulty of using the supplies to good purpose must have been enormous. The author of the *Dialogus de Scaccario* tells how he has himself seen provisions brought in in this way. But in his time the system was giving way to numbered money which had been introduced for the soldiers' pay,[1] the ferm in kind being compounded for a lump sum (Oxford, for instance, for £150). When the king beyond seas was putting down an insurrection he had to have money. But he had to have supplies for his troops in kind as well, as he could not reckon on living entirely on the country.[2]

According to Aneurin Owen, writing in 1841, the tunc rent, as it was called, of the free maenol (a landed district in some respects equivalent to a manor), a payment for the

Digitized by Google

support of the king, was collected by the Crown at that time in some parts of Wales.[3]

It will easily be seen that such a system, by which the distant king could send his followers to consume the food of tenancy,[4] laid itself open to serious abuse in many directions. Hence, so long as the communal system remained, and so long as the tenants under the feudal system possessed any freedom, the rights of the king and chief were closely regulated by customary law to prevent abuse. In the Irish laws the proportion of free quarters for the servants of the chief is calculated,[5] and his rights both of coshering and coyne carefully limited.[6] The food rents due on stock given to a freeman, depending both in time and amount on the chief's rank and on the value of the stock given to the entertainer, are carefully laid out according to rank, ale and boiled salt meat, red meat and fat without being salted, and so forth. The Brehon [7] says that if the king himself comes to the house of a man of the feini grade for entertainment and brings with him a man beyond the number allowed, his allowance of food would not be increased, a provision reasonable enough when we read that the king of Ireland might bring twelve-score men with him for a night's entertainment. So stern are the regulations made to protect the borrower, that the mortgager might break the contract if the chief took food rents as interest and brought too large a company with him: this was feeding beyond honesty.[8]

As an example from the Sagas, when Olaf the Saint began a progress he had so many men[9] that the entertainments bespoken did not half serve; for it had been the custom that kings went about in guest quarters in the uplands with sixty or seventy men only and never with more than one hundred and twenty men. The small kings in the uplands rebel, making it one of their chief complaints that Olaf was travelling over the country with a great army, not with the number of people fixed by law for a real progress in guest quarters. It would seem that he took so many with him because he knew that trouble was brewing. It had been the custom, the Saga says,[10] of former kings to make a progress in guest quarters every third year in the uplands.

Digitized by Google

Later, as there was likely to be a scarcity of corn, Olaf prohibited its export from Hordaland, adding that he as usual would come then with his people in guest quarters.[11]

The Orknéy Sagas are full of references to the custom; *e.g.*, Earl Rognwald and his people "fared" about to feasts and free quarters over the land, and the freemen made them good cheer.[12] When the spring began the earl fared far and near about the North Isles to get in his rents.[13]

In the Welsh laws the progresses of the bailiffs and stewards of the king among the unfree men were limited as to time and manner.[14]

The account given by Peter of Blois of the miscellany of followers of all grades who formed part of Henry's retinue as he flew through the country, showed that the danger was equally great or even greater with the feudal king. In all cases where there was an acknowledgment of superiority and chieftainship, those who took protection in this form from others higher in rank than themselves were liable to supply these food rents, unless they were of so high a grade of chieftaincy themselves that they were entitled to the value of seven female slaves (cumhals) as an eric fine for killing.[15]

As times altered friction arose between the king, who was responsible for all public action, and who, in buying or hiring for the common use, had to do so at current rates, and the freeman, who proposed to continue his payments on the old basis.

Chapter 23 of Magna Charta provides that all counties, hundreds, wapentakes, and trithings should remain at the old rent. As the value of money altered, and other circumstances led the king to raise the ferm at which the publicanus (the sheriff) had bought the county, the sheriff squeezed the people further and laid the blame on the king, and they fought it out. The chapter was unfair to the crown, though the king's demesne manors, which were of enormous extent, practically including the boroughs, were excluded from this provision. It was much as if in 1917 the conscientious objector refused to pay any higher income tax than that levied in 1860 or 1913.

Apart from the relations between chief and freeman

Digitized by Google

and unfree, the system was a convenient mode of payment on the spot, or of showing appreciation for good work. There are in the Irish laws even provisions for free quarters for workmen, the Commentary giving as a reason that double rations might be given to the man of perfection.[16]

As an example of the results of English legislation in Ireland over customary rights without any understanding of the principles which underlay them, Spenser tells us[17] that in his time, there being no inns, it was dangerous to go into another man's house for lodging or to take food, as the statute had made coign and livery treason.

The Misuse of the Communal System.—Leaving to one side for a moment the other sources of the chief's revenue, let us look at the development of this system of support of the chief in kind as it affected the relations of the peoples of the Islands in after ages.

Although this social system promoted a very ineffective military organisation in which each tribal unit, equivalent as it were to the company of a regiment, made its disturbing voice heard in tactics and in strategy, it shows us a condition of society in some respects ideal, an aristocracy of descent and wealth, resting on a close tie of kinship: a society holding together the family in the wider sense both in its public and private relations, and enforcing wide social intercourse between the highest and the lowest, the freeman and the chief who was his foster child, the lord of cattle and the man at whose house he ate and drank his food rents. Small and confined as the world was, all were knit together by a real bond of social unity, in which the rights and prerogatives which attached to the chief were part of the scheme by which he represented in an eminent degree the obligations of the limited life.

But all such human frameworks are built only for a short time. The ideal social life, in which ruler and ruled co-operate together for the good of the community, if it ever exists at all for a moment in perfection, is possible only when the efforts of the community are directed to produce from the earth or from local commerce, the barter of family with family, only what is necessary for its own subsistence.

Digitized by Google

With external trade, with the necessity to provide against invasion, with farming for commercial gain, with a religious organisation which imposes Eastern ideals from a foreign and southern country, comes the breaking up of a system which very likely at the time was in process of translation. As happens in all such upheavals, such parts of the old system as were profitable were used for their own advantage by the innovators, and any evil effects were put down to some inherent vice in the original social life, and not to the real cause, this misuse of them. So when the Saxon brings over to Ireland the military system resting on land tenure, which he had but hardly learnt himself, with its customs, oppressive to freemen, of wardship and marriage and feudal exactions, he takes advantage in addition of the Irish practice of refection, and the custom that kinsmen of the tribe support the lord by providing him with necessary supplies at home. But in the usage of these ancient habits he regarded no bounds of moderation, and the Irish chiefs fell into his bad example. Davis says of it: "The most wicked and mischievous custom of all others was that of coin and livery, which consisted in taking of man's meat, horse meat, and money of all the inhabitants of the country at the will and pleasure of the soldiers. . . . This extortion was originally Irish. . . . But when the English had learned it, they used it with more insolence and made it more intolerable." He also denounces "cosherings which were visitations and progresses made by the lord and his followers among his tenants, 'sessings' of the Kerne, of his family called Kernety, of his horses and horse boys,[18] of his dogs [19] and dog boys, and the like. And lastly cuttings, tallages or spendings high or low at his pleasure." Sir John Davis seems to have had no acquaintance with the limitations which the Brehon law, which he helped to make utterly void, had put on these exactions.

How long this degraded use remained as immemorial custom and how largely it was enlarged for evil may be seen from the account of the divisions of lands among the sept of the O'Sullivans in the sixteenth century, *infra*, p. 147 *et seq.*[20] You will see that the contributions of the kinsmen's to the lord's support, so carefully guarded by the

Digitized by Google

A.L. Irel. ("he is not entitled to butter"), have become in the mouth of the Anglo-Irish lawyer the payment by them of "anything that the lord lacked from time to time."

As I have previously urged, these customs, although Davis speaks of them as "originally Irish," were methods of mutual support between chief and freeman, forming a fundamental part of the social system found in all early tribal communities, from those described by Tacitus and Cæsar onwards, customs not of necessity evil when properly guarded.

Other collections of customary law than the Irish, and these late, testify to the continuance to a late date in an uncommercial society of this support of the chief by the people. The Welsh were undoubtedly much more and earlier under the influence of Roman and feudal ideas of land and property then the Irish, and in consequence the tribal society was earlier and more completely broken up. The Welsh Anomalous Laws, customary laws of uncertain and probably of late date, in summing up the general position of the chief in respect of this means of support, specify [21] "three modes by which the king supports his household and retinue: first, from the property of his own maer-trev" (what in England was called a demesne, the land in hand) "and his mensal land; the second is from his lawful due from his land, and his own men; the third mode is from the penalties for illegalities done in his land where they are due to him."

Of the demesne and the mensal land we shall speak when we come to consider land tenure; the penalties for illegalities done have been considered in my *Tort, Crime, and Police in Mediæval Britain.*[22]

Besides these general means of support, the chief took fees, as chiefs always do, for registering and ratifying evidence of social status; he controlled the highroads, a right which, in England at least, had a most far-reaching effect in extending his jurisdiction, and he controlled commerce; he protected strangers and settled all questions of land user, in each case, as it were, taking his commission. His powers will be commented on as they occur in connection with any such matters.

Digitized by Google

NOTES.—[1] *Dial. de Scacc.*, Book I, c. vii. [2] See *Cal. of Doc. relating to Ireland*, vol. i., for an account of the supplies for Henry's army of invasion in 1171; and the great Rolls of the Exchequer of Normandy by Thomas Stapleton. [3] For these dues in Scotland and the connection of the farm rent of the crown with the tribal system, see Skene's *Celtic Scotland*, vol. iii. 246–283, and Lawrie's *Scottish Charters*, lxvi., clxxix. (the can of a ship), ccix. [4] *A.L. Irel.*, ii. 27. [5] *A.L. Irel.*, ii. 25. [6] *A.L. Irel.*, ii. 21–39. [7] *A.L. Irel.*, v. 43, 53. [8] *A.L. Irel.*, ii. 233. [9] Laing's *Heimskr.*, ii. 292. [10] Laing's *Heimskr.*, ii. 348. [11] Laing's *Heimskr.*, iii. 44. [12] O.S., 110. [13] O.S., 120. [14] *A.L.W.*, Ven. II. xviii. 5; xix. 6; xxi. 1; xxvi.; xxvii. 4, etc.; and Anom. Laws, XIV. x. 5. [15] *A.L. Irel.*, iii. 113. [16] *A.L. Irel.*, ii. 37. [17] Spenser's *View of Ireland*, Morley's edit., p. 70. [18] *A.L. Irel.*, ii. 27. [19] *A.L. Irel.*, iii. 413, hunting dogs, staghounds, and shepherd's dogs are mentioned. [20] Recorded in a note on the date 18th June in the *Calendar of State Papers*, Irish series, 1587, cxxx. [21] *A.L.W.*, Anom. XIV. x. 5. [22] Williams & Norgate, 1917.

Digitized by Google

PART III

THE HOLDING AND TRANSFER OF LAND IN MEDIÆVAL SOCIETY

(*See* EXPLANATION OF TECHNICAL WORDS, *supra*, p. xxvi.)

CHAPTER XI

FOREIGN EXAMPLES. INCORPOREAL RIGHTS. VARIOUS ENGLISH TENURES

HITHERTO the communal society has been considered as far as possible away from the land, as a society of mutual responsibility and mutual profit, responsible in personal dealings for the ill acts of its members, and as a consequence sharing in the profits of their several ventures.

So long as such a condition of things exists the user of the land is common with exceptions to the whole community; but the tendency to individual possession grows by that it feeds on, so that at various dates, according to the pressure exercised by economic causes, such as geographical position, land contour, climate, increase of population, opportunities for external trade, land in these communities becomes in some cases very early, in others very late, the subject more or less of individual property.

Foreign Instances of Dealings with Land.—Before we go on to the consideration of the alienation, inheritance, and user of land, a huge subject if one discusses it in any detail, which I do not propose to do, a subject which touches equally all systems of society, feudal or communal, it may be well to give a casual glance for a moment at some examples of the communal society existing or recently existing in places other than the British Islands.

Such communities, as we now see them, have for a long

Digitized by Google

time past regulated their social relations, both external and internal, largely by reference to land as a basis of society, as well as by the personal tie, modified ownership of land breaking in upon the personal relationships. The varying conditions cause great variety of degree in which the change takes place, but in every instance the evidences in writing for the change are late, and of the original conditions before the change there is rarely written evidence.

In *Serbia by the Serbians*,[1] Dr Svina Troyanovitch, writing of present manners and customs, says, ancient legal documents referring to possessions only mention movable property, which shows that it was only at a later period that landed property began to be regarded as private possessions.

I give only one or two examples for the interest of the general reader, so that he may understand that this condition of society was not merely a primeval habit of the Germans of Tacitus' day or of the Irish or Western Islanders alone in the fourteenth to the seventeenth centuries, but a common form of social life spread over all Europe and Asia, and existing to very late times in parts favourable to its continuance. Those who wish to study the subject in greater detail are referred to the works of Sir Henry Maine, M. de Laveleye, and a host of other investigators.

To take as an example Russia in the late nineteenth century, in Mr Wallace's[2] account of the Mir he describes a peasant family and village association governed by a village elder who is controlled by the Heads of Households, who are themselves controlled by the adult members. The family has common responsibility for all the debts, and the village association for all taxes and communal obligations. The family farm together and pool earnings from other sources. The household farm independently of each other, and pay a fixed sum into the common treasury.

M. Kovalevsky, in his *Ancient Laws of Russia*, describes as then existing in Russia (in 1891) the sept, the clan, the group family, the undivided household up to fifty or more living under one roof, eating at one table, a society marked with the features found in our British communal societies of the Middle Ages, as of the society described by Tacitus a

Digitized by Google

thousand years earlier. This community, called a verv, was jointly answerable for the ill acts of the persons composing it, the society including adopted persons and the children of a wife by her former marriage. Such children would be grown up and able to help to support the family. These households, he says, are governed by a house elder, who, only *primus inter pares*, is the appointed officer of the community. He cannot dispose of the family possessions without the unanimous consent of all, both men and women. He represents the community in the Courts, and sees to taxes and military service; he settles all disputes in the house; he has great influence in matters of marriage and dowry; he arranges employment for the unemployed members; he is guardian to orphans; he manages the farming operations; he sells and purchases and accounts to the family. He acts on behalf of the community. It is the *nulle terre sans seigneur*, the legal doctrine underlying feudalism. Every man without a chief, to the king, say the Irish laws,[3] and we see the same rule in the Welsh codes. Someone had to be responsible for the behaviour of the individual so long as common responsibility lasted at all. The family shares in the earnings of its members and in the produce of its lands, the one exception being the earnings of the women and girls in their leisure hours, which go towards their dowry.

A fundamental rule of these communities, says Sir Henry Maine,[4] as of Hindu joint families, is that a member trading at a distance from the seat of the brotherhood ought to account to it for his profits.

To give one more instance from the Slav peoples: what follows is extracted from an account of the present organisation of the communes in Serbia by Professor Constantin Kommanondi of Belgrade.[5] To form a commune there must be 200 adults inhabitating the tract of land; several communes may combine and form a new one; a village may leave its own commune and join another, or may form a separate commune; the communes and the villages must by a vote at a meeting express the wish to do these things.

The communes are "autonomous entities"; they look after their own local affairs, free from interference by the

Digitized by Google

State, but they are also part of the State, and the State decides when the powers of the autonomous communities end and the powers of the State begin.

The commune is governed by the general meeting of the inhabitants in their communal assemblies or by delegated bodies called the Municipal Council and Communal Tribunal. The Municipal Council treats, among other things, of the voting of money and purchase of land, but their powers of raising money and disposing of property is strictly defined and limited. The Communal Tribunal is the link between the commune and the State, having extensive powers in either direction, police, autonomous, executive, and judicial.

In chapter xii. of the same work Dr Svina Troyanovitch relates (p. 172): Until quite recently there existed associations called Zadrugas, clans including male kinship to the second and third degree. All landed property, cattle, and, with exceptions, movable property, belonged to the men. The marriage was exogamous. The woman could not marry inside her own tribe.[6] The Zadruga was ruled by an elder who settled all matters as to the duties of all members and the handling of property. Gradually the members of the Zadruga acquired separate property outside (Osobina), the property of the women being sheep, oxen, and the like. On a death there is division and redivision of the land, as among the early Irish and Welsh. The Montenegrins, he says, count pure kinship down to the seventh degree, all the members belonging to one Brastvo or brotherhood who may not intermarry. This is the tribe, the Zadruga, the sept.

At present, he says, the common property of the Brastvo consists of meadows and forests; fields for ploughing, which are hedged in, have always been regarded as the private property of a family or Zadruga. Every Serbian is member of a commune. He may leave and move to another commune, but the commune may refuse to receive him if he cannot support himself or if he is not of good character. The co-operative system has taken great hold in Serbia, as in Ireland, as a modern development of a society founded on the family as a unit, a society in which the kinship has died out.[7] We now return to mediæval Britain.

Digitized by Google

The Change to Feudal Custom.—The social system, by which the grant of land by one individual to another took the place of its common use by the community, did not affect the usufruct of land only; it extended to every matter ever so remotely connected with the land which could be the subject of grant or sale.

In every way it conflicted with and wiped out the usages of communal society, acting as a solvent particularly on those features of the society which rested on kinship. In some instances the change was merely the replacing of the kindred by the king or lord; in others a custom beneficial in itself was replaced by usages oppressive to the freemen.

The men attendant on the chief mentioned by Tacitus, the tribal bodyguard, the Welsh teulu, the men who form the court of the Orkney earls, serving the chief who is also their kinsman, a service so beautifully used in the battle between the clans in Scott's *Fair Maid of Perth*, are replaced by a guard of professional soldiers; the elaborate customs of inheritance by the joint family die out before rules based on individual succession and later testamentary dispositions administered by church courts; and the close ties of fosterage of the young and gossipred, the services of training and care given by the very near relations greatly for affection, the relationship which so intensely irritates the Elizabethan and Jacobean English, because it stood in their way of imposing their views of culture on the Irish, passed into the sale of the wardship and marriage of the minor to the highest bidder by the feudal lord.

The Transfer of Incorporeal Rights.—The system tended to create a volume of charges on the actual land of things without bodily existence, "incorporeal" rights, each of which could be sold or granted and held separately by different persons apart from either the communal or individual ownership or possession of the land itself, of which the occupiers might be unfree men.

All those easements, those rights over land which under the communal system were the possessions of the community, such as rights of use of the common mill, of fishing and hunting, of cutting timber, even of pasture on the common lands, become

Digitized by Google

the subject of grants to specified persons to the disherison of the community. The rent of the bakehouse may be granted to one man, the right of ferry or of passage over a bridge to another.

The right of presentation to a benefice (it is not unusual in Domesday to read of "half a church" belonging to a manor), all offices, whether lay or ecclesiastical, which refer to lands, the right to have food and drink and horse meat from a certain portion of land,[8] the exclusive right to hold a market at a particular place, and an infinite number of things of the kind, become the subjects of individual possession.

Even the duties of the lord to the persons themselves become subject to sale. The right to sell in marriage the infant heir, male or female, of individual property becomes a most important subject of barter.

Tolls and dues of all sorts arise by grant from baron and churchman. The great abbots and bishops and priors, whose possessions had come into existence in great part by the accumulation of little gifts of all such rights, are foremost in the use and increase of them by sale or lease. Edgar of Scotland, for instance, grants to the monks right of wreckage.[9]

The food rents spoken of by Tacitus as given by the community to its chief, the customary right of the Irish chief to stay at the houses of his poorer kinsmen and there to consume the regulated food of tenancy, the king's ferm, collected from each county by the sheriff or officer to whom it was farmed, or the lord's dues, collected by his bailiff, were subject to the same practice of sale to strangers. To give a late instance only, in a lease dated 1630, the archbishop of Dublin is to provide victuals and lodging for two boys and horse meat and stabling for three horses on the premises whenever the landlord, Sir R. Nugent, resorted to Dublin.[10]

Two examples of the effects of the ultimate decay of these customary dues and tribal privileges may be given: one in Ireland. Spenser, speaking of coign and livery, says, neither in this was the tenant wronged, for it was an ordinary and known custom, and his lord used commonly so to covenant with him, which if at any time the tenant disliked he might freely depart at his pleasure. But he tells us that the Statute

Digitized by Google

made coign and livery treason; there being no inns, it is dangerous, he says, to go into another man's house for lodging or to take food.

The other in France. Speaking of the French Revolution, Sir Henry Maine [11] points out that the majority of the French nobles had little or no analogy to what we understand by a landed aristocracy. A certain number of them, relatively but a few, had great estates; but the largest part of them had little or no land let for rent to lessees or tenants at will. The multitude of petty noblemen and gentlemen lived on the money produce of the small incidental services due, as we should say, from owners of land held in copyhold to the lord of the manor.

He enumerates them: the fines on death or sale, the forced milling at the lord's mill, the sale of the beast in the lord's market, and the miscellaneous rights, such as the dovecot whose occupants feed on the peasant's corn—these monopolies, he says, referring to "early Aryan organisms," represent the ancient provisions for the service of the little village commonwealth. The lord, the Seigneur of France, is answerable for the conduct of the whole manorial group to its superiors and its neighbours. He is the manager or governor of the little society, with the advice of his free tenants. He is not the owner of all the land of the manor. Much of his revenues, and here and there the most important part of them, consists of the various dues payable to him from all classes of his tenants.

As I pointed out above, the varying conditions under which the change from the communal use of land to individual ownership takes place brings about great variety in the forms of tenure of land, and great variation in the times of the modification.

Examples of English Tenure of Land.—Where the necessity of war overshadowed the necessity of food production, the land tenure, as on the borders of Scotland or Wales or Austria,[12] was of a semi-military nature, if not wholly feudal, the interests of the community giving place to the need to select the best fighting men. If in such forms of tenure we find duties of an unfree nature incompatible with our

Digitized by Google

idea of the military tenant (as where, in Domesday, we find thanes holding land on the west coast between the Mersey and the Ribble, who in addition to their rent do some duties and suffer some restraints equivalent to those of the southern villeins), we are bound to assume that they had men in their employ and under their authority through whom they performed these services.

Considering the very full treatment which the feudal military system has always received at the hands of historians, it is not necessary to enlarge further upon its characteristics. The contrast between feudal law and tribal custom may almost be said to consist of this, that the feudal lawyer regarded military efficiency, and as a consequence the king's peace, expressed in the relations of lord and tenant of land, as supreme, while the tribal lawyer, jealous or contemptuous of an ill-respected federal authority, and little disturbed by physical disorder, which existed always and everywhere, as much under feudal as tribal custom, bent the customary law to a fair adjustment of relations between members of the free community as such. Any necessary points will be noted later as occasion arises.

But although the feudal military tenure is the most prominent historical mode of landholding in England, lands were held by grant from individuals to a very large extent by other tenures, which it is as well to notice here before proceeding to the user of land in tribal communities.

Land Tenure in the North of England.—A modified form of the feudal tenure is found in the north of England in those counties not included in Domesday, and not subject to William's hand—the counties which had been for two hundred years or more the highway of the Danes and Norsemen. Here we find a tenure called thegnage and drengage. We might assume, if we followed the idea of the historical antiquarians, that differences of land tenure are racial, that this peculiarity of tenure was Scandinavian. It was so to this extent only that the geographical farming conditions in the extreme north of England—Westmoreland, Nothumberland, etc.—were and are similar to those in Norway; the greater part of the land was suitable only to stock-raising and hunting;

Digitized by Google

the tenure of land was regulated by the duties required of the tenant of a stock farm and a hunting ground.

The dreng, says the Boldon Buke (a survey of the possession of the See of Durham by reference to Boldon near Sunderland in Durham County, made by order of Bishop Hugh Pudsey in 1183), feeds a dog and a horse, attends the great chase with greyhounds and with ropes with which the enclosure was made into which the deer was driven. The other services which are called for in this district have little connection with arable cultivation or even with regular warfare. "To carry fruit (acorns and nuts), to find a litter for the Lord Bishop on his journey, to feed a dog, to provide a castleman, to make a hunting lodge, to guard the aeries of hawks, to attend the roe hunt, to do forest service in fawning and rutting time, and bee keeping, to bring the swine from pannage, to carry millstones, to prepare the milldam" are services which help to show why William did not try to force his dominium on this rough country, but left it to his son Rufus to deal with counties severed from England since the ninth century.

We meet here with tenure by cornage, horngeld, rentegeld, beast's gafol, payment by horn, so much a beast to be paid to the chief or lord for stock kept on the common pasture. But it is essentially in the first instance a military service. It is a rule of the tenure, even in the sixteenth century, that everyone at every affray and following have a Bowspeare and Gunne and bring his horse to the fray.

The drengs in John's reign pay fines to be relieved from military service in Normandy.[13] They are the armed Border forces of the Crown who keep watch over the unenclosed pasturage against invasion, like the men in the Irish tribal laws who guard the border to check cattle-lifting.[14] In a survey made in 1604, the property of Kidland on the Northumberland borders, estimated at 10,000 acres, is stated to have been of no value for many years past owing to the raids of the Scottish borderers, so that no one paid rent for twenty years.

As you go north the terms of landholding appear to be more free, the holders of very small farms being in the position

Digitized by Google

of freemen, not subordinate to any lord. Maitland[15] says: "In the south of England the frank pledge is territorial, in the midlands personal, in the northernmost counties there is no frank pledge at all." The tenants attend court. No legal process can be served except in the manor court. When we come to speak of the use of land for crops and pasturage, this part of England forms a very interesting study.

Other English Tenures.—Other tenures of land in England by individuals from an individual superior were (1) *ancient demesne*—or dominium—the lands of the king held for his own use, cultivated by serfs and villeins for the convenience of obtaining provisions as he moved from one manor to another. In Wilts the king had one-fifth, partly his own, and partly as holder of the waste. In Kent he held 1422 manors. His tenants were not responsible to the local or manorial courts; they were quit of toll in every market, town, or city in the realm.[16] Such manors were farmed out by the king for a lump sum.

(2) *Socage tenure*, which was undoubtedly the adaptation to individual landownership of the holding of land by the family, the chief incident being the payment of rent, the dues formerly due to the chief. The heir, when a minor, was in the wardship of his kin. The wardship ceased at fourteen, the guardian being the nearest relation on the side which had no pecuniary interest in the land, the father's relations if the land came through the mother, or the mother's if through the father. But the minor is included in the manor, and has to do service and plead in the manorial court.

(3) *Borough English*, the descent of land to the youngest son; and (4) *gavelkind*, a form of land tenure which touches many parts to which we shall come presently.

NOTES.—[1] *Serbia by the Serbians*, edited by A. Stead, ch. xii. p. 173. [2] Wallace's *Russia*, 188. [3] *A.L. Irel.*, 241. Land without a chief and a tribe is glossed as meaning a chief of the same tribe. *A.L. Irel.*, iv. 21–25. [4] *Early Law and Custom*, chap. viii. p. 252. [5] Chapter v. of *Serbia by the Serbians*, p. 69. [6] This was practically the Church's mediæval sale of marriage. "And let it never be that a Christian man marry within the relationship of six persons in his own kin (*i.e.* within the fourth degree), nor with the relict of him who was so near in worldly relationship; nor with the wife's relation whom he before had had; nor with any hallowed nun, nor with his godmother, nor

Digitized by Google

with one divorced." [7] *Serbia by the Serbians*, Rural Co-operations, p. 265. [8] Y.B. 11 Edw. III. 269. [9] Lawrie, *Scottish Charters*, xix. [10] Pat. 13 Jac. 1, p. 280. [11] Maine, *Early Law and Custom*, p. 296. [12] See the Preface to vol. iii. of *A.L. Irel.* as to the House Communities of the Croate Serbs on the frontiers of Austria. [13] Madox, *Exch.*, i. 659. [14] *A.L. Irel.*, i. 185, guarding the borders. [15] Maitland, *Select Pleas in the Manorial Courts*, Selden Soc. [16] Fitzherbert, *Natura Brevium*, p. 221, quoted in Yeatman's *Ancient Demesne*.

CHAPTER XII

THE NORSE TENURES. THE UNFENCED WASTE. EASEMENTS

THE variety of modifications of the communal society are more marked outside England as commerce or Rome, or both, or the remoteness from either, affect stationary conditions.

Ireland was least touched of all parts of the Islands by the Roman influence; the country was naturally suited to pasturage as it is to-day; there was much moisture; the grass grows sweet and fresh the year round; there were very great fertile plains producing large crops of corn, but there was little inducement to grow corn for export, though the rivers and the large seaboard gave plenty of opportunity; life was easy; Ireland was not on the trade routes of the world.

In consequence she kept her tribal institutions much longer and in more archaic form, and surrendered them more grudgingly and with more bitter suffering in the course of change. Here a much wider unit than the family governed the user of land, the powers of alienation and the authority of the chiefs.

The Odal Lands of the Orkneys and Shetlands.—It is extremely interesting to contrast with this apparently very ancient form of social life over a large expanse of comparatively level land, suited then as now to pastoral requirements, the other extreme of the social community, the odal ownership of land in the Orkneys and Shetlands.

Digitized by Google

Odal land was landed property subject to a customary law, according to which it descended in certain proportions to the children or nearest of kin, the eldest son taking the principal bu or manor, in such a way that the life tenant for the time being could not alienate it from his heirs. It was held, so far as any State was concerned, in absolute ownership, free from any oath of fealty or tenure of military service or rent attaching to the land; but the udallers paid scat or fixed land tax to the king or earl or other chief for his support, and fed him on his rounds, and did military service for defence as freemen.

The men who settled in Iceland and these islands and the Western Islands of Scotland and Man,[1] flying before the feudalising influence of the federal king, came from countries where there was very little level land, a great extent of indented sea coast, and a great wealth of fish and wild animals. Both in the original home and in the new colonies the main sources of living were fishing, hunting, and piracy; the small extent of cultivable ground, incapable of increase, gave no opening for alternative fallows; the equally small extent of pasturage no opportunity for stock raising on any large scale; the seafaring life interfered with and discouraged both.

From the Landnamaboc, the Icelandic settlement, to which the Orkney settlement was similar, would seem to have been the settlement of individuals with their direct families, and not, like the emigration of the Angles to England in the sixth century, the movement of a whole people. Each noble as he fled on his ship from Norway with his wife and children and dependants and a few friends, or emigrated from his temporary home in Ireland or the Western Highlands, left behind him, like the early settlers in America, the traditions of a more closely settled country in which the other members of the group family remained, and came nearer to absolute ownership of land, each leader seizing on a tract of land where he landed, and sharing it out among his followers.[2]

The women held lands as men,[3] bringing land as their marriage portions,[4] and freedmen also took tracts in this way in settlement.[5] The Landnamaboc mentions several

Digitized by Google

cases where one man challenged another for his land by wager of battle.

The emigration either to the Orkneys or to Iceland was not the slow growth of a nation who gradually settled and peacefully developed the land, but an occupation resulting from acute military conditions by a number of individual shipmen landing at long distances of time, and occupying large tracts so long as there was spare land. When land became more scarce they had to be content with less. "The men that came out later thought that they that had first come out had taken in settlement too much land. But King Harold Fairhair made peace between them on these terms, that no man should take in settlement more land than he and his shipmates could carry fire round in a day." [6]

Hence the communal land arrangements here have shrunk into something which at first sight looks very like individual ownership, differing, however, from the feudal tenures in that there was no custom of primogeniture, and that the udaller, as we see him holding land even in the seventeenth century, owned no lord, paid no fealty, and did no military service except as member of the community to his chief. This land was not subject to any right of a lord on a death, but was divided by law among the customary heirs, though the common cultivation might result in the strips remaining undivided for several generations.

Co-ownership of land and co-partnership in toil was, in early times, a matter of necessity, that men might have sufficient capital and stock and labour for farming. Only when the family had combined for three or four generations, so that there were too many for joint work and occupancy, did they separate like Lot and Abraham.

But although the cultivation of the land was, as it was so lately and persistently in all society, a common cultivation of an agreed crop in a common field, the right of occupancy of the land in the Norse colonies appears to have passed to, and rested in, the individual. It is a life usufruct with very limited powers of alienation, very similar to the conditions of the land community of Ireland, except that on a death the division was among the immediate family and not the sept.

Digitized by Google

For however complete the rights of dealing with the land by the man in possession might be during his life, he had only contingent powers of disposal after his death.

On a death the land is divided among the members of the immediate family, according to specific rules brought by the settlers from Norway. The provisions of the Norwegian Law Book [7] relating to such succession are quoted in full in Mackenzie's *Grievances*, p. 9. The eldest son has the principal buil (or manor); "the other children receive an equivalent out of the other land; every one his own lot, a brother a brother's lot, a sister a sister's lot, according to the estimation of the neutral men," etc., etc. If there is not land enough to compensate the chief manor, the co-heirs were "satisfied in money and goods," as far as these go. The other manors, "with the woods," belong to the sons; "the daughters shall only have their lot in the most remote and discontiguous lands," so that the family property may not be broken up by marriage. Mackenzie [8] quotes cases showing the similarity of practice in the Islands with these laws. According to Train's account of the "absolute estates of inheritance" in Man, the division was on similar lines. Down to the sixteenth century, in Man no man could sell his land without licence of the lord, who represented the chief of the group family.

But apart from all restraint of disposition after death, the user of the lands was hampered in a way which must have been a great hindrance to the energetic Viking or trader, who saw a greater opening for his powers on seaboard than in the cultivation of the small insular fields with their little background of common pasture. If he wished during life to dispose of his land, he must first offer it for sale to the next of kin, who were entitled to redeem it, who, if it had been sold, could redeem it from the stranger purchaser. The reader should compare Ruth, chap. iv., vv. 1–12. Even in Laing's day, in Norway (end of eighteenth century) the right of redemption within a certain number of years was competent to those odal born to an estate which had been sold out of the family.[9] The Law Book of Norway, identical with the Orkney law, says: [10] "Will a man sell his odal land? Then shall he summon all the odal born, and notify them that he is to sell such odal land,

Digitized by Google

making to them the first offer if they will buy, and have no impediment such as the want of money and the like. Also, he shall proclaim, or cause to be proclaimed in public market, that he is to sell such odal land, and shall again offer it to his own kindred the odal born, whether known or unknown; but first to those who stand in the nearest degrees of relation to him, whether male or female, that so the thing may come to their knowledge though they should not be there present." [11]

"Taking consideration of the great confusion within the country of Zetland, anent the buying and selling of land thereinto, etc., it is statute and ordained that no person or persons frae this forth either buy or sell any sort of lands with others without the same be first offered to the nearest of the seller's kin according to the use and constitution of the country." [12] The lendermen of Norway, says Mr Clouston, though their lands were practically hereditary, could not grant them to their sons.

But beyond this there was a further restraint. The life user of lands subject to customary inheritance could not sell them at all, involving the risk of division of the family property, unless sheer want compelled him, except that he was allowed a right called the "tent penny and ferd," *i.e.* the right to bequeath a tenth of inherited property and a fourth of acquired, averaged as a sixth of all, which enabled him to increase the inheritance of a favourite son or daughter or to remedy some inequality such as commonly arises in the distribution of an inheritance.

As an example, a decree of the Lawman of Orkney and Shetland and his Council, given in Appendix II. of Mackenzie's *Grievances*, affirms a sale of lands as made according to law, in which the seller, after reciting the offer to his kinsmen, and their refusal, states that he had publicly and frequently advertised his desire to sell "in courttis and heidsteins and maid knawin that he was fameist and perachaud of hungar, in falt of fude, and naikit in falt of claithing," and that "it was force till him to sell to ony that wald by." Unless human nature was very different in those times he would not stand to get much of a price under such conditions.

The Common Ownership of the Unfenced Waste. Easements.—

Digitized by Google

There was yet another qualification of individual ownership. In these Islands and the Western Islands, and the coast adjoining them, settled by a naval and seafaring people who looked first to the sea for their living, the cultivated farms, the occupied land, the town or township as it was called, lay along the sea coast, convenient to the ships, or in deep narrow dales, separated by dykes or fences from the rough or hilly unfenced inland. This part within the dyke, which alone constituted the odal property by inheritance among the family, the tilled house fields and houses (aker and eng), which were enclosed, and the house pasture (husahagi), which might or might not be enclosed, but which was undivided and shared in common by all the township, was an ownership apart from the part beyond the dyke, the common hill out-pastures, over which all the townships in common had easements (unnendi). Each owner of the fenced and cultivated land had a common right of user in this far larger extent of unfenced waste behind, with convenience of access to and servitudes or easements of various kinds over it.

This matter of easements, though made up of little things, is of prime importance in the early relations of land. Where the land was held in common ownership in groups, the arable strips intermingled, the stinted pastures in common, interspersed as time went on with tracts owned in severalty by chiefs, ecclesiastics, widows, and other privileged persons, land occupied in large part as pasture for cattle which frequently break fence, we must expect the collections of customs to be largely concerned with predial rights by custom or by agreement over other people's property; in the first instance personal rights, rights called by English easements, by Romans servitudes, by Germans Grunddienstbarkeit, the mutual accommodations of adjoining owners of land in all those little auxiliary matters which are of necessity for the use of land, such as rights of water for stock and for milling, rights of fencing, of pasturage, of hunting, of cutting turves, rights of way across properties from one part to another, or to the waste or to the sea shore, rights of fishing, of felling wood, of building, of salvage of seals and whales, of leading water across land, of burning charcoal in woods; in fact, all those matters not pro-

Digitized by Google

vided for in modern schemes of small holders not based on communal society. The easements over the common land early became such an integral part of the odal ownership that in the sixteenth century a deed in the Orkneys will be expressed to pass the land "from the highest stone on the hill to the lowest stone on the beach."

With these common rights come corresponding obligations to allow to others the same rights, and to refrain from acts which may interfere with their enjoyment. All the communal customs prohibit acts which may interfere with and provide for convenience for the common enjoyment. Examples of these mutual accommodations in communal ownership are given on p. 262.

The land which descends to the family, and which rests in the individual in all parts of the Islands, the odal land, the orba, tir, cruib or sliasta land, the bocland, the land which can be alienated as portions for daughters or given to the Church, is the cultivated and enclosed portion only. To every body of such land, as we might say to every estate, there pertains a proportionate interest in the rights and obligations attaching in the common beyond, essential in all parts of the Islands for the livelihood of the men who cultivate the small quantity of enclosed land.

This common ownership of the unenclosed waste has a long and varied history hardly yet ended. It continued until a very late period in all parts of the Islands, even in Southern England, although it was very much modified here by the feudal manorial system. In other parts it has a variety of experiences.

Vesting, in the first instance, in the chiefs of the community, who regulated its use for the common benefit, it became in almost every case throughout the Islands, by written deeds and charters, not infrequently monastic forged, or at the instance of parliaments and of lawyers acting in the interests of the men of wealth and power, the absolute property of the chiefs, in whom the common lands vested in trust for the community, or of their commercial assignees or successors, as being merely appurtenant to the cultivated land under fence which had passed into their individual possession. The reservation

Digitized by Google

to the despoiled community of certain limited easements was, and is, in daily danger of extinguishment on the grounds of public expediency.

Federal Antagonism to Communal Landholding.—Those who aspired to federal authority began by breaking down the hereditary character of this communal system of landholding. This takes place in all parts. When Harold Harfager's son was in 880 killed by the Earl of Orkney in blood feud, Harold imposed a blood payment, which would fall on the odal landowners, of sixty marks of gold. The earl agreed with them to pay the whole if they would give up their rights to him and hold of him as feudal lord. This, says the Saga,[13] they agreed to do, "the poor because they had but little pieces of land, the rich because they could redeem their odal rights when they liked." In 1137, Earl Rognwald, in want of money to build St Magnus' Cathedral, offered the landowners that instead of redeeming the right of each succession as it fell in, they should redeem the odal outright, which they did. After this the conditions of the odal holding remained gradually decaying by the subdivision of lands and the legal encroachments of the Stuarts.

On his conquest of the Isle of Man in 1075, Godred Crovan kept for his own men the south of the island, but granted the north to the natives, on condition that none of them should at any time presume to claim any portion of the land by hereditary possession.[14]

In a settlement in 1195 between Sverri, king of Norway, and the Earl of Orkney, Sverri, confiscating the estates of those who had rebelled, "fixed a limit of three years in which the kinsmen of the dead might ransom the estates with money."[15] He takes Shetland under his own control for tax and tribute, and from this it came as a crown colony under the direct rule of the king of Norway.

The author of the *Dialogus de Scaccario*, chap. ix., says that William the Conqueror took the lands of the Saxons, and returned them to them without the right of succession, leaving them to gain that by bargains with their lords.

The same feature is found wherever the communal society is seen, from Ireland to India. The free institutions of the

Digitized by Google

Slavs are noted by Byzantine writers of early times, but they gradually cease to be free, overpowered by the Byzantine principle of unlimited monarchical power, which in all time through Rome has fought the folkmoot and all representative institutions.

Speaking of the decay of parliamentary forces in Russia under Peter the Great, and pointing to the worthlessness of Parliaments in England under the Tudors and Stuarts up to 1640, and the National Assembly in France after 1613, M. Kovalevsky says: "The fall of representative institutions we notice both in England and France was a common fact of European history." King Charles I. of England was not the only sinner.

NOTES.—[1] What is here said of the Orkneys and Shetlands applies, for the most part, as far as one can ascertain, to Man and the Western Islands of Scotland. But our authorities for these parts of the Islands are of the weakest. [2] Landnamaboc, I. vii. 2; viii. 2. [3] Landnamaboc, II. iii. 5, 6. [4] Landnamaboc, II. iv. 3. [5] Landnamaboc, II. iv. 14, 15. [6] Landnamaboc, V. i. 1. [7] Lib. v., c. 2, art. 63. See Appendix C, Town or Township. [8] Mackenzie's *Grievances*, pp. 10–11. [9] *Heimskringla*, I. 125–126. [10] Lib. v., c. 3, art. ii. [11] Mackenzie's *Grievances*, p. 7. [12] Declaratory Law made in the Law Ting of Shetland, August 22, 1604. [13] Harold Harfager's Saga, c. 32; Saga of Olaf the Saint, c. 99; Laing's *Heimskringla*. [14] Chron. of the Isle of Man, *anno* 1065. Train, in his *History of Man*, says, "The island is divided into two parts, south and north; the inhabitants of the former speak like Scots, and of the latter like Irish." [15] Sverri's Saga, 125.

CHAPTER XIII

ALIENATION AND INHERITANCE

The Right of Redemption.—The subject of the restraints on alienation and the principles of inheritance of communal property is capable of illustration in the past from almost every country in Europe; it has left deep marks on the laws and habits of those countries from which, as an institution, it has disappeared: it is still fully or partially the basis of

Digitized by Google

society in many parts of Europe, especially in Russia, Serbia, and other countries in the East. While the influence of the feudal system has very generally ceased to affect modern society, the instinctive ideas of the communal society remain dormant in the mind, ready to point to and help to modify evils attaching to the individual ownership of property, or, if ignorantly handled, to incite to revolution.

I have treated the Norwegian land question separately, because, owing, as I see it, to the origin of the settlement, the small area of cultivable soil and the seafaring occupations, the immediate family rather than the group family or tribe had early become the unit of division, the chief restriction either on gift *inter vivos* or public sale being the right of redemption by the near kinsfolk of the shares which the customary law secured to them.

This right of redemption to land was customary in all other parts of the Islands, including England,[1] though in all cases it slowly dies away. But where there was a wider circle of kinsfolk entitled to share in the inheritance, this right was only part of a general prohibition of alienation, accompanied by large exceptions for various causes. The principles which governed alienation and inheritance to land in the other tribal parts of the Islands differed little from the Norwegian custom except in degree.

In England, under feudal law and the influence of Rome, the bocland exceptions, which governed the alienation of acquired land, ate out the customs relating to community land. Such exceptions being in writing, while the inheritance to common land was matter of unwritten custom, the records of successions to bocland have been taken as the rule and not as the exception, resulting in a most confused picture of landholding in early society. The custom in England before Roman and feudal influences caused the communal society to decay was almost certainly under the Danish kings the same Scandinavian custom, a family succession with right of redemption to the heirs. "If any dies without a cwide," the lord is to take nothing but the heriot, and the property is to be distributed under him "among the wife and children and the nearest kinsfolk, to each the proper share."[2]

Digitized by Google

The effect of the feudal system, where it was unmodified, was that, while increasing military efficiency, it affected the whole social fabric by doing away with all rights of the children to the usufruct of the soil. The children of the man endowed with the land by his lord had no claim as such to succeed to any share of his tenancy in land, and certainly had to pay for the goodwill of the lord in competition with others for any custom of inheritance.

The grant to the lord's follower was in the first instance only a temporary grant to him personally (a grant unlikely to be objected to by the main body of the freemen), in return for and so long only as he performed certain specified duties. These performed, the grantee was in his own territory absolute master leader and judge. He was a free man except as regards the conditions on which he had been granted the use of the land. The duties usual were to follow the lord to battle; to go with him to the law court or to the general assembly and make oath for him there; to assist him in paying the compensation for other members of the community for whom the lord was responsible; and to abide by his decision in his court in all matters which might concern him or the community for whom he stood.

But the tendency was persistent to make temporary possession permanent.

During the long growth of the system it must very early have become a custom in this succession of life interests that on the death of the father the eldest son, as supposedly the most capable fighter, should succeed to the user of the land to the exclusion of others, paying the lord for his assistance to his title.

The land divisible among the members of the family rested in the head of the family, in Ireland called the geilfiné chief, in Wales the penteulu, and in any matters of distribution or alienation he made decision for the family. It was an easy transition that the land hitherto held in common by the family should rest in the eldest son, the obligation being on him at first to make provision for the others of the immediate family.[3]

The alienation of goods and chattels, until their dis-

Digitized by Google

tribution fell into the hands of the Church, was subject to specified customs of inheritance by the wife and children, and to the obligation to offer to the members of the community any goods for sale before seeking a foreign market. Beyond these restrictions their movement was in the unfettered discretion of the individual.

I have spoken of inheritance to land, but this may be misunderstood. We must clearly distinguish between the customs of alienation and inheritance before the introduction of the modern will and after.

The Saxons had, for instance, a form of conveyance[4] reserving a life interest to the grantor, of the character of a corrody, which has been called a will, a means of the monastery making sure of a man's goods or land during his life, but allowing his occupation and use of them in his lifetime. The kinsmen who were entitled after his death, if it were a death-bed will, would be pretty sure to dispute the validity of an exception to the rule that a man might not leave land away from his family. Another kind was a gift to pious uses as part of a death-bed confession, accompanied by the receipt of the sacraments. I question whether this was revocable. Queen Matilda, in extreme illness, gave away all, even to the bed she lay on, to the Church. But she recovered.[5]

Until the modern testament, adapted from the Roman will, gave to the possessor both of land and goods an almost unlimited power of disposition after death, the only means by which property of any sort could pass from one to another were (1) gift *inter vivos*, (2) an unwritten custom of devolution of land or other property to classes by right of kinship, near or remote, and (3) a public sale.

As observed elsewhere, this question of alienation and inheritance was intimately connected with the responsibility of the kinsfolk for wrongs, the social rights and duties being coupled together, as they always are in every healthy society, the customary law as to movement of land being framed in every part with a view to keep the common property intact, so that it might not be dissipated to those not responsible for the wrongs.

Digitized by Google

The Fourfold Division of Land.—From the very earliest records everywhere we seem to see a fourfold division of land into (1) land of which the use was common to the whole community, whether tribe or group family; (2) fenced land, divisible among and heritable according to custom by the immediate or group family: in its origin undoubtedly a return for improvement; (3) land of which, as the exception to this common ownership, the user has been for a short period acquired by an individual for himself or his family by his own exertions, or as payment for services, or as appendant to an office in the community; and, finally, (4) the land assigned for support to the official class, the lands of the Tanist, of the Brehon, of the Church, of the officials of the King's Court, and the Mensal lands. To take (4) first.

The "mensal lands" were lands voluntarily set apart by the community from time immemorial for the subsistence of the king or chief. In Ireland, Meath, with its capital Tara, the land where the four kingdoms of Ulster, Leinster, Munster, and Connaught met, was the mensal land of the Irish Ardri;[6] in Scotland, Gowry, in which was Scone, where the earldoms of Strathearn and Menteith, Athol, Angus and Mearns, and Fife and Fothreve meet, was the mensal land of the Scottish king. In Sir John Davis' account of the M'Guires of Fermanagh,[7] he gives a very pathetic account of the old Brehon who kept in his bosom the roll which set out the receipts from the mensal lands of M'Guire, adding that "besides these mensals M'Guyre had 240 beeves, or thereabouts, yearly paid unto him out of all the seven baronies, and about his castle of Enniskillen he had almost a ballebetagh of land, which he manured with his own churles" (p. 264).

The common waste or forest used by all, whether in England, Ireland, or the Orkneys, for pasture, mineral and timber reserve, could be alienated in one way only, by the gift of a tract to be fenced for use to a family or an individual member by the chief acting on behalf of the community, or by the settlement on it of strangers and aliens in the same manner. Otherwise no rules of alienation or inheritance apply to it.

Digitized by Google

How this worked to the advantage of the chief as he gradually took the position of owner may be seen by the following instance from the English Year Books. Certain townships of Huntingdon claim common of herbage in Weybridge for all their beasts, on the ground that their arable lands and their meadows which were fit to be mown extend to and abut upon the lord king's demesne wood of Weybridge, and that their lands and meadows are wasted by the deer of the lord king, so that they have not nor can have any profit therefrom, and that on that account they had the aforesaid common.[8] The king gave them pasture in the public waste, which in theory he held for the community, in compensation for the wrong done by the deer in his own private lands.

The use of this vast expanse of common land, the foundation of all cultivation of early times, and in some parts until recent times, was carefully regulated in all the communal societies. The consideration of this division of land will be deferred until we treat of the uses of the land (*infra*, Chap. XV.).

There remain (2) and (3), the land cultivated by the community in a common field, and the individual user of land by private persons either for a short time or as the result of inheritance.

Leaving the latter to one side, and looking only to the common agricultural user of the land by the community, the co-tillage, a redivision of the portions set apart for cultivation took place from time to time as the membership varied by birth or death.[9]

I have already spoken of the variation in the Orkneys, where various causes had combined to replace early the group family as a unit by the direct descendants. The parts now referred to are those in which the group family remains longer as a political and social unit.

Where the division continued to be among the members of the tribe or group family, it was no doubt at first made at stated periods of time. So long as there was plenty of land, so long as the main industry of the people was cattle breeding and hunting, and arable cultivation was insignificant,

Digitized by Google

this might continue. But so soon as land began to be used to any large extent for arable cultivation, so soon as an individual user began to impinge on communal ownership, there would be a growing tendency to make a redistribution at deaths, so as to ensure that the land should be put to its best use, and should not in one part have too many and in another part too few responsible for its cultivation. A most instructive account of the method by which until recently this used to be done in Russia will be found in the chapter on the Mir in Wallace's *Russia*.

As all agriculture took place in common fields in which the strips were intermingled, no absolute separation was made until the owners became so numerous that it was necessary that the lands should cease to be held in common and be permanently divided. Where the larger unit of society prevailed, as in Ireland or Wales, final separation was postponed for three generations of the free group family from the root owner, the sons, first cousins and second cousins consecutively dividing and equalising among themselves their respective parents' shares. After the deaths of all the second cousins their descendants separated into distinct communities.[10]

How completely the use of the land belonged to the larger family is shown by the provision in the Welsh laws that a father cannot dispose of his son's rights in land or *vice versa*, except where there is an agreement between father, brothers, first and second cousins, and lord, to yield the land as blood land, as compensation for a tort. Speaking of the families of the fuidhirs or strangers dependent on the chief, the Irish Brehon says, "the father does not sell anything to the prejudice of his sons, grandsons, great grandsons, and great great grandsons." [11]

But these customs of partition appear in Wales, at least, to have been confined to the group families of freemen.[12] The geldable lands,[13] the lands occupied and cultivated by the unfree men, as also the maertrev or demesne lands, which the chief cultivated by his own unfree dependants, were not divided between the brothers, but were redivided by the chief's officials between all in the trev or township,

Digitized by Google

i.e. family rights were only recognised among freemen. It was, in fact, a chief distinction here between free and unfree men that on the death of an unfree man his land fell back into the common stock of the community, instead of being divided among his immediate descendants even unto the third and fourth generation.

Each member of the community so given temporary possession of land gave, say the Irish laws,[14] to the others pledges of indemnity from disturbance, pledges symbolised by placing an article of small value on the rack pins at the foot of the other's bed. The chief object of this indemnity was to secure that the joint fences of the common lands should be properly kept up by the individual members of the family, as the family were responsible as against outsiders if any one member did not do his share of fencing. See below, Chapter XX.

However the customs as to the succession to the common lands of the community might vary in the Islands, they were subject to the principle that there could be no personal succession to community land, and therefore no necessity for any rigid rules of distribution, the unwritten custom, the corus finé, providing for its transmission. The idea that any one man could so absolutely own the land of the tribe, sept, or family, that he could direct the enjoyment of it after he had ceased by death to make use of it himself, was unknown in the Islands *unless by way of exception.* Where the tribe or group family was the unit, the children, though they took a certain specified share, did not by any means necessarily take the share of the parent: a fresh division was made. The tribe lands on the death of a member were to revert to the tribe.

If there were no buildings, the land is divided by seniority; if there are buildings, the youngest son takes the father's homestead, as being the most likely to be yet under age, and not yet fit to go forth to war. Buildings, which were generally wooden huts, were not divided.

This customary devolution of land, the land being held in joint occupation through several generations, meant that pedigrees had to be carefully kept, a matter of much amuse-

Digitized by Google

ment to the commercial Englishman, who had forgotten the necessities of its origin. The claimant of land by kin and descent [15] must show his kin and descent, "and if he be a fourth man he is a proprietor."

Possession of titled land for four generations gives a claim to the soil. If he lives out of the country, his rights enure to the ninth generation. In Orkney [16] five generations had to be traced back to claim odal right. The law required these genealogies to be proved in court. Families had oral genealogies going back for centuries, handed down from father to son. The Senchus Mor [17] says that Patrick left to the poets, *i.e.* the Brehon lawyers, extemporaneous recital, because it was acquired through great knowledge and application; and (also the registering) of the genealogies of the men of Erin. It would be plainly part of the business of the poet lawyer to commit to memory the pedigrees on which inheritance to land would depend.

Throughout the sixteenth and seventeenth centuries, and in the Western Highlands in the eighteenth, when the feudal system had fully spent its force as a military agency, the chiefs of all the communal societies were being tempted and coerced as the representatives of the tribes to a surrender of the tribal common lands to the government, to take them again as an individual grant to the chief by feudal land law, thus destroying the customary holdings and vesting the tribe lands absolutely in the chief as feudal tenant of the Crown.

I pause here to describe a good example of the customary devolution and user of community lands, a late instance from Irish history, while this process was going on.

In the *Calendar of State Papers*, Irish series, p. cxxx, 1587, June–August, on 8th June there is a note describing the ancient custom of division of lands, time beyond the memory of man, among the O'Sullivans of Beare and Bantry. The proper inheritance of land belonging to the O'Sullivans is fifteen quarters, every quarter containing three plough lands. The one-half whereof was by ancient custom allotted to the O'Sullivan, lord of the country for the time being. The other half to be divided and distributed among the worthiest and best of the name, as cousins and kinsmen to the lord, as a

Digitized by Google

portion to live upon, viz. to the Tanist, the best part of the said one-half, which is two (? four) quarters, every quarter containing three plough lands. To the second eldest next the Tanist, which is Donnel O'Sullivan, the plaintiff, there is allotted of the said one-half six plough lands, and so the rest to be divided among the other kinsmen. But it is to be understanded that this order was in some times altered, and so ought to be according to the custom of the country, that is, according to the diminution or increase of the said name of the Sullivans, which alteration should be when the name should augment; then everyone's portion were diminished to give living to the newcomer; and if the name were diminished, then the portion of the deceased to be divided among the outlivers. But the lord's portion, which is the first half, did never alter, but continued still to be O'Sullivan for the time being. The lord hath also four quarters of land belonging to his manor of Foyd, and this, with half the fifteen quarters aforesaid, is all the land the lord hath in his own possession, howbeit he is chief lord of all the country. There are twenty quarters more in the country, which is the lord's too, but they be allotted to other cousins and kinsmen as their shares of old ancient custom to live upon, paying his rents to the lord, which is but little worth nowadays (here follows particulars of the tribesmen), and every one of them hath his share thereof, paying his rent to the lord for the time being, and at the lord's pleasure he may take the land out of their hands if they had not paid the rent, which in old times was the cessing of his men of war, as galloglasses, kerne, horsemen, and such like, besides to pay all his charges whensoever he would come out of his country to any town or city, to sessions, term, service of his prince, and such like, etc.

There is also belonging to O'Sullivan two principal castles as his chief manors, or dwelling, in Beare and Bantry. In Beare the chief manor of Dunboye, alias Bearehaven Castle, of which he carrieth his name of O'Sullivan Beare. In Bantry, the manor of Foyd, and another castle builded by Sir Owen's own father, called Carrig in Assyg; the which three remaineth in the possession of the said Sir Owen. There is also a fourth castle, called Ardea, which is the manor, or house allotted

Digitized by Google

ever for the Tanist for the time being, and is now in the possession of Philip O'Sullivan, Tanist and brother to Sir Owen; but there was never seen a castle allotted to any other of the name.

The standing rent due to the O'Sullivan out or upon his country is but £40, and that itself was ever allotted to the lady for the time being towards her idle expenses, so as the country being no good farm land, but all valleys, cragged rocks and hills, can yield no great commodity, and therefore the O'Sullivan for the time being liveth only by the sea, and the commodity thereof, as his fishing, his wrecks, and such like, etc. And for the fishing, it is a thing uncertain, for some years; if fishing do fall upon the coast, then Dunboye is worth much; if fishing fail, it cannot yield profit.

For the ships and boats, the rents of them are but as the lord and they can agree, according as the fishing do continue all the season of the year, or fail, as sometimes it doth fail, within one month, etc.

The reason wherefore there is no reservation of rents upon those that hold the said land is, because they were to pay everything that the lord lacked from time to time, as debts, building of a house or castle, or marrying his daughter, or to supply the wants of his house, and such like, etc.

Individual Ownership gradually breaks in.—The prohibition of alienation of community land must have been broken into as soon as any individual was so bold or so base in a community of hunters and stockbreeders as to grow corn in the home pasture, or to tie his cow to a stump in an enclosed piece of wild grass.[18] Individual ownership of land is alluded to in the earliest parts of the Brehon laws. It is found in the records of all parts of the Islands. It appears early or late, as corn-growing or commerce or Roman influence produce it; it can be traced slowly creeping in everywhere, and everywhere it brings with it feudal custom and primogeniture. The exceptions to the communal devolution are few at first, and dictated by the self-interest of the community.

When alienation of land is allowed at all it must be assumed, I think, that it is only a transfer from one member of the group family to another of his personal interest, and

Digitized by Google

that all conveyance to external purchasers was strictly prohibited. In early Irish, as in early English law, the tribesman may alienate his communal land for certain specified purposes connected with the welfare of the community: for future maintenance,[19] for rewards to those who had taken his protection, for support of the aged of the community or of his own parents, for gifts to the Church,[20] for a preference to a favourite child, or for a marriage dowry. But with these exceptions it is only very gradually that any occupier can alienate land. He can only do so in the first instance when he has acquired the land by his own efforts, and then only as to part of it. Probably the decay of the communal society has proceeded very far when this becomes the rule. If and when such alienation is allowed, the most natural and equitable succession to these lands, in default of it, would be to a man's own personal family and not to the joint family.

How far the exception would be allowed at all would appear to have depended on the dealings by the seller with the communal lands. If he had accumulated property and so benefited the community, he was allowed to sell property; but if he had already sold to the extent allowed and had not purchased, his right to sell would be keenly watched and was questionable. It is assumed I take it that when he sells or gives, it is not outside the community, unless to the Church, but a grant to one within it whose status is such that he is able to buy and fit to receive.[21] There would not be much harm done by transfer from one member of the same community to another.

But the power was accompanied by exactly the same qualification of necessity as in the Scandinavian customary law. If the gift was without necessity it was liable to be set aside. In case of great necessity he may, with leave from the community, give not only his acquired land, but communal land up to one-third of his share. In the Irish laws [22] little and great necessity are twice defined—that he could avoid it, and that he could not avoid it, and again as the purchase of a cow and horse, and a dearth.

Where the land is not community land alienated for specified allowed purposes as above, but has been obtained by the

Digitized by Google

individual's own labour, or when it has been cleared and enclosed for grain growing or meadow, or where it had been manured, the amount which he may dispose of is far greater. The law is not for the common man only. The chief is not exempt from the social obligations.

As an example given in the Irish laws,[23] the boaire chief may leave one-third of his acquired property as he pleases, or "if it be the land that grows it, *i.e.* and in right of urine or manure he obtains the land, he can dispose of half." The free ceile pays a small sum for the dung of the animals loaned.[24]

By the Welsh laws,[25] Ven. II. xvi., no one is to retain gardens in his possession on account of having manured them for more than one year; for they are to be manured every year; but he may (10) apparently retain a fallow for two years, (11) a field where cattle lie and ley-land the same, (13) yard dung land three years, and (14) cardung woodland and manured fallow four years. After these times apparently the land is again shared out, "it is to be ploughed," (17) which refers to cleared woodland.

The feudal law of England since 1884 inclines to follow the tribal custom of tenants' unexhausted improvements.

The Geilfiné.—For land which had fallen under personal ownership, a system of distribution and descent among the members of a family who were nearest in blood to the chief, or prime stock, called the Geilfiné, is disclosed in the Irish laws, of which the particulars are very obscure and the opinions of experts very contradictory. As I have been unable to satisfy myself that I had any clear conception of what this system is, or that the very learned editors of the Brehon laws and other scholars had arrived at any definite conclusion, I have not burdened this book with further reference to it. I refer to *La Famille Celtique*, by M. d'Arbois de Jubainville, and the prefaces to the volumes of the *Ancient Laws of Ireland*, especially volume iv. Our authorities for these customs of alienation and inheritance before the influence of Rome modified the communal society are almost wholly Irish and Scandinavian. The Scottish Highlands, though undoubtedly governed by the same customs, show us almost no written records previous to feudal-

Digitized by Google

ism. The tenures existent in Fordun's time, the demesne of the Crown, the church lands and feudal tenures, says Skene, speaking of a remark of Fordun's about thanages in book IV., chap. xliii., only show traces of an older system. Wales again falls early under the influence of feudal and Roman ideas. The ecclesiastical law [26] says that the eldest son is to have the patrimony, but the law of Howel adjudges it to the youngest son as well as the eldest, including bastards.

NOTES.—[1] See P. and M., ii. 247; and *Hist. of Mon. of Abingdon*, P. and M., ii. 202, as to the consent of children who were next of kin. [2] *Canute's Laws*, ii. 70, Thorpe; and see Glanvill, vii. 1. [3] *T.A.C.N.*, viii. 5. Neither fiez de hauberc nor sergeanty nor barony can be divided. 2. The eldest son takes the fief. The other brothers have the eschoites (immovable hereditary property susceptible of division). If the eschoites are of more value than the feudal tenancy the eldest son can choose to equalise values. 4. If there were no eschoites the eldest takes the fief and supports his brothers in "leur vivre ou en mariage ou en autre maniere." 5. The vavassories and li vilain tenement (laicum tenementum) and burgages are partible by custom. [4] Not the cwide. See P. and M., vol. i. [5] Ordericus Vitalis. [6] In the face of this it is difficult to believe that even a ministry with so little sense of imagination as the "Liberals" of 1915–16 should offer the title of Tara to a Scottish peer who was neither an Irish freeman nor an Irish Ardri, but a pure foreigner. [7] Letter to the Earl of Salisbury, 1607. Stockdale, 1786, p. 262. [8] *S.P. Forest*, p. 25, Selden Soc. [9] See Sir John Davis, *Rep.*, pp. 29, 49; Hil. 3 Jac. Le Irish Custome de Gavelkind and Hil. 5 Jac. Le Cas de Tanistry. [10] *A.L.W.*, Ven. II. xii. 1–5; *A.L. Irel.*, iv. 69–75. [11] *A.L.W.*, Ven. II. xv. 8; *A.L. Irel.*, iv. 287. [12] See *A.L.W.*, Ven. II. xii. 1–5. [13] *i.e.* lands which, says note, *A.L.W.*, Ven. II. xii. 6, are the bond maenols which are subject to supply the king. [14] *A.L. Irel.*, iv. 69–75. [15] *A.L.W.*, Ven. II. xiv. [16] Johnston's Introd. to *Orkney and Shetland Records*. [17] *A.L. Irel.*, i. 45. [18] *A.L. Irel.*, iii. 417. The owner of a dog is liable for its trespass if he knowingly tied it to a hollowed withered stake. [19] *A.L. Irel.*, iii. 47–51. Maintenance by the foster son, *ibid.*, 53, line 3 *et seq.* [20] *A.L. Irel.*, iii. 53, 55. [21] *A.L. Irel.*, iii. 45. He who buys and has not sold is capable of grants out of his own acquired wealth, but he leaves the property of the tribe intact. Comm., *But he leaves—i.e.* but that he leaves their right to the tribe entirely and completely, *i.e.* the one-third, or an equal quantity of other land. As I understand this, the one-third refers to the acquired wealth. *Ibid.*, ii. 283. He is not to sell or alienate his tribe land. Comm., *i.e.* the whole of it, *i.e.* or release it in favour of an adopted son of an extern tribe. [22] *A.L. Irel.*, iii. 47, 51. [23] *A.L. Irel.*, iii. 49, 51. [24] *A.L. Irel.*, ii. 201. [25] *A.L.W.*, Ven. II. xvi. 9–17. [26] *A.L.W.*, Ven. II. xii. 2.

Digitized by Google

CHAPTER XIV

ALIENATION AND INHERITANCE—*continued*

PASSING to the individual use of land by private persons as such, the Brehon law text summarises the principle as that "no one should grant land except such as he has purchased himself, unless by common consent of the tribe (group family), and that he leaves his share of the land to revert to the common possession of the group family after him."[1] "The proper duties of one towards the tribe are that when he has not bought he should not sell."

But it is implied that he may mortgage his family land: "everyone is wealthy who keeps his tribe land perfect as he got it, who does not leave greater debt on it than he found on it"; "no person should leave a rent upon his land or upon his tribe which he did not find upon it."

Under any system of common culture the right of alienation must have been much restricted, as the buyer took it under the obligations entered into by the community, both in respect of the cultivated strips and of the rights exercised over the waste. All dealings with land had to consider the effect on the waste and on the easements over the waste which attached.

Gavelkind.—This form of inheritance to land, by which it was partible among all the males, in default among daughters, was called Gavelkind. We meet with it not only in Ireland, where it exists in the archaic form in connection with the repartition of lands among the members of the sept, but in various other parts, especially in Kent, where the lands descended to the males of the family proper. Littleton,[2] writing "De Tenure appel Gavelkind deins l'County de Kent," adds, "auxy tiel custome est en auters lieux Dengleterre et auxy tiel custome et North Galles," etc. A note under the words North Galles says that the custom existed in Wales, as in England, "a tempore cujus non existatit memoria." The learned Mr Elton, in his *Kentish Tenures*, mentions numerous places, such as Chester, many parts of Norfolk and Suffolk, Taunton Dean and other parts of Somerset, Gloucester,

Digitized by Google

Wareham in Dorset, Usk in Wales, etc., where a tenure called by this name is found. As a matter of fact, it is practically identical, except that it excludes females, with the odal holdings of the Orkneys, the distinction being that in the Irish form we see the archaic society in which the group family has not yet given way to the immediate family of father, mother, and children. One connection between the Kentish and the Welsh gavelkind is the allotting to the youngest son of the tyddyn or homestead on division.[3]

"La Résolution des Justices touchant le Irish Custome de Gavelkind" is not only an exposition of this custom of partition and inheritance of land, but it also gives a description of the communal society which I have endeavoured to depict here as it affects the occupation of the land, and sets out the reasons or excuses for the abolition of the custom. It is of sufficient value to be quoted at length, substituting generally for the expression Irish or meer Irish, primitive peoples, Teutonic or Germanic, if you like.

"First, it is to be known that the lands possessed by the meer Irish within this Realm were divided into several territories or countries, and the inhabitants of every Irish country were divided into several septs and lineages.

"Secondly, in every Irish territory there was a lord or chieftain and a Tanist who was his successor apparent. And of every Irish sept or lineage there was also a chief who was called a canfinny (ceanfiné) or caput cognationis.

"Thirdly, all the possessions within these Irish territories (before the common law of England was established in this Realm as it now is) ran always either in course of tanistry or in course of gavelkind. Every seignory or chiefry, with the portion of land which passed with it, went without partition to the tanist, who always came in by election or strong hand and not by descent; but all the inferior tenancies were partible between the males in gavelkind.

"Yet the estate which the lord had in the chiefry or which the inferior tenants had in gavelkind was not an estate of inheritance, but a temporary or transitory possession. For as the next heir of the lord or chieftain was not to inherit the chiefry, but the oldest and worthiest of the sept, who was

Digitized by Google

often removed and expelled by another who was more active and strong than he" (as William Rufus expelled Robert, Stephen Matilda, John Arthur, etc.), "so the lands of the nature of gavelkind were not partible among the next heirs males of him who died seised, but among all the males of his sept in this manner.

"The canfinny or chief of a sept (who was commonly the most ancient of the sept) made all the partitions at his discretion; and after the birth of any ter-tenant, who had a competent portion of land, assembled all the sept, and having thrown all their possessions into hotchpot, made a new partition of all; in which partition he did not assign to the son of him who died the portion which his father had, but he allotted to each of the sept, according to his seniority, the better or greater portion.

"These portions or properties being so allotted and assigned were possessed and enjoyed accordingly until a new partition was made, which at the discretion or will of the canfinny was to be made on the death of each inferior tenant. And so by reason of these frequent partitions and removals or translations of the tenants from one portion to another, all the possessions were uncertain; and the uncertainty of the possessions was the very cause that no civil habitations were erected, no enclosure or improvement was made of the lands in the Irish countries where this custom of gavelkind was in use, especially in Ulster, which seemed to be all one wilderness before the new plantation made by the English undertakers there." [4]

The judges go on to point out differences between Irish and Kentish gavelkind, one being that in Kent the wife is endowable of a moiety. The Irish custom, they say, was agreeable to the custom of gavelkind used in North Wales.[5]

Spenser, in his *View of Ireland*,[6] tells us that the descendants of the men who submitted to Henry VIII. refused to acknowledge the submission because their fathers had only a life interest in the lands.

By way of trying to force the Irish Roman Catholic to pretend to abjure his religion, 17-18 Geo. III., c. 49, sect. 1, enacts that lands of papists in Ireland are descendible according to the course of the common law, *i.e.* in gavelkind, unless

Digitized by Google

the eldest son conforms to the Protestant religion—one of those almost incredible acts of meanness which dot Irish history in the centuries.

Sir John Davis, in his letter to the Earl of Salisbury concerning the counties of Monaghan, Fermanagh, and Cavan, 1607,[7] writing of this custom of gavelkind, wherein there is no difference made between legitimate sons and bastards, says therefore both these customs, both of tanistry and gavelkind, in this kingdom are lately, by the opinion of all the judges here, adjudged to be utterly void in law, not only for its inconvenience and unreasonableness, but because it was a mere personal custom, which tended to alter the descent of inheritance, contrary to the course of the (English) common law, which King James had, with a wise policy, extended over all the Irish countries; which "wise policy" of wrong and robbery, instead of a reform of the existing customary law, may be said to have been responsible for all the political evils which Ireland has suffered through the centuries until to-day.

The disadvantages to the individual, if not to the society, were in past times that these customs of inheritance resulted in the multiplication of small landholders or lords, whose diminishing properties were subdivided among their children, lords who exacted pin-prick dues on the men below them.

It often happens, says Edward I., when disgavelling the lands of John of Cobham in 1276,[8] that tenements held in gavelkind, which, so long as they remained whole, were sufficient for the maintenance of the realm and provided a livelihood for many, are divided among co-heirs into so many parts and fragments that each one's part will hardly support him.

Variations of the Custom.—The development of the custom varied in the different parts of the Islands according as the local conditions quickened or retarded the change to individual ownership. In the Orkneys the economic forces, the very small amount of land available, the call of the sea and of trade cause the odal landowner to sink into a feudal tenancy. When, in England, sub-infeudation of feudal tenancies was allowed, Edward used force and parliamentary influence (the statute Quo Warranto) to regulate the rights and claims

Digitized by Google

of the holders of minute manors, as James I. of Scotland called for titles in the fifteenth century of the holders of the many regalities of Scotland. Where the king did not exercise such control the conditions led to such outbreaks as the French Revolution. In Ireland the history of the arrested development has been one long story of muddle and oppression and misunderstanding, assisted by a cross-current of religious prejudice.

Alienation under Feudal System.—Turning to the feudal system, at first the feudal tenant could not alienate his land at all. It was a personal tie between him and his lord for personal service which he alone could give. It was of the first necessity that the tenant should not part with the lands to another who might not be such an efficient fighter or so able to bring a force into the field. Succession to land resolves itself into a succession of life interests, with the result that to-day a life estate is a freehold and a lease for 999 years is not. The eldest son of the tenant, if a sound man, was the most likely person to succeed his father, especially as the lord had over him when a minor the rights of wardship and marriage. But even if the grant of the lands had been made to the late tenant and his heirs, the son would require personally to be put in possession of the land (livery of seisin), and would have to pay a heriot for being enfeoffed, the son taking nothing as heir unless he was enfeoffed by the grantor.[9] Magna Charta, ch. 2, attempted to regulate this payment at death, a provision affecting the barons as much as the king or Church.

In the time of Henry II. the only alienation allowed was for the marriage of a daughter, which presumably brought upon the land a new capable fighter, and for religious uses.[10] But in his time the Crusades, which saw the ruling powers selling and mortgaging kingdoms and principalities to take the Cross, broke in upon the feudal principle, and the general employment of mercenaries completed the change, so that it came to matter little who the immediate tenant was, provided that the services and rents reserved had been performed and paid. There being little ready money in use, sales took the form of a lease for life or for a term subject to the services

Digitized by Google

and rents reserved, called sub-infeudation. But the grantee could pass on the land so long as he had heirs.

If he had not heirs, the land would follow the customary rule of the dying communal society and vest in the lord as chief in theory for the community, in effect for himself personally. As the lord's and the tenant's rights swayed back and forth in legislation, men gradually acquired the right to sell their lands. The lords attempted to prevent alienation from the donor or his heirs by statute ; [11] the courts repealed the statute [12] by a legal fiction called suffering a common recovery, which enured until the year 1833. But the exclusive descent from father to son by successive life estates, though abolished as a law, has been kept up by custom through settlements on marriage.

If the tenant conveyed part of his lands, reserving services, to meet the dues to his own lord, he became lord of this part himself, with all the feudal rights of wardship and so forth, to the detriment of his own lord's right. This was stopped by statute,[13] which prevented a man, on a conveyance of his whole interest in any part of his land, an interest called an estate in fee simple in the land, from making any reservation, thus making the buyer the tenant of the original lord.

The necessity for livery of seisin, the passing of possession from one man to another by the public delivery of some symbolic thing such as a clod of earth or a key, led to the doctrine of uses.

If the heir went abroad, if the man to whom the lord wished to make a grant was following the king's court or had gone on a crusade, the only way in which he could be put in possession was by delivering that symbol of possession to some other person for his use or benefit until it could be personally delivered to him. When the Franciscans came in the twelfth century, prohibited from acquiring property by their vows of poverty, the rich convert, who wished to give them a shelter, conveyed a house to some reliable person to the use of the Franciscan community for their benefit. Then begins the struggle between the Ecclesiastical Courts and the Courts of Common Law as to the conveyance of property, which does not end until the passing of the Statute of Uses.[14]

Digitized by Google

The Chancery, towards the end of the reign of Edward III., allowed lands to be conveyed to religious houses, notwithstanding the Statutes of Mortmain forbidding it, by means of this conveyance to a use, and the Courts tried to prevent it.

The Statute of Uses tried to put an end to this by enacting that he that had the use had also the legal possession. But the clerk of Chancery was too shrewd for the common lawyer. He created a trust upon a use, the first taking the legal, the second the beneficial possession, with the result that conveyances are to-day made unto and to the use of A in trust for B, etc.

The tenant for life of feudal land was in the same position as the tribesman with regard to waste, the lord standing in the place of the community. The tenant could not cut timber trees, pull down buildings, dig minerals or cut turf.

Only very gradually indeed, even in England, does primogeniture become an absolute rule, and only very gradually can the tenant of lands convey them *inter vivos* as against his heir.[15] Even of acquired lands he must not give away all.

Scottish Feudal Holding.—The south-eastern Scottish imitation of English feudalism as shown in Fordun is detailed in Skene's *Celtic Scotland.*[16] The Scottish king gave lands in perpetuity to the great men, the earls, thanes, and freeholders, subject to an annual payment to him. Another class of holders, who became the tacksmen or kindly tenants of a later time, usually kinsmen of the lord, held lands on long leases or for life, with remainder to one or two lives, and beneath them were the unfree on a yearly tenancy.

The king's demesne lands were farmed by a thane who paid a share of the produce as can or coigny. The wars after the death of Alexander III. resulted in most of the thanages reverting to the Crown and becoming feudal tenancy under the Norman Bruce and his successors.

Skene [17] quotes as an example a deed enfeoffing Walter de Lesly,[18] expressly providing against the recovery of the lands from the feudal holder by the heirs of thanes who anciently held these thanages for a feu rent or cain, as Toisech of the tribe. In these changes the waste land became known as forest, and passed to the Crown.

Digitized by Google

All Transactions Verbal.—Until the great revolutionary agency of the will was in use, all disposition of land, of which alienation was allowed, was *inter vivos*, and all transactions relating to property were carried on up to a very late date without the use of writing. We come down to the days of the Tudors before serious legislation emphasises the will; it is past the middle of the seventeenth century when England thinks it necessary to enact the Statute of Frauds.

The express contracts, which the Irish Brehon and the other tribal judges enforced, were verbal contracts; and gifts *inter vivos* were verbal before witnesses, made before the chief, and registered in the memory of the poet; any wish for the variation of the customary law of descent in favour of a daughter or favourite child or creditor was a verbal wish: a condition which, when the time came for the break up of the communal system, rendered it the easier to transfer the rights of the community in the common lands, of which they had no written evidence, to the nominees of the kings and chiefs or to the Church.

To illustrate from Scandinavia. A letter is written and signed by the lawman of Shetland and others, describing how, in 1516, the signatories were witnesses to a verbal agreement for exchange of odal lands; in 1545 two parish priests and certain law officers certify that they have seen the above, "an open letter with an entire seal impierced," and recite its contents, the open paper letter of 1516 and the certificate of 1545 being merely for the preservation of evidence of the verbal agreement of exchange.[19] There was not apparently any technical taking of seisin.

In the Welsh laws the procedure in actions relating to land is laid down at great length, but there is no mention of any deed.

The Church: Writing and the Will.—With the Roman monk came legal writing, the written contract and the will; it was he who chiefly benefited from their provisions. The Church discouraged intestacy, protected alienations for its own benefit, enforced written contracts, supported creditors of the dead. To it, more probably than to any other agency, was due the decay of communal society.

Digitized by Google

In this connection it is worth while quoting from two great historical authorities who have dealt with the subject. Sir Henry Maine refers [20] to the dislike of the Brahmans for the larger family, as follows: "One chief impediment to pious liberality is that system of joint ownership by groups larger than families which is still common in India. . . . Every man's rights in such a group are more or less limited by the rights of everybody else; and as a rule the assent of the entire group is necessary before any part of its property can be alienated. Hence the sacerdotal system, of which the rudiments are to be seen in the law books, is more manifestly adverse to joint forms of property. . . . The more separate households, the more occasion for domestic sacrifice, the more opportunities for pious largesse to the sacred order. . . . The Christian Church, when engaged in proselytism among barbarous societies, exerted a similarly dissolving force upon tribal ownership. The Church certainly introduced its barbarous converts to the testament or will; it strove to strengthen their reverence for contracts; and the Irish evidence seems to prove that it largely extended separate as distinguished from tribal ownership."

Pollock and Maitland, in the *History of English Law*, point out the same feature: "The Church would prefer that the dead man's lands and goods should never reach the hands of the heir, but be dissipated by pious gifts." [21] Speaking of the destruction of the *post obit.* will of land and death-bed gift by Geoffrey FitzPeter in the thirteenth century, and quoting Glanville, vii. 1, giving as reason for this course that a man *in extremis* may do with his land what he would not think of doing in sound health, they go on to say, "But as a matter of fact, during the thirteenth century men did pretty frequently profess to dispose of their lands by their last wills or by charters executed on their death-beds. It is a common story in monastic annals that so and so bequeathed land to our Church, and that his heir confirmed the bequest. The monks hurried off from the side of the dying man to take seisin of some piece of his land; they trusted, and not in vain, that they would be able to get a confirmation out of the heir: 'a father's curse' was a potent argument." [22]

Digitized by Google

Of Anglo-Saxon law they say, "We know nothing about the conveyance of any land that was not bookland, and bookland we take to be an alien ecclesiastical institution from which few references can with safety be drawn." [23]

The Executor and the Chattels.—The will of land only came very slowly, and met with much opposition, the struggle lasting until Tudor times. But the ecclesiastics very early claimed the office of executing the last will of the dead person, and by this means obtained control over the chattels. By threats of Church penalties for intestacy, they persuaded all men to make wills of their personal belongings. The supervision of these wills was by the Court Christian, the predecessor of the Probate and Divorce Court of to-day, the heir who took the land having nothing to do with it. He had no claim to the chattels, but had to rely on his villeins and their farm stock and implements for carrying on agricultural operations. As an example showing the difficulty of the position, in the *Cal. of Close Rolls, 1323-27*, p. 15, the escheator is ordered to deliver to a lady as dower, *inter alia*, a third of two parts of a messuage—a third of a several fishery—a third of a yearly rent of four capons—a third of the rents and services of twelve villeins—and a third of the pleas and privileges of the Court. This was another strong argument against intestacy. The situation must have been much complicated at the time of the Black Death, when many men perforce died intestate.

As the result of this action of the Church, the Statutes of Mortmain were passed to limit the gifts to pious uses gained by monastic influence, and later the struggle round the Statute of Uses arose from a similar cause. When the churchmen tried to get hold of lands or houses in the boroughs devised by will, the citizens resisted. In 1268 the Londoners insisted that their wills should be proved in the Court of the hustings, and the king supported them.

In the time of Henry II. the church courts and the king's courts both took cognisance of wills of chattels and of the distribution of intestates' goods, but the church courts gradually got the mastery and retained it. Magna Charta, c. 26, says, "If any freeman dies intestate, his chattels (*i.e.* the dead man's part—the other two-thirds would go according to

Digitized by Google

custom) shall be distributed by the hands of his next kinsfolk and friends under the supervision of the Church, saving to everyone the debts owed to him by the dead man." The kinsfolk had ceased to have the goods shared between them as of right; debts had ceased to die with the dead.

The Church encouraged the view that intestacy was a sin for which Christian burial might be refused, and asserted the right to distribute the goods of the deceased in such a case. In 1246[24] Innocent IV. decreed that if any clerk died intestate his property should be converted to the use of the Pope, being moved thereto by the deaths intestate of the Archdeacons of Lincoln, Bedford, and Northampton, all leaving considerable property; and see the threat of Abbot Samson of the Monastery of St Edmund's, recorded by Jocelyn.[25]

Here the Church made the first wide breach in the communal society by tempting the possessor of goods to disregard the customary obligations of the group family, by which his goods were distributed among his kin, and to dispose of them by the agency of the Church, as it thought good for the benefit of his soul.

With regard to chattels, it was an ancient and unwritten custom that a man could only dispose of one-third or one-half of his goods at his death, according as he had a wife and children, the wife taking, if no children, one-half, a recognition of the community of goods between husband and wife. If there were children, the wife took one-third and the children one-third. This is the law of Scotland to-day,[26] and it was the law of London until 1724, and of the province of York until 1692. Only in the province of Canterbury did the law earlier allow a man to set aside both wife and child. By Henry I.'s charter it was promised that if one of his barons died without a will, the wife and children or liegemen (? the *legitimi heredes* or *agnates*) might divide his property for the good of his soul as they should think best. By Magna Charta, c. 26, "if nothing be due to us, then all the chattels fall to the dead man, saving to his wife and children their reasonable shares."

A few examples are here given of this custom.

By Decree 6 of the Synod of Cashel, 1171,[27] a man must

Digitized by Google

make his will in the presence of his confessor and neighbours, and his chattels, after payment of debts, should be divided into three parts: one for his children, one for his wife, and the third to such uses as he should declare.

The Year Books of Edward III.[28] give a writ *De rationabili parte bonorum.* A woman claimed a moiety of the goods of her husband, who had died without issue, as the common custom of the realm was that the wife should have her reasonable part of the husband's goods, which she claimed that the executors detained from her.

The following are from *Lincoln Wills*[29]:—"1514: Thos. Crest of Holton—I will that all my goods be divided into three parts: the first part shall be disposed of for the good of my soul; the second shall remain to Alice my wife; the third to be distributed between my children. The residue of my goods I give to Alice my wife, whom I make my executrix." "1514: Robert Alphyn—Of the residue of my goods, the one-half I give to Elizabeth my wyff, and the other half to be divided among my children."

The English lawyers steadily struggle for publicity of wills to prevent undue influence. Everywhere all sales or conveyances of land or chattels were public, taking place either in court, or in open market, or before some responsible person, such as a chief or lord or high ecclesiastic, whose witness of the transaction was of value. The thing in question had to be delivered either actually or symbolically, the delivery being the essential part of the conveyance of the thing given or sold.

In England the fine in the king's court, a pretended action settled by compromise by leave of the court on payment was largely used as a form for conveyance of land. A memorandum of the transaction, or any writing accompanying the delivery, could then be endorsed on the plea rolls of the court. An example from Shetland is given above, p. 160.

The sale of cattle or other chattels could only be safely made in open market where the seller was known or could prove that he had honestly come by the goods. If not sold in open market, the purchaser, in case the goods had been stolen, would be in the position of the thief, and would have to vouch to warranty the person from whom he had bought,

Digitized by Google

who in his turn vouched another up to the fourth.[30] Except in the case of theft, the proceedings on movables do not come much into the king's courts, but are disposed of in the lower courts.

The common land would tend to unite all, and to interest all, as its use concerned the community, whether of the tribe or the manor. It is of national importance and increases steadily in importance. It is treated of in the higher courts. The cattle increased in one man's hand, and only touched the community as they affected the use of the common land on which they grazed. So the law and practice relating to the two classes of property fell naturally into two distinct parts.

The feudal principle that the eldest son, the fittest military tenant, should succeed to the land to the exclusion of all other children, with the assistance of the Roman will, soon hardened into powers of disposal beyond the life of the occupier, which could be transferred and bartered as a whole. But while feudal law enlarged the scope of ownership, it absolutely destroyed the community of property in land. The eldest son succeeded his father in the holding; the other children were forced into the fighting ranks as followers of some baron, or into the Church, or earned a living by commerce or by farming as tenants of a lord. The common interests of the family in the soil dissolved, and with them their common responsibilities for the acts or omissions of each other. As the logical result the king, in whom the land rested in the place of the community, found little opposition to his taking the place of the kindred as prosecutor for tort and crime, while the Church claimed and ultimately obtained in their place the distribution of the personal goods of the deceased.

NOTES.—[1] *A.L. Irel.*, iii. 53. The word here translated tribe is Finé, which is defined as geilfiné or group family in commentary on p. 51, last line. This use of the word tribe in the translation, which runs throughout these laws, is very unfortunate, as the allusion would appear to be to the group family far more often than to the tribe. The explanation in the latter part of this commentary is that "his share of the land" is its equivalent—he may effect an exchange—and that "to the common possession" refers to the land of his father and grandfather. [2] P. 205. *Anciens Loix Françaises*, book III. chap. ii. sect. 265. [3] See *Stat. of Realm*, vol. i. p. 224. *Cf.* Inheritance by the XII Tables to all unemancipated, and in Greece, *Petit Leges*

Digitized by Google

Atticæ, cl. tit. 6. [4] Sir John Davis, *Rep.*, 1674, p. 49. Compare with Sir John's assertion that Ulster seemed to be all one wilderness the unanimous enthusiasm of his contemporaries for its high cultivation and agricultural wealth. [5] Altered by Stat. of Rutland, 12 Edw. I., and abolished by 34 Hen. VIII., c. 28. [6] P. 41. [7] Stockdale, 1786, p. 273. [8] *Robinson on Gavelkind*, p. 76. [9] See Bracton, lib. 2, c. 6, fol. 17*a* and 17*b*: "Or to whomsoever he might give or assign the land." [10] Litt., 17, 19, 20. [11] De Donis Condit., 13 Edw. I., c. 1. [12] 12 Edw. IV. [13] Quia Emptores, 18 Edw. I., c. 1. [14] 27 Hen. VIII., c. 10. [15] See P. and M., ii. 247. [16] Vol. iii. 246–283. [17] iii. 247. [18] *Reg. Maj. Sig.*, pp. 66, 71. [19] Goudie's *Antiq. of Shetland*, p. 81 *et seq.* [20] *Early Law and Custom*, chap. iv. p. 83. [21] P. and M., vol. ii. p. 255. [22] P. and M., vol. ii. pp. 355–357. [23] P. and M., vol. ii. p. 84. [24] Matt. Paris, *anno* 1246. [25] *Jocelyn of Brakelonde*, King's Classics, edited by Prof. Gollancz, xxvi. p. 22. [26] A writer in *Chambers's Journal*, January 1, 1915, "From Finland in Wartime," says the laws of Finland are based on those introduced by Sweden six or seven centuries ago. Husband and wife have equal rights. A man can only leave to strangers what money he has *made* for himself; all inherited property must go to wife and children in equal shares. [27] *Gir. Camb. Exp. Hib.*, book I. chap. xxxiv. [28] Y.B. 17 Edw. III., p. 144. [29] Vol. i. pp. 58, 61. [30] See my *Tort, Crime, and Police*, p. 136 *et seq.*

Digitized by Google

PART IV

THE USE OF THE LAND BY THE COMMUNITY

(*See* EXPLANATION OF TECHNICAL WORDS, *supra*, p. xxvi)

CHAPTER XV

WASTE OR FOREST. WILD ANIMALS

I HAVE tried to give a faithful account in general terms, such as may be understood by persons unlearned in historical travail, of the two social systems. The one was in existence in a remote past, founded on the social instincts of man; the other in the first instance was a transitional condition of society which gained supremacy from its original advantages for military organisation. This latter system remained as a tradition governing the descent and alienation of land after its military advantages ceased to be a cause for existence. In consequence it has been largely used as the foundation for the teaching of English history. The feeling in favour of a voluntary army now results from our system of landuser, since men can hardly be expected to acclaim the elementary obligation of defending a land of which they have no sense of ownership.

Both systems have their times and their uses; both act and react on our society of the present day. The idea of the communal system may easily be exploited by the demagogue in times of revolution; feudal ideas underlie not only our laws of property, but our dealings with other nations.

This and later chapters will deal lightly with the various uses of the land under both systems; with the methods in use in the pastoral and agricultural societies; with their corresponding political and social variations; they will deal

Digitized by Google

with the industrial direct uses of land, bearing in mind that all industry is indirectly dependent on the use of land.

Commerce and the mediæval Church, influences which especially speeded the decay of the communal system, are subjects too complete in themselves to be treated of in such a work as this, except by casual mention. But I shall attempt to trace that decay as it has occurred in the different parts of the Islands down to the present day, and comment on its causes, economic and political.

If the change from the one social system to the other were a dead question of antiquarian research, I would not trouble to disturb the dust. But I am very much mistaken if an elementary knowledge of these systems of living in the past is not a necessity for the unlearned man, if we are to avoid a great catastrophe at the present day.

It may be said that the change from the common ownership of the soil by stock-owning kinsmen to individual landholding for arable agriculture marks the collapse of the tribal system as a social frame, and that that framework of life ceases to exist, except as a picturesque survival, so far as and when agriculture and the enclosures which attend on agriculture fully take the place of pastoral pursuits.

When, where, and how far such changes take place must always be largely dependent on conditions of soil, rainfall, climate, and earth contour, to which the habits of the farmer adjust themselves, and in consequence in the same measure independent of and inimical to changes in the ideas of men. The farmer is from necessity conservative, unready to change his treatment of the soil, which so hardly gives him a living. His eyes fixed on the earth, with the assistance of the experience of many generations, he gauges what product can be gained from it at the least expense of money and labour, which will be certain in its return and quick to mature. What he decides to take from it, whether grass or corn or other matter, depends on his experience of its capacity for yield. As he is cautious and silent, the advocates of change, who do not see the many hindrances to success, details which are fully patent to the farmer, not infrequently call him a fool.

The change to arable cultivation comes very slowly.

Digitized by Google

Undoubtedly in all new countries men live content with hunting and stockbreeding for ages, before they begin to take the trouble to cultivate even the richest land. Hence in any account of the uses of land we must begin with its uses for animal life. Gibbon suggests to us that there were probably large extents of land in Gaul, when the Franks invaded, which would allow of lands both for the barbarian and the Roman. As the barbarian was a hunter and stockbreeder, he would be only too willing to leave the tillage, which he despised as unworthy of a freeman, in the hands of the Roman. By this means the invasions were broken more easily to the overtaxed Romans, because the cultivation and use of waste land by the new settlers lightened their burdens so long as they were under Roman government.

Methods of Stockbreeding.—There are only two methods by which the breeding of animals on a large scale can successfully be carried on: one is by use of a wide range of unfenced common pasture, which in the Middle Ages was called the waste or forest, the system under which at the present day we draw our supplies of meat from the South American Republics and from parts of the United States and Canada. On such a range the animals roam and find food and shelter, being either killed off when winter comes, or carried through any severe weather with some slight assistance of an inexpensive nature. This system presupposes a very extensive common pasturage and generally very primitive arable cultivation of the soil. At the present day it is in use for the most part only in the warmer climates.

The other method is our modern stall-feeding, dependent on the most scientific and most expensive system of grain-growing, and on the seeding of a comparatively small quantity of first-class, well-drained land, with carefully selected tame grass seeds for occasional grazing.

This is a method which results in the scientific production of animals for food, milk, or wool, with a view to the greatest weight and size, the least waste, and the most perfect suitability to the purposes required.

As an example, Sinclair,[1] speaking of Muthil, county of Perth, says, large marl pits had been discovered since 1770,

Digitized by Google

and much lime has been used in agriculture, with the result that almost every farmer lays down a field annually with grass seeds. Less ground is now ploughed up, more cattle and horses are reared, and four times the quantity of grain produced. The so-called Free Trade has since gone far to counteract the benefits so obtained for the land.

Up to the time when the use of roots and artificial foods for stock enabled the farmer to make scientific fattening a general practice, the common pasturage system over a large area was the method by which mainly animals were bred in these Islands. According as this was a prime or a subordinate part of farming, the social fabric grew as it depended on a common usage of the soil or a jealous individual ownership of fenced land. It has nothing whatever to do with race. No doubt it has happened that the Celtic and Scandinavian population largely continued to inhabit those parts of the Islands especially suited to pastoral pursuits, more remote from commerce, less closely connected with grain-growing Europe, not dominated by Roman ideas. They had no tradition of agriculture.

So long, then, as pastoral pursuits were of primary importance, the waste or forest in its aspect of range or common pasture was of far greater concern to the people than the quantity or quality of the yield of the arable land. Even in Magna Charta, catallum (chap. x.) is used as the legal term for the principal of a debt.

The first matter of which one must gain a clear idea is the use and usufruct of this common pasture, its connection with the arable cultivation, its development, how it came to pass from the ownership of the community into individual and private hands, so far as any records give us knowledge,[2] its formal disappearance except as a local survival, and its influence throughout on the social and political conditions.

The Waste.—This waste or forest, the part beyond the fenced fields,[3] comprised all the land belonging to the community, not under cultivation by the community or by its individual members, and not in use for meadows or for stinted pasture—that is to say, pasture regulated as to time of usage and number of stock, or for private woods.

Digitized by Google

It did not include all the land unfenced, for the greater part of the cultivated land was unfenced; nor did it include all the woods, for woods held in severalty by individual members of the community, or jointly by families, apart from the common waste, are mentioned in Irish, Welsh, and Scandinavian records; the partition of the waste or mountain lands of the sept figures among the subjects of distress in the Irish laws.[4]

Nor did it include all the pasture, for a good deal of land, apart from the waste, was in use for pasture for a specified community—land, for instance, lying amongst other cultivated land not suitable for the plough, or land turned out to wild growth after some years of cultivation, or land lying conveniently to the homestead for milk stock and horses. Even the portions set apart for meadow were not necessarily fenced, though they were usually so.[5] A meadow, say the Welsh laws, is land appropriated for hay only and enclosed by fence. No one except a lord is to have more than two reserves of grass, a field and a meadow.[6] The meadow is at all times to be forbidden to swine, which would practically mean enclosure.

But all the rest was the land of the community in reserve: waste or forest; not unused, not unoccupied, not devastated, but waste, a tract put to no definite use for the public benefit except for the haunt of game and of wild birds and fish, and for a common summer pasture to which the whole settlement moved out, or to which they drove their animals in the spring, in Ireland called booleying.[7]

It was also a nursery for timber for uses of all sorts, a quarry for stone and other minerals, a storehouse for charcoal, for bark for tanning, for honey, for wax, and so forth, and also (note this, for it is the essence of the change) it was liable to be eaten into for fresh clearances for cultivation, as the requirements of the community called for an increase of the cultivable area to meet the wants of an increased population, as the community authorised its chief to make such increase.

Besides a vast amount of cultivable soil, the waste contained the roughest, thinnest, least convenient, worst drained,

Digitized by Google

and no doubt most heavily timbered parts of the common soil. The arable cultivation and meadow lay in the level land by the rivers in the rich valleys, as in the example in the Thames valley given by Maitland in *Domesday Book and Beyond*, or on the high tablelands such as Salisbury Plain. It is only by very slow degrees that heavily timbered land is cleared for the plough, as the enormous expense and labour necessary for removing stumps is prohibitive.

Where the soil was good and ploughable, and the climate, as on the eastern coast of England and Scotland, more suitable to grain-growing than to grass, the waste pushed back into the rougher parts occupied a comparatively small area of land. It soon became of value for pasturage for the cattle of the grain-growers, and was the subject of rapid development in the direction of ownership in severalty. Where, as in parts of the northern counties of England and in the rest of the Islands, there was a scanty population and conditions less suitable to corn, the waste, being very extensive, had little value except as a summer pasture, for hunting, and as a common reserve. In these parts, in consequence, the change from tribal custom was delayed until very late; the influences of their prolonged extension into more modern times has never altogether died away.

The difference in quantity and quality of the waste had effect on the stringency of the regulations made to preserve wild animals, which were a great source of annoyance in the corn-growing districts, and to control the use for pasture and other purposes. The strict forest laws of the Danish and Norman kings enforced on a rich and comparatively level soil largely given up to agriculture found no counterpart in the other parts of the Islands, where the plenty of the unused land gave no need for such laws. It has nothing to do, as some Scottish historians seem to think, with the natural characteristics, or with the goodness or badness of kings.

The Forests, as having their "Origin in Sport."—I must apologise for entering here into a criticism of modern historians, which I would willingly have dealt with in a note if they had been less influential.

The conditions being as I have above described, famine

Digitized by Google

in early society being always imminent, timber being the most important item of all the needs for existence, whether in agriculture, war, social life or commerce, and the forest being the meeting place of everyone that was in distress, and everyone that was in debt, and everyone that was discontented, the king and the sept chief did only his duty when he closely controlled its use and made regulations against the abuse of its advantages.

From the very earliest times the ruler cared for and claimed large rights over the waste. For instance, the capitular of Charlemagne,[8] De villis imperialibus, c. 36, commands the judex to superintend the needful grubbing of woods in the forests, and not to allow our wood to be turned into arable; to reserve beasts of chase in the forests, and to protect hawks' nests; to collect diligently the dues of the forests, and if he send his own swine into our woods to fatten, let him be the first to pay the tithe for good example.

The English monastic chroniclers lead us, however, into another view of the forests.

The poetical Saxon chronicler from his monastery tells us (*anno* 1087) that William the Conqueror instituted a great protection for deer, and ordered that whosever slew hart or hind should be blinded; that he protected boars and hares, that he loved the tall deer as if he were their father, and so on. This, standing by itself, would not amount to much. It is quite certain that the Norman kings, who, as the representatives by conquest of the community controlled the waste, made exceptionally severe regulations as to its use. It would have been very extraordinary indeed if William, holding England with a small garrison of Norman soldiers, should have allowed the disaffected Saxon, whether monk or layman, to shoot deer and hatch plots over the unenclosed waste. Much later, in Richard II.'s time, hunting was used to cover political meetings. 13 Rich. II., Stat. 1, recites that while good Christians are at church hearing divine service, divers artificers, etc., keep greyhounds and other dogs, and under cover of hunting make their assemblies, conferences, and conspiracies to rise and disobey their allegiance.[9]

But the passage does not stand alone. The author of

Digitized by Google

the *Dialogus de Scaccario*, writing in the twelfth or thirteenth century, says:[10] "The king's palaces and their chiefest delights are in the forests," meaning, I suppose, Westminster, or perhaps Woodstock, where fair Rosamund lived; "for they come hither for the sake of hunting or to refresh themselves for awhile with a little ease. There they for awhile breathe the air of natural liberty," and a great deal more of the same mild sarcasm.

"The king's forests are a safe mansion for wild beasts; not of any sort, but of woody ones." "The beasts are at their liberty to range uncontrolled over every part of them": an unnecessary observation, there being no fences to stop them from ranging from Southampton to Berwick. But he also mentions the restraint on cutting down timber, even if in a man's own woods, if those woods were in the district of the forest.

I do not pretend to explain this statement, which was most probably one of those pieces of bombastic sarcasm with which the monastic manuscript was often ornamented, sarcasm which the constitutional historian, without any sense of humour, takes as historic fact. It may have been a sly commentary on the passage in the Saxon Chronicle which must always have been a joke at the Exchequer. The author cannot have been ignorant of the immense value of the forests as the one great national source of food for man and for animals, and of timber for all uses and manufactures. At the beginning of the *Dialogus* he tells us that the sheriff accounts, *inter alia*, for purprestures and for the revenue of the woods to the Exchequer; he must have known what a great part the pannage dues, the sale of timber and of venison, played in the royal revenues and the royal progresses.

Of themselves these statements are of no great historical value; both the authors belonged to the great corn-growing caste, with a natural antipathy to jumping animals. Both belong to the company of mediæval poachers, whose depredations it was the king's office to check.[11]

But on such a foundation has been built a lofty edifice of absurdity, based on the patent fiction that the Norman "tyrant" preserved the unfenced forest lands, which may

Digitized by Google

be estimated at three-fourths of the whole acreage of the country, for his very occasional sport and amusement, and that succeeding kings were enabled to continue this most foolish abuse of the whole reserve of national resources. It is as well to bear in mind the kingly responsibility for the preservation of the national food and timber, for an old lie, even if spoken or written in mockery, dies hard. A history is hardly ever written without some attacks on the kings about the forest laws, supported by the statement that the forests were only preserves for the king's sport.

I propose to show what they really were, but in the meantime I enter an earnest protest against a falsification of history which obscures the whole study of the uses of the land from the outset.

To give two late authorities only. M. Petit-Dutaillis begins his account of the forests by calling them "a melancholy and decisive witness to the brutality of the Norman Conquest." "The forest," he says, "owes its origin to sport," and in support of FitzNeal's definition in the *Dialogus* he quotes the seventeenth-century lawyers, Manwood and Coke, writers who both put vert a long way before venison, writing when the conditions of the earlier times had been almost wholly forgotten, and when the wild animals on the unenclosed land had become a nuisance instead of a source of food. "The forest," he says [12] (p. 150), "consisted of a number of game preserves, protected by a special law" (p. 154), "vast preserves for larger game."

Mr M'Kechnie, a careful writer, except when he goes out of his way to villify John, in his work on Magna Charta,[13] commenting (p. 482) on chaps. 44 and 48, calls the forests "certain wide districts," "reserved to the Crown for purposes of sport" (p. 483); "the king's power was supreme and he used it frankly for the preservation of the beasts of the chase, not for the good government" (p. 484); "land claimed as royal preserves" (p. 493). "They used them not merely as pleasure grounds, but also as a source of revenue" (p. 495); "a strict monopoly of the more exciting forms of the chase" (p. 507); "large tracts of land consecrated to the wild boar and the stag," and so on.

Digitized by Google

You are asked to believe that the whole population of England were content to allow the greater part of the then unenclosed land in all its wildness to be forbidden for them for food and timber in order that the king, when not held up for a month by a contrary wind in Aquitaine or Ireland, might have a day's shooting in Nottingham or Dorset. The English people were then very patient of ill government, and made allowances for defects of administration. But they expected common sense in their kings, if not in their historians, and they got it. Famine was a permanent terror.

The theory ignores the fact that every great feudal landowner held in his hands the wastes and forests of the manor, every chief of a tribe the wastes of the tribe; that not even in the most violent revolutions did the people ask to have the forests abolished; that the high ecclesiastics protested against the provisions of Magna Charta which would have thrown them open to the whole population without regulation.

It is the absence and decay of such regulations which is in great measure responsible for the commons of England passing into private hands. The king was the protector of the national food and timber supply. He enlarged and strengthened his control of the waste because it was an immense source of revenue, not as a game "preserve," or as a thing having its "origin in sport."

Let the student judge of this matter by the evidence of his own common sense, by the pleas of the forests themselves, and the different statutes and regulations made to correct abuses, and let him keep in mind the vast amount of land which they contained, the fact that it was unenclosed and unmeasured, lying amidst other men's lands, that wild birds, animals, and fishes formed a great part of the food of the people, even in England, up to the seventeenth century at least, and that timber was the only material for house and ship building, fencing and firing.

The causes which threw a vast waste of land into the hands of the English kings operated all over the Islands in various ways to the same result, the chiefs, whether in Sutherland or Ireland, the abbots of Bury or Kelso becoming owners instead of trustees of the reserve of the food and timber

Digitized by Google

supply. The effect of their neglect to enforce proper regulations in the past is that we import now nearly forty million pounds worth of timber, and that enclosures of common lands for golf continue.

Only by understanding the history of the waste in the past can we hope to measure the irritation in the vulgar mind, that does not know the risks and worries of landownership, at the occupation by a few men of great stretches of uncultivated land.

The English kings undoubtedly wrested to their own financial advantage the resources of the waste; but it was recognised that the king who took the revenues paid the expenses of the nation. On that rests the difference between the mediæval protection of deer as a source of food, and the eviction by the large landowners, such as the Dukes of Sutherland, of the men with a traditional claim of tenancy in the Highlands, to form deer preserves for the sport of aliens.

The Forests as a Range for Wild Creatures.—Leaving now for a time the king's forest, we will consider the uses of the waste as it was the original property of the community, vested in the chief or lord of the manor, then as it became, and how, the subject of private ownership, and finally, how it was lost to the community, becoming, (*a*) in England, the waste of the king or lord, over which the copyholder, the former poor tribal freeman, had certain specified customary rights, now still in process of extinguishment, and (*b*), in the Scottish Highlands and Ireland, the subject of private ownership of the chiefs, of their feudal successors, or of commercial speculators, sometimes with and sometimes without the customary qualifications, accompanied in both countries by the most distressing and savage evictions of the native tribesmen.

The first and most important use of the waste was as a range for wild animals of all kinds all the year round, for the summer grazing of cattle, horses, and sheep, and as a food store for acorns and nuts for swine. All over the Islands in the twelfth century, and for long after, the flesh of wild things formed a proportion of the food supply as great or greater than the flesh of tame animals, and infinitely greater than the corn crops raised. As, for instance, in the purveyance

Digitized by Google

for King Richard II. in 1387, quoted p. 318 of my *First Twelve Centuries*: "Fourteen oxen lying in salt and two oxen fresh" are contrasted with "three tons of salt venison and three ditto fresh venison." The official, while enumerating wild birds, in addition to the enormous quantity of tame fowl, as "Conyngges, Fessantes, Herons, Bitterns, Pigeons, Partridges, Curlews, Brewes, and Cranes," adds "and wild fowle enogh," probably meaning duck?

Undoubtedly in England, especially under monastic influences, the cultivation of corn land tended steadily to increase as the fitness of the soil for corn, so well known to the Romans, was rediscovered,[14] and with it an increased friction between the corn farmer and stockbreeder and hunter, a friction which has existed ever since Abel's goat jumped into Cain's corn. It was the duty of the king or chief responsible for the use of the waste to hold the balance between these two opposing forces, to decide by forest regulations how far the game, and in summer the tame stock, were in such numbers as to be more profitable than isolated crops of grain, and how far the grain-grower was to be protected from their depredations.

A very large quantity of corn was required for the beer which was the drink of all classes; probably the larger part of the crop was devoted to this purpose. In the Domesday of St Paul's, the canons each received per day for their establishments some 7 or 8 lbs. of bread and 4½ gallons of ale (30 gallons a week). They brewed twice a week. Giraldus' very spiteful account of the monks of Canterbury, after he had feasted at their expense, shows the great amount of wine and ale used. In Jocelyn, the cellarer, one of the most important officials, is always in trouble over his accounts, because he cannot meet the cost of the liquor supplied not only to the monks but to their guests. No doubt a good deal of the reputation for drinking of the monks came from their great hospitality.

The references to ale and brewing in the Irish laws are very frequent; kiln drying is one of the accomplishments taught in fosterage; it is impressed that it is a chief's duty to distribute ale. The Welsh chief takes toll of a vat of

Digitized by Google

mead from each free mænol, and a vat of bragot twice a year from a bond mænol.[15] Among the duties of the men of the mær trev to the lord are kiln drying and threshing.[16]

It was a long time before the forests ceased to be the great storehouse of food for all people, food to be jealously guarded in their interests at a time when famine was a frequent danger, accompanied or preceded almost always by failure of mast or by murrain among animals tame and wild.[17] A famine in days when there were no artificial or tame grasses and no stock feeding with turnips, mangolds, or cake was likely to result from a failure of mast or from a murrain among cattle far sooner than from a shortage of corn. There are very frequent references to murrains in all parts of the Islands; but the monks, being mainly engaged in corn-growing or sheep farming, do not give any especial prominence to the murrains which accompanied famine. They are more concerned with the price of corn. Yet every few years a great pestilence and murrain is recorded of cattle which were running on the same range and eating of the same food as the wild animals. At the Eyre held at Pickering in 1334 the foresters report that of 914 deer killed, 500 had died of murrain. It may have been another way of accounting for their own neglect or theft.

Murrain was not the only fear. One mad dog might infect the deer of the whole kingdom: the dread of disease spreading among the wild animals is shown in many ways. "The judges of Howel," say the Welsh laws,[18] "were not able to fix a legal worth on a broch, for during the year that the swine were afflicted with the quinsy, it obtained the privilege of a dog; and during the year that there was madness among the dogs, it then obtained the privilege of a sow." There is a characteristic provision in the laws of William the Lion,[19] that if a wild beast is found in the forest and it is not known how he came by his death, "the flesch of the beast found sal be send to the house and hospital of the leper folk," but if none such were near it "sal be given to pure and seik folk." There are similar provisions in England, by Assizes of the Forest, supposed to be of the time of Edward II., when an animal was found dead in the forest.

Digitized by Google

An inquisition attended by the four nearest townships was held by the forest authorities to determine the cause of its death, with one eye to murrain and the mad dog, and the other to the breach of the necessary forest regulations.

So great had been the progress in corn-growing in the eastern parts that the conditions in South-Eastern England had changed altogether in the fourteenth century. Writs addressed to the sheriffs in 1300 show that there were then no forests in Lincoln, Norfolk, Suffolk, Cambridge, Bedford, Kent, Sussex, Middlesex, and Hertford, all grain-growing counties unsuited for pasturage; Cornwall had been disafforested by John in 1204: Leicester by Henry III. in 1233; Lancaster and Northumberland for a rent of £40 by Edward I. in 1280. In Devon only Exmoor and Dartmoor were then forest. The differences over the boundaries of the forests in England were practically settled by a Parliament at Lincoln in January 1301, on the basis of perambulations made in the previous years.

Westmoreland was disafforested by the Forest Charter of 1217. But in 1225 the knights of the county complain to the king that the local barons continue to treat the disafforested lands as if they were forest. The value of the forests to the great local men, and the difficulty with which the royal administration was faced through local jealousies, may be illustrated by a great litigation both as to vert and venison in 1501 between Sir Roger Hastings and Sir Richard Cholmley over the forest of Pickering, Yorks.[20]

There was naturally a very broad line between the management of the waste in the pastoral and corn-growing parts. In all those parts of the Islands which were in the main pastoral, where the feudal system had not yet penetrated, the community of co-owners themselves guarded the use of the waste for wild animals by customary regulations.

The Gwentian code of Welsh law gives the value of the stag as that of the ox.[21] By the customs of Wales hunting would appear to have been free to all freemen;[22] the freeman had a qualified right to hunt in the king's forest,[23] and he can always hunt on the land of a neighbour freeman of the sept;[24] but the traveller may only follow game on to another

Digitized by Google

man's land if he has first shot at it from the road.[25] The same provision is found in the Scottish laws.

The king has his special rights of hunting everywhere: "It is free for the king to hunt everywhere in his country. In whatsoever place a hart, which is hunted by the king's huntsmen, shall be taken, no one is to have the quarter pertaining to the land."

The concluding sections of the *A.L.W.*, Anom.,[26] proclaim the freedom of hunting: "three immunities of an innate Cymro: five free erws; co-tillage of waste; and hunting." "Three things free to a kindred and its aillts under the privilege of maternity: building timber out of wild woods; hunting over wild ground; and mast gathering in wild land." It was the duty of the chief to see that these privileges were not abused.

The Western Highlands and the Orkney and Shetland Isles give us very little information as to the regulations about wild animals on the waste. In the first place, the "township," which contained the cultivated land, lay almost always convenient to fishery along the sea-coast or along the river banks in the lower parts of the glens, fenced off from the waste, so that there was little chance of interference by the wild beasts with the arable crops; the great mountains in the backgrounds had been from time immemorial open to the deer; the great grain-growing monasteries were absent; and no federal government was acknowledged which could have made forest laws for the community. Until the devastation of the Western Highlands by the descendants of the chiefs or their commercial assignees, in the eighteenth and nineteenth centuries, each district made and administered its own customary bye-laws or neighbourhood laws by its elected birlaw men or local arbitrators.

In the Irish laws, apart from the very elaborate and clearly laid down rules about fencing, which apply as much or more to tame cattle as to wild beasts, birds, and fishes, all that specially relates to wild animals tends to show that where all owned the waste in common, all could hunt and take the beasts that feed on it, but that all were responsible for damage to the common arable crop. The owners of

Digitized by Google

fenced private woods were liable for the damage by wild animals which sheltered there;[27] among the "inherent rights of every territory" was the right to the wild animals in the wood, even if appropriated. The form of the regulations against misuse was a matter for the locality where all owned the waste.

The rivers all over the Islands, before they were polluted by refuse, abounded in salmon. The Norman or Angevin kings put them "in defence"—that is, preserved them for their own use as a commercial asset. In the rest of the Islands they were free to the community.

The Border laws, made in the sixteenth century from time to time with a view to keep the peace on the debatable land between England and Scotland, are an example on a larger scale[28] of the difficulties which attended the regulations of hunting and fishing on waste land between two tribes or communities. There was a most elaborate order for watches on all the fords of the streams and heads of the glens to prevent either side interfering with the other's fishing of the Tweed, and to check cattle raiders. The laws provide against hunting or depasturing cattle upon the other side of a debatable line; by those of Queen Mary, 1553, the inhabitants were to depasture their cattle within the limits and bounds of their own realm, which, as they had no map, they could only know from traditional perambulations, or risk their cattle being impounded, which would mean a bloody feud.

Coming back to those parts in which the federal government existed, and was strong enough to enforce a forest law for its benefit, to England and South-Eastern Scotland, corn-growing lands influenced by the theory of the Roman dominium, where the ownership of land was in the king, we meet with forest laws administered by and for the benefit of the king. It lay with him to make the regulations for the use of the waste; it was a district unfenced, unmeasured, and varying in extent as it was affected by the increase of cultivated lands; it became increasingly valuable to the king for revenue and as providing him with the sinews of war for the State; it is not surprising that he and his

Digitized by Google

officials perpetually encroached on the unfenced lands which were not part of the waste at the expense of private persons or of monasteries.

If one is to take seriously John's statement in a letter to Brian de Lisle,[29] he at least understood his position, even if the monastic authors and their followers did not. He puts vert before venison.

The forest laws attributed to William the Lion provided that anyone taking a wild beast without licence was to be arrested and held to the king's order (*i.e.*, an indefinite fine), and for hunting without licence a fine of £10. A free tenant whose lands ran with the forest, and whose hounds followed a beast from his lands into the forest, might follow and kill "as far as he may cast his horne or his dogleisch."

In England, in the first instance, any freeman had a right to hunt wild animals, whether game or vermin, on all unenclosed waste, unless such land had been granted by the king to private persons, or was subject to the forest laws. The grants of chases, parks, and warrens to private persons who enclosed them was a real grievance, as it steadily grew, to the people in general; the clergy were great offenders in this respect, *e.g.* of Abbot Samson of Bury, Jocelyn says (p. 43), "He also enclosed many parks, which he replenished with beasts of the chase, keeping a huntsman with dogs."

Where the forest was unenclosed the chief difficulty was in the poachers, who would wait about on the boundaries of known forest land with a view to driving, frightening, or coaxing the wild animal out on to land not subject to the forest, and killing it, heading it off if it turned back into the forest. Then, if he missed, the beast might stray on to arable crops and become a nuisance. Such a condition very early led to a modification of forest laws on the debatable ground outside but on the edge of the forests, called the purlieus; here the king's officials had jurisdiction to enable them to control poachers.

The purlieu man must start the chase on his own land, hunt towards the forest, and not head the beast from the forest, called forestalling, so as to drive it on to cultivated land. He must call off his dogs before they entered the

Digitized by Google

forest, and not hunt in the night or with other than his own servants.

The purlieu must have been a great encouragement to poachers, justifying enclosure. It was a constant grievance of the cultivators of arable land who wanted to kill and eat the venison, but looked to have their crops protected from others who had the same desire.

I defer, until I have mentioned other uses of the forest, dealing with the grievances which arose in England, and the management of the forests there.

The following cases relating only to game will give some idea of the procedure in England in prosecution by the Crown for hunting in the forest. A forester traces blood in the snow to a house where he finds venison. The occupant is put in prison and dies there, but before dying accuses two others. The foresters search these men's houses, find bones there, and imprison them. One of them, Roger, later comes before the justices and establishes his innocence, on which it is decided that because Roger lay for a long time in prison, so that he is nearly dead, it is adjudged that he go quit; and let him dwell outside the forest.[30] A man would rather pay a heavy bribe to the forester than risk such an imprisonment.

The head of a hart is found in the wood of Henry Dauney at Maidford by the king's forester. Henry Dauney's forester is dead, and nothing is known of the hart. The whole town of Maidford, with the wood belonging to it, is seized into the king's hand on this account. Later, Henry Dauney gives two marks to get his wood back.

A chaplain and seven clerks are found with bows and arrows on the king's road within the forest. Hugh, the steward of the forest, retained them in prison. Afterwards he delivered them to the sheriff of Hunts, who imprisoned them at Cambridge. There they were handed over by the justices in Eyre to the Bishop of Lincoln. Simon the sheriff is in mercy for not sending word to the justices of the evil deeds of the clerks, and the verderers for not producing the bows and arrows. If the Church got the clerks' fines, the king got even by mulcting the sheriff and his own officials.

Digitized by Google

Wild Species of Tame Animals—Close Time.—One chief distinction between sheep and other tame animals on the waste was that thy were the only species of tame animals in use of which a wild kind was not also running on the range. The Forest Laws of William the Lion (ch. 8), treating of horses found in the forest, gives the forester the right to take them (if he can catch them). But it inflicts a fine of 4d. for tame or ridden horses.[31] Gilbert de Umfravill gives the tenth colt of his brood mares running in his forest from the western part of Cotteneshopp.[32] The Charters of the monks of Newminster provide for catching the *equi silvestres*. They were in the fens of Cambridgeshire. "Alas! your hors goth to the fen with wylde mares, as fast as he may go." [33] In Sir G. S. Mackenzie's account of the cultivation of land by small farmers in Cromarty and Ross in 1810 (p. 250), he says of the harrowing after the plough, "The seed . . . was covered . . . by harrows fastened by birch twigs to the tails of wild young horses, which were thus first accustomed to labour."

Wild horses [34] and herds of wild cattle ranged and bred all over the Islands. FitzStephen, writing in 1174, tells of the herds of wild cattle running in the forests north of London (disafforested 2 Hen. III.).

Those who wish to see wild horses might do worse than go to Bampton Fair in Devon; the remains of herds of wild cattle are or were likely to be seen in England in the park at Chillingham in Northumberland, in Chartley Park, Staffordshire (enclosed in 1248),* and in Somerford Park, Cheshire.

Wild Swine.—Provision in defence of crops sown for food has to be made against the trespass not only of deer, but of that much more difficult class of animals to deter by fence, the "wild hog out of the woods." Pig-sticking was a favourite sport of kings in mediæval Britain, as in modern India.[35]

There was a close time for all wild animals. The season for hunting the wild swine by the king's huntsman is given in the Welsh laws [36] as from the ninth day of the calends

* I have since been informed that the last of this herd were sold by the late Lord Ferrers: the Duke of Bedford bought some animals for his menagerie.

Digitized by Google

of winter until the calends of December. According to the same laws, there was a certain close time for deer. Hinds were hunted from the first week in February to the feast of St John at Midsummer, and stags from St John to the calends of winter. The times of hunting in England for the male deer, from St John Baptist (6th July) to 25th September; for female deer, from 25th September to Candlemas, 14th February; the boar, from Christmas to Candlemas.

NOTES.—[1] *Statistical Account of Scotland*, vol. viii. p. 486. [2] Such records are few and scattered, *e.g.* "There are no sources of information from which a precise knowledge of the state of agriculture in the northern counties previous to the rebellion of 1745 can be derived. . . . We still see the arable land divided into small crofts and many of the hills occupied as commons" (from a *Survey of Cromarty and Ross, 1810*, by Sir G. S. Mackenzie). We are slightly better off now, but we still depend greatly on inference and comparison. [3] *Foris stant*. The monk who delights in any absurdity of etymology if it will advance his theories about deer says that it is called forest by changing the letter O into E, ferest: that is, a station for wild beasts (*Dial. de Scacc.*, book I. chap. xii.). [4] *A.L. Irel.*, i. 203; *A.L.W.*, Anom. IX. XXV. 3; *A.L. Irel.*, i. 162, lines 20, 28–29; and M. D'Arbois, *Résumé d'un Cours de Droit Irlandaise*, 1888–89, p. 22 *et seq.* But in the first instance woods are for the use of the whole community. *A.L.W.*, Anom. XIII. ii. 49: "Three things in common to a country and kindred: mast woods, hunting, and an iron mine; and exclusive ownership is not to be claimed to the one or the other of them." The grove (holt) is mentioned in the ancient formula in the Gulatingslaw of Norway, G. 292, as part of the old odal estate, distinguished from the forest pastures (teigar) in the commons outside, which latter, at first personal rights, became in course of time easements attaching to and parcel of the odal estate. In the division of such estate in the Orkneys the law did not allow the woods, a very valuable part in such a country, to pass to the daughters, possibly because in the first instance it fell to the sons to perform the sacred rights. [5] *A.L.W.*, Ven. III. XXV. 27, 30. [6] *A.L.W.*, Anom. VIII. xi. 7. [7] *A.L.W.*, Anom. XIII. ii. 236. Three indispensables of a summer resident: a bothy, a herdsman's dog, and a knife. *Ibid.*, 237. The three indispensables of a bothy are a roof-tree, roof-supporting forks, and wattling, which he may cut in any wild wood. These are from laws probably late but in or before the sixteenth century. [8] 812, Pertz, *Mon. Germ. Hist. Legum*, i. 181. [9] W. R. Fisher, *The Forests of Essex*, 1887, p. 208. [10] Book I. chaps. x.–xiii. [11] *S.P. Forest, 1215*, Hunts. They say that William of Leicester and Walter and the others came to the foresters with books and candles, meaning to excommunicate them if they did not deliver the said Gervais, a clerk, from prison. [12] Charles Petit-Dutaillis, *Studies and Notes Supplementary to Stubbs' Constitutional History*, 1908. [13] W. S. M'Kechnie, Magna Charta, 1905. [14] According to the *Report of the Tariff Commission*, 1905, vol. iii., the estimated

Digitized by Google

average production of wheat in the island, 1901–5, per acre was 30·77 bushels. In the Australian Commonwealth the average for the years 1901–11 was 10·63 bushels, and for the U.S. about the same. [15] *A.L.W.*, Ven. II. xxi. 1; and xxvii. [16] *A.L.W.*, Ven. I. xx. 9. Annals of Loch Cé, 1107: Cenn Coradh was burned between the two Easters with sixty puncheons of mead and beer. [17] *E.g.* Ann. of Ulster, 953: a great destruction of cows. Ann. of Clonmacnois, 955: great dearth of cattle and many diseases. Chron. Scotorum, 960: a great plague of cattle. Ann. Clonm., 981: murrain of cows. Saxon Chron. Ann. of Ulster and Brut y Twysogion, 986: the great murrain of cattle in England and Wales. Simeon of Durham, 1111: a famine, a murrain among animals, and a very great destruction of birds. Annals of Loch Cé, 1115: great havoc of birds, cattle, and people (owing to very severe winter ?), 1131. A.S. Chron. 1133: so great disease among the cattle (swine and fowls) as never was before in the memory of man. Annals of Loch Cé, 1133: a great cow mortality throughout all Erin. Four Masters, 1154: great destruction of cattle, etc., etc. [18] *A.L.W.*, Gwent. II. xxiii. 6. [19] C. 20, Skene's *Regiam Majestatem*. [20] Cox's *Royal Forests of England*, p. 121. [21] *A.L.W.*, Gwent. II. xxiii. 1. [22] If dogs be slipped at a stag and it be killed, the owner of the land had the hind quarter (*A.L.W.*, Ven. III. xviii.). [23] *A.L.W.*, Dim. II. xiii. 15, 16. [24] There are three hunts free to every person on the land of another—(1) hunting a roebuck, (2) hunting a fox, and (3) hunting an otter (*A.L.W.*, Dim. II. viii. 72). [25] *A.L.W.*, Anom. IV. i. 20. [26] *A.L.W.*, Anom., c. 83, 142. [27] *A.L. Irel.*, iv. 77, 121; and v. 483. [28] See *Leges Marchiarum*, by Wm. Bishop of Carlisle, 1747, pp. 147–156. [29] Quoted *Rotuli Lit. Clans.*, edit. Hardy, i. 85. "Sed ita quod sciatis qui illi fuerint et quid capiant et quantum *quia non habemus forestas et bestias nostras ad opus nostrum tantum sed etiam ad opus fidelium nostrorum*, sed bene illas custodivi faciatis propter latrones quia bestie magis separent per latrones quam per predictos Barones." [30] *S.P. Forest*, pp. 3, 4, 6. [31] Skene, *Regiam Majestatem*. [32] *Kelso Chartularies*, No. 325, p. 261. [33] Chaucer's *Reeve's Tale*, line 160. [34] *A.L.W.*, Ven. III. iii. 11: a wild horse is worth threescore pence. [35] See the records of wild-boar hunting given in C. J. Cox's *Royal Forests of England*, p. 31. [36] *A.L.W.*, Ven. I. xxii. 10; xvi. 8; Dim. II. xiii.

CHAPTER XVI

THE WASTE. TAME ANIMALS. DOGS AND HAWKS

The Range for Cattle.—Whatever might be the value of the forest for deer and other wild beasts, all other uses were subordinate to the feeding of the "cattle upon a thousand hills," which formed at once the coinage and the food and the means of cultivation of the land.

Digitized by Google

The king is paid both the money penalties of his courts and the ferms due to him from the counties largely in cattle and other animals, and in fact in produce of all kinds.

E.g., Wm. de Braose (9 John) paid 300 cows, 30 bulls, and 2 mares *pro habenda loquela.*[1] Philip FitzRobert (6 Rich. I.) gave £200 and 100 bacons and 100 cheeses for the wardship of the land and heir of Ivo de Mundy.[2]

The counties had their specialities in food. The sheriff of Gloucester, 1316, buys 20 salmons to be put into Pyes against Christmas; the sheriff of Sussex, brawn and meat of all sorts; the sheriffs of Buckingham, Bedford, and Essex, hens. Geoffrey FitzPeter pays 10 palfreys and 10 hawks that the king of Scotland's daughters might not be committed to his custody.[3] The Exchequer Rolls of Scotland show in the purveyance for Alexander III. and his queen for 29 weeks and 2 days at Forfar Castle, 48 beeves, 25 swine, 20 sheep, 60 stone of cheese, 31 fowls, 17 chalders 1½ bolls of malt, 3 chalders 2 bolls of barley, 38 chalders 8 bolls of fodder, besides a special provision of barley and fodder for the Queen, 700 eels for the King from the lake and 180 for the Queen. But the frugal Scot was a small eater.

Bribes might be paid in them. In 1334 accusation is made against a deputy collector of revenue, *inter alia*, that he has appropriated to himself 74 fat cattle belonging to men on whom he has passed sentence as justiciary. He answers that they were convicted by a former justiciary; that the cattle had been stolen from him and returned by a friend of one of the thieves. The defence sounds rather weak.

All lords of lands take a great part of the rents of their lands in the same way: *e.g.* Papers relating to the Macleans of Duart,[4] in the account of rents of Duart, p. 293, out of over £3100 received, all but £500 was paid in "kyne." Sinclair, writing in 1793, says of the parish of Bower in Caithness that the proprietor received the greater part of his rent in victual and services of cultivation and payments in animals, hawks, hens, and eggs, etc., and various small services up to 1760 or so, since then more money.

Digitized by Google

Query, in respect of these rents of eggs, what happened if the hens did not lay, and what rule was laid down as to the freshness of an egg? The absolute authority of the lord was greatly limited by such things. If the rent was paid in hens, it would be a good opportunity to get rid of the non-layers.

Cattle formed the greater part of the food of the king's levies as they moved through the country, and of the whole people; and land for cultivation was measured by the amount which a team of eight oxen, varying in strength and endurance, were able to cultivate in a day.

No one would dream of sending milch cows or work oxen, which might at any moment be wanted for labour, to run on a distant range. Hence the setting apart of home pastures, stinted pastures, regulated so that they should not be overstocked, comes very early into rural economy. They were common to all the community for the cattle in daily use for work or milk. The milch cattle in particular were very important, as evidenced by the numerous minute regulations in the Brehon laws as to injury by dogs and other cattle, the provisions about dry cows and cows going dry. The cows going dry are among the "proofs which attest the falsehood of every king," so that he loses part of his honour price.[5]

But all the rest of the cattle, those kept for food and the growing stock, went out in summer all over the Islands on to the waste land, whether the forests of the king or the wastes of the manor or tribe, to be brought in only when the failure of the pasture made it necessary.

E.g. the monks of Newminster had a lease of the hill pastures of Kidland in the Cheviots, in North-West Northumberland, where they sent out their cattle to range in summer, their men living on the range from April until August in their coats of quilted canvas, with spear in hand, keeping watch on the Scots. But "their damage and losses were so excessive greatt as well to the stealinge and spoyle of their cattailles as in the murderynge and takinge awaie as prisoners of their herdes and servuntes," that they agisted or took for hire other people's cattle on this range instead of their

Digitized by Google

own. In 1604 no one had paid rent for twenty years because of the Scottish borderers.[6]

When frost came those which it was intended should be carried through the winter were brought on to the home pastures to starve on what they could find until the spring. The Scots, we are told of the common pasture of Kidland, did not generally raid in the dead of winter, for then "the ways are so foul and the cattle so weak, they cannot drive or carry anything off." [7] The rest were killed off as "marts" or Martinmas beef in November, and salted down for use, until with the longer days of the spring came the change to the fresh meat of tame animals.

The Rule as to Ranging Stock.—It seems to have been a well-recognised rule that men could only take out to the waste cattle or sheep in proportion to the number which they could carry through the winter or which they possessed. No man must keep more stock in summer than he keeps in winter.[8] If any man pastured more beasts on the common pasture than he had land to justify, he was liable to be fined or to have his beasts seized by the officer appointed to protect the common pasture from being overstocked.[9] In a case of replevin against a man for taking beasts in a common pasture, the defence was that the defendant held land to which was dependent a search of common pasture for more beasts than ought to have been put there and for beasts of those who ought not to common there.[10] In 1630, in the Forest of Essex, there is a Presentment by Regarders of Waltham: "We saye and present that it hath been the Ancient Custome of the Forrest to be driven twice every yeare by the officers of the said Forrest to avoyde Forrainners Cattle. For yt it may not be surcharged."

But if not fined or distrained on, if any man reared a greater number of cattle on the summer pasture than he could carry through the winter, he was liable to certain loss, apart from the damage to the common pasture. The chief or lord was no more entitled to put on too many beasts than the other members,[11] and it was his business to see that the rules were observed.

I question, judging by what authorities we have, whether

Digitized by Google

the neglect of these most necessary precautions were not in some cases the cause of the conditions of overstocking in the Highlands which gave a handle for the savage evictions of the clansmen by absentee chiefs in the eighteenth and nineteenth centuries. There are regulations laid down, and there is a regularly appointed shepherd and an account kept of everything, and the whole profits are divided, says the *Report of the Royal Commission on the Highlands, 1883.* Speaking of the club farms, there is some evidence of the overstocking of the common pasture in the poorer parts of the islands.

Where, however, the community had not enough stock, whether cattle or sheep, for the range, the lord or chief could agist stock from others, provided he had the right to a fold, by which he could make manure.[12]

The Irish laws, as might be expected, are full of references to cattle in every relation, but the laws are more concerned with fencing against stock, and with the injuries to cattle from various causes, than with any restrictions of the use of the range. In Ireland the chief class had grazing rights over the common pasture, corresponding to the amount of stock which they possessed, paying to the community a rent of one animal in seven for these grazing rights.[13]

"In the East Riding of Yorkshire," says Canon Taylor in *Domesday Studies*, "every village had its 'outgang,' where the cattle of those who possessed rights of grazing were collected in the morning, ready to be driven out into the moor under charge of the neatherd. We have still in my own parish of Settrington the public cowherd who takes the villagers' cows into the lanes, and who is paid rateably by the owners." This appears to be the waste and stinted pasture combined. What, except motor cars, is to prevent a revival of this custom, by which the cows, which the villagers would be encouraged to keep, could keep eaten down the wide wastes of grass on our highway, now mown at the expense of the local authority?

The Range for Swine.—Of equal importance to the pasture for cattle was the value of the woods, grass, nuts, mast, and roots for swine. The trees, in Domesday, are valued by the

Digitized by Google

number of swine which they will provide for; pannage, the payment for the grazing of swine, figures in every kingly account, in every account of a monastery or lay estate.

The king's pannage was possibly of even greater financial importance to him than his rights of pasturage for cattle or of hunting in the waste.

In 1257 the park of the forest of Windsor was agisted, *inter alia*, for 156 pigs, the king taking every third pig, or 2s., as pannage.[14] In his perpetual progresses with a huge train, in his campaigns with his armies, the "bacons," the carcasses of the swine, could be carried with him, while he is dependent for cattle and deer on the country he happens to be in or invades.

When Henry, in 1171, goes over to Ireland, various towns and counties (Carlisle, for instance, and Stafford) provide him with hogs by the hundred. But in that Isle of Saints and cows the Saxon expects to find, and does find, the cattle to be had for the catching and killing, with which he fed his army. Very early in the invasion, in 1170, before Henry's arrival, Raymond Le Gros and his men at Waterford, after a raid in the country round, in which they had taken a great spoil of cows, were attacked by the Irish at a fort which they had raised at Dundonell, south of Waterford. They drove the cows inside and at the critical moment drove them out in front of themselves with yells and blows on the Irish, charging and routing the enemy.

The damage done by swine to the pasturage and their gross feeding resulted in regulations in all the customary laws to prohibit their entrance into the forest when not required, and to compensate for the damage done by them in meadows and fields. The Irish custom is stated to be [15] that pits rooted by swine in another man's meadow should be filled by the owner of the swine with corn. This archaic mode of compensation is altered by the later commentary to the rule that other land should be given until the land is restored. It would look as if the old rule had really been in force, as it is found in the Statutes of William the Lion.[16] By William's Forest Laws (c. 5) it was declared, "Ane approven use and consuetude" to forbid swine to enter the

Digitized by Google

forest "publicklie in paroch kirkes," the forester taking one of them for the first three times, and all for the fourth time, for the king's use, if he could catch them.

In the same way the Welsh lord and the freeman might preserve his wood from the end of September to the middle of January, and kill one in ten of swine found there.[17]

The king and the men of power were always on the outlook to claim an exclusive right, as against the poorer man, of this valuable perquisite, on the ground of the damage done by the swine. Knud of Denmark, for instance, the son of Svend Estridson, claimed the exclusive right of pannage in oak woods and of fishing in all fiords as a royal perquisite.

But if the mast was plentiful, the value of the pannage put the shoe on the other foot. Then the forester[18] may summon the burgesses and landwartmen to bring their swine to the forest "to the effect that the king may have his pannage for them."

Meadows were always interdicted to swine.[19] The breeding sows must always have been kept on the stinted pastures or in pens.

The Range for Sheep and Goats.—Sheep and goats as occupants of the common range were on a different footing from all the other animals. They were far more helpless both as regards speed and defence than other stock; possibly for this reason they were the only kind of animal on the range of which there was no wild species in the Islands; they had to be protected against dogs and wolves and hungry men, which could only be profitably done if they were herded in large bodies. In the wilder parts, such as the Peak of Derbyshire, wolves remained until a late date, doing much damage. In the Welsh laws the minimum of sheep which composed a "legal flock" for which proceedings could be taken in case of trespass was thirty animals and a ram, a small number to require a shepherd.[20] By the Forest Laws of William the Lion,[21] the forester may take for his own use one of the sheep found trespassing in the forest.

Consequently they do not appear as a prominent part of rural economy until much later than the other animals. When they do make themselves felt in the later days, they

Digitized by Google

are found for the most part in the hands of the Cistercian monks, who started business about the time when the wolves were being exterminated. In England and South-Eastern Scotland sheep farming formed and remained one of the chief industries of these monasteries, which did not rent the flock, but kept the sheep in hand, employing their own shepherd and rearing sheep in close connection with arable cultivation. In the Boldon Buke the sheep with the pasture are in most cases stated to be "in the hand of the bishop."

A further evidence that sheep belonged to that part of farming economics which centred round the arable land is that in the Irish laws women took possession in distress by sheep, and not by horses, as men did. The value of their manure, folded on the land for arable cultivation, was well known, so that it was frequently compulsory on the tenant of the great man to fold the sheep on his portion of the land.

Though sheep do not appear prominently in the Pleas of the Forest, or as being causes of conflict on the waste, the folding of sheep for manure becomes of great importance in the development of the lord's rights over it, as encouraging him to take to himself a very profitable source of revenue. The whole vill of Bright Waltham [22] advise as to the reeve to be appointed and men to take special positions in looking after the lord's sheep.

In a case in the Year Books, an answer to a plea of replevin was an avowal that to the defendant belonged the right of search of the common of the vill, and that the sheep taken do not belong to any of the commoners. To which the plaintiffs reply that they claim a fold and the right when they have not enough sheep of their own to take other people's sheep to make manure.[23] In another similar case the lord of the manor had in right of his manor the agistment of other persons' beasts, and had agisted 2000 sheep.[24]

Goats, which shared in some of the disabilities of sheep, were worse considered for their injury to the pasture and timber of the waste even than swine. William the Lion's Forest Laws enact that "Gif a goat be found in the Forest thrice, it is lesome to the forester for ilk time to hang ane of them be the horns upon ane tree . . . and for the fourth

Digitized by Google

time to slay ane of them," a very necessary provision if the young timber was to be preserved.

But the chief difficulty of keeping sheep or goats on a range was then, and is now, the difficulty of protecting them from the depredations of dogs.

Dogs and Hawks.—Laws or customs declared for the preservation of animals, wild or tame, are of little value unless provision is made for control of the means by which they could be caught and killed. These means were dogs and hawks (and for fish, herons).

Men by themselves, even the most inveterate poaching clerics, would find it difficult, armed with the simple weapons of those days, to kill any great quantity of game. But with dogs and hawks great destruction could be done, and both dogs and hawks will go hunting on their own account. Hence when, in England, complaint is made that the legitimate control of the forests by the government is abused by the officials, the fight centres round dogs and hawks rather than round the really more important but less picturesque matter, the waste of timber.

In the third volume of the Brehon Laws there is an elaborate series of fines for injury to an animal by a hound,[25] and for setting a dog on deer or other animals. Though at certain times, under the laws of William the Lion, cattle were allowed in the forest, an exception was made (c. 1) where the beasts were found by the keeper of the forest with "ane present keiper," having "fire ane horne or ane hound. Or gif they be found in the forest in the time of nicht lyand haveand ane horne or ane hound quhilk is called warset"; and chap. 13 contains provisions against harehounds (*i.e.* greyhounds) or mastiffs in the forest, the harehound to be seized and the mastiff's master to be put under pledges.

The "lawing" of dogs—that is, cutting off three claws of the forefoot to prevent fast running—was the recognised means of controlling both the poaching dog and his poaching master. It was no more inhuman or cruel than cutting off the tail of a terrier pup. When an eminent writer is horrified at this mutilation, Mr Fisher (p. 228) sums up: "For the rest, we may consider that the eminent historian was recording

Digitized by Google

an isolated act of brutality; or we may mark with admiration how his power of word-painting kept touch with his imagination; but we must not suppose that the acts of which he speaks were directed or justified by the Forest Laws."

At an inquisition in Somerset in 1227,[26] the people complain that whereas the lawing of dogs ought to be made every third year by view of jury, the foresters "come through the town blowing horns and make a nuisance with much noise to cause the mastiffs to come out to bark at them," and so attach the good folk (*la bone gent*) for their mastiffs every year.

Both dogs and hawks when trained were of great value; buckhounds, greyhounds, spaniels, and trained sheep dogs are mentioned in the Welsh laws,[27] but the most considerable value is attached to the shepherd dog to take out the cattle and bring them up. To feed a dog and attend the chase with greyhounds and ropes was a frequent service for land.[28] Feeding dogs and providing dog biscuit figures several times in Domesday. In the accounts of Hamo of Pincerna for the territory of Bayeux to Henry II. (about 1180) is Bernagium, a customary contribution for feeding the hunting dogs of the count.[29] They were an integral part of hunting; they were necessary for rounding up cattle and other animals; they were essential for defence.

Dogs and hawks as presents figure in both chronicles and accounts; they appear as cash in the exchequer of the English kings. Welsh rents in Domesday are paid in honey, hawks, hounds, and Welsh ale; six "wulperettos" and six other fox dogs are paid into the exchequer in John's day; one hundred Norway hawks and one hundred girfalcons, four hawks and six girfalcons to be white, in 5 Stephen. So from every point of view, as dangerous for worrying cattle and sheep, as man's assistant in the chase, as the capable driver of stock, as the outlaw that hunted on his own account, as a valuable means of appeasing the wrath of kings, as currency, the dog in the twelfth and succeeding centuries holds a very high place.

His companion the hawk was not far behind him. Hawks,

Digitized by Google

being wild, were likely when loosed from the hand to fly off hunting on their own account. As they were expensive both to buy and feed, the best check upon their misuse was an eye to hawk stealing. If any steal a hawk and carry it away, "it shall be done of him as of a thief that stealeth a horse or other thing," says a statute of Edward III.[30] A person catching such an one was to hand it over to the sheriff, who should advertise and deliver it to the right owner.

In a quarrel between the lords of Avenel and the monks of the great sheep-farming monastery of Melrose over a forest in which the lords of Avenel had reserved the rights to the game, Alexander II. awarded that the lords were not to keep any tame beasts in the forest or to interfere with tillage, but the monks were not to cut down any tree in which hawks build, or until it was clear that the hawks would come back next year, and were not to set traps in the forests.[31]

Among the fines imposed on tenants by the Manorial Courts for breach of the customs of the manor is one for selling hawks out of the lordship.[32] In 1180 Philip de Champ Segré, a feudal tenant, owes two moulting hawks for the loss of a royal eyrie.[33] Whoever shall take the eyrie of a hawk, let him pay a pound to the king.[34] Henry III.[35] enacted that every freeman shall have in his own woods eyries of hawks, sparrow-hawks, falcons, eagles, and herons.

NOTES.—[1] Madox, *Hist. of Exch.*, c. ix. [2] Madox, *Hist. of Exch.*, c. x. [3] Madox, *Hist. of Exch.*, c. xiii. [4] *Highland Papers*, vol i., Scottish Hist. Society. [5] *A.L. Irel.*, iv. 53, and see ii. 51, as to injury in distress, and iv. 104, as to injury by dogs. [6] *Archæol. Æliana*, 3rd series, vol. viii. [7] *Archæol. Æliana*, 3rd series, vol. viii. note p. 266. [8] *Manor Court of the Abbey of Newminster*, 66, Surtees Society. [9] Abbey of Ramsay, 1278, *S.P. Manor*, Selden Soc. [10] Y.B. 21, 22 Edw. I., p. 18; *ibid.*, p. 544; *ibid.*, 30, 31 Edw. I., p. 424. [11] Y.B. 32, 35 Edw. I., pp. 42, 240. [12] Y.B. 21, 22 Edw. I., p. 454; *ibid.*, 32, 35 Edw. I., p. 38; *ibid.*, 30, 31 Edw. I., p. 424. [13] *A.L. Irel.*, iv. 32. [14] Cox, p. 289. [15] *A.L. Irel.*, iv. 89, 97. [16] Chap. 24. [17] *A.L.W.*, Ven. III. xxiv. 6–8; Dim. II. xxiii. 43–45; Gwent. II. xxviii. 8–10; xl. 13; Anom. v. i. 5; Anom. IX. xxv. 3; XIV. vii. 8. [18] Stat. of Wm. the Lion, c. 7. [19] *A.L.W.*, Dim. III. iii. 36. [20] *A.L.W.*, Dim. II. xxv. 7. [21] Skene, *Regiam Majestatem*, Forest Laws of Wm. the Lion, c. 4. [22] Abbot of Battle's Court, *S.P. Manor*, Selden Soc. [23] Y.B. 30, 31 Edw. I., 424. [24] Y.B. 32 Edw. I., 38. [25] *A.L. Irel.*, iii. 345, 495. [26] Inquisition in Somerset, 1277, *S.P. Forest*, 125–128. [27] *A.L.W.*, Ven. III. xiv.; Dim. II. xiv. 18.

Digitized by Google

[28] See the dreng's duties in the Boldon Buke. [29] *Great Rolls of the Exch. of Normandy*, by Thos. Stapleton, p. lx. [30] Stat. 34 Edw. III., c. 22. [31] *Nat. MSS. of Scotl.*, pt. i., No. xlix. [32] *Archæol. Æliana*, 3rd series, vol. viii. [33] Stapleton, p. lxxviii, reference in note 1*b*. [34] *A.L.W.*, Dim. II. xv. 2. [35] Charter of the Forest, 1217, c. 13.

CHAPTER XVII

THE WASTE. TIMBER. THE BY-PRODUCTS. THE REGULATIONS OF THE WASTE

Timber.—It is difficult to bring home to a population of forty-five millions, who import yearly forty million pounds' worth or more of timber, a good part of which could be grown here, the importance of the timber reserve in these Islands in the Middle Ages. It was, except for wattle and for the rare and expensive use of stone, the only material for house building; it was the only material for shipbuilding, for all purposes of manufacture for which timber would be used, and the only and a very wasteful material for fencing.

As a single illustration of the enormous waste of timber in this last particular alone I would refer to the "Rectitudines Singularum Personarum" in Thorpe's *Ancient Laws*, i. 43, where the duties of the geneat were said to include "hewing deer palings." These must have been at least 6 feet long, and for sufficient strength from 6 to 8 inches wide and from 1 to 2 inches thick. It would take a quantity of very large trees to make even a moderate number of such palings.

Moreover, as no such timber could be split to any advantage where there was a knot or where a branch occurred, only the very soundest and straightest timber could be used, and in consequence the waste of the finest trees for such a purpose would be enormous. The part not used would be of no value except for firewood and charcoal, and if it were not handy for hauling to some cottage it would lie and rot, as millions of acres of such timber do at the present day in the British colonies and elsewhere. And it would be unlikely to be handy,

Digitized by Google

as the large trees would soon be used up near the homestead—"Large tracts of land consecrated to the wild boar and to the stag!"

Days of great building came in the twelfth century, a vigorous and lavish commerce reaping rich profits and daring great adventures, an abounding increase of shipping, more frequent enclosures, as the king, becoming more absolute, made grants of parks and warrens out of the common pasture to the great nobles and churchmen who met him at Runnymede. It was essential that the national supply of timber should be carefully husbanded. All the laws and documents which remain to us from that time contain provisions for the preservation of the timber from waste and destruction.

Big timber was sufficiently scarce to make it convenient to take the nearest, even if it did not belong to one. Magna Charta, c. 31, provides that the king and bailiffs were not to take for castles or other work of ours wood not ours against the will of the owner of the wood. No one of the codes gives anyone, except for specific purposes, the right to cut timber trees on the waste or forest.[1] The Pleas of the Forest in England are concerned with the wastage of wood almost more than with the destruction of the food supply. William the Lion's Forest Laws provide penalties for taking greenwood or oak trees; the Welsh laws[2] give the value of an oak tree taken as six-score pence, of a tree planted for shelter for cattle twenty-four pence; the Irish laws[3] order that possession of a tree which a man has been allowed to appropriate in the waste must have been taken by marking it; the grove of the old odal estate in the north never passes to women, lest it should pass from the family by marriage; the manorial landholders enforce strictly their rights to the timber of the waste of the manor.

Abbot Samson of Bury, hearing that the Bishop of Ely is going to ask for some timber trees from a wood named Elmsett, is prepared to promise them, much against his will, but from fear of the bishop. The bishop's messenger by mistake asks for timber at Elmswell, where there is no great timber, but the bishop's carpenters go at once and

Digitized by Google

mark the best trees in Elmsett. Samson hears of this mistake of name and takes immediate advantage of it. He had promised timber in Elmswell, where there was none, but at once he goes with his carpenters and marks all the timber oaks in Elmsett for the abbey, including those marked by the bishop.

The dissolution of the monasteries resulted in a great disturbance of the rights of the community over the waste, and in particular in great destruction of timber by the new owners. A statute of 35 Hen. VIII., confirmed by 13 Eliz., provides for its preservation.

Secondly, the trees, apart from their value for timber, were necessary for the support of the stock, tame and wild, both on account of the food afforded by their fruits and young growth, and also for the shelter and shade necessary for stock-breeding. Hence, vert and venison went together.

As land was in those days of very little value, and the corn raised on it of no great use except for home consumption, the unnecessary felling of valuable growing timber, often only to be piled and burnt on the spot, to make a clearing for a sparse crop which might be eaten up by animals, tame and wild, and of which the profits went to an individual, was an act which, in view of its possible injury to the community, could not be done without the consent of its head. It was an "assart," for which a fine was due under the English Forest Laws. Any destruction of timber was waste, and was regulated even in those parts of the Islands where timber was plentiful.

In fact, a man was taxed for his improvements, whether they were improvements or not, as we are taxed to-day in respect of money spent on our properties.

Charcoal.—One of the uses of timber, and a chief cause of its destruction, unless carefully watched, was for the making of charcoal, a material in constant demand for the primitive furnace. See as to Peter de Neville, *supra*, p. 41.[4] In action of waste for cutting down oak trees, Sharshulle J. says, "If there was not any underwood, do you think she might not fell oaks to burn?" (as meaning to say that she might), "and charcoal is a necessary, and she could not have it except from the great trees."[5]

Digitized by Google

As an example of much later date, at the beginning of the seventeenth century, the immense forests which used to cover the downs of Sussex were fast being destroyed. A writer of that time (Norden's *Surveyor's Dialogue*, p. 215, quoted in Tusser, p. 280) considers that this was due to the use of charcoal for the manufacture of iron and glass. "Now or lately," he says, "in Sussex neere 140 hammers and furnaces for iron, and in it and Surry adjoining 3400 glass houses; the hammers and furnaces spend, each of them, in every twenty-four houres, 2, 3, or 4 loades of charcoal." So the use of timber for making charcoal comes under the supervision of government. It was not likely, in those days of monopoly both of the means of life and its responsibility by the community, that the king or chief would allow any private man for his own purposes to chop down a tree or trees in the forest to make charcoal for sharpening his mattock.

Fuel and Repairs.—What part of a tree was timber, and what estovers, hay bote, house bote, hedge bote, and so forth—what part of the tree a man might lop for immediate personal use, as distinguished from the main parts, which could be used for, or grow into beams and sleepers, was a matter which was for the most part regulated by common sense, or, if not, gave rise to fierce disputes and heartburnings.

The commoners, who are accused of rooting up and throwing down trees on the marsh lands of the Abbot of Glastonbury, claim a right to collect fuel and to take branches for the repairs of bridges,[6] branches which would have to be pretty big ones if they were to span the dykes of the Glastonbury moors.[7]

Among the inherent rights of every territory, say the Irish laws,[8] are cooking fuel in every wood, the mast of each wood, sufficiency for the night of faggots, etc., materials for the yoke and plough. Even the feudal lord acknowledged the customary right to take fuel and wood for repairs, though doubtless a very jealous eye was kept on the size and quality of the bough taken. The tenants of woods in the English forests had the right of cutting wood for fuel or for repairs.

Digitized by Google

The same right was acknowledged by the old Norman law.[9] Lords shall not put men in prison who have customary rights (costume) in their forests for any offence of the forest, unless they are caught killing beasts; but they are to give pledges and have a day assigned to them for doing right. If the custom is in question there shall be a view, and what he has cut shall not be removed before judgment is given, etc. The Latin version adds a similar provision as to common of pasture: where the herbage has been used, etc.

Any abuse of this right was waste for which a man could be fined by the Regarder, and he would continue to pay a fine until the wood had grown to its former state. When a wood was put "in regard," such right was forbidden.

There is a very curious item in the presentation against Peter de Neville, the forester in fee of the forests of the county of Rutland in 1269. It recites that the king, Henry III., in his wood of Stokewood, in which the neighbouring people of those forests are wont and of right ought to have common of herbage, had given thorns and underwood to his brother the lord king of Germany for enclosing his town of Oakham in the time of turbulence which prevailed recently in the realm, and for this reason the wood was placed in defence for three years by the king, so as to prevent animals entering, so that the underwood might grow again. Peter kept the wood in defence for five years and took money himself for beasts entering by way of escape.

There was the more necessity for regulating the use of the timber, as the waste was not infrequently common to several townships or vills in England, or to several small tribal communities or group families in the other parts of the Islands.

Minerals and other Matters.—The digging of minerals of all sorts is an important use of the waste, as building in stone, whether of bridges or houses, becomes more common. Lime was in common use for many purposes, and the lime kilns of the forest were in special need of regulation, not only because of the value of the limestone burnt, but because of the amount of the wood used in the burning. It was some centuries yet before marling and claying brought in a new

Digitized by Google

use and a new danger to the waste, but the digging of peats for fuel was a common practice, to be jealously watched as a use of the waste likely to lead to most disastrous consequences; and besides stone for building and limestone there was iron and lead and tin to be dug out of the forests, and forges and works for manufacture to be supplied with fuel. In 1282 there are said to be seventy-two itinerary forges in the Forest of Dean licensed by the Crown, and consuming an enormous quantity of timber.

By the customary laws of Man, every landholder, besides the pasturage of cattle or sheep on the common land, could quarry stones for his own use, and dig peat on payment of ½d. to the lord; the Castle of Berwick in 1265 was provided with sea coal; the sheriff of Ayr charges for eleven-score stones of iron for making cross bolts before the battle of Largs;[10] castle building and church building in stone was going on all over the Islands.

Bruce, at his castle of Tarbert, spends his leisure time building, making contracts with masons, arranging for the carriage of lime and the working of iron, and paying his men in cheese and barley meal. The lands around the Castle of Forfar are held on condition of supplying 300 cartloads of peats when the king (Alexander III.) goes there, and the man who carries them into the towers of the castle was paid six bolls of barley.

Among the matters about which the Regarders of the Forest by the English legislation were to take notice were forges and mines, as well as harbours for the export of timber. In the presentation against Peter de Neville in 1269, he is charged with taking timber for limekilns. In the Notts Eyre, 8 Edw. III., 1334, among the pickings of the forester in fee is a payment for the carrying of mill stones through the forests, an act not only damaging to the roads, but very likely resulting in the destruction of timber to make a way for the wagon or to bridge a stream.

The Small Products of the Forest.—Besides the cattle and swine and wild horses and game, and fish in the rivers, and birds, and the timber and charcoal and fuel and stone and iron and peats, there were many small articles of value to

Digitized by Google

the community to be found in the forests. When once the lord who was not akin to the people whose interests in the waste he represented, or the chief who was akin but following a bad example, robbed them of their interest for his own benefit, when either of these broke loose from the local regulations which limited his takings out of the waste, there was nothing so small out of which he might not make a revenue in those days when the revenue of the fighting man was made up of all sorts of odds and ends of uncertain amount, due at uncertain times.

Bees.—So honey from the wild bees who build in the trees, to be had for the asking, is seized for the royal or manorial purse.

Although sugar was introduced into Europe with the Crusades, it was a very long time before it superseded the use of honey for all purposes for which sugar is used. It was an expensive foreign product, brought from the East at great cost and risk.

Wax was equally important, being used even to our own day for candles, which in the twelfth century were the only lights, except the Scandinavian pine torch, for the wealthy and for churches. Here again the use of the supply must be regulated to prevent absolute destruction and to check the damage to the timber in the effort to get honey and wax.

In consequence, in all those parts of the Islands in which the forests took a prominent place the customary law, before the chief became the lord, makes careful regulations as to the taking and the division of honey. The long chapter on Bee Judgments [11] in the Irish laws is one of the most remarkable efforts of the case law to make equitable division among neighbours; the Welsh laws provide that the king may take the hives of his unfree vassals,[12] who may not sell honey without first offering it to the lord, and for the forfeiture of tree and hive to the land, "if a wild hive be stolen and the tree be cut in which it may be."

It must have been a real surrender of value when Henry III. (1217) permitted every freeman to have the honey that was found within his woods,[13] a surrender not only of money value, but as giving a right of interference with the forest,

Digitized by Google

which increased the difficulty of strict supervision for other purposes—" Please, sir, I was only looking for my honey."

One comes across a variety of other small matters in various places, little in themselves, but mounting to a considerable revenue in the total, such as fuller's earth,[14] bark for tanning, and many other small matters. The power of the chief or king to turn these perquisites to his own use resulted from the necessity felt in the interests of the community that they should not be abused in use or destroyed by malice or mischief. By indiscriminate stripping of the bark a forest may soon be destroyed, as residents in the United States know. The Irish laws [15] provide for fines for injuring trees by barking them for tanning leather.

By Chapter 43 of Magna Charta a tanner was not allowed to live in the forest.

The Regulations of the Waste or Forest.—If the reader will now decline from the brilliant dramatic figures about " large tracts of land consecrated to the wild boar and the stag," " a number of game preserves protected by a special law," " vast preserves for larger game," and so forth, and if he will take to mind that the forest or waste was a floating area of unenclosed, uncultivated land, unmapped, unmeasured, known by local reputation only or by occasional inquisitions made, sprinkled with enclosures of fields of private persons, he will be able (but not otherwise) to see that in the interests of the community, regulations for the forests, to prevent over-stocking, to guard against disease amongst animals, against the waste of food and the destruction of timber, against injury to the soil by mining and digging peats, and for the enforcement of peace among neighbours, were necessary and were very willingly acquiesced in by the community, except where some captious monk grumbled because he could not have all the venison he wanted in addition to his corn. Such rules were made and enforced in all parts of the Islands, whether by the English and Scottish Forest Laws or the customs of the other parts.

In the first instance, no doubt, such regulations were made by the general assembly of the people, or by the local assemblies of the districts, and were enforced by their elected

Digitized by Google

official under the orders of the chief. The enforcement of these regulations lying in the hand of the chief or king as personally responsible for all the realities of administration,[16] and as trustee for the community of the common property, it followed that, as the ownership of the land passed from the community to the individual, the powers conferred on him to enforce rules for their benefit remained with him, whether as king or lord, to be used for his benefit subject to any of the customs in their favour which he was unable to override.

A single illustration of the necessity for regulation will be sufficient. It was matter of necessity that the waste in all parts of the Islands should be open to all the community, for with the rarest exceptions all, both the king's forests and the manorial or tribal reserves intermixed, was unfenced. No obstacle of this description, in the first instance, prevented an animal from wandering from the waste of any one part of the community to that of another.

It would appear that there ought to have been an endless confusion, owing to the straying of cattle or other animals into or out of the king's forests or from the waste of one manor or tribal division to another. But animals, wild or tame, either from timidity or choice, stay by the same haunts, unless greatly disturbed,[17] or driven away by lack of food, and if they stray will return on the road by which they are driven out. There is an entry in the Rutland Eyre, 1269,[18] illustrating this point and the difficulty of dealing with poachers, where a man granted two does took six, "and by reason of the noise which he made by beating drums when he beset them many beasts came out of the forest into the liberty and were taken, to the loss of the lord king and to the detriment of his forest." A writer in Yorkshire in 1641,[19] speaking of the summering of beasts upon unenclosed land, says, "Our mares and yearling foals and fat beasts will stay here all summer long and never offer to break out, although they want water."

To attain such an end each community must lay down regulations as to the road by which each district drove out its stock to the common range. For instance, in the Aston

Digitized by Google

Manor, Paine Roll, 1597, a rule is laid down that "every man drive his drift according to the drift Roll," which prescribes the route by which the commoners from the different valleys should drive their stock to the common pasture.[20]

The community appointed herds and shepherds to watch the common stock both on the home pasture and, where necessary, on the range, and men went at stated times to salt and round up the cattle. Under ordinary conditions this would be sufficient, but where the stock was ranged on the borders of the territory, as on the borders of Scotland or Wales, the watchers stayed with the cattle until the autumn brought them back.

Is it any wonder that the Norman and Angevin kings, and the kings and chiefs of the other parts of the Islands who were induced to copy them, and the lords of manors and the abbeys and ecclesiastical proprietors, exerted to the utmost the authorities which they had inherited from the tribal system over the waste, and sought every opportunity for enlarging their powers? Such encroachments were not, in the first instance, strenuously fought, because it was plain that some authority was needed, whether king, chief, or lord of the manor, to regulate hunting, to see that there was a close time for breeding of both tame and wild animals, that diseased animals were not taken out on the range,[21] and that infectious murrain did not spread among the animals that roamed over the Islands at will.

We have no knowledge of the actual origin of the manorial courts, unless they grew out of the powers possessed by tribal chiefs, which in their turn enlarged the authority of the head of the family; but very early indeed the necessity for regulation of the land for use must have forced itself upon society as a matter about which all men must submit to a common rule; it was natural that the lord's courts mainly concerned themselves with agriculture and the management of the waste, with the additions, of course, that men should provide for their common defence and should keep the peace with one another. The regulations of the manorial and other courts, with the addition of the Forest Laws, apart from their abuse, were only additions to or modifications of

Digitized by Google

established unwritten custom. In those days laws were not the ingenious and sudden inspiration of some very clever individual (though the chronicler generally so attributes them), but the result of the slow mind of the community working on existing habits which were recognised as obligatory on all. One cannot read into mediæval conditions the output of profuse and often unnecessary legislation as poured out in our day.

The king in this matter of the waste, for instance, represented the community with its responsibilities and burdens.[22] If he abused his position for his own profit, or in the absorption of public business, or as payment for services rendered permitted the custom to be turned by subordinates to evil use, the only object of the legislation or the new charter was to restate the good custom and the old position; the mass of the freemen at least knew, if we do not, that the king or chief was their best shield against the oppression of lesser men, and that they were willing to suffer a good deal from him for his protection so long as he did not run too far outside the line.

It would not appear that the rules for regulation of the waste were in themselves unfair in any part of the Islands. As population increased some limitations of the rights of strange men, who with commerce multiplied, became a necessity.

The severity of the Forest Law, if it existed, was caused by the poaching outlaw having nothing which could be taken for the offence except his life, not because the king was of necessity cruel or tyrannous. "None shall lose life or member for killing of deer, but shall be fined for it, *if he have anything*," says the Charter of the Forest.[23] The rulers of those days never killed anyone so long as they could get anything out of him. Historians, says Mr Fisher in his Preface to the *Forests of Essex*, following the old chroniclers or one another, have dwelt much upon the cruelties practised under the Forest Laws, but they have told us very little about the Royal forests themselves, or their purlieus, or of the manner in which the laws were administered.

Each generation saw the social status further decayed;

Digitized by Google

a greater influx of foreign men from France and Flanders and Scandinavia settling in or wandering about the Islands. It was not in any way against the interest of those who cared for the common welfare that wastrels should be prevented from abusing the common property of all. The fees to the appointed foresters of the English kings or to the elected birleymen were paid by the corn-grower for protection from the ravages of wild animals, or tame animals half wild, or wild men, not in response to the tyranny of kings.

But the good laws became open to violent abuse in two directions: first, in proportion as agriculture progressed the value of the waste for pasture increased; it became the interest of the great man—king, chief, abbot, baron, bishop, lord of the manor—to crowd the waste with his own animals and to claim an exclusive use of it, not only for the value of the game or for the pasture of his own beasts, but to make money by agisting or taking to him the stock of others; as times became quieter and wolves fewer, flocks of sheep on the open spaces became very profitable; the breeding of hawks was by no means an unlucrative business; fishing in rivers by means of falconry became of such commercial value that the English and Scottish kings hastened to put "in defence," that is to preserve, the rivers, and to declare a close time for salmon.

In consequence there was a growing tendency, especially in agricultural England, for the king to increase the forest bounds by subjecting to the forest regulations lands which were in private hands, or which, owing to their nearness to cultivated portions, had not been part of the forest, and to treat the forest and its profits as his personal property; while, on the other hand, it was to the financial interest of the great landowners to withdraw land from the common use, and to obtain grants of tracts to themselves personally, either for cultivation or for commercial use, or as parks or warrens.

Secondly, the officials who carried out the regulations tended (as officials always do, especially under a democracy) to increase in number enormously at the expense of the community, and to strain the written and unwritten law to

Digitized by Google

their advantage and to make profit by any means, fair or foul. The records of those days, such as the Forest Laws themselves, the Pleas of the Forest, and occasionally the Chronicles (though these are not at all to be trusted, as being written by persons directly interested in decrying the government) show in England such an abuse of deputed powers in the forest by persons in authority, whether great grantees or common officers, as would in itself be almost sufficient for a revolution if people were not then accustomed to suffer much from local authority without hope of redress.

On the other hand, the paltry poaching by men who lived on stolen deer and their scuffles with the foresters read like the trial of a poaching affray in the nineteenth century. I doubt if the friction which inevitably arose between the stock-owner on the waste and the grain-grower on unfenced land, great as it must have been, was as great as the loss and annoyance caused by the depredations of game. The tame stock, once or twice driven away, were more likely to stay in the distant parts; there was an owner answerable for their acts; they were brought home as soon as the failure of food and the cold made them inclined to scatter in search of food. But the game was with them always; it had no owner except the community; in a country covered with woods the game was bolder and the damage more incessant; it was extremely difficult to fence successfully against the smaller animals, against the wild swine, the deer, to say nothing of the multitude of wild birds.

In the course of nature, in any part where arable cultivation assumed importance, men early called upon the chief to make regulations as to the use of the waste land for wild animals, to say which were vermin to be killed by anyone everywhere, and which were beasts of the chase, the property of the community, to put limits to the unfenced forest, their breeding and resting place, in which they were to be protected, and above all things to control the irresponsible poachers, the Robin Hoods, Little Johns, and Maid Marians, who had little or no land or cattle of their own, and made their living in the waste land, destroying the food supply, burning the timber, watching on the edge of the woods for the animals

Digitized by Google

which they were driving into the open, and disturbing and driving on to cultivated land vermin and beasts of prey. In Ireland and in the west and north of Scotland the small amount of grain and the large amount of land especially suitable for pasture lessened the necessity for such laws.

I am not attempting to deny that, as the years went on, the misuse of essential regulations became in England a great evil; but such evil would appear, even from the most partial records of the monks themselves, who were the most inveterate poachers, to have resulted, as do most social and political evils, from the unrestrained abuse of good laws by subordinates paid by fees and perquisites, or by purchasers or grantees of forest rights, rather than from any acts of the king himself.

In any event, no member of the tribe, state, or nation made any attempt to abolish the Forest Laws. The different laws and charters relating to the forest made in England and Scotland from time to time went no further than to prevent the inclusion in the forest of waste land which had not previously been declared subject to forest supervision. This gave the holder of arable land the opportunity to kill out in the part of the range near him the game and vermin which destroyed his crops. Such charters checked a wasteful increase of forest at the expense of arable cultivation, putting a limit on the great grievance of lavish grants by the king of jurisdictions over common land by way of enclosed park and warren; and they attempted to abolish the extortions and oppressions by which the badly paid officials of the forests robbed all with whom they came in contact.

The authority which was in use in the English forests to control the pasturage for deer, cattle, and pigs, the use of timber and other necessaries, was very highly organised,[24] and sensible when not abused. Under the Justices of the Forest, who administered the Forest Laws and decided questions arising out of grants of exception, holding forest eyres at intervals of years, came wardens or foresters in fee, who had been appointed or who had farmed a forest.

It would be one of the chief duties of these wardens to see that the marks which indicated the boundaries of the forest were not disturbed and that "lines were run" from

Digitized by Google

time to time. As such things are not touched on in our school histories, and as few readers have any acquaintance with unfenced land, I would point out that where there are large tracts of such land, it is usual, unless it is convenient to set up stone corners, to mark a tree "fore and aft" with a blaze, and run the line in the desired direction to another marked tree or stone, and so until the first corner, usually on the banks of a river, is again reached. As the tree grows and the mark of the blaze becomes indistinct, it is usual for the inhabitants of the district to join from time to time to run out the line, re-marking the trees, and watching for unauthorised or fraudulent marks on other trees, sometimes made to alter the line for the benefit of some individual.

The wardens were paid by the usual collection of miscellaneous products.

Elias of Tingewood holds the forest of Whittlewood;[25] he pays for it 2½ marks a year at Michaelmas and the Annunciation of the Virgin Mary, 2 quarters of nuts, 30 geese, 30 hens, and 200 eggs. For his part he collected fees in kind for allowing palings for corn land and dead wood for fuel; he had all the nuts, the after pannage (*i.e.* making piggeries in the forest at his will), eggs, chiminage, dead wood, pasturage for beasts, and fees from corn land.

In 1300 a woman, Sabine Peeche, was warden in Somerset of the five forests of Mendip, Selwood, North Petherton, Neroche, and Exmoor. The wardens executed the decisions of the justices.

The office evidently was of considerable value. In 1204 Reginald Lacy paid 900 marks and five palfreys to be forester of Cumberland. On his death in 1214, his widow pays for livery of her inheritance, which included the forestership, 500 marks, and on her marriage to Thomas de Mutton soon after the accession of Henry III., he paid £100 and a palfrey for the forestership.[26]

Under the wardens were the verderers, who were elected in the County Court, but were responsible to the king or owner of the forest. They were generally landowners in the forest. The foresters, who did the work under these different officials, kept guard over the timber and the game. They

Digitized by Google

were appointed by the warden; they received no pay, but lived on fees and blackmail and theft. There were besides other officials, such as the agisters, who collected the money for agisting cattle and pigs in the king's demesne.

Every three years a view of the forest was made by twelve knights called Regarders.[27] They were to take notice of (1) the herbage in the king's demesne; (2) the eyries of hawks and falcons; (3) forges and mines; (4) harbours for the export of timber; (5) honey; (6) assarts, *i.e.* clearing land for crops which might or might not be an improvement according to the value of the pasture and timber. For instance, in Ireland five seds and the loss of the produce was the fine for ploughing up land let for grass.[28] In the Eyre of Cannock Chase, 1262, there is an inquisition respecting a certain place in Boseehaye containing 20 acres which Sir Robert de Grendon wished to assart and plough. The verderers, etc., say that as there is no vestura on the land it would not be to the detriment of the king. The soil belongs to Sir Robert. He may plough it for a fine of six marks, but so enclose it that the game may freely pass in and out.[29] (7) Purprestures, *i.e.* any act which withdrew land from common use for pasture, etc., such as enclosures, ploughing, making fish-ponds, building, hauling lime or marl; (8) waste, such as the destruction of timber; (9) to inquire whether underwood and branches in the king's demesne woods had been impaired; (10) 6, 7, and 8 in the king's demesne to be viewed; (11) who had bows, arrows, crossbows, greyhounds, or braches, or anything to do harm to the king's deer.

Swanimotes were, by the Charter of the Forest, to be held three times a year: before Michaelmas for agistment, about the feast of St Martin for pannage, and fifteen days before the Feast of St John Baptist for fawning. Undoubtedly the calling of frequent swanimotes and fining for non-attendance had been a great grievance.

Throughout the twelfth and thirteenth centuries there was a steady increase of arable cultivation in England. The climate in the east and south-east was unsuitable for grass, and suited corn; the monasteries, from whose records we have for the most part particulars of the system of cultivation,

Digitized by Google

required great quantities of grain for beer and bread; and the continental wars of the English kings and their progresses with a train of judges and officials through the country for military, financial, and judicial purposes led to the same result.[30] The comparative peace which followed the conquests of Henry II., and the decay of the feudal military system owing to the more general employment of mercenaries for continental war, turned the attention of the landowners to a larger use of their land for arable farming and for stock raising.

The monasteries, both in England and Scotland, which had acquired enormous tracts of land, used them both as corn farms, sheep farms, and cattle ranges. Flanders was beginning to consume large quantities of English wool. Each decade saw an extension of the use of the waste or forest for breeding cattle and hogs, the great landowners, lay and ecclesiastic, exacting to the full their rights of pannage and agistment and crowding out the smaller commoner with increasing herds and flocks.

So far as the use of the waste as a breeding place for wild animals was concerned, such animals, as they ceased by degrees in England to be of so great importance as a source of national food, were collected into the enclosed parks taken from the waste for the private benefit of individuals who were allowed to enclose them, thus reducing the acreage for the poorer men, who depended on the waste for the pasturing of their cattle.

When, in the sixteenth century, there was a reaction from the advancement of arable, sheep walks took the place of the deer forest. The necessity for the use of the waste as a reserve for timber, minerals, and other matters remained. But its chief historical interest is connected with its use as a common pasturage for tame animals in support of arable cultivation.

NOTES.—[1] *A.L.W.*, Dim. II. viii. 40, 52. [2] *A.L.W.*, Ven. III. xx. [3] *A.L. Irel.*, i. 202, 206. [4] Y.B. 20 Edw. III., vol. i. 410. [5] *Norden's Surveyor's Dialogue*, p. 215, quoted by Tusser, p. 280. [6] Som. Pl., No. 572. [7] See Y.B. 21, 22 Edw. I., pp. 418, 506; 32, 35 Edw. I. [8] *A.L. Irel.*, v. 483. [9] *T.A.C.N.*, chap. 59 *bis*; De Forfez de Bois. [10] *Exch. Rolls of Scotl.*, vol. i. [11] *A.L. Irel.*,

Digitized by Google

iv. 163 *et seq.* [12] *A.L.W.*, Ven. II. xix. 9; Dim. II. viii. 6; II. xvi. 14. [13] *Charter of the Forest*, chap. xiii. [14] Stapleton's *Exch. Rolls of Normandy*, "Account of Hamo Pincerna," p. lviii. [15] *A.L. Irel.*, iv. 149. [16] The king had to find all materials for warlike preparations, *e.g.* 2 John—To find for Master Urrie carpenters and timber and everything necessary for him to make petards, mangonels, and engines and necessaries for six horses and four men his attendants. 14 John—The docks at Portsmouth ordered to be enclosed by a wall and pent-houses made to keep the ships' tackle. [17] For this reason that they drove away the other deer, the roe deer were declared not to be beasts of the forest by the decision of the K.B. 12 Edw. III. [18] *S.P. Forest*, p. 44, Selden Soc. [19] Best, *Rural Economy in Yorkshire*, 1641, p. 144, Surtees. This applies only to the common range, and not to stinted pastures or to beasts feeding near corn crops. See *infra*, p. 238. [20] *Arch. Æliana*, 2nd series, vol. viii. This was a copy of the old Roll, "the old Roll being waxen and growne soe dimme that it was hard to be read." [21] Scabbed horses or weaklings not to be put on the common pasture. Rules of Abbey of Newminster, about Kidland. *Arch. Æliana*, viii., and Chartulary of Abbey, 66 Surtees. [22] See *L.H.P.*, xvii. [23] 9 Hen. III., c. 10. [24] See Preface to *S.P. Forest*, Selden Soc. [25] 6 Edw. I., 1278. [26] J. C. Cox, *Royal Forests of England*. [27] *S.P. Forest*, Preface. The Chapters of the Regard are on the back of the Patent Roll 13 Hen. III. The Forest Assizes of Henry II. will be found in Bened. of Peterb. R.S. [28] *A.L. Irel.*, iii. 115. [29] *Staffs Coll.*, part I. vol. v, 1884, p. 137. [30] *E.g.* Hardy's *Norman Contrabrevia Rolls*, 2 John. To send to Neufberg for the victualling of the castle six tuns of wine, six measures of corn, one measure of peas and beans, or half a measure and a cwt. of onions.

CHAPTER XVIII

THE DEALINGS OF THE CHIEF WITH THE WASTE

THE subject of the dealings of rulers and people with the waste or forest is of far too varied and extensive a nature to be treated of in such a work as this except in the most cursory manner. Yet for any true perspective of mediæval history it is essential that their relations with respect to this question should be studied away from the prejudice of the chronicles which form so much of the groundwork of elementary history.

There is comparatively little written authority for detail of the treatment of the waste in those parts of the Islands

Digitized by Google

where it remained until late times in common use by the community, a use regulated and secured from friction by the control of the local chief and his birley men. We were well into the end of the eighteenth century before, in the more remote pastoral parts of the Islands, this use gave way to individual ownership of huge tracts of unfenced and unused land. The position in these parts may be summed up by saying that until a very late date (in the Western Highlands after 1745) the chief controlled the common lands for the benefit of the whole community, though in their use he expected and received a great personal preference. See below, Chapter XXXVI.

The Norse records, which show us the transition stage of primitive society faced with extensive commerce, and the forest as the subject of easements attached to the holding of fenced and cultivated fields, are for the most part for the English reader untranslated and unedited.

But there is a considerable amount of literature dealing with the subject in mediæval England which must be mastered before the student of English history can obtain even an elementary conception of the real relations between king and people.

As a short summary it would appear that the English king, at least up to the end of the fourteenth century, probably to a much later time, remained for the most part the fiduciary owner of the unenclosed forest. He held it as the protector of the small cultivator against the great church and lay barons, whose interests were directly opposed to common ownership. There is, I think, no doubt that the king's position as controller of the waste exercised a very powerful influence in his disputes with the great men.

But various influences told against this common possession of land. There was immense temptation to a wandering king, whose eyes were turned to France rather than to English affairs, that he should make grants out of the common lands to private persons with the double view to enclosure and improvement and as a steady source of revenue to support foreign wars. For example, in 1200 John grants to men holding land in the forest of Lancaster the use of their own

Digitized by Google

woods exempt from Forest Law. For this they pay £283, 17s. These grants resulted often in the formation of fenced parks, where the grantee could preserve and hunt beasts of the chase, agist cattle, and take pannage for pigs to his own individual profit, in the place of using the land for the cultivation of crops, as the modern farmer preserves the hares which he is allowed to kill under the Hares and Rabbits Bill. It was a course which appeared the more reasonable as the value of British wool led under the Edwards to woollen manufacture in England and Ireland.

Parks and Warrens.—It is these parks which become a real social grievance, withdrawing pasture, timber, and firewood from the common use, and preserving, for the sole benefit of the baron or abbot, wild beasts to consume the food which used to be the common property. At Merton,[1] at a time when the baronial landowners were making a determined attack on communal rights in land, the Lords demanded the imprisonment of trespassers in their parks and ponds, but it was denied by the king, and so deferred.

Then again, as the boundaries of the forest were more certainly ascertained and defined by charter and statute, a fresh source of irritation, a fresh opportunity for increase of revenue, a fresh withdrawal of land from the community arose by the grants of warren in the purlieus (see p. 183 *supra*).

Where land had been disafforested, or where, on the boundaries of the waste, lay land where game was fairly plentiful, the beasts straying out of the forest on to the outlying lands, the kings sold rights of warren to their great men, that is rights to kill the lesser beasts of sport, but not beasts of the chase, beasts such as hares or rabbits. Such grants kept alive, to the detriment of the crops of the farmer, the meaner and less sporting features of game preserving, a nuisance to the real cultivator whose land lay near the purlieus.

Very likely the king expected the grantees to keep an eye on the poacher who hung on the edge of the forest, and to help to drive back the beasts of the chase if they broke out. In 1313, and again 1317, Edward III. orders the Justice of the Forests south of the Trent to drive the game

Digitized by Google

in the disafforested regions back into the forest within forty days. The cultivators outside could not complain of this, as they would be sure to have complained of the damage done to them by the game.[2]

But I am not at all sure that of all the grievances which attended the conflict between corn cultivation and vert and venison these grants of warren were not the most exasperating. They certainly are the feature most closely connected with our modern game laws.

M. Maury (*Les Forêts de la France*), after noting the efforts made by John of France and his son Charles VI. to restrict the abuses of the rights of warren, says, "Les abus de ce genre, quelque peu réprimés, se perpétuerent cependant jusqu'à la révolution."

When the king had a right of property in the venison it was to the public interest that he should be supported in breeding it, but when he began to grant out to private persons parks and warrens the community suffered from the enclosures rather than gained. Unless lands were included in the forest and subject to forest laws, all had the right to hunt over the unenclosed parts. A grant of a right of warren destroyed this right.

The enclosure of park and warren in Elizabeth's day had not yet extended to Ireland. Fynes Moryson[3] mentions the existence of two small parks of the Earl of Ormond in Munster and the Earl of Kildare in Leinster enclosed for fallow deer. But he says, "I have not seen any other park in Ireland, nor have heard that they had any other at that time." He mentions that they had many red deer and fallow deer scattered in the woods. Payne's *Briefe Description of Ireland*, 1589, speaks of the plenty of game, that a red deer without the skin was worth 2s. 6d., that there were no parks. He gives directions for enclosing a warren for conies by a hawhaw, planted on the outer bank.

The Interests of Stockbreeder and Cultivator conflict.—As commerce increased, as arable cultivation was extended, there came and remained the chief source of friction—the balancing of the adverse claims of arable cultivation and right of pasturage: which was most to the interest of the

Digitized by Google

community, which in each instance would pay best—the devotion of some tract of land to cultivation and industrial user, or to the support of beasts tame and wild. The responsibility for decision in each individual case rested with the king—the king, who had to settle such questions through his subordinate officials, while himself attending to high politics or military strategy on the borders of Aquitaine or of Scotland.

The king would not have escaped whipping for such work if he had been more than human. But as it was, as a man commanding other men all intent on making a living out of their offices, it was inevitable that he should take blame for their unfortunate judgment in deciding between contrary interests or for their deliberate misconduct, for bribes taken from rich individuals, for weighing down the balance against the common interest, or for their own local gain.

In most cases where a purpresture or an assart has been committed, it must have been an open question, to be judged largely by speculation on future results, how far the withdrawal of land from common use would be justified by the profit from the mill, lime kiln, fish-pond, or stone quarry, or from agriculture in place of pasturage, of which the returns of the first crops on the sour stump- and root-infested land would give no sure indication. Clearing land meant fencing, and a use of a great quantity of the best timber, and fencing to keep out deer must be high.[4]

It is unlikely that there were any men concerned in such matters in those days so wholly ignorant of farming as the member of Parliament who in his hatred of brewing proposed recently to plough up hop gardens for potatoes; but where in the interests of the community the purpresture was justified, the profits, apart from any dues to the king, went to an individual or to an abbey and created jealousy, directed against the authority which allowed the exception rather than against the "profiteer."

In the earlier days the English king is the protector of the common land for common use against the crowd of hungry officials and big men who are desiring it as an individual possession for possible improvement. Only by degrees, as

Digitized by Google

commerce and corn-growing and the Roman Church break up the communal society, does he too become the individual possessor of the waste as opposed to the community, making lavish grants of it to the men who work for him, and taking little pains to see, as did the society of old times, that it was used to the best advantage for all and protected from injury.

Decline of the Forests.—Thus the forest decays, and with it the kingship, because such regulation of user of the land was indefensible when the king ceased to control the common land in the interests of the community.

Sometimes the Crown involuntarily disafforested a district. Rossendale Forest in Lancashire was so disafforested at the beginning of the sixteenth century, the Crown having come to the conclusion that the land could be put to good purpose. The population increased within the next fifty years from 20 adults to 1000.[5]

Under the Stuarts, when in a great part of England and Eastern Scotland the growth of agriculture and consequent increase of enclosures forbade the free wandering of wild animals, the Scottish king, James VI., and his son Charles extended the forest boundaries and abused the obsolete laws for their profit and pleasure. Probably few men bothered themselves about Charles' Prayer Book, or Laud's reverence for the altar, or the refusal of the very wealthy Hampden to pay his taxes. But the revival of unnecessary swanimotes, the enforcement of dead regulations of a past time, the support of an army of tyrannous officials, and the claims of the kings to the exclusive right to hunt wild animals,[6] must have helped to make men indifferent to the course of events in a struggle between two forces for both of which they had little sympathy. It was the local oppression which told.

What a nuisance the deer became in after years and why vert and venison went together is shown by a petition addressed to the Crown by a meeting of gentlemen at Rufford in Nottingham in 1708, complaining of the enormous increase of the red deer in the Forest of Sherwood, and that so many of the woods had been granted or given away by the Queen's predecessors that there was but little harbour left for the

Digitized by Google

deer in the forest, and the deer in consequence were distributed all over the country, eating up the corn and grass. They complained also of the tyranny of new keepers, who threaten them if so much as they do set a little dog at the deer, though in the corn, and also that the deer so destroy private woods as to injure them to the extent of from £10 to £50 a year. To which the Crown replies that the men whose crops were eaten up bought the land with the incumbrance,[7] a typical official answer.

The results of such refusal by the Crown to move with changed conditions led to savage outbreaks of poaching, with wholesale destruction of deer, frequently by men of good standing and clerks, both rectors and chaplains. Mr Fisher, quoting the *Report of the Select Committee of Evidence*, 1863, adds in a note there were also blacks (the Waltham Blacks), men who blacked their faces and hunted by night in the Essex Forest down to a late period, who lived entirely by deer-stealing—very desperate characters.

Examples of Forest Law.—I will conclude this matter of the English forest laws by citing a few examples from the *Select Pleas of the Forest*, edited by the Selden Society.

First, what were the legal rights of the forest officials? In 1334, 8 Edw. III., the Nottinghamshire Eyre ask what pickings the forester in fee had, and the verderers, regarders, and jurors answer: (1) the right to hunt the hare, fox, squirrel, and cat; (2) the right to have the bark and the crops of oaks given by writ from the demesne woods; (3) the right to after-pannage when it occurs, *i.e.* when there are any gleanings of mast after the pigs; (4) the right to the (fees for the) lawing of dogs every three years; (5) twenty shillings a year for millstones when they are carried through the forest; (6) the right to hold ten knights' fees in chief, being excused service for providing foresters; (7) his lands in the forest outside regard and his dogs not lawed.

In 1269 a presentation was made against Peter de Neville, forester in fee of Rutland, and he was charged that he took timber for houses and for lime kilns in the forest and for making charcoal to the amount of 7000 oaks and fuel trees and other trees, besides inestimable injury to the underwood

Digitized by Google

and branchwood. He was only allowed dead and dry wood which could be collected with the hand alone and without an iron instrument. He had unlawfully taken for thirteen years the nuts, the after-pannage, the profits of mast, the windfalls, and the pleas of (*i.e.* the fines arising from) the thorns, hazels, and such-like small vert, and pleas of unlawfully taking hares, rabbits, foxes, and cats, and of having dogs and greyhounds in the forest against the assize (fines which ought to have gone to the king).

Then follow a few of the fines paid, including 100s. from the Archdeacon of Northampton for greyhounds. Then follows the item mentioned above (p. 41); then the item mentioned above (p. 203).

He made enclosures in another park and took money for hay, for herbage, and for the escape of beasts; he had appropriated land and rent of lands to himself; he imputes to Master William de Martinvast that he was an evil-doer with respect to the venison; he imprisons him twice, makes him pay a fine of 100s., and his sister twenty quarters of heaped wheat and two cows.

He imprisons Peter de Constantine for two days and two nights, bound in iron chains, on suspicion of taking a certain rabbit; and this Peter gave twopence to the men of Peter de Neville to permit him to sit upon a certain bench in the gaol of the same Peter, which is full of water at the bottom.

The record cites many other cases in which Peter charged innocent persons with forest offences or compounded with guilty ones. He charged the Prior of Launde that certain deer came out of the forest and entered the prior's park, and he caused several cartloads of forage to be taken to burn the enclosure of the park. The prior paid thirty marks to have peace. He caused many townships to be summoned to make inquisitions, and when they did not come fined them at his will.

Then Peter is charged that he has his piggery and his pigs, sometimes to the number of 300, digging in the enclosure of the lord king without warrant. He puts a forester to take toll of chiminage, to which he has no right, on an outlying road, and raises the hue, and distrains on a man hauling his

Digitized by Google

own ash trees until he is paid, and imprisons the man until payment. He has an excessive number of foresters, and pages under them. It will be noticed that instead of the grievance being that the king had a day's shooting, the king was robbed all round by the forester in fee.

One more instance. There was a great outburst in Somerset in 1278–79, the people claiming that the disafforested lands were not taken out of the forest, but that they were surcharged with foresters and their pages, and that those who had woods in the forests were still vexed for purprestures, wastes, and assarts. The foresters lawed dogs illegally and not every third year; they came at harvest time, collected corn, brewed ale, cutting down the trees for fuel in the woods of the good people, and forced the people to buy their ale. They collected (quillent; convey, the wise it call) lambs, pigs, wool, flax, etc.; they take unlawful tolls for fuel, wood, charcoal, etc.; they call the free tenants to swanimotes and fine them if they do not attend, etc. etc.

The blame, however, for the mismanagement of the forest tracts did not lie wholly with the king or lords. The destruction not only of game but of timber, from which the royal control of the forests has in great measure saved England, went on unchecked on every occasion on which the common folk got the upper hand. I would refer to Mr Fisher's account of the damage done to the trees under the Commonwealth, and at other times, in spite of the Crown, and I will quote from a French author M. Maury's account of the forests of France, away from the distortions of our English constitutional historians.

Speaking of the effects of the settlement by the nobles in later days of dwellers in the forest to do them service and pay rent, he says: (p. 233), "Au milieu de ces forêts vivait une population sylvestre, livrée exclusivement aux industries qui naissent de l'exploitation des bois; les charbonniers, les cercliers, les sabotiers, les cendriers, les tourneurs, les briquetiers, tuiliers et fourniers, les forgerons, les pothiers, les vanniers, les ferriers." (P. 235), "Ces diverses corporations ouvrirent des clairières dans la forêt, construiserent des cabanes avec l'écorce qu'elles enleveaient aux arbres." Then

Digitized by Google

follows the gist of the difficulty, the difficulty to be kept in mind when listening to the abuse by the monk or constitutional historian of the Angevin or Norman king: "Cette population sylvaine, si elle offrait l'avantage de protéger le pays contre les bêtes fauves, déclarait d'un autre côté une guerre impitoyable aux arbres."

Noting the edicts of the kings which attempted to check the evil, the author continues: (p. 237), "D'autres habitants, plus dangereux que les hôtes établis par les seigneurs, que les petites agrégations de charbonniers, de cendriers, de brisseliers ou de tuiliers, étaient les voleurs, les larrons, dont les compagnies redoutables fondaient sur les malheureux voyageurs obligés de traverser la forêt."

Tracing, then, the gradual destruction of the forests by the grantees of the nobles, as their needs became more insistent, M. Maury goes on (pp. 238–239) to say: "Une guerre sourde et continue fut déclarée à la végétation forestière"; (p. 240), "il n'y avait qu'un remède à ces dévastations croissantes, c'était la concentration de l'autorité forestière en une seule main, l'établissement d'une administration une et simple, qui fût veiller également à la protection de toutes les forêts du royaume et assez de force pour cette protection fût efficace."

The kings by successive decrees regulated the usage of the forests and nursed them, causing thereby no goodwill from nobles, people, or larrons. Then came the revolution. Louis XVI., who had emancipated the serfs, placed the woods in 1791 under the protection of the municipalities. (P. 265), "C'était, il faut le dire, livrer les forêts, dans les communes rurales, précisément à ceux qui les dévastaient. Les villageois, et surtout les montagnards, profitaient de l'anarchie pour se ruer sur les arbres. On les brûla ou les abattit inconsidérément. La haine pour les seigneurs fit porter la hache dans les bois qui avaient été leur richesse ou le théâtre de leurs plaisirs. Les arbres disparurent de tous côtés. . . ."

The Forest as a Reserve for Cultivation.—One use of the waste or forest which we have not considered was as a reserve for cultivation.

Under communal ownership, as long as there was no

Digitized by Google

lack of land, land taken from the waste could be shared rateably among an increase of population at each fresh division, whether at a death or at a stated period. We have very little knowledge how far or how often in early times fresh land was so brought under cultivation, though we find the process going on in all countries in which there are surplus lands. It is simply a question of the amount of the waste reserve. The Russian villages throw off daughter villages instead of making subdivisions of their waste, striving for a law of expansion instead of change. In Ireland, as there was a large reserve of waste cultivable land, such divisions continued until very late. In the Western Islands the reserve of cultivable land soon came to an end, leaving conditions which resulted in perpetual subdivision, leading later to terrible hardship, poverty, and cruelty. A similar exhaustion of surplus lands in the Orkneys resulted in the disappearance of the class of odal freeholders.

Besides division of surplus land among the freemen, two classes of men from outside encroached on the common reserve. The chief or king, with consent at first of the leading men while land was plentiful, and afterwards of his own initiative, made gifts of large tracts of waste land to the Church and to his supporters. David of Scotland was not the only king who by such grants made himself a "sair sanct" for the Crown. In England this process had gone so far before the Conquest that the folkland had come to be looked upon as the king's property, of which he might dispose, subject to the customary rights, which remained because they were inevitable on unenclosed land, and because the process was so gradual that its final upshot could not be seen at that time. After the Conquest we hear no more of folkland. It has become *terra regis*. In the other parts of the Islands the tendency was steadily in the same direction.

Common rights over pasture in the days when land was of little value were very largely given to the monasteries by different great landowners, in view of their improvement by the agricultural and sheep-farming monks, or they accompanied as pertinents the grant to the monastery of a few acres of arable land. These gifts of waste land to the

Digitized by Google

Church, which, being in England outside the bonds of kinship, was dependent on the king's bounty and protection, were made often on terms which relieved the king or lord of expenses which in the first instance would fall on him as common administrator, as for instance when Alexander II. grants to the Abbey of Kelso sixteen acres of land at King's Selkirk, burdened with the obligation of keeping up a bridge over the Ettrick, or a grant made on the terms of providing so many fighting men. So long as any sense of communal control remained the community was not likely to make any protest against such action of their representative. But every grant strengthened the disproportion between the chief and the freeman.

As the chief's power in this respect grew, there could have been very little difference in effect as regards the use of the waste between the chief as kinsman of his people, bound to them by a personal tie and sharing the land with them, and the lord of the manor, controlling the use of the land, but restrained from harsh dealings by the custom of the manor.

The Power of the Chief.—The gradual decay of the communal ownership of land cannot be ascribed to any one cause alone, even in England.

A prime cause was the natural increase of the wealth and power of the king and of the chieftain class from which he sprang, at the expense of the poor freeman. It was not only that his cattle multiplied more greatly on the range and stinted pasture, or even that he had a larger personal following of kinsmen following him and feeding him, as Tacitus, in the *Germania*, tells us that the chiefs were followed and fed. Beyond this an increase of wealth and authority came to him from his position as vested representative of the interests of the community in the common soil, responsibility which steadily tended to become an absolute ownership.

His position as chief gave him, especially when the assembly of people fell into disuse, a deciding voice in all dealings with the land, and in particular with the waste land. In theory the protector of the common rights, he had every opportunity, in view of his large interests, to become,

Digitized by Google

whether by extension of custom or by purchase, or by undue legal pressure or by mortgage and loan, the absolute owner, the lord of the manor. His power and wealth grew by his ability to place strangers as his personal dependents on the waste.

Strangers.—The jealousy of strangers, that is to say, of persons not akin, and not settled by some certain method within the territory, was a feature of all ancient communities, existing long after the kinship has ceased to be the foundation.

It was dangerous to take a stranger in, as the man doing so became responsible for his acts in his own person. A stranger and a person who had no property was liable to be arrested, unless he could find a native willing to become his surety.[8] This was a necessary result of the stationary character of all early societies.

In early days, before commerce and pilgrimage had accustomed men to look more kindly upon aliens, the strangers in the tribe were generally the criminals, bankrupts, and broken men of other tribes. These, with the broken men of the tribe at home, put themselves under the protection of the chief, submitting to conditions which left them in a position very little above slavery. A fuidhir, says the Brehon law,[9] is of this kind: however great the thing that may be required of him, he must (render it or) return the stock or quit the land. And however long he may have been in the service, he must quit the land at length. His evidence was not taken against his lord. Bracton [10] says mere villeinage is that which is a tenure, rendering uncertain and unlimited service where it cannot be known at eventide what service hath to be done in the morning—that is, where the tenant is bound to do whatever is commanded him.

The man who came in from outside, who had no kin to swear or to pay for him in the community, would, if he were a respectable person, be on the way home to his own people. He might be entertained for a night or two, but for no more. Beyond that he was in the hands of the chief. But the stranger could be settled by the king or chief on the waste land of the tribe on terms, and by this means the stranger becomes a very important agent, a prime cause of the break

Digitized by Google

up of the social system, as the kings and chiefs grew in power by the settlement on the uncultivated land of men not belonging to the tribe, not akin to anyone, as their own personal dependents.[11] A good proportion of these strangers were no doubt the refugees and broken men from other tribes.[12]

But not all of them were so. Traders came and settled; men from other tribes married into the tribe; even in those days of close-community and slow motion there was a great deal of travel, which the Norse invasions and the vogue of pilgrimage largely increased. A very slight acquaintance with the Norse sagas shows the perpetual sea voyages and admixture of races which resulted from commerce. As the numbers of the community increase, and they require greater use of the waste land, the trade increase is settling on the waste more men from beyond, who are responsible not to the community but to an individual, causing a conflict which works itself out to a great extent by violence, the unfree men of the chief dragging the freemen of the community down with them.

The settlement of foreigners of property, though jealously regarded, is provided for both in the Welsh and Irish customs, it being clearly assumed that every honest tradesman would sooner or later return to his own people. Every fuidhir, except the bond fuidhir, is able to separate from the chief if he leaves no debts or wrongs behind him.[13]

There is a ridiculous statement which crops up from time to time in the newspapers and in history books, to the effect that the Saxons drove the Britons to the mountains of Wales and Scotland. Apart from its inherent impossibilities,[14] which should strike even the most childlike mind, the absurdity of the thing rests on the alien character of the tribes in the East to those of the West, to whom it was supposed that they had fled, on the ground that they were *all Britons*. There could be no difference, so far as the character of the alien enemy went, between the Eastern fugitive and the Saxon raider. People took no risks in those days from aliens. Both would be enemies as coming from beyond, and both would be enslaved if caught. It is unlikely that the Eastern

Digitized by Google

and Western tribes would even speak the same dialect. As the Somerset man said of the people of Lincolnshire, "They do talk so strange; they do say us, where us do say we."

Just the same absurdity is written by our compilers of the status of the Northman in the time of the Scandinavian invasions. He is represented as being paid by a wicked king enormous sums out of the pocket of the monk chronicler (who has sworn a vow of poverty) in the face of a helpless and indignant nation. The only position he could hold, whether as merchant, pirate, or ally, was as a stranger protected by the king, Malachi, Alfred, Athelstan, Ethelred, and so forth, and settled on the waste, a foreigner for whom the king was responsible. He might under certain conditions become one of the tribe, but otherwise he had no place in the community, and "however long he may have been in the service, he must quit the land at length." It is impossible to make head or tail of any of these early periods without realising the fundamental bond of the kinship of the community.

Death was not a usual penalty in early days, whether under tribal custom or English court law, even if the criminal had no money to pay fines, but rather outlawry, which meant headlong flight or imminent risk of death at the hands of anyone who chose to act. Existence as a dependent of the chief, even on the most onerous terms, was preferable to wandering in the territory of other tribes as a base alien. So it was natural that the chief should settle under his protection on the waste to do him service, weaklings and strangers of all kinds as his own personal dependents, men for whose acts he would be responsible.

This very soon adjusts itself to the king's right of protection given to merchants from whom he takes fees for his services. He extends his grace to fairs and markets, and to those settlements which ripen into boroughs, because in these places there would be a great majority of foreign people with no tie of kinship and no local rights.

NOTES.—[1] 20 Hen. III. [2] *Cal. Patent Rolls, 1313–17*, p. 532. [3] *Description of Ireland, 1600–3.* [4] Every freeman may within the forest (but on his own ground) make a mill, spring, pool, marl-pit, dyke,

Digitized by Google

or arable ground, *without enclosing such arable*, so it be not to the nuisance of any of his neighbours. Charter of the Forest, 9 Hen. III., c. 12. The litigation caused by such acts may be seen in the Year Books. See "Nuisance" in my *Tort, Crime, and Police.* [5] Cox, *Royal Forests of England*, p. 105. [6] Act of James VI. of Scotland, para. 4, ch. ccxiv. That none hunt or hawk within six miles of the king's woods, parks, castles, or palaces under pain of one hundred pounds. [7] Cox, *Royal Forests of England*, p. 218. [8] Responsibility for a stranger, a casual labourer or tramp, "who lies down one night with thee," lasts for three days, "unless a native receives him from thee." *A.L. Irel.*, i. 163. All should take care that they do not receive fugitives in their houses: for if the outlaw is taken in anyone's house, the receiver will lose all his chattels and will be in peril of his life and members. *T.A.C.N.*, ch. 38, De Receteurs. See *A.L. Irel.*, iii. 61. In the early English laws, among the matters pertaining to the king is the harbouring of outlaws. Cnut II., 12–15, Thorpe. No man may harbour a stranger beyond a night without pledges (borch). If anyone bides in a town beyond a night, he shall be brought before the justice or sheriff and be at their will. Assize of King David, c. 3, Acts of Parl. of Scotland, vol. i. [9] *A.L. Irel.*, iii. 131, 385. [10] Folio 26*a*. [11] One of the deis rights (rights in relation to land) of the flaith, the higher class of chief, was "the following of cottier tenants (bothais) and fuidhir tenants which he brings upon his land, because his wealth is the greater and better." *A.L. Irel.*, iv. 312. The divisions of the tribe (or query family) of every chief are stated to be his fuidhirs, his kinsfolk, his "gabhail fodagniat" dependents. *Ibid.*, iv. 283. [12] Alltuds, whether of the king or the freeman, became proprietors in the fourth generation if they have occupied the land, the king's on the king's waste and the freeman's on his land. The freeman's alltud has a qualified proprietorship, which looks much like English villeinage. *A.L.W.*, Ven. II. xvi. 21. [13] *A.L. Irel.*, v. 513, 515–521. [14] A similar drive was tried on in New Zealand many years ago, with the object of confining the natives to one end of the island. When the driving party got to the end, the natives were behind them.

CHAPTER XIX

MEDIÆVAL AGRICULTURE

Arable Farming.—Before tracing the development, and, for the most part, final extinguishment of the user of the waste as common pasture, it will be more convenient very shortly to consider the agriculture with which it was connected. This subject has been well written over, and there is no need to dwell upon it.

Digitized by Google

It is by this time well understood that all agriculture in early mediæval times, and the greater proportion until the close of the eighteenth century, was undertaken in unenclosed fields. In the earlier times the whole community as one took part together in the processes of cultivation, individual action being subordinated to common necessity; the same crop was grown at the same time in the common fields in which the different families or individuals, including the lord and the priest, had a number of strips intermixed and changeable, so that each had part of the weak as well as of the strong land. The whole of the operations were regulated by the bailiff of the lord of the manor in England, and by elected birleymen, or by the agent appointed by the chief in the other parts.

All life in the agricultural community was socialist and self-supporting as far as possible. The manor and the monastery, like the sept and clan, were both societies of men, little nations which combined their forces for all moral and material purposes according to the ideas of the time, the king bearing to the manor the like relation which the pope bore to the monastery. Each person had certain rights in the land which could not be taken from him so long as he performed his corresponding duties. But they were rights in respect of the land as members of the society, not, as now, rights referred to a collection of units of doubtful racial unity, of varying religious unity, connected only by convenience of commerce.

Mackenzie,[1] in 1810, writes of the extreme west of Scotland: "The greatest number of farms in the parishes of Applecross and Loch Carron (5·45 by 57·30) are occupied by small tenants, from two to twenty on each farm, possessing in common, though often in different proportions. . . . Such a farm resembles a small republic, in which every public measure is settled by a majority, and where often more time is spent in debate than in action."

The cropping was managed, according to the strength of the land and other considerations, on either a three- or two-course rotation; the carucate, Fleta, writing in the thirteenth century, tells us, being 180 acres if the rotation was three-course, 60 for winter tillage, 60 for spring tillage, and 60 for fallow; if in two-course, 80 for tillage and 80 for fallow.

Digitized by Google

Arthur Young, an ardent advocate for enclosures, writing at the end of the eighteenth century, says [2] that the open-field management then in use in England was fallow, wheat, and oats, to which he says, "while the fields are open and common, the farmers are by cruel necessity tied down." Lands in Ireland,[3] he tells us, were then managed on "the old system exploded by good farmers in England of sowing wheat upon a fallow, and succeeding it with as many crops of spring corn as the soil will bear." Lowther, writing in 1629 of Eastern Scotland, says that, except in Moray, "they have little or nothing enclosed, neither of corn ground, woods, or meadow. They use all or most part over Scotland no enclosure but staff herding, each man though he have but one beast."

The weak point of all such common effort, especially if the portions are interchangeable, is that there is no incentive to improvement; the system frowns on new venture or bold experiment, often stereotypes bad methods, and throws into the hands of a manager, who may not be the best or most reliable of farmers, the action of the community in times of urgent decision. Yet such a system, the clubbing together of capital, stock, implements, physical power, and brains, would seem to be the only method leading to success where the holders of small parcels of land are to attempt agriculture. It would at least minimise the difficulties arising out of the necessity of water for stock, rights of way, and like matters. The alternative is the large arable farm requiring big capital, held or owned or financed by one man for his sole individual benefit, the type of the middle West in the United States, the farm which forms the ideal of writers such as Arthur Young. He instances a Suffolk farmer holding 1100 acres, who, from an outlay of £2265, of which £150 was the pay of six labourers, £120 of six servants, and £80 harvest expenses, made a profit of £1263.[4]

The communal farming can only hope to succeed by submitting to a manager; it will err always on the side of economy and restriction of enterprise; it will look for large profits without corresponding outlay; it will not attempt great ventures, but will play for safety; if it does not make much, it will do a safer business; but the individual, using the same capital,

Digitized by Google

will, if he is to be successful, try new methods, risk bankruptcy, venture large expenses, and perhaps make a fortune. Arthur Young mentions a Norfolk farmer who, in 1768, had, on an arable farm, 280 steers fatting on turnips and artificial grass hay: the risks arising from the outlay of capital involved would make such a venture most improbable to a company of small holders, such as the mediæval farmers were.

The complete team for the plough, by which land, except in the Western Highlands, was measured, was usually four yoke of oxen, or eight oxen four abreast.[5] The Domesday of St Paul's shows us plough teams in lots of six, eight, and ten horses and oxen. Mr Innes, in his *Scotland in the Middle Ages*, says that the Scotch plough of the thirteenth century was drawn, when the team was complete, by twelve oxen, two being a husbandland, and six husbandlands a ploughgate.

As the plough was of very heavy wood and iron, the land unused to the deep, clean culture of to-day, and the small, thin oxen wintered on straw, the team was none too strong for the work.

A mode of ploughing, of which Giraldus speaks, in the twelfth century in Wales,[6] was in use in some parts of the Islands as late as the opening of the nineteenth century. Sir George Mackenzie, in 1810,[7] says: "The mode of ploughing which was formerly general over the whole of this country, and which is still practised by the small tenants, is somewhat curious. The plough was drawn by four horses abreast. Between the plough and the horses was a long apparatus of twisted birch twigs, by which they were united. The halters were fixed in four holes made in a piece of wood about six feet long, which was held by the driver, who was thus enabled to pull all the horses at once, and encourage them to move forward by occasionally applying his stick to their noses. He walked backwards, with his face towards the ploughman, and directed the width of the furrow slice. A man attended whose office was to keep the plough in the ground by pressing on the end of the beam with his whole weight. A fourth followed with a crooked spade, with which he turned over such parts of the ground as the plough had missed, and he also turned over such slices as had fallen back." The horses were appar-

Digitized by Google

ently fastened to the plough by the birch twigs: an account in Lithgood's *Travels in Ireland*, in 1620, mentions ploughs drawn "by horse tails without any garnishing," the horses three or four abreast. Sinclair [8] says that in Moray the late Sir Robert Gordon, about 1763, introduced the practice of ploughing with only two horses, managed with reins without a driver. In England, under the influence of agricultural Rome, the furniture of the plough was more advanced.

How completely the cultivation of the land was done by a community and not by an individual may be illustrated from either the Welsh or Irish customs regulating co-tillage. From the former [9] we learn that the ox so engaged was not in possession of the owner, so that he could be bequeathed. He was under control of the ploughman and driver, who were responsible for him, and his owner gave surety for performance to be kept until the "tye," which was twelve erws or acres, was completed, the produce being divided between the ploughman, the driver, the owner or provider of the plough irons, the plough, and the respective oxen. In land not divided until the fourth generation, there would of a certainty be a great deal of co-tillage in the common field, to say nothing of the cultivation of tribe land. The owner of the irons was to keep them in order; the driver was to furnish the bows of the yokes with the wythes; and the ploughman was to be able to make a plough and nail it. The provisions in the Irish laws as to co-tillage point in the same direction, except that they include provisions as to fencing the crops of the family.

The English manor, whenever and however its organisation arose, was, in the twelfth and thirteenth centuries, the centre of a system of farming, all the operations being undertaken in common in subordination to the head, who controlled the round of duties both in the common field and in the waste. Like a modern store, it was divided into departments, each under its head officer, and it was almost entirely self-supporting. Of the status and occupation of the different persons who were engaged in such a little world, it will be sufficient to quote Professor Vinogradoff [10]: "It taxes our ingenuity how to draw distinctions between the various kinds of dependence and service." Those who wish to do so will find ample exer-

Digitized by Google

cise for their ingenuity both in the monastic records of the time and the modern commentaries.

In Scotland there were tacksmen tenants with leases, bowers who farmed milk kye and their grass, and steel bowers who received stock and cattle with their farms.[11]

The Chartularies of the very numerous English and Scottish abbeys, such as Abingdon, Kelso, and very many others in all parts, and such authorities as the Domesday of St Paul's, can be referred to for particulars of estate management. Walter of Henley, Fleta, Bishop Grossetete's rules for farming, composed about 1240, and an anonymous husbandrie of about the same date, give additional particulars. The sum of all was an elaborate system of checks and counter-checks, a most careful account-keeping, and a general distrust by and of everybody concerned. It has no bearing on later history.

Eastern Scotland in the fifteenth century had also caught the fever of agriculture. Acts were passed in 1424, 1426, and 1449 enforcing agriculture, whether it paid or not. Everyone was to plough or dig.

Monastic Farming.—It is to the farming of the great abbeys, for the most part, that we must refer the first great breach in the communal society. The Irish or Scottish monk was not necessarily akin to the tribe to which his monastery belonged, but he professed to be, and, if not, the exception, however common, could be covered by fiction. But the Roman monk, the Saxon of Coldingham or Arbroath, of Dunstable or Romsey, was aggressively adverse to kinship as a tie of life. For him there was one tie only—Rome. The husband, the farmer, the cottar, were his unfree tenants at a fixed rent, not his free companions.

Moreover, the monks, forbidden usury, bound by a vow of poverty, introduce us for the first time to the commercial use of land as a means of wealth; they raise corn in large quantities; they have flocks of sheep on the common waste, which is lavishly granted to them by pious kings and feudal lords; they grow wool as well as corn for export.

The Rental of Kelso for 1290, the oldest description of such rural estate management, "particulars gathered of a state of occupancy previously," shows us the monks holding

Digitized by Google

their immense territories in hand, and farming them by overseers, taking rents in work and produce, and shipping huge quantities of wool; it shows us husbandmen, who appear, like the Irish daer ceile, to receive stock as well as land, a tenancy here called stuht, and higher free tenants, and cottars with a few acres.

The Cistercian sheep ranchers of the great Lowland monasteries need not look upon enclosures as a necessity, for their farming was on such a scale that it paid them far better to employ a shepherd and neatherd to "staff herd" their animals than to make costly enclosures. It is from Southern England, where the corn-growing is a preponderating interest, that the impulse to general enclosure comes.

Meadows and Stinted Pastures.—When the spring came, the work animals lived on the stinted pastures or on the field itself. "Our townesfolk," says Best [12] in the seventeenth century, "most commonly on the 3rd of May, begin to tether their draught cattle, viz. their horses and oxen abroad; in the field on the heads, common balkes, bounders of fields, and theire owne lande endes, together with the towne, towne side, and the like. Then our chiefe care is to save our corne, our owne lande endes, and our fresh pitts,[13] and if wee doubt eyther theire teatheringe or their turning loose on nights, but to rise before day bee light, and sometimes at midnight, otherwise one shall never meete with them."

The sheep had to be folded or tended at such times. "After Lady Day [14] our farmers usually hire boys and girls to keep the ewes and lambs aboute the towne, towne side, and lanes till mid-April, then, when the fields have gotten some foothold, they carry them further from home." I use these later examples, since, as agriculture was stationary in the earlier times, there is no reason to suppose that the practice in the seventeenth century differed from that in the twelfth, or, for the matter of that, in the time of Saul and David, except that the sheep would be more closely tended.

Such meadows of wild grasses for hay as then existed were very few and of great value. Thus, in the Domesday account of Edington in Wilts, there are enumerated 35½ carucates (say 5000 acres) of plough land, pasture a mile long and half a mile broad, and wood ten furlongs long and five broad, but only

Digitized by Google

100 acres of meadow. Of Pickering in Yorkshire, the Survey gives meadow half a mile long and as much broad. But all the wood which belongs to the manor is sixteen miles long and four broad. Canon Taylor, in *Domesday Studies*, says of this parish, of which the acreage, 32,700 acres, now corresponds with Domesday, that in the time of the Confessor less than 400 acres were enclosed, about 7000 acres were tilled in open fields, leaving some 25,000 acres as moorland pasture.

The Welsh laws even go so far as to attempt a definition of a meadow as "land appropriated for hay only and enclosed by a fence," [15] and they follow it up by declaring that no one except a lord is to have more than two reserves of grass: a field (I suppose a stinted pasture) and a meadow.[16] All the rest is to be common. There are also heavy penalties for ploughing up the grass boundaries between two trevs, and for ploughing other's land by stealth. Lowther, quoted above, writing of want of enclosures in Scotland in 1629, says, "They have very little hay, unless at a knight, leard, or lord's house, some very little." His horses in Edinburgh were fed with straw. By the Brehon law, five seds and the loss of the produce was the fine for ploughing up land let for grass.[17]

It is hard for us, who find little difficulty in re-making meadows on suitable land that has been manured for many generations, with selected tame grass seeds stimulated by artificial manures, to appreciate how grave was the offence, whether in the forest or in the enclosed meadow, of destroying the matted wild grass, which, apart from the straw of the corn crop, was the only winter forage for all the animals, wild and tame. This little bit of coarse hay was the kernel of all advance in the science of agriculture; it was more important as an agent of progress than the corn crops; and it was of equal value to the stock-raiser, who hoped to increase the number of animals which he could carry through the winter, and by that means the manure for his arable land, and to the corn-grower, who soon realised the value of better-fed stock for his plough. To make any progress in this respect the meadows must be fenced. If not, the greater part might easily be destroyed in a night or two by a herd of swine.[18] It is in connection with the valuable meadow that we first come upon enclosures as a definite

Digitized by Google

necessity, one of the agencies which, in England at least, helped to destroy the communal system as it rested on farming.

Until quite recently, the allotment of meadows by drawing lots was in use in some parts of England. It may not yet as a practice be quite extinct.

The use of the stinted pastures was carefully regulated to prevent the young grass being eaten out too early in the year. The tribesman or tenant had to keep up his young stock either until he was able to send them out to the range, or until he was allowed to put them on the stinted pasture at home.[19]

The same conditions, then, varying in degree, obtained all over the Islands: there was the common waste, the range for game, and summer pasture for tame animals, and general reserve; there was the arable, cultivated by families or persons in common, the little spots of wild grass meadow, and the stinted home pasture common to the work stock, the in-milk cows and sheep. How far there was a clear line of demarcation between the range and the home farms depended upon the geographical conditions and the commercial opportunities.

NOTES.—[1] Sir George Mackenzie, *Survey of Cromarty and Ross*, 1810. [2] *Tour in Ireland*, by Arthur Young, vol. ii. p. 21, 1892. [3] *A.L. Irel.*, iii. 187, speaks of fields of grass and corn, and notices fences and railings. In *A.L. Irel.*, iv., arable land is divided into first-class land, hilly, arable, and labour-requiring arable, measured in price by cows. [4] *Six Weeks' Tour through the Southern Counties of England and Wales*, 1767, pp. 11 *et seq.*, 21. [5] *E.g.* Domesday of Yorks, Swine. "This manor was, and is, belonging to the Archbishop of York. He has used there in the demesne one plough, and eight villeins and six bordars having three ploughs and a half. There is a priest with half a plough." [6] Quoted in my *First Twelve Centuries of British Story*, p. 228. [7] *Survey of Cromarty and Ross*, pp. 249–250. [8] Sinclair, *Statistical Account of Scotland*, vol. v. p. 6. [9] *A.L.W.*, Ven. III. xxiv. [10] *English Society in the Eleventh Century*, p. 218. [11] See, for instance, the *Corshill Baron Court Book*, printed by the Ayr and Galloway Archæological Association. [12] *Rural Economy in Yorkshire*, 1641 (Surtees Soc.), p. 118. By "towne" he means the farm, closes, and yards (see below quotations from Marshall and Lord Selkirk), the hagi of the Norwegian odal holding of the Orkneys. Speaking of the sheep, p. 83, last line, he says, "when they come to field and not hange soe much towarde the town." [13] Small shallow trenches or hawhaws that served to bound enclosed lands or portions of common. Best, Glossary. [14] Best, p. 11. [15] *A.L.W.*, Ven. III. xxv. 27, 30. [16] *A.L.W.*, Ven. II. xxii., xxiii. [17] *A.L. Irel.*, iii. 129. [18] *A.L.W.*, Anom. VIII. xi. 7: the meadows are at all times to be forbidden to swine. [19] *A.L. Irel.*, iv. 100: farrow pigs and lambs do not come into common pasturage as between co-tenants until Lammas Day.

Digitized by Google

PART V

THE RIGHTS OF THE SMALL HOLDER IN THE WASTE

(*See* EXPLANATION OF TECHNICAL WORDS, *supra*, p. xxvi)

CHAPTER XX

STOCK-BREEDING AND CORN-GROWING CONFLICT

The Two Kinds of Farms.—I propose next to deal with the subject of the exclusion of the small holder from the unenclosed waste, and so with enclosures, a great agent in the social change. But before doing so, I would point out that there are two distinct varieties of farm planning, which I shall treat separately, the result of geographical formation, which affects the question of enclosures.

Where, in the interior, away from the sea and from rivers, the cultivated parts lay intermixed with the open waste, and the land lay fairly level, there could be no sharp division except by fencing or by perpetual watching of the cultivated land against trespass from the open waste beyond and around it. It is this which accounts for the elaboration of the English Forest Law.

But where, as in the Western Islands and along the coast, and in the river valleys,[1] the cultivable land lay by the water, which in those days was the chief means of communication, the waste, the steep hills beyond, could be sharply divided off by fence or dyke from the cultivated part. The first lent itself to the manorial system, to individual ownership, and to arable cultivation, the lord's demesne lands being mixed with the tenant's holdings and with the uncultivated pasture and woods; the second, which may be called the township farm,

Digitized by Google

was found where the common user of the land survived under the co-ownership of freemen, and where stock-breeding of some sort was the more important industry.

Where such a separation of the waste from the cultivable land was possible, as for instance in the Western Highlands, there was little friction between adjoining townships as to pasturage, or between the stock-breeder and the arable farmer as to trespass, and no need of drastic forest laws. But where the waste, as in Southern England, was intermixed with the cultivated lands, the inconvenience of watching animals on unenclosed land led very early to the use of remedies for restraining them, on the one hand by the regulation by authority, with which we have just dealt, and on the other by enclosures.

The Yardland Theory.—There is a theory, induced by the division of the inhabitants of these Islands into two separate classes, called Teutonic and Celtic, that these races or peoples or nations indulged in past ages in a totally different development, a difference which is reflected in their modes of farming. It is a theory which leaves out of sight the economic causes which, apart from political interference with farming, modify methods or hasten social changes.

It has been assumed, for instance, by Mr Seebohm and others that the yardlands of the corn-growers on the east coast are peculiar to the Teutonic race, and the lie of the hamlets on the west a sign of Celtic depravity. It may be so, but it is very unlikely, very improbable, and very easy to be accounted for by other means.

Without going at once to the most rational explanation, let us set up a few speculative theories. It might be the result of different immigrations of peoples taking place at different times.

The tribes in motion at the time of Brennus's assault on Rome would be very unlikely to bring away with them to Britain the same arrangement of fields or methods of cultivation as other tribes in motion six centuries later, any more than visitors to England in the fourteenth would adopt the four-course system of the nineteenth century. Some, traversing the royal road from Susa to Sardes, may have come across

Digitized by Google

the Babylonian plains on their journey west, and have become acquainted with different methods of wheat-growing in the East. May we not say that it is likely that the Western Highlands took their township formation from the Scandinavian north, through an immigration round the Orkneys, and the Southern Irish and the people of the West of England theirs from the traders of the Mediterranean, Greeks, Phœnicians, or Carthaginians ?

They must have been bold seamen who first struck out into the Atlantic round Land's End from Cadiz, and surely great traders. As the Irish immigration would appear to have been the earliest in point of time, it might well be that their system of farming came to them from the East through Spain, which was much earlier civilised by contact with the traders than Gaul, and much nearer to Ireland, according to the seamanship of that time, than any part of the greater island, except the extreme south-west. Only very daring sailors would reach Ireland at all.

Arable Cultivation modifies the Social Use of Land.—As a matter of fact, apart from any speculation, any such variety in farming methods only emphasises the difference between the pastoral life, concerned with the breeding of animals and co-existing with a communistic tribal formation, and the grain-growing, which leads to fencing and the individual ownership of land.[2]

Nearness to the great grain-growers of the ancient world of Europe, the Romans—Republican, Imperial, Pagan, and monastic Christian—influenced the date at which pastoral pursuits gave way to agriculture ; the suitability of the climate and soil for either was assisted by the labours of those who brought to the monasteries the science of grain-growing and the legal ideas of land management and land ownership of the Romans. But they could not have pretended to have succeeded in Eastern England and South-Eastern Scotland if the natural fitness of the soil and climate for grain-growing, and its unfitness for grass, had not led them into the way.

Where dairying and stock-raising is the important industry, the farmer requires that his homestead shall be so placed that the stock on the unenclosed pasture can freely reach the byre,

Digitized by Google

and that his enclosures for stock shall be convenient for this. In the place of the yardlands round the village he must have his hagi, his enclosed pastures—in other words, he wants a certain amount of isolation.

There was another circumstance. When the main support of cattle was the open range, more than one village shared in the use of it, the cattle intermixing on the range, but driven out by a certain route and brought in in the autumn. In a country at all rolling, the stock-breeder wishes to have every convenience for pasturing both sides of the hills, while at the same time he can keep his stock under control, and be able to pen or house them at convenience, and water them at the stream which runs down the valley. He and his family will salt and hunt up the stock on the waste. A hamlet or a few isolated farmhouses are more convenient than a large village for such a business.

The grain-grower, on the other hand, must have his grain fields, if only for safety, near his house, and his neighbours near him to help in field operations. In the one case the man wishes his home pasture for stock, in the other his corn fields to be convenient to his homestead. The village street and the yardlands are necessary for arable culture.[3]

Rainfall.—Which parts of the Islands were suitable for grain and which for grass is a matter dependent on rainfall. If you should draw a rough line from Southampton to Sheffield, and through Carlisle and Lanark—Inverness, you would have roughly a division of cultivation which would explain without any need for theories about race or tribal customs why west of that line the far greater amount of land is devoted to pasturage, and east of the line to arable cultivation. It is not only the hilly contour of the land that counts; in the west throw down a sod and stamp on it, and it will grow; in the east it is difficult to find the sod to throw down, and very hard to make it grow. As a result of the difference in rainfall, the whole of the western half of the larger island and the west of Ireland is, to a great extent, a pastoral and dairying country, and the eastern half is principally employed in agriculture. Anyone driving from Cirencester to London, following the course of the Thames, then from London to Cambridge, and from Cam-

Digitized by Google

bridge across the Chilterns back to the west, would find the same conditions existing to-day as they did when Arthur Young took his six weeks' tour in the eighteenth century—great corn fields on the east coast, to which was attached the business of fattening stock, and a vast expanse of grass in the west, which could be used most profitably for growing stock.

I give a few figures from the statistics of 1880,[4] which may help to explain my meaning. Statistics of counties by themselves may be unreliable, as they are liable to be crossed by local variations of industry, such as potatoes in Anglesey and Ireland, hops in Kent and Hampshire, apple orchards in Hereford and Devon; and they are very greatly affected by the statistics of sheep breeding and by the abandonment by absentee landlords of good pasture land to wild deer, variations which have to be considered in drawing any conclusions from the number of cattle. The very name of Huntingdon, for instance, reminds one of the green waste which covered it in the time of Henry II., while the proud boast of Anglesey was its ability to provide corn for all Gwynneth. The sheep of Huntingdonshire are more than three to one of those of Anglesey. Salop and Worcester have 581,000 sheep, and Norfolk 638,000.

In Scotland, the large acreage given up to mountain deer, and the introduction of sheep on a large scale into the Western Highlands, affects the reliability of the contrast in cattle. Yet nowhere else in the Islands is the contrast in corn-growing so pronounced. I have not added, for reasons of space, the statistics as to oats, as the small total of cultivated land in the west, except in Ireland, precludes any large acreage of grain. I have, for the same reason, selected only certain counties, trying fairly to balance; but I warn any untravelled reader, who is unacquainted with the vast amount of land lying waste and unused in these Islands, that any such balance of pasturage and arable can only be considered in connection with great tracts profitably devoted to sheep, such as in Wiltshire, Dumfries, Argyll, and Tipperary. The particulars as to the sheep in Ireland are those of 1916. They are not given in *Bevan's Atlas*. The amount of grain raised in Ireland, even in the rough and poor counties of the west, is in striking con-

Digitized by Google

trast to the very small amount of cultivation in the Western Highlands of Scotland, especially if one keeps in mind the large crops of potatoes raised in the island.

West.	Acreage.	Cattle.	Corn %.		Cattle.	Acreage.	East.
Somerset	1,049,815	207,783	12·6	36·6	165,452	1,055,133	Essex.
,,	,,	,,	,,	20·6	103,100	934,006	Sussex.
Hereford	532,898	75,221	18·6	47·9	46,490	524,926	Cambridge.
Salop and Worcester	1,313,620	198,461	20·5	32·8	108,278	1,356,173	Norfolk.
Anglesey	193,571	43,740	13·63	41·75	28,313	229,515	Hunts.
Cheshire	705,493	151,866	11·3	34·2	83,381	804,798	Yorks, N.E. Riding.
				26·4	39,674	328,427	Fife.
				25·3	8,237	179,142	Haddington.
				21·6	16,571	297,161	Berwick.
				10·3	29,349	298,579	Stirling.
				12·2	16,976	428,494	Roxburgh.
				15·4	18,907	234,926	Edinburgh.
				4·6	5,934	227,869	Peebles.
Argyll	2,083,126	59,976	1·1	22·2	10,957	81,114	Linlithgow.
Ross and Cromarty	2,016,375	42,735	0·9			2,075,712	
				16·9	152,106	1,260,625	Aberdeen.
				18·1	25,207	248,284	Kincardine.
				16·6	46,304	569,840	Forfar.
				14·1	40,259	439,219	Banff.
				11·8	23,031	340,000	Elgin.
Inverness	2,723,501	51,287	1·5			2,857,968	

Total Cultivated Area in Scotland

Inverness	4·6	23·2	Caithness.
Sutherland	2·5	47·9	Aberdeen.
		48·5	Kincardine.
		44·5	Forfar.
		38·1	Banff.
		30·9	Elgin.
Argyll	5·7	75·0	Fife.
Ross and Cromarty	6·5	64·6	Haddington.
		65·5	Berwick.
		38·2	Stirling.
		42·2	Roxburgh.
		57·2	Edinburgh.
		18·4	Peebles.
		73·0	Linlithgow.

Digitized by Google

IRELAND

West.	Acreage.	Cattle.	Corn %.	Cattle.	Acreage.	East.
Waterford	456,198	98,869	8·4	10·3	105,143	466,261	Cavan.
Cork	1,838,921	381,757	7·76	18·65	72,844	318,806	Monaghan.
				14·06	158,834	778,943	Tyrone.
	2,295,119			20·1	132,413	611,936	Down.
Galway	1,502,362	158,890	4·21			2,175,946	
Sligo	451,129	86,087	6·16				
				18·0	120,548	575,700	Wexford.
	1,953,491			12·10	118,987	507,254	Kilkenny.
				10·9	82,874	418,497	Kildare.
						1,501,451	

Read in connection with these :—

RAINFALL AVERAGE OF TEN YEARS

Somerset (Wells)	35·06	18·70	Essex (Shoeburyness).
Hereford (Ross)	29·88	21·81	Cambridge.
Lichfield	29·32	25·12	Yarmouth.
Chester	28·43	24·84	York.
Argyll (Ballachulish)	83·81	26·38	Haddington.
		22·78	Leith.
Fort William	80·05	29·68	Aberdeen.
		22·88	Nairn.
Stornoway	47·93		
Waterford	38·32	37·95	Down (Donaghadee).
Cork (Blackrock)	43·29	42·82	Bray (Wicklow).
Galway (Tuam)	44·10	40·57	Londonderry.
Sligo	41·16	29·87	Dundalk.

SHEEP

Cheshire	98,892	684,091	Yorks, N. Riding.
Anglesey	46,735	155,059	Hunts.
Argyll	1,021,948	267,901	Berwick.
Ross and Cromarty	361,236	506,609	Roxburgh.
Inverness	711,910	169,512	Peebles.
		137,693	Aberdeen.
Galway	626,544	122,808	Down.
Cork	231,867	126,724	Kildare.

After all deductions are made for local variations and conflicting industries, the striking result, which cannot be discounted, is this :—In the East there is an immense preponderance of corn-growing ; in the West, the rainfall being unfavourable to corn, and the grass sweet and plentiful, there is very little corn and a proportionately large preponderance of cattle. Now it is an axiom of good farming that corn cultivation does not of necessity mean fewer cattle, but rather the reverse ; as the saying has it, no corn no cattle, no cattle no manure, no manure no corn.

According to farming canons there ought to be as much

Digitized by Google

stock in the corn-growing East as in the pastoral West. This is the case in a few counties, notably Lincoln, and it is the case to a large extent in Ireland, a fertile country if it were freed for Anglo-Scottish control. But so especially adapted for stock-raising is the whole of the British Islands west of the line I have suggested, that in this part the cattle, in spite of the small area of corn-raising, were generally far more numerous even in 1880 than in the East. If the comparison was one of the weight of the animals, it might not be so effective.

The historic antiquarians speak of a wild-grass system as peculiar to the Celtic parts, in which the fields, after corn cultivation, were thrown out to grow up in pasture. It simply amounts to this: where it grew easily, natural pasture was allowed to take the place of arable in the place of a fallow after the forest land had been long enough under arable cultivation to have felt the sweetening effect of the sun, and to have acquired a rough drainage; where, as in the eastern counties of England, grass grew with difficulty, arable cultivation on a two- or three-field system with a fallow took the place of pasturage, the stock being turned on to the field to clean it every second or third year. Where the land lay low and flat, and was difficult to drain, a frequent case in the eastern fens, a system of long narrow strips, the earth bedded up to the centre by the plough, was the most natural means of lessening the excess of water. The system found convenient when pipe drains were unknown was no doubt extended to other cases.

Marshall,[5] while he considers that formerly nearly the whole of England lay unenclosed, the meadows being on the low-lying lands, the more distant land pasturage and wood, the inlying land "stinted," says that in the extreme West this system did not prevail. Here the custom was that the lord of the manor assigned portions of the common pasturage to persons who had rights of use to be ploughed up for two years for wheat. Then they returned to common pasture. This is the result of the ease with which grass will grow in the West. The general practice as to meadows was to divide the meadow into as many portions as there were persons, and then draw lots.

Sinclair,[6] treating of Perth county, says the ground is prepared for yielding three crops of oats by folding the cattle upon

Digitized by Google

it, or by watering by means of the rivulets which run from the hills, and, after being thus cropped, it is thrown into grass.

I do not believe that Celtic or Teutonic has anything to do with it. It is purely a question of rainfall.

Fencing.—One of the first and most prominent evidences of the social change is an increase in the amount of enclosed land. The common fields for cultivation must have been generally, though probably not always, enclosed as being cheaper for the community than perpetual watching; stock-breeders require divers small enclosures for their different bunches of cattle; but apart from this, and from the necessary enclosure of meadows, individual ownership called for enclosure from the common stock, and from persons riding or driving over the fields, which in the then state of the roads could not have been uncommon. Tusser, in the sixteenth century, gives as an argument in favour of enclosures this kind of damage, instancing the damage done by driving flocks of sheep to be washed across corn fields.

The men of the Islands in the Middle Ages were as much alive to the convenience or the necessity of enclosures as we are to-day. But the mechanical means were not, as they are at the present day, easily at hand in the form of wire or iron posts. Enclosures were a matter then of comparative cost; where it was cheaper to staff herd cattle or sheep or swine than to enclose large tracts with fences of stone or wood or thorn, the man gifted with common sense, who had struggled with the land for existence, would so herd them; it is only very gradually that the mechanical means so improved as to balance the cost of enclosure.

Apart from the waste of timber, jealously guarded, the cost of getting out and putting up a wooden fence of any description was very considerable; axes, nails, unless the palings were bound with withies likely soon to be broken by animals, iron wedges, supplemented by the stone gluts which antiquarians suppose to be palæolithic axes, would all have to be procured at some cost. Though palings were used for fences, it was for king's or lord's or abbot's parks. The common fields were enclosed either by split rail fences, if the wood was plentiful, or by thorn hedges with ditch or bank, or dry-stone

Digitized by Google

walls, such as are used in many parts of the Islands (*e.g.* parts of Gloucestershire) for fencing at the present day. Staff herding would have the additional advantage that the herd could keep watch for raiders or enemies.

Our notices of enclosures in early times in England and South-Eastern Scotland are casual ones. The Welsh laws suggest that, except for meadows, fencing was not considered a necessity. Every owner of corn was to mind his own corn, and every owner of beasts his beasts, on risk of their being impounded for tresspass.[7] But when the crop was harvested, the owners must look after it, and the cattle are free, and the pigs.[8] Crop is defined [9] as "corn after it is severed from the land whereon it grew; the produce of an orchard; cabbage; flax after it is cut or in a garden uncut; tedded hay; thatch for houses; and their fence (thorns ?); leeks, and everything that pertains to a garden."

So long as cultivation was in common, so long as the community had common interests in the soil, it was unlikely that any co-owner would intentionally turn animals on his crop.

Western Scotland gives us no record of this time; but any silence elsewhere is compensated by the attention given to fencing in the Irish Brehon laws. We have to come down almost to our own time before we find the details of enclosure dealt in with equal care or such evident appreciation of the difficulty of balancing the duties of men cultivating land and ranging cattle.

There is mention in the very ancient Senchus Mor of the necessity of fencing common fields for cultivation.[10] The necessity for fencing the common lands may very likely have occurred between the date of the reduction into writing of the text of very ancient custom and the much later commentary.

There is immediate distress for neglect of fencing in accordance with the pledge given for corn fields and grass fields;[11] but the detailed provisions about fencing are found in the "Judgments of Co-tenancy," in vol. iv. of the Laws. This tract shows the properties of the group family subdivided and separated by joint fences. All fences were joint fences. Fines were imposed for improperly made fences, and for delay

Digitized by Google

in fencing. Even where the family land had been partitioned, the family remained liable to this duty. "Let them distrain his family until they fence their brother, 'the defaulter's' land." [12]

That all might be constrained to help in the work of fencing, a rule is given that each of them shall give his victuals into the hand of the other at night that he may remember to come in the morning.[13]

Four kinds of fences are mentioned, of great height to turn deer: (1) a ditch with an earth bank, the ditch to be three feet deep, and sloping from one foot wide at the bottom to three feet at the top, with the bank to correspond; (2) a dry-stone wall, three feet thick and six feet high; and two kinds of rail fences of split wood, one so close as to turn small pigs: "the top of the one tree shall be on the trunk of the other tree, and so as that the smallest sucking pig could not pass through it for its closeness, nor the ox pass over it for its height; the other, the naked fence, much less close, but the same height." "A trench or stone wall in the plain; a naked fence in the half plain; and the close fence in the wood." [14] The close fence is the modern Virginia rail fence.

Besides the provisions for fencing, the Irish law required specific care to be taken of stock on unfenced land: "a yoke for the pigs; a hood for the hens; ties of leather for the goats; a spancel for the yearling calves; a shepherd with the sheep; a herdsman with the cows." [15]

Trespass of cattle is minutely estimated as to its nature, length of time, time of day or night, season of the year, size of animal, and sufficiency of fence, by a "worthy neighbour," in grass of equal value.[16] Fines are also laid down for damage done by the pet pig kept in an enclosure, the pet pig being represented, very truly to nature, as leading the herd into trespass.

Each part used for fencing the material nearest to hand, most effective, or least expensive. In the north and west of Scotland the stone wall and dyke separated the cultivated land from the common out-pasture. In England the quickset hedge and ditch, not so effective as a timber fence against deer, or even mischievous tame stock, but less wasteful of

Digitized by Google

timber, became the usual mode of making enclosure. Fitzherbert, in the sixteenth century, speaks of the ditch as four or five feet wide, and two and a half to three feet deep, and he gives directions for making quickset fences.

Enclosures, then, as a remedy against trespass, an encouragement to individual improvement, a means of acquiring land in severalty, became, as time goes on, increasingly common, encouraging the break up of the common cultivation of the community.

NOTES.—[1] See, for instance, the map of a portion of the Thames valley in Maitland's *Domesday Book and Beyond.* [2] All West European gardening and farming comes from the Romans. Their agricultural writings are inconsistent with common culture. *Palladius' Husbandrie* gives elaborate instructions for grain-sowing, leaving times and places to individual judgment. He gives directions (41, 43, 44) for buying or choosing a field, and his fields have no balks (ii. 3). [3] See Mr Seebohm's plan of Hitchin in his *Village Communities.* [4] Bevan's *Statistical Atlas*, 1880. [5] Marshall, *On the Appropriation and Enclosure of Communable and Intermixed Lands*, 1801. [6] Sinclair, *Statistical Account of Scotland*, vol. viii. p. 568. [7] *A.L.W.*, Ven. III. xxv.; Dim. xxv. 1, 2. [8] All land is open to the swine from the feast of St John to the Calends of January, except the meadows, which are closed during this time. *A.L.W.* Ven. III. xxv. 26, 27. [9] In *A.L.W.*, Ven. III. xxv. 10. The definition looks late, to my mind. [10] *A.L. Irel.*, i. 175, Comm. [11] *A.L. Irel.*, i. 215, 217. [12] Judgments of Co-Tenancy, *A.L. Irel.*, iv. 131. [13] *A.L. Irel.*, iv. 77. [14] *A.L. Irel.*, iv. 77, 113. [15] *A.L. Irel.*, iv. 87. [16] *A.L. Irel.*, iv. 104.

CHAPTER XXI

DRIVING OUT THE SMALL FREEHOLDER. EASEMENTS

Copyholds and Customary Freeholds in England.—As land became more valuable, and the economic conditions changed, efforts were made to seize the communal rights of customary tenants in the soil. The dealings with the waste affected the small freeholder, as well as the unfree man, who afterwards, becoming a copyholder, was almost at the mercy of his lord in that respect. The consideration of this subject, and of the common rights of each co-owner against the

Digitized by Google

other, forms the stepping stone to an account of the causes which led to the decay of communal life in all parts of the Islands, especially with regard to the township farms of Western Scotland, the Orkneys and Shetlands and Ireland.

There are, says Mr Elton,[1] speaking of course solely of England, three kinds of customary tenures as they exist in modern times: the border tenant right of the North of England; the customary tenures in the Midlands and south-eastern counties; and copyholds for lives by West of England tenure, mostly on Church lands.

Mr Elton's grouping can stand for the condition of all parts of the Islands, provided we remember the variations to which local conditions pointed.

In the south and west of England there are even now vast bodies of waste and unenclosed land. The traveller from Waterloo to Weymouth, for instance, if he will look out of the window instead of reading *Tit Bits* or *Answers*, will notice that he is passing through an almost uninterrupted reach of waste land, level and hilly, marshy, barren, thin, and fertile. This waste does not represent land which has fallen back from cultivation owing to the Free Imports system; it is land which it was not thought worth while to cultivate in days when the best arable lands were cultivated on a very expensive system of high farming, when the pressure of population was not so great as now, and when much rich land, which, owing to free imports, has now gone back to grass, was then bearing crops of grain.

But the trade influences from the Continent, the near market, the aptitude of the land for corn-growing (a natural equation quite ignored by Cobden) made enclosures of land fit for arable, from the time of the Statute of Merton, the chief pivot on which the decay of the community in England turned. Individual ownership comes about by individual improvement, which is the only legitimate way in which it can come about.

Going north and crossing the Trent, the land relations change. The parishes become very much larger, the area of rough and unenclosed land much greater, the character and quality of the land less especially fit for arable farming, the climate more uncertain and severe.

Digitized by Google

Very soon individual occupation resulting from improvement, the enclosure of the best land for arable, gives way, as the motive power for the destruction of the communal society, to a competition for individual user of the unenclosed waste for pasturage and for commercial uses.

Though the actual degree of certainty of possession might vary in these three kinds of customary tenure mentioned by Mr Elton, they were alike in this, that the terms of their holding were according to local custom.

The whole of villeinage and copyhold tenure would seem to turn on the right of alienation. If the tenant could not alienate against the will of the lord, he would be in no worse position than the free tribesman under the Brehon law, so long as the communal system existed. To what extent he might alienate would depend upon the local custom. The custom generally was that the son succeeded the father in his holding on paying the customary dues for admission. Speaking broadly of the whole Islands, as the group family ceases to be the unit, the son had an unquestioned right of inheritance, provided that he paid the dues fixed by immemorial custom.

"Custom [2] is the life of a copyhold." "The immemorial custom is part of the law, and stands with it," and it was remarked that it was then so in Ireland, "where some give more and greater privileges to others to induce tenants to inhabit and manure their land." That being so, the man who held by local custom, and who knew the local custom dating back to unknown times, would not much care if the monk who drew up the Court Roll inserted words such as *servitia*, *servilia*, or *tanquam nativus*,[3] or stated that the tenant held only at the will of the lord. The reign of the sword was not so entirely gone that the tenant would concern himself about the words if he had possession, and if the whole neighbourhood knew the custom.[4]

Still, short of force, the copyholder's position in England was very uncertain, and there was every inducement for the lord to turn freeholds into copyholds, where the tenant's labour was not required, so as to seize the waste for the lord. As an example of the value of such rights in an action, the Prior of Launde,[5] in respect of beasts seized, claims that it

Digitized by Google

had been the custom from all time in respect of common appendant that every commoner of the vill who holds one virgate of land should have eight oxen,[6] and if more or less land, animals in proportion, and if anyone should put more or other beasts on the common, the lord might impound them, for *beyond this customary right the lord had the right of agistment from without or within.*

The Grantees of the Monastic Lands.—When, in Henry VIII.'s time, the monasteries were dissolved, the grantees of the monastic lands attempted to turn out the tenants on the plea that their rights went with the rights of the monastery. They were only partially successful. But it was very difficult for the poor tenants to resist the pressure which those new owners put upon them.

"These extortioners," says the supplication of the Poor Commons, "buy at your Highness' hand such abbey lands as you appoint to be sold, and when they stand once full seized therein, they make us poor Petitioners so in doubt with their threatenings that we dare do none other but bring into their Courts our copies taken of the Convents and of the late dissolved Monasteries, and confirmed by your high Court of Parliament. They make us believe that by virtue of your Highness all our former writings are void and of no effect, and that if we will not take new leases of them, we must then forthwith avoid the grounds as having therein no interest."

The Northern Tenures.—As soon as we leave England south of York, the attempts at the destruction of customary tenures in the northern counties, and of the whole communal system in the Western Highlands, and of the odal rights of the Orkneys and Shetlands, are little else than the attempts of the Stuarts to enrich the Crown by the destruction of the northern statesmen, and to impose the feudal system on the other parts of the Islands. This also applies to Ireland, but that country has a longer history, and must be treated separately.

James VI. and I., who, from his earliest years, had always been hard up, set out to seize on all the lands held by customary tenure in Westmoreland and Cumberland, encouraging the great landowners to join the Crown in the spoliation. A bill was filed in Chancery in the name of Prince Charles, com-

Digitized by Google

plaining that the tenants claimed, under cover of tenant right, to have an inheritance in their hands. The tenants fiercely resisted, and the matter was compromised with a declaration of tenant right to a customary estate of inheritance. But James was not satisfied. He issued an abusive proclamation, declaring that this tenant right should cease to exist as a custom "which ought to be damned to perpetual oblivion," upon which the statesmen published a remonstrance to the Crown, for which they were prosecuted in the Star Chamber as for a libel. Then James revived his proclamation, "to repress the insolency of the people." But the judges were not so subservient as he wished. On being referred to, they decided that the estates of the tenants were estates of inheritance according to the will of the lord, descending from ancestor to heir according to the custom of the manor, and they pointed out that this northern custom was more beneficial to the lord than the southern tenures, inasmuch as the tenant paid fine not only on the death of the tenant, but on the death of the lord. So the Scottish Solomon drew in his horns.

The Ulster Tenant Right.—These north of England tenures have an interest as being probably the progenitors of the Ulster Tenant Right of Ireland. They differed from the southern copyholders in this, that the tenants were freemen. They transferred their land by deed instead of by copy of the manor, and had the right to renewal. The lands lying in the highway of Scandinavian invasion were settled largely by men of that race, governed by Scandinavian custom. The land measures, I am told, of the north of England, the south of Scotland, and of Ireland, are nearly identical.

When the Anglo-Scottish rulers of Ireland have, in spite of the most solemn proclamation and promises, robbed the Irish chiefs and people of the lands of their septs, the lands of the adventurers, the undertakers the tenants of the Jacobean plantations of Ulster, are apportioned in a form of socage tenure according to a custom which is nearer to these north country English tenures and to the ancient tribal holding of land which such tenures represented than to any other form of English customary land-holding by an individual.

The custom crystallises at the meeting of the ways. The

Digitized by Google

Scottish kindly tenant, who accompanies the Montgomeries to settle on Con O'Neill's lands, was accustomed to individual holding, but his Irish sub-tenants had never let go the communal ways. The Saxon tenant was powerful enough as an individual to look after his own rights, but his lord was then, as always, inclined to lean to any advantages which accrued to him by the adoption of the spirit of the tribal system. He distributes the tenancies in the land in socage, not in feudal tenure, to the tenants as if he were a chief making division of tribe lands. The tenancy appears to shape itself, unconsciously perhaps, as a compromise between opposed principles which cannot be reconciled.

It was a tenancy to an individual, but it took the form of a tenancy "at will." Although there might be no words said or written about it, there must always have been in the minds of any contracting Irish, and even of the Scottish kindly tenant, the communal conditions which even then survived. The holding may even have been liable to be interfered with by acts neither of the lord nor of the tenant, the rearrangement of the common waste of the sept on a redivision.

But it was usually a tenancy for lives, often for three lives, and was subject to the central principle of the Ulster Tenant Right—the right of the tenant to sell the goodwill of the tenancy at will, subject to a right of pre-emption to the lord.

What did the tenant propose to sell? He claimed the right of sale of the right to sell, the right to a fair rent, and the right to continuous occupancy. In some form or another each one of these rights can be traced back to the tribal conditions to which the Scottish plantation was opposed.

A tribesman could sell his rights in the land so far as they did not conflict with the resultant rights of his kinsmen and chief; he was entitled to his allotted share so long as he paid the specified dues to his sept, away from any competition rent; and very early or late, at varying stages of varying societies, the descent by family from father to son, in the place of a redivision among the greater family, on payment on each occasion of a fee for registration, had modified the tribal custom.

So, in spite of the tenancy being "at will," it was, as James's judges declared, an estate of inheritance, perpetually

Digitized by Google

renewable by a fixed fine to the chief at death, saleable by the holder, and subject not to a competition or rack rent, but to customary due; existing in our own day as an example of good tenancy, giving the tenant security for his improvements, power to borrow money for outlay, and encouragement to expenditure for all purposes of good farming.

The development of the Ulster Tenant Right was not at all plain sailing. The English settlers soon fade away before the Scots, less fit probably from their more advanced commercial leanings to adjust the compromise of system. The lords, as their safety and independence of the native Irish increased with time, did not acknowledge in the tenant all the advantages of the right any more easily than in the English northern counties.

They tried to have it "damned to perpetual oblivion," and could no doubt have succeeded if they had had to deal only with the Irish Roman Catholics, disabled by infamous penal laws from receiving leases of lands, oppressed and discouraged.

But the Scottish Presbyterian was under no such disability, and he was as keenly alive as the lord himself to his individual advantage. He had learnt in the "great house" of Scotland to fear God and take his own part. So he fought through the centuries with varying success. In 1734, when the Irish Society refused to renew the right, a large emigration of tenants to America resulted. It is said that at the surrender of Cornwallis at Yorktown there were present seven generals of the American army, the descendants of Ulstermen who had been evicted from their holdings.

The secret societies of the tenants—the Hearts of Oak and Hearts of Steel—set off secret offers to the landlords from outsiders to take the lands of which the tenant claimed the goodwill.

In the south of Ireland the peasantry, at the feet of their conquerors, discouraged from work by the successive destructions of their industries, had no such advantage for farming, and no sympathisers across the narrow seas to whom they could look for help. Worse off than the villein and copyholder of the south of England, they held, as a conquered

Digitized by Google

people, strictly at the will of the lord, on a rack rent system, the gulf widening through the centuries, the bitter hate of the Irish for their oppressors increasing with the contempt for them of the Anglo-Scot.

Common Rights between Co-owners.—Before dealing further directly with enclosures, there is a subject, small in itself, concerning two collections of little things which lie at the heart of all social landholding: (*a*) the common rights of user which exist over the unenclosed waste for all members of the community; and (*b*) the rights which, so long as there is any social life, can be claimed by any one holder or set of holders of enclosed land from another. These two forms of common right combine and overlap, and are confused by the revolutionary looking for excuses for trouble, whether it is Tyler or Cade or Kett who builds on their abuse a dream of social lotus-eating. They are rights which conflict with enclosures, and for which allowance must be made when individual enclosures come about, unless there is to be grievous wrong done, and undying conflict between the owner of the enclosure and those on whose common user he has infringed.

Such ownership of the common waste as will prevent its misuse must rest in someone—the lord or the chief controls it, and directs and apportions the common rights. He alone can have a controlling power over the use of timber and minerals, to prevent the destruction of the cultivable surface by reckless digging, or the effacement of irreplaceable trees.

But his power, his ownership, is held as chief for the community, and it is limited by its rights of user. Though the soil may be "in him," he cannot enclose the waste, if his enclosure destroys such user, except as the right is given to him by the community acting through its assembly or parliament or birlaw court, or except as by sheer strength he encroaches on communal rights.

The usual common rights in all parts alike of the community over the waste are first and most important the right of pasturage; then the right of turbary, the right to cut turves for fuel or house-building; the right (called in French law *estovers*) to take for fuel or for repairs furze or bushes, or the branches of trees; and the right of digging various kinds

Digitized by Google

of earth, sand, gravel, or loam; also the right of way and the right of access to water.

The first right, that of pasturage, was regulated throughout in all parts by an invariable rule of common sense which might not be broken without disaster. A breach of the rule may be said to have been largely responsible for the conditions which enabled the Scottish chiefs and their assignees to rob the clansmen of their rights in the unenclosed lands, and led to the lamentable evictions in the Highlands of Scotland in the eighteenth and nineteenth centuries, called the "improvements."

The rule is fairly stated in Sir Anthony Fitzherbert's *Surveying* in the sixteenth century, the test being "to see howe moche catell the hay and straw a husband getteth upon his owne tenement will fynde sufficiently in wynter if they bye in house, and to be kept therewith all the winter season, for so moche catell shulde he have commen in summer, and that is sufficient."

The same right in Scotland, called commonty in Scots law, the common property in the moorfield or outfield, was subject to the same rule of common sense.

"In the old statistical account of Bedrule, north-east of Hawick, it seems probable that the land *outfield* in many places was occupied in common by the proprietors or tenants in a certain district, parish or estate, having been thereby entitled to *soum* or pasture on the outfield in summer, in proportion to the number and kinds of cattle he was thus able to *roum* or fodder in winter by means of his share of *infield* land. Each soum represented the grass for one cow, or two two-year-old cattle or five sheep."

The result, where the rule has been broken, is given in the distressing account by Marshall, writing on the agriculture of the Western Highlands in 1794, of the condition of a district in Perthshire in the latter part of April and early in May, after an unusually severe winter: "The pasture and meadow lands gnawed to the quick and strewed with the dead carcases of sheep; the cattle in a starving state, barely able to crawl out of the way of the passenger; . . . the most active of the cattle and sheep running after the plough and harrow, and striving for the roots of weeds turned up."

Digitized by Google

How very important such common rights have always been may be judged by the statement of a learned writer in 1798 that the third part of England at least has been computed to consist of wastes and commons. Such a right had to be very carefully and minutely regulated.[7]

But such minute apportionment meant pains which are wearisome, and the arbitration of neighbours, which may be objected to as lacking authority. Marshall, in the work above quoted, gives as the train of evils of detached grazings and distant sheelings, to which, as a supporter of advanced farming, he objects: the drift of the flock; the driving across intermediate grazings; the inconveniences and danger of having stock at a distance; the never-ceasing disputes with the occupiers of the surrounding lands; the consequent hounding and harassing of stock; and the over-stocking of parts, leading, says he, to the unprofitableness of the petty flocks of the smaller tenantry.

Authority to settle the never-ceasing disputes is necessary for the proper use of common lands and for the preservation of common rights. Mr Dalton's Committee in 1865 reports that in almost all cases of Metropolitan commons, it was found that the surface had been greatly deteriorated and disfigured by excessive and careless digging of gravel pits or by the collection of nuisances, the deposits of cinder and dust heaps and manure, or by the firing of gorse and brushwood. . . . It was also found that many of the commons had been intersected by railways . . . *and that in all cases there was want of a properly constituted body to look after the interest of the public.* This last expresses the whole difficulty which has always faced communal ownership of waste land. It is one of the chief causes of the decay of such ownership. Is there a chief, a lord of the manor, a properly constituted authority to look after the waste lands? If the Highlands were overstocked and unprofitable in the eighteenth century, it was the fault of the chief, who most profited, and whose business it was to see that the proper proportion was observed.

The Laws of Wales and Ireland give a summary of early rights over common lands and of the acts of interference prohibited for their user. There are "three things that are

Digitized by Google

not to be done without the permission of the lord and his court—building on a waste; ploughing a waste; and clearing wild land of wood on a waste; and there shall be an action for theft against such as do so; because every wild and waste belongs to the country and kindred in common; and no one has a right to exclusive possession of much or little of land of that kind."[8] Three kinds in common to a country and kindred: mast woods; hunting; and iron mine; and exclusive ownership is not to be claimed to one or the other of them. The provisions for common pasturage of co-tenants in Ireland, which appear to relate not to the common waste but to land held in common under fence, are stated in the Laws, where the arrangements for fencing are set out in great detail, to be arranged before witnesses as if upon securities and guarantees. The provisions are designed to avoid friction. In order to avoid the frequent quarrels which arise over the depredations of jumping stock, every land occupier must give pledges for his cattle in right of the co-occupancy of land to the four neighbours next to him on the two sides and two ends, in case of fence breaking.

As additional examples of such common rights in communal society:—

England.—Novel disseisin for reasonable estovers in 100 acres of wood to take housebote and haybote, etc., and of a net in the said wood to take woodcocks, and of pasture for six pigs without pannage, and to take rushes in 40 acres of rush land, and to take turf in 16 acres, etc.[9]

Isle of Man.—Every landholder has a right by prescription or immemorial custom of feeding his sheep and cattle upon the commons, their number being in proportion to the quantity of land which he holds. He has also the right of quarrying stone for his own use and of digging peat on payment of ½d.[10]

Ireland.—Farrow pigs and lambs do not come into common pasturage (as between co-tenants) until Lammas Day. Among the inherent rights of every territory are cooking fuel in every wood, the mast of each wood, sufficiency for the night of faggots, etc., materials for the yoke and plough, the wild animals in the wood, even if it is appropriated.[11]

Digitized by Google

Rights of Way and Water.—Rights of way, rights to drive stock or to draw water across neighbours' land, which are so inconvenient, and so easily avoided by vesting the right in an individual who will decide according to his own interest, are primary and essential common rights in all early societies.

The Year Books, for instance, show us claims for right of way over land for driving beasts and carrying corn, etc.[12] By the Irish laws every co-tenant is bound to permit others to draw water across his land;[13] and the owner of a mill, which was then the most important mechanical home industry, could make use of the water from his neighbour's land for the mill on compensation.[14]

The Welsh laws say: Every habitation ought to have a bye-road to the common waste of the trev, and to allow other land for it. Every habitation ought to have two footpaths—one to its church, and one to its watering-place.[15]

Ireland.—The liabilities of land extended to the adjoining roads; the liabilities as regards roads, a fence for it alone, and to cut them and cleanse them and remove their weeds and mire in time of war and of a fair; and because it is expected that each should assist the other.[16]

In *Orkney, Shetland, and West Highlands.*—"Anent the possessing of grass, outbrekis and balkis, the assize ordareis as the merkstaneis was set of befoir within the dykis sall haiff his bak to the hill." Note by A. W. Johnston, *i.e.* shall have his balk or access to the hill. April 1576.[17]

Easements.—But it is quite impossible to separate the rights of common of the community, whether of pasturage, estovers, digging in the soil, or water, as between members of the community, entirely from the obligation of the individual who has acquired a separate interest in land to allow rights to the others of the community or to individuals over those lands.

In other words, we pass from common rights to easements. An easement, called by the Romans servitude, by the Scandinavians *itak*, by the Germans *Grunddienstbarkeiten*, is defined by Mr Gale [18] as a privilege without profit which the owner of one neighbouring tenement hath of another, existing in respect of their several tenements, by which the servient

Digitized by Google

owner is obliged to suffer or not to do something on his own land for the benefit of the dominant owner.

To illustrate by Scots law, by the action of souming and rouming to check servitude of pasturage, the servient subject is first soumed or the amount of the stock it can pasture determined, and then the proportion effeiring to each of the dominant tenements (roums) fixed according to their capacity for winter foddering.[19]

I give as examples of such easements, the very essence of all successful and friendly farming, and of the accommodation of neighbours, the following, some being from very remote and largely pastoral parts:—

Northumberland.—Adam and Alina convey to William Heyrun three pieces of pasture, with power to assart and cultivate without any common which they or their heirs may claim or have except after the hay and corn are carried, and saving a free entry and exit to them with all their beasts to the other pastures. Another conveyance saving free entry and exit to a watering-place and free chace to water all their beasts there.[20]

In the Chartulary of the Abbey of Newminster,[21] in Northumberland (an overflow from Fountains about 1138), there are many such grants of easements, such as a right to get coal; a right of way for getting marl; pasturage for all kinds of stock; quarrying stone; osier beds; a pen for catching wild horses; salt pans on the banks of the Blythe.

The monks of Newminster were Cistercians, and as such great farmers. They leased in 1181 from Odnell de Umfravill a tract of land on the borders of Scotland called Kidland, consisting of boggy hills of the Cheviot range with fertile valleys between, with the proviso (p. 74) "quod canes uno sui pede carebunt ut feræ meæ indomitæ pacem ibi habeant." In a border survey of 1542,[22] it is said that Kidland could not then be cultivated because of the thieves of Teviotdale. There is a provision [23] that if the wild horses (*equi silvestres*) or cattle strayed, they should be driven back to their range.[24]

Avenel *v.* Melrose, referred to Alexander II. (*supra*, p. 197), is an example of the difficulty caused by trying to do two things at once on one piece of land. Apart from the award

Digitized by Google

there was great difficulty. A timely miracle might cause the hawks' nests to fall down, or the White Lady of Avenel might warn off the hunters. But the monks could hardly keep pigeons or chickens with protected hawks, and the deer would effectively interfere with tillage. Murrain might spread to their own cattle.

Eastern Scotland.—David in 1147 grants to the Church of St Mary in Stirling, *inter alia*, land with fishing, and the privilege of a net in the river; land with the wood; a salt pan with land attached. In a Confirmation by David in 1150, of all the grants formerly made to Dunfermline, he grants the passage and boat of Inverkeithing, excepting free passage for persons on Court business.[25]

The only variation of such easements comes with variance of occupation. In the Gragas, in the Norwegian and Danish Customs, rights of salvage of whales, of sealing and driftwood, are more prominent than rights of way and water.

Enclosures, as they become a cause of communal decay, have to be considered with reference to all these rights of user with which of necessity they came into conflict. While the constitutional historian is attributing revolutionary thought to some lack of Parliamentary procedure in days when Parliament did not exist, or to the supposed evil qualities or imaginary evil acts of a king, the common man, if as a consequence of acute indigestion he was brooding over the ills of his condition, was laying stress on some act of men in power, some enclosure of common waste, or act such as the making of the dam by Abbot Samson, which interfered with his right to get food from the land.

NOTES.—[1] Elton, *Custom and Tenant Right*, p. 18. [2] C.P., 1612. Elton, *Custom and Tenant Right*. [3] Y.B. 13, 14 Edw. III., xxxi. [4] Refer to the very valuable prefaces to the Year Books, Rolls Series, 13, 14 Edw. III., and 18 Edw. III. [5] Y.B. 16 Edw. III., vol. ii. p. 163. [6] Boef's *Rep.*, "grossa animalia Rec." [7] A prescription, for instance, for common, for four cows and a half, meaning of course half-time commonage for one cow, was held good in Hill and Allen's case, 1 Keble, 793. [8] *A.L.W.*, Anom. XIII. ii. 101, 109, 142. [9] Y.B. 30, 31 Edw. I., p. 134. [10] Statute Book, anno 1583, 1637–43–62, 1703, quoted Wood's *History of Man*. [11] *A.L. Irel.*, iv. 100; v. 483. [12] Y.B. 30, 31 Edw. I., p. 350. [13] *A.L. Irel.*, iv. 213 *et seq.* [14] Appendix D, Milling and Fishing. [15] *A.L.W.*, Anom. IX. XXV. 7, 8; and see *A.L. Irel.*, iv. 157, 159. [16] *A.L. Irel.*, iv. 145. [17] *O.S.*

Digitized by Google

Rec., Clouston, p. 139, Nos. 63, 64. [18] Easements, Part I. ch. i. [19] *Balfour's Oppressions*, Maitland Club. [20] *Northumberland Assize Rolls*, pp. 408, 409. [21] Surtees Society, pp. 20, 152, 160, 183, 195, etc. [22] Printed in Hodgson's *Northumberland*, III. ii. 222–6. [23] P. 80 of the Chartulary of the Abbey of Newminster. [24] See as to turbary, Chartulary of the Abbey of Newminster, pp. 22, 32, 33. [25] Lawrie's *Scottish Charters*, Nos. clxxix., ccix.

CHAPTER XXII

ENCLOSURES IN ENGLAND

MANY and various causes of change influence the different parts of the islands in different degree and at different times, so that it is necessary that each part should be treated separately. Though all such causes are largely a matter of degree, the change in England, the pre-eminently corn-growing country (at least in the southern parts), is largely bound up with the history of enclosures, which here differs considerably from the history of enclosures in the rest of the islands, apart from any question of land contour.

Many circumstances combine to hasten individual ownership of the soil. The great strength of the federal authority discouraged communal responsibility; the feudal tenures, which replaced the society of kinship, rested on individual ownership of the soil and hastened enclosures by encouraging individual occupation as against the community; the French origin of the kings and of most of the great lords, and the wealth and numbers of foreign ecclesiastics, tended in the same direction; the propinquity of France and Flanders and the large commerce with their peoples told against kinship, bringing a great number of strangers to the country to be settled on the land; commerce and arable cultivation, with the resulting increase of population, caused an increase in the value of land; by the proximity of Flanders as a market for wool, sheep farming on the waste became a very profitable industry for the great landowner, and a great inducement to him to oust the smaller man or to overstock the waste with his flocks; and the waste was further diminished by the extravagant gifts

Digitized by Google

to the monasteries by successive kings both of Scotland and England and by lords of baronies and manors. All this, with the large amount of arable farming, put enclosures upon a different footing in England from the rest of the islands, and brought about the change very much earlier.

Although all arable land was farmed in a common field, the extent of the farming by the monks, of which we have very full evidence in their chartularies and elsewhere, monks bound by their order to replace all claims of kinship, all obedience to the community, by allegiance to a foreign authority, combined with feudal tenure to identify arable cultivation with the relation of landlord and tenant rather than with co-ownership of kinsmen.

Enclosure of the Waste by the Lord.—In mediæval times we do not so much mean by enclosure the wholesale enclosure of arable fields such as took place in the seventeenth or eighteenth century for the improvement of arable farming, as enclosures made of small parts of the waste or forest by the lord, or by persons to whom he had sold the privilege in his own personal interest.

In those parts of the islands where it was still a matter of common acknowledgment that the user of the land was in the first instance common to all, though there might be wide exceptions, such enclosures were not likely to be made contrary to the general wish, and do not appear to have been resented.

But in England, where the land was vested in a lord who could rent part or the whole of it to tenants for rents to be paid to him, or his personal assignees, the only interest remaining to the community were such rights as they could claim by immemorial custom and could sustain in the manorial court or in the law courts of the king. Under these influences enclosures very early became associated with the withdrawal from common cultivation of land over which the community had the common rights of which I have just written, lands which they were accustomed to use as common pasturage when the crops were harvested, and from common use of land over which they had been used to have right to take firewood, brushwood, peat and fern, to fish and to hunt, and to range their animals.

Digitized by Google

I should feel inclined to put the time at which the interests of the lords and great landowners and of the small tenants and men who formerly represented the freemen became diametrically opposed, the lords encroaching on the waste and claiming rights of eviction from the holdings and the tenants resisting, as about the end of the twelfth century or a little later. Probably the date of Magna Charta would be coincident with the pivotal moment of the change. The change is first definitely put into writing in the Statute of Merton (*infra*, p. 268).

This conflict which then began has continued almost unabated throughout English history. It has been largely responsible for political revolutions which are attributed to the personal characteristics of men in preference to economic pressure.

When dealing with this revolutionary change, which has by no means spent its force, I would urge that we should weigh carefully the conclusions for which it may, by expert writers, be held responsible. The misuse of an economic change by individuals is no excuse, when that change has run its course, for attributing its results, as is so frequently the case, to the wickedness and greed of any class or to the direct desire to do wrong of any person in authority. The historian walking backwards can often see plainly what the man advancing in the past could not see looking before him.

In an admirable article on the "Past and Future of Rural England," in the *Quarterly Review* of April 1913, in which some very striking and suggestive books are reviewed,[1] there occurs the following notable passage:—"A few years ago students of the rural problem had to deplore the fact that, for a history of the land workers, it was necessary to go to a volume, a meritorious volume, by a professor in a Prussian university."

The Labourer as a Landowner.—For our day, the ultimate chief result of continuous enclosures has been, as anyone may see for himself by slow travel over the islands, the divorce of the labourer and the small yeoman from any association with land ownership. This is generally assumed to be inevitable, an incident only in an admirable progress. But I believe that

Digitized by Google

the view that the ejection of the labourer from the land is an inevitable economic event would not be held if people knew more of the communal and less of the constitutional history; if they could associate national prosperity less with financial supremacy, with the widely diffused standard of comfort, or with picturesque grandeur, and more with a widely diffused land ownership; if they could understand that the mediæval world did not at any time revolve round Westminster; if they could realise that our system of land holding was not the natural condition of mankind; they would be in a better position to understand the success of the radical demagogue.

The following quotations are from the work of a writer eminently qualified to speak on this subject of enclosures (*English Farming, Past and Present*, by R. E. Prothero): "The changes which produced unexampled prosperity of landowners and large tenant farmers combined with other causes to plunge the rest of the rural population into almost unparalleled misery." "The cottager, before the enclosures a labourer with land, became, after them, a labourer without it." "The peasant with rights and a status, with a share in the fortunes and government of his village, standing in rags but standing on his feet, makes way for the labourer."

These statements have even greater force if applied to the condition of the transplanted Irish of the sixteenth and seventeenth centuries, and of the successive waves of prosperous aliens who enjoyed their inheritance, and to the club hill-farmers of the Highlands evicted to make way for the Lowland sheep farmer by their chiefs in the eighteenth and nineteenth centuries.

The writer was no doubt thinking of the later wholesale enclosures of the seventeenth and eighteenth centuries, but the true nature of the later change cannot be properly understood without tracing it from its appearance in the thirteenth century, from the early enclosures of which it was a growth; and viewing it as it arises and takes its course in all parts of the islands.

Early Enclosures.—Enclosing the waste very early becomes in England the subject of legislation and of litigation in the

Digitized by Google

Courts. It is, in the first instance, enclosure for the benefit of the community, but it soon accrues to the individual benefit. The co-ownership slowly disappears, leaving only customary rights for the smaller man, long before any laws are enacted to protect him.

I would refer to the observations in a former chapter (p. 219) as to the difficulties experienced by the king, lord, or chief, when holding the balance between proposed grants to individuals for improvement on the waste and the customary rights of all, and would remind readers that any such swing of change at the present time would be accompanied by similar embarrassment for those responsible, and by hardship to many individuals.

The rights of co-owners over common lands, of which I have previously spoken,[2] were matter of custom only, custom destructible only by direct enactment of people or ruler. Every holder of lands had the right of feeding his "work stock" on the waste, lest he should be unable to cultivate the growing crops. This common of pasture differed from other common rights in its exceptional value, its more general user and necessity. It is the subject of the greater part of all the many cases of communal dispute in the earlier Year Books. As an example of one use of such opportunities, and of the possibility for its abuse,[3] the chief lord of the manor claims in right of his manor the agistment of other persons' beasts, and he had in this case agisted 2000 sheep on to the waste.

But other important communal rights, such as mining, cutting peats and turves, getting firewood, lopping trees, agisting or folding sheep (which meant arable cultivation), cutting hay, hunting and fishing, were equally dependent for their existence on custom and not on any law.[4]

The Statute of Merton.—The seal of the State was put to enclosures of the waste in England in the first instance by the Statute of Merton, 20 Hen. III., c. 4 (1235–1236). It recites that free tenants prevent the lord (the patriot who forced John to submit to Magna Charta) from making profit of the wastes, woods, and common pasture, though the tenants have sufficient pasture in proportion to their holdings. In other words, the free tenants, who might equally with the

Digitized by Google

lord look forward to the increase of their stock on the common land, had had at that time the power to check the lord from agisting strange animals from outside for his own benefit on the common pasture, to the detriment of their rights.

The Statute enacts that if the tenant brings an action *de communia pastura sua*, and it is shown that he has sufficient pasture, the lord can go on enclosing; if the tenant wins, he can recover by view of the jury with damages. But to anyone who has studied the effects of the litigation of those times, short of force he would recover nothing.

A question at once arises on this Statute which forms a frequent cause of dispute in the Year Books, the intercommuning of vills, the cattle of more than one vill or manor ranging over an unenclosed waste common to both. To settle this difficulty the Statute of Westminster 2nd [5] allowed the lord to enclose as against the tenants of another manor, for putting up necessary buildings or for enlarging his court. The Act specifies as necessary buildings—a windmill, sheepcote, and dairy.

The amount of common to which each tenant was entitled was settled by a writ of admeasurement, the measure being the number of cattle which the commoner could keep in winter, a writ open to a stranger having common of pasture on another man's land.[6] This was sometimes a custom of the manor apart from any legislation,[7] the customs often putting restrictions on the user of the waste which were in favour of the men of wealth, as for instance that no one should have stock on the common pasture who had not a fold in the vill.[8]

A case [9] shows the construction put by the Courts on the Statute of Merton and the difficulties which arose; as follows:—

The lord had enclosed eight acres which he said was waste, leaving to the tenant as he says sufficient pasture, and he enclosed two acres of land adjoining his house to enlarge his court. The tenant says the eight acres were arable, and that there were two acres of wood between the enclosed land and the court which could have been used for enlargement. The tenant's claim was for pasture for stock in two years after the corn was cut and carried, and in the third year throughout the year when the land lay fallow.

Digitized by Google

Bereford giving judgment says that the Statute had not so wide a meaning that by reason of his seignory a man might take and enclose another's common to make a meadow or pasture within his court ; it only permits him to enlarge his court by curtilage or garden or what else is necessary for his court. On the other hand, the cause why this Statute was made was that whereas at the beginning a man had not the means to make his court sufficiently large, then if afterwards his means and his household increased, it should be lawful for him to enlarge his court, and by reason of his seignory to make curtilage and garden out of the common adjoining his court, etc. But it is very seldom seen in the Year Books that the poor tenant dares to put himself in opposition to his lord, as he knows that the lord has many means of crushing him, especially by a jury called from a hostile or distant district. In Y.B. 16 Edw. III., p. 1, the plaintiff claims that the defendant has got him outlawed to prevent his suit; in the next case in the same book, that he had been imprisoned and compelled to execute a deed while under duress.

The cases about common pasture in the Year Books are mostly cases occasioned by a dispute as to whether the unenclosed land is common to two or more manors, or a dispute as to an enclosure between two lords.

The first was a very common case, and a great factor in leading to enclosures. When all the land was unenclosed, it was inevitable that the question should frequently arise of the boundaries of the waste of the different manors, and whether any tract of waste was pastured in common.

As an example of this,[10] the defendants in replevin say that the waste M is their soil, and that the beasts of the prior, the plaintiff, were driven out of the vill of L, whereas the vills do not intercommon ; the prior claims that the whole is a great moor, and that the soil is in him. Again a commoner and freeholder claims for tortiously taking cattle in another vill on the ground that the vills intercommon. The answer is that they do not and never have.[11] It is a common plea on both sides.

As an example of the question of enclosure between two lords,[12] the Prior of Leeds encloses with a wall a piece of land

Digitized by Google

claimed as common pasture by the people of Woodnesborough. Six years after they bring action, and the jury decide against him.

As an example of both at once, in a case in the Year Books,[13] one side claims land in two vills which he says intercommon in the waste, the other that they do not; one says that as lord of the waste he has approved the land claimed, leaving sufficient pasturage; the other that the approvement of which he speaks was an enclosure of more than 1000 acres of waste without which there was not sufficiency of pasture nor ingress nor egress.

That the judges wished to hold the balance fairly, and were not always on the side of the enclosing lords, who were frequently abbots and priors, is shown by a remark of Stonore J. in such a case[14]: "He is now claiming the common not as being in the lord's estate but as neighbour with neighbour; and would it be right that you should have common in his land and he not in yours? And the lord will also have common in his land; wherefore should he not have common in the lord's soil?" And per Hillary J.[15]: "It seems to the Court that a person who is tenant of the soil can approve against his lord as against another commoner."

It was contrary to the best interests of the Crown that the small holdings of the freemen, and even of the unfree copyholders to whose status the freemen were fast descending, should pass from their hands to large farmers at a competition rent which was paid to the lords.

But although the Court might desire to do the tenant right, the power to enforce its will was very uncertain. Notice that in the case above quoted of an enclosure by the Prior of Leeds, the case only comes into Court six years after the Act.

The lord had many holds over the tenant. He was by far the largest user of the waste in every direction. Subject to the communal control which grew yearly weaker, he could make a commercial use on a large scale of the common land for pasturage for large flocks of sheep or herds of cattle and swine, while controlling and regulating its use by the small men.

The result was that at every time of disorder, and at most

Digitized by Google

times when no actual revolution was in progress, the tearing down of enclosures was a common and probably a successful practice. It was evident that the men who tore them down fled into the towns, for the Statute of Westminster 2nd provides that if hedge or ditch be destroyed by undiscovered persons and neighbouring towns do not indict the guilty, they shall be distrained to repair the damage done and to pay damages. After the great rising in 1549 against enclosure by the great landowners, 3 Edw. VI., c. 3, attempted to amend the former Statutes.

The Change in England Economic.—But in spite of any acts of tyranny upon the weak by the powerful, and such retaliation, the change from communal to individual society in England differs from the change as it came about in the rest of the islands, in this that it was an economic instead of a political revolution. England was the only part of the islands in which commerce early became a dominant factor (except *perhaps* in the Orkneys), forcing the change from the communal farming, with its yard lands, rigs, balks, oxgangs, pennylands, dales or rapes, for the supply of home necessaries, to farming for profit and for export, which could only be carried on on a large scale by individuals or by communities such as the Cistercians as a business for external gain.

As a consequence, in spite of all changes of farming, the enclosures of the common pasture go on steadily from the twelfth to the nineteenth century; but slowly, so that even in the seventeenth century there was an enormous quantity of waste land, of fen, of forest, and of undrained and unimproved land, and a great amount even at the present day. The increase of enclosures is coincident with improvement in farming methods, as men only enclose land if they think it worth enclosing.

It was not likely that such enclosures should be tamely submitted to by men who had accepted their living out of common land, and had paid their dues or their rent to the chief or lord of the manor in daily labour. Every act of labour on the community farm was satisfied as dues or rent by the men of the community or manor. They ploughed, sowed, reaped, and harvested the crops, they made beer and

Digitized by Google

mead, they joined in the hunt, they cut and hauled wood and peats and rushes, and they sheared sheep and tended the farm stock. No money was needed unless it was necessary to pay for such articles as could not be produced at home.

As commerce increases, as the merchants pass through the country with their wares, as the Crusades bring the islands within hearing of a new and much greater civilisation, of new products of luxury, of the muslins and cloths of India brought to them through the traders of Persia, Arabia, and China, of the silks and spices of Ceylon, as the increase of wealth brings into use new articles of luxury as matters of necessity, the freeman becomes restive under his daily toil and his communal stagnation, and begins to dream, like the labourer of to-day with his bicycle, of a world in which there is no labour but ever pleasure and riches, a world which never comes, "a land in which it seemed always afternoon."

As outside influences led men to vary its cultivation, the land was put to various purposes for profit. Throughout the fourteenth century the connection with Flanders and the increasing wool trade brought about an extension of the waste for sheep farming. The lord, in making grants or apportionment of waste lands, could reserve the right of sheep walk, or the privilege of folding sheep over any lands in the winter between certain dates, overwhelming the use of the waste by the poor tenant for his handful of stock.

The Large Farmer and the Small Holder.—The gradual enclosure of the waste land for cultivation or its monopoly for large flocks of sheep gradually drove out the small holder for the man with large capital, and made the arable holding of the smaller men, the equivalent in extent most probably of the former communal holding, a useless incumbrance. It was not necessary for the lord to take steps to deprive either the freeman or the unfree man of the arable if he could drive him from his user of the waste for the pasturage of his animals, or so far reduce his user as to make him no longer a small farmer and stockbreeder, but a cottager with a few acres, dependent for his living on an external trade or on his hire as a labourer.

He either became, if able, the large farmer under a lord,

Digitized by Google

or he abandoned his holding, and with it any communal rights remaining, leaving it if an unfree man either on terms or as a fugitive, and he went to the town, where he joined others in pulling down enclosures and filling up ditches. The great landowners welcomed the change which saw the small holder go to help to distribute and to consume the corn raised and to ship or manufacture cloth from the wool of their flocks.

When, at the end of the fourteenth century, with a vastly increased commerce and an export market which had become sensitive to regularity of supplies, the Black Death came, and by its destruction of life automatically doubled the wages of the craftsman, the shoe was on the other foot. The large farms were left on the landowner's hands, and he began to cry out for the small man to stay or to come back to work at the old wages. The small man naturally refused. Then comes the Statute of Labourers.

The method of payment had changed. Gradually the labour rents had become commuted for money. In the place of an unwilling or unskilled worker aided by rainy days and frequent Church festivals, the landowner used money which he could apply to hire the same persons to do work for which they were especially fitted.

The Value of Currency.—But the value of money changes. It is one great source of all our economic troubles, and there is no way out of it, even by free imports or tariff changes. The pay for a day won't pay for half a day. Then the lord tries to force the labourer to accept the lesser pay, and the labourer tries revolution, which only succeeds when it is in accordance with the current course of economic conditions. As the trade in wool and the manufacture of cloth increases, the lord turns sheep on the land and ceases to raise corn, bringing in a revolutionary spirit which not even a mediæval king can quell.

Bridges and Roads.—The economic change was helped rather than hindered by the decay of the old Roman road. To those on the eastern and southern coasts, close to the most important market of the western world, sea carriage must have been infinitely preferable, cheaper and less dangerous, than land carriage to a possibly glutted market.

Digitized by Google

There was every inducement to export corn, wool, and other products by sea for a good price to the country which supplied the manufactured cloth. So for centuries we find the allowance or refusal of export used as a source of revenue by enabling the king to grant licences to such responsible people as were willing to pay for the exception. 34 Edw. III., c. 20, for instance, forbids exportation of corn except to Calais or Gascony; 17 Rich. II., c. 7, allows corn to be exported. The sway of exception expresses political pressure on external nations, and the king's needs for money for national expenses.

I should be inclined to guess that what are called "Celtic" customs and differences in the western part of the island resulted, apart from rainfall, in the distance both by sea and land from the only market of the islands, Flanders.

Later, when agriculture in eastern and southern England was competing with the pastoral industries which depended on the export of wool to Calais, the damage done to crops by flocks of sheep and the consequent friction, hurries the farmer into enclosures, especially in the sixteenth century, just before the check to improvement in agriculture occasioned by the dissolution of the monasteries, of which Latimer so bitterly complains, had been felt. Then an exceeding bitter cry goes up both from the corn growers who suffered from the trespass of animals and from the stock breeders who saw their expenses increase as they guarded against the injury done by their own stock, and an equally bitter cry from the small farmer, who saw himself being ruined by enclosures and partition of arable land, and eaten out by great flocks of sheep from the use of the waste.[16]

The Effect of Enclosures.—Latimer, who saw both the restriction of the yeoman on the waste through the dissolution of the monasteries, and the decay of the small holder such as his father before the enclosures which resulted from the same cause, gives us a picture of the yeoman of his time. "My father was a yeoman, and had no lands of his own. He tilled as much as kept half a dozen men. He had walk for a hundred sheep, and my mother milked thirty kine. He was able and did find the king a harness, with himself and his horse." Such men were the very foundation of communal society, patriotic

Digitized by Google

in a double sense both to the land of their birth and to the ruler. But the trend of events were too strong for them.

Tusser, publishing in 1557 *et seq.*, strongly advocates enclosures. He speaks of the swineherd, neatherd, and shepherd as "fence to the meadow and corne," "there horse being tied on a balke is readie with thiefs for to walke." The flocks, he says, spoil the winter corn by feeding it too close, and he inveighs against the carelessness with which roads were made through the crops by the driving herds or flocks.

Fitzherbert, who if he were Sir Anthony was a judge, and if he were John was a well-to-do and successful gentleman farmer, may be presumed to be speaking in view of facts known to him and without any of the prejudice which might attach to the out-at-elbows Tusser, when writing some twenty-five years earlier from the more chastened and possibly fairer outlook of the practical stock breeder, he sums up in a sentence the whole tendency not only of individual possession, but of the growth of the chief's power under a communal system, when he gives as an argument in favour of enclosures, "then shall not the riche man overeate the poore man with his cattell."

He urges enclosures as paying for themselves in three years by saving the expense of herdman, swineherd, and shepherd. And then he says, "hath he every fyelde in severaltye," and "by the assente of the lordes and tenauntes every neighbour may exchange landes with other," breaking up the communal cultivation.

The woollen manufactures, which had grown by the decay of agriculture, helped to relieve the congestion by enrolling as wool operatives the men driven off the land. But they became landless men, the first line of the army of the proletariat.

From the twelfth century the enclosures went on steadily to the nineteenth century, as England attained its maximum as a wool and corn growing country. It became, until the calico millennium of Cobden destroyed it, and brought the land back to the waste of the Middle Ages without the timber, a great centre of high-class farming, as the population grew, as chemistry taught the occult sciences of marling and liming,

Digitized by Google

the use of artificial grasses and of artificial foods, and as the economic pressure of the French wars made intensive cultivation more necessary.

The change, which was inevitable, was accompanied throughout, as all such revolutions must be, by misuse of power in many cases by greedy men both rich and poor, both lord and tenant, by efforts to remedy friction and suffering, often ill judged, of governments which did not see the tendency of events or their causes, and by schemes of philanthropists and political economists who would sacrifice all mankind to their one special prescription for the millennium. Sir Hugh Plat, a theorist, who wrote at the end of the sixteenth century, describes marl as "a natural and yet a divine soil, being an enemy of all weeds that spring up of themselves, and gives a generative virtue to all seeds that are sown upon the ground by the labour of man," surely a most discriminating earth.

In the eighteenth century there came about a great movement in favour of large farms, high culture and corn growing, the result of large accumulations of capital, which probably helped greatly to carry us through the stress of the French wars, urging forward the enclosure of land wherever it could be supposed to pay, and benefiting the country by encouraging the investment of capital in the soil instead of in speculative ventures abroad.

In 1767 Arthur Young, the apostle of high farming and enclosure, who, farming without any experience, had failed, and had taken to advising others, made a six weeks' tour of the southern counties, beginning among the highly farmed and largely enclosed lands of the east coast, among which he notices on the one hand a vast quantity of land quite uncultivated, which, he says, has the appearance of a desert, and, on the other hand, near Thetford, "a complete farm entirely gained from the waste, for so I must call an old sheep walk." Of the large farms in Norfolk, which he tells us had been nearly all sheep walks, he says, "had they been cut into small farms, they never would have been improved, the expense is so great." It is in the misjudging of this vital factor of the expense that a great deal of the failure and of the suffering lies. Men are not all judges of such matters, and the way is

Digitized by Google

open for the political speculator to take advantage. Bolingbroke, says George Selwyn, writing in 1775, has a scheme for the enclosure of Sedgemoor, which would pay off all his debts.

As Arthur Young goes west enclosures become few; between Witney and Northleach all the country is open. This still remained the sheep-farming part. But when he comes to the west along the Severn from Gloucester to Newnham, he finds all enclosed, and admits that the farmers here find more profit in grass than in ploughed land. His description of the lands from Avonmouth to Bristol, "nothing but very rich grass," and from Bath to Devizes, "the greatest quantity of grass lands," has not altered. Then as now the western half of England and of Scotland, with great part of Ireland and Wales, was more fitted by rainfall for grass than for corn.

When Arthur Young comes to see the great arable farms adjoining Salisbury Plain, farms of from 600 to 800 acres of arable, each farm having its share of the Plain into the bargain for pasturage, then an ideal condition for farming, he proposes to cut up the Plain into forty-acre farms by enclosures of hedges, saying, "such a vast tract of uncultivated land is a nuisance." He attributes the bounds of waste lands to "chance alone."

Before leaving this part of the subject I would instance an example (possibly an extreme one) of the conditions which attended and may still attend the division and appropriation of the common lands of the waste, only noting in advance that as soon as the communal society decayed, all the safeguards as to number and quality of stock, time and manner of user, went with it, so that the waste lands now in all parts of the islands are under no such proper supervision that it can be supposed that they can in any way be put to their best user. This is a great argument in favour of their enclosure and redemption by the community.

The example is not from England, but is taken from Sir John Sinclair's *Survey of the Northern Counties of Scotland*. It refers to the common called Millbuy, in the Black Isle, Cromarty, N.E. Scotland. "It is asserted," he says, "by

Digitized by Google

the best judges, that the soils of the whole of this immense common are as good and as capable of every improvement as those of the rest of the peninsula, and that the plough may in fact reach any part of it. Several attempts have been made to have a division of this commonty lately. . . . It will manifestly be rendering essential service to the tenantry and lower class of cottagers in this district to deprive them of the privilege of misspending and missapplying so much of their time and labour as are annually bestowed in collecting their miserable turf for firing, which is the chief and in fact the only benefit (if it can be so deemed) that they reap from this common ; for if the face of it is examined, no person will pretend to advance that those who depend upon it for the pasture of a few hungry sheep and young cattle can possibly derive advantage from so wretched and cruel a system ; nay, it is impossible that animals can exist upon such sustenance, and recourse must be had in consequence to depredation and encroachment upon property from which they are debarred, so that their very morals are affected by this same evil usage and privilege of common." He praises the "expediency" of division, and advises an action which he says would cost from £1000 to £1500. It may be judged what chance the cottar would have in such a contest.

Even where, as in many enclosures in England, the price given has been fair, and the cottager not unfairly squeezed out, it should be seen that the waste in the hands of the new owner will cease to be waste and be cultivated to its fullest capacity. Otherwise the land of the community has only passed into the hands of the individual to the disherison of the commoners' posterity.

Mr Prothero thus comments on the astonishing progress in agriculture between 1700 and 1800 ("Past and Future of Rural England," *Quarterly Review*, April 1913):—"Without the substitution of separate occupation for the ancient system of common cultivation, this agricultural progress was impossible. But in carrying out the necessary changes, rural society was convulsed and its general conditions revolutionised. The divorce of a peasantry from the soil, and the extinction of commoners, open-field farmers, and eventually small free-

Digitized by Google

holders, were the heavy price which the nation ultimately paid for the supply of bread and meat to the manufacturing population. . . . The decision was made under an economic pressure which completely overrode the social considerations which should have controlled and modified the process of enclosure. . . . Some of the practical evils of open fields and their attendant pasture-commons might have been, with skill, time, and patience, mitigated."

Speaking of Napoleonic times, Mr Prothero says: "Contemporary writers, who comment on the increasing degradation of the labouring classes, too often treat as its causes changes which were really its consequences. They note the increase of drunkenness, but forget that the occupations of the labourer's idle moments were gone; they attack the mischievous practice of giving children tea, but forget that milk was no longer procurable; they condemn the rising generation as incapable for farm labour, but forget that the parents no longer occupied land on which their children could learn to work; they deplore the helplessness of the modern wives of cottagers who had become dependent on the village baker, but forget that they were obliged to buy flour, and had lost their free fuel; they denounce their improvident marriages, but forget that the motive of thrift was removed." Every word of this is equally applicable to the labourer of Scotland and Ireland.

NOTE.—[1] *The English Peasantry*, Gilbert Slater; Constable, 1907. *The Disappearance of the Small Landowner*, A. H. Johnson; Clarendon Press, 1909. *The Agrarian Problem in the Sixteenth Century*, R. H. Tawney; Longmans, 1912. *The Village Labourer*, J. L. and B. Hammond; Longmans, 1911. *English Farming, Past and Present*, R. E. Prothero; Longmans, 1912. [2] A great amount of most valuable material on this subject is contained in Elton on *Commons and Waste Lands*, and Elton on *Custom and Tenant Right*. [3] Y.B. 32 Edw. I., p. 38. [4] Henry III.'s Charter of the Forests (9 Hen. III.) acknowledges the customary rights, admitting that the commoners might exercise their rights in the forests provided that they observed the forest regulations. [5] 13 Edw. I., c. 46. [6] Y.B. 6, 7 Edw. II., p. 2, Selden Society. [7] Y.B. 21, 22 Edw. I., p. 544. [8] Y.B. 21, 22 Edw. I., p. 454. [9] Y.B. Edw. II., vol. ii. p. 38. [10] Y.B. 14, 15 Edw. III., p. 168. [11] Y.B. 12, 13 Edw. III., p. 206. [12] Y.B. Edw. II., vol. v. p. 59. [13] Y.B. 16 Edw. III., vol. ii. p. 472; and see *ibid.*, vol. i. pp. 24, 186, 226; *ibid.*, vol. ii. p. 163; 18 Edw. III., vol. i. p. 40; and as a typical example of the use of the waste, 17 Edw. III., p. 350. The question how far a common extends beyond the

Digitized by Google

bounds of a hamlet is discussed Y.B. 33–35 Edw. I., p. 448. [14] Y.B. 18 Edw. III., p. 402. [15] Y.B. 18, 19 Edw. III., p. 166. [16] 1517, Commission of inquiry by Wolsey on decay of tillage. 1535, 27 Hen. VIII., c. 22, against conversion from tillage to pasture. 1549, rising in Norfolk under Robert Kett, a landlord, directed against enclosures and dovecots and so forth.

CHAPTER XXIII

THE COMMUNAL SOCIETY IN SCOTLAND. THE TOWNSHIP FARM

THE south and east of Britain was, as I have tried to show, early engaged in commerce and agriculture influenced by Rome and continental connections. In her development she took Wales with her, much as a vigorous nurse drags along a sulky and weakly child. Here feudal ideas very early controlled all advance.

Just at that time when Henry, followed by his son John, was enforcing a stronger authority of the Crown over the barons of England such as they never attempted to enforce over the vassals of Aquitaine or Normandy, Ireland was invaded through Wales. But until Edward I. came back from the Crusades, with the memories of the barons' wars in his mind, and the precepts of the Roman law ringing in his ears, the English king did not try to extend the English feudal system to Ireland. The feudal relations were only between the king and the greater lords.

As the connection with France expanded, the unfitness of feudal levies for war beyond seas very speedily appeared, and they were replaced by mercenary troops. But the system remained as a legal theory, and as a legal theory in the hands of the Edwards it affected the land and the people and the political ideas of the outlying countries in the Middle Ages and to-day. In the rest of the islands an entirely different set of conditions controlled the development.

At grievous risk of tiresome repetition, I call attention to physical conditions and economic action which assist a study

Digitized by Google

of the communal society, if we search for the reasons for its survival in late times in one part and its early disappearance in another. Let us begin with the Orkneys, and then pass to Western Scotland, for the present ignoring Ireland.

The western coast of the larger island throughout was pastoral, and as far as commerce went never became more than the summer warehouse for the plunder accumulated in the Viking raids from Norway, or a storehouse for the needs of Ireland.

The Orkneys.—But the Orkneys stood apart. The islands were more grain-producing than pastoral;[1] they lay against Norway when the north was a great commercial region; they were a centre of traffic for the islands; they had a tradition of revolt against feudal authority.

A purely naval people, they had little occasion for modifying their system of landholding for warlike purposes. It was in times of danger an easy matter in so small an area to call together the small body of freemen with their following for defence, and to draw levies from the wild lands of Caithness and Sutherland and the men of the western "dales" and islands.

The Orkney Islands, not having the extreme rainfall of the west coast, were suited for corn-growing, but not for export, as the area for corn was too small and the climate unfavourable for wheat; still for their own uses the land of the islands was largely put to corn-growing. But the grain was oats and barley. When in 1186 Sverri calls a Thing at Bergen to discuss the trouble caused by the imports of German wine, though the merchandise of the Orkneys and Shetland is mentioned, the wheat is spoken of as brought from England. John Major, writing in 1521, says of the islands, they produce in plenty oats and barley, but not wheat, and in pasture and cattle they abound. So much for climate and position.

The connection with Rome was very slight indeed, and that with Norway very strong. At the end of the eleventh century, Earl Harold of the islands and the Orkneyingers took the wrong side against King Sverri of Norway, with the result that he severed the Shetlands from the Orkneys and took the former into his own hands. From this time the two groups

Digitized by Google

of islands go different ways; the Shetlands remain for a long time closely subject to Norway, ruled by Norse officials and by Norse law and free from Scottish interference, while the free landholders of the Orkneys, practically independent, played off Scotland against Norway, and in spite of the temporary seizure at several times by the kings of Norway of the odal rights of inheritance, continued to hold their land by the allodial tenure usual in Norway until well into the sixteenth century. With this odal right, the allod or allodium of Norway, I have dealt above, pp. 131–7.

I need only repeat that by this system the lands in these northern islands were held in absolute ownership freed from any feudal fealty and from any services, other than the payment of scat or land tax for the arable land only under cultivation [2] like rates now, subject also to the right of the earl to be fed and ministered to on his rounds, the coyne and livery of Ireland, and to liability for military service. Beneficia or fees were unknown in Norway until the Reformation.[3] It was an ownership independent, with exceptions, of written conveyance, which may account for the statement in the preface to the Acts of Parliament of Scotland,[4] "if there ever existed an allodial tenure in Scotland, it must be acknowledged that all traces of it have disappeared."

The final acceptance by the earls of Orkney of these odal rights excluding feudal relations occurs when Earl Rognwald, short of money for building St Magnus' Cathedral at Kirkwall, called a Thing about 1136 to consider a new proposal. "The earls had taken all freehold lands of inheritance after men, but the heirs had to redeem them for their own, and that was thought rather hard. He offered the freemen the choice of buying their freeholds out and out, so that there was no need to redeem them . . . but a mark was to be paid to the earl for every ploughland over all the isles." [5]

Not at all a bad description of the ultimate effects of this system and of the communal system generally as a political disadvantage as time went on, where the amount of cultivable land was very limited as it was in Norway and the Orkneys and Shetlands, is a passage in the account of the mythical heroes of the Norse [6]: "He ruled that realm while he lived

Digitized by Google

and his sons after him, and they shared the land amongst them, and so the realms began to get smaller and smaller as the kings got more and more numerous, and so they were divided into provinces," a passage to be remembered when Alexander and David I. divided the lands of Southern Scotland, or when Canute, William I., and Henry II. divided their dominions among their children, before the feudal principle settled into primogeniture.

The tendencies of a system which led to perpetual subdivision were easy to be seen. To correct the tendency the members of the family exchanged lands, the son's heirs buying back the lands of the daughters in the outlands which might pass to the church or the earl. The family lands were kept together by judicious marriages, and by the "tent penny and ferd" (*supra*, p. 135). Most of the documents which remain to us refer to these exchanges.

There was no room for expansion for corn-growing; the pasturage of the islands themselves would not carry any great amount of stock, nor would the wilds of the mainland south of them, and there was always the call of the sea.

The great agency of foreign trade, which for ever breaks up the communal system, acted far earlier on these small islands which were barely self-supporting, even with the wastes and forests of Caithness as hunting grounds at their back, than on the broad lands of England. And this agency of foreign trade insists on freedom of resources in the hands of individuals for commercial enterprise. It was not consistent with the need of capital for ready use in commerce that it should remain shut up as an inalienable asset in comparatively unproductive land in a bleak climate. The ardent voyager abandoned his land to the younger brother, or came back after many years of travel to redeem it with his gains from the sea, or he bought out all the right of redemption of others.

To instance an example from the Orkney Records,[7] an estate had been held undivided in joint occupation since the death of the owner for about fifty years. He had given the tent and ferd to one son, who gave it to his daughter, who disposed of it to a stranger. The heirs, who are only cousins,

Digitized by Google

are allowed to redeem it as if the alienation had been made by the original owners, though the right to redeem was limited to children and not to cousins.

It would be impossible to carry out successful commerce under such conditions.

Individual purchase and possession of land was known very early in a trading community such as Norway.

As examples: in the divisions between heirs of lands shared into two parts, it is provided that if either manures not his half, the other shall have such half in tack (*i.e.* as tenant for a rent), before any other man, paying therefor as others will give.[7]

In Thiotta (an island in Halogaland) there dwelt many small bondes. Harek began "with buying a farm not very large, and lived on it, and in a few years he had got all the bondes that were then out of the way; so that he had the whole island and built a large head mansion."[8]

When in 1195 Sverri settles with the Earl of Orkney, confiscating the estates of those who had rebelled, he fixed a limit of three years in which the kinsmen of the dead might ransom the estates with money.[9]

Feudalism would seem to have been the natural tendency for those desiring to be free from these restraints of family claims to land. But there was more than one reason why the udallers of these islands remained subject to the communal ties rather than accept feudal tenures.

As I have pointed out, they rested like England on their naval power, they had little connection with Rome, and their free landholders, not the monasteries, are the leaders in agriculture. But besides this the Norsemen who settled these islands, settled them because they were flying from the inevitable feudalism. Their existence in the islands is the protest of a naval people against a system which owed its temporary supremacy to its fitness for organising land warfare. For sea warfare it was impossible that the udallers could permit the king to monopolise the sea coast as his feudal right. The odal farm extended to the sea at low tide and further. "There lies a rock out in the sea on which there is both seal and bird catching and a fishing ground and egg gathering;

Digitized by Google

and from old time it had been an appendage to the farm which Granhel owned." [10]

They claimed "all the ways to the salt, or to the sea, or to the wood or to the bounds of the district."

But as time goes on the crown of Norway passes to the Swedes and the Danes, the old Norse line of the earls gives place to Scottish rulers responsible to the nearer king of Scots, the change of the trade routes leaves the islands in common with the west of Scotland and Ireland outside the track of commerce, and finally, in 1468, Orkney and Shetland are mortgaged for the dowry of the queen of James III. of Scotland, and the islands are taken over by Scotland from the lowland Norman earls of St Clair who had been its rulers. The latest known Norse document in the Orkneys is 1426. But as most lands pass without writing this is no evidence for decay of Norse blood.

From this time on the udallers, doomed to decay, struggle against feudal exaction aided by force and fraud.

A century after the description given by John Major, the islands had been brought to ruin by the action of the Stuarts, and the land under their rule was going out of cultivation. Robert Stewart, an illegitimate son of James V. of Scotland, who had been made Abbot of Holyrood, made an exchange with the Bishop of Orkney, and became bishop *in omnibus*, besides having the earldom rights and revenues and the sheriffship granted to him by charter.

Then began, says Mr Clouston, a period of tyranny and plunder which resembled more nearly Turkish misrule than anything we associate even with the worst administrators of our race and in the rudest times. (It was not nearly as bad as the continuous treatment of the Irish by their Anglo-Scot oppressors through the centuries.) As the udallers grow poorer they have no alternative but to accept feudal tenures and to submit to any exactions put upon them. Besides penal prices by way of raising the payments, making the mark and lispund much larger, the earls' factors or stewards stopped export until their demands of feudal duties were paid.

Throughout the eighteenth century the struggle of the udallers goes on, and it rests, as do all struggles of the same

Digitized by Google

nature, on the use of the common pasture-land by the men who own the arable enclosed townships on the coast.

In 1824, Lord Dundas claims all the common lands with mines, minerals, wrack and ware, upon the ground that he had by infeftment a right of property in the whole lands of the district of Zetland. The freemen, on the other hand, contended that in all deeds and contracts connected with land, a mark land of arable had in Zetland ever been held to contain a proportion of the adjoining scattold or common lands, including mines, minerals, etc. ; and that the proprietors of mark land have in virtue thereof ever possessed and exercised rights of common property in the scattolds or common lands.

But there is no large quantity of land enclosed or unenclosed in the Orkney Islands, and no corn available to support a large population or for export. Apart from the ruin caused by the oppression of the Stuarts, overpopulation and subdivision are responsible for the quiet decay of the odal holding, when the trade which in early days made them rich had passed to other channels.

Passing over to the mainland, Scotland not only furnishes us with the most striking contrast between the requirements of pastoral and arable use of land, but no part of the story of the islands so clearly points the causes of the social wrangles of the past, the difficulties which lay in the way of the consolidation of the kingly authority, the effects of the misuse of charters, feoffments and deeds ; no part illustrates more amply the difficult economic questions in later years caused by overpopulation, and their inadequate solution in the face of the varying fortunes of external war. It will be worth while to linger a little over the story of Scotland, especially where it is connected with the other parts of the islands, and as it expresses the conflict between the communal and feudal forms of society.

The Western Highlands and Islands.—When we leave the corn-growing Orkneys, and pass to the western side of the larger islands, we come into a country unfitted by land contour and rainfall for the cultivation of grain, a part in which the communal society in consequence lasted in many essentials for a very long time. See pp. 244–245.

Digitized by Google

There is such a very strong contrast between this country and the eastern half of the islands, that the historian often saves himself the trouble of inquiring into natural causes by imagining that one half was inhabited by a wicked race called the Celts, and the other by an unco guid people called Anglo-Saxons, or Teutons, an explanation which is absurd. But as my explanation is a theory, and my theory may not agree at all points with those taught to the young in our schools, it may be as well to give some descriptions of the country written at different times, so that the reader may thoroughly understand the character of the land of which we are treating, and be in a position to test the theories of the author in the course of the story.

Writing in the fourteenth century, Fordun [11] says of the mainlands of the Highlands: "In the upland districts and along the highlands, the fields are less productive, except only in oats and barley. The country is there interspersed with moors and marshy fields. . . . It is, however, full of pasturage grass for cattle, and comely with verdure in the glens along the watercourses. It abounds in sheep and horses; and its soil is grassy, feeds cattle and wild beasts, is rich in milk and wool, and manifold in its wealth of fish in sea, river, and lake."

William Marshall, in 1794, thus describes the district of Ross on the western coast: [12] "It is better calculated for grass than grain. In the spots where grain is cultivated it is extremely productive; but it is not every season that a crop can be reaped. The autumnal rains, too, often destroy the flattering expectations of the husbandman. . . . Cattle is the staple stock." Saying that the Central Highlands enjoyed drier harvests than Cornwall or Devonshire, he excepts the western margin of the district, "which in moisture of climate approaches nearly to the western extreme of England."

Writing at the beginning of the nineteenth century, Sinclair [13] says of Monivaird and Strowan, in the county of Perth: "The greater part of the soil is better fitted to produce grass than corn; as much of it lies in steep banks, abounds with stones, and is liable to be washed away by the rains when in tillage"; and of Moy and Dalarossie, in the

Digitized by Google

county of Inverness : [13] "The cultivated ground bears but a very small proportion to that which is lying waste, perhaps not above a fifteenth part. The quantity of grain necessary for the support of the inhabitants would require to be much greater, were it not that the numbers of cattle and sheep [14] furnish them with flesh and milk in aid of other provisions—they depend for rent and provisions on the cattle."

Sir G. S. Mackenzie [15] says that the people in the west depended wholly on cattle, the country being unsuitable for corn.

The Earl of Selkirk [16] notes : "The climate generally is a discouragement to tillage—the western coast and isles are subject to such excessive rains that a crop of grain can scarcely be secured without damage, or at least without great expense, difficulty, and uncertainty. Under these circumstances, the farmer will certainly find it for his advantage to keep the greatest part of his arable land (*i.e.* land fit for cultivation) in pasture."

Stock-raising, then, being the staple of farming for this district, the farm lands were arranged for its convenience.

Skene [17] says, the fields were not enclosed, but in winter the stock are penned in an enclosure, and are watched by the tenants in rotation, who are fined for damage if they let the stock out. In summer, like the Irish, they take their cattle out to the hills.

The Township Farm.—Marshall [12] (p. 31) describes the township farms as follows :—Arable land . . . divided into infield and outfield. In the former the steading or town, as it was called, was situated, and it was kept in tillage, on which all the manure was laid. The outfield consisted of such plots at the bottom of the valleys as were level enough and free of wood and stones to be ploughed, and were kept in corn and lea alternately, the cattle being folded upon them for manure, called tathing. The meadows were patches among the fields, too wet, woody, or stony to be ploughed, and placed under scythe or sickle for a scanty supply of hay, while the faces of the braes, roots of the hills, woody or stony wastes at the bottom, with a small plot near the house, termed the doorland, for baiting horses, were kept as pasture for cattle in summer and sheep in winter ; while the sheep and horses were pastured

Digitized by Google

during summer on the mainland or hill pasture which lay immediately above the head dyke, and contiguous to the green pasture grounds.

The larger estates, he says, are divided into officiaries, each consisting of an ancient barony, on Loch Tay containing from one to three square miles of valley lands, each with their proportion of hill; comprising from ten to twenty towns or farms, each farm or petty township being subdivided into farmlets; generally from two to six or eight in number. Each farm, though ever so minute, has its pittance of hill or vale, and its share of each description of land; as arable, meadow, green pasture, and muir.

In general, he says, each farm reaches across half the valley, namely, from the burn or river to the head dyke, and has generally some portion of muir immediately above it, contiguous to the green pasture ground. "Where two proprietors have opposite sides of the same ridge or general line of mountains, as frequently happens between parallel glens, their properties are determined by the atmosphere; by wind and water marches; the line of partition lying between exposure and shelter; and it is still more nicely marked by the tendency of rain water."

Sir G. S. Mackenzie [15] describes the arrangement as follows:—"The glens were occupied by a number of people, each of whom paid a trifling rent according to the size of the arable land he possessed. The hills . . . were generally occupied in common by all the townships . . . and were considered in no other view than as an appendage to the arable land. . . . If any of these small tenants reared a greater number of cattle on his summer pasture than what he could maintain during winter, he was subject to certain loss."

All these writers at the end of the eighteenth and at the beginning of the nineteenth century, under the stress of the Napoleonic wars, favour large farms at the expense of the destruction of the social life and of the manhood of the country. Sinclair, for instance, in 1796, says of the parish of Jedburgh: [13] "The conjoining of a number of small possessions into one has long been prevalent in this part of the kingdom; it certainly *has had the effect of reducing the number of inhabitants.*"

Digitized by Google

Sir G. S. Mackenzie, in 1810,[15] speaks of the system of crofting, putting poverty-stricken people on the waste, tying them to "improve" a certain space annually, and, in some instances, to perform various services and to work at fixed prices when called on. He advises larger farms and fewer people. The crofter system which he speaks of was the division of the run-rig holdings among individuals, the pasture remaining in common. This led to frightful subdivision. The Duke of Argyll, in the Hebrides, gradually condenses the farms as the crofts fall in and guards against subdivision. This means, for the change to be a healthy one, emigration or industrial development at home.

I add a fuller description from Selkirk's *Observations*,[16] p. 42. "These farms consist in general of a portion of a valley, to which is annexed a tract of mountain pasture, often stretching to the distance of many miles. The habitations are collected in a little village upon the best of the arable lands, which are used as crofts in constant tillage. The less fertile of the arable land on the outskirts, termed outfield, are only occasionally cultivated, and every part of them is in its turn allowed to rest in grass. The lands in tillage are sometimes cultivated in common, but are more usually distributed among the tenants in proportion to their shares; seldom, however, in a permanent manner, but from year to year. Their riches consist of cattle, chiefly breeding cows and the young stock produced from them, which are maintained on the farm till of a proper age for the market, and by the sale of these the tenants are enabled to pay their rent. The number which each farm or town is capable of maintaining is ascertained by ancient usage, and may be in general from thirty to eighty cows besides other cattle."

The Western Islands.—The accounts of the arrangement of the Hebrides differ only in the amount of land being smaller, and the sea being the boundary. "The odalsjord comprised the tun or township, with its bol or chief farm enclosed by its hill dyke, which separated the inner field from its soettur or common pasture. Outside his home fields he owned as outgrounds all the surrounding land as far as he could throw his knife."[18]

Digitized by Google

Of course the form both of farm and cultivation varied according to the lie of the land and the quality of the soil. "The possession of each tenant," says the Duke of Argyll,[19] "was divided into innumerable little plots of land—this in 1776—none of which remained in his possession for more than a year or a couple of years, the various plots and patches being redivided each year by lot." Speaking of the island of Tiree, he says that much of the soil is "pure shell sand, which yields a rich and beautiful pasture, full of clovers of several species. But it is unfit for cropping, and liable to blow over and render sterile other tracts." He adds that the poor tenants of small crofts had cropped it until in this way two large farms had been destroyed. Tiree was singular among the Hebrides in having no waste or moors, and no peats for fuel.

Skene [20] says, in the Central Highlands the townships averaged 90 acres within the dyke, and 250 beyond. In the islands they were measured in penny lands.

"Merks land," says Sinclair,[21] ought to contain 1600 square fathoms. To each one cow is allotted. The peat mosses furnished fuel. The great mountains were, and had been from time immemorial, deer forests.

The money measure was used in the west. "The oldest problem perhaps of our history is that the western half of Scotland, the wildest shires of the Highlands, and the wildest islands, were measured and valued in marklands, shilling lands, penny lands, farthing lands, long before money as an element of rent was known on the eastern side of Scotland." With the Norsemen the valuations were for taxes as well as rent, to provide ships for their summer expeditions. "The great highroad of northern commerce . . . passed in full stream upon our shores and islands, bringing with it a knowledge of money." I leave to one side the antiquarian inquiry into the merk land, ounce land, and penny land, etc., and their relative value with the ploughgate, except to suggest that in the Orkneys a farthing land was about 1¼ acres, penny lands averaging 8 or 9 acres, and ounce lands made up of 18 penny lands. A farthing land was synonymous with merk land. In North-East Scotland 8 oxgangs of 13 acres make a ploughland, 4 ploughlands, or a davach, equal a pound land of old

Digitized by Google

extent. I refer readers to the introduction to Clouston's *O.R.*, to Cochran-Patrick's *Mediæval Scotland*, and Skene's *Celtic Scotland*, vol. iii.

I have taken pains to describe at length this North-Western land and its system of farming, both because the subject is not much known to the general reader, and because without a thorough understanding of the physical conditions the reader will not be able to appreciate the story of the revolution which took place here from the fifteenth to the eighteenth century, or to understand that when it happened the small man was deprived of his only means of support.

Families in townships, cultivating in runrig, says Skene, existed down to the nineteenth century. They disappeared by the arable land being separated into crofts, assigned permanently to each family, and *the hill pasturage taken from them for the purpose of being thrown into grazing farms.*

The Value of the Waste.—The essence of the change depended on this fact that, owing to the very small quantity of cultivable land and the unfitness for corn, the pasturage was by far the most valuable part of the holdings, but that the written charters and conveyances drawn by men from the east, accustomed mainly to arable cultivation as the greatest value, looked only to the arable land, and passed by means of general clauses the valuable grazing lands.

Before very shortly recounting the different political steps in the revolution, I insert the account of the way in which the change affected the body of the clansmen as given by Mr Cosmo Innes,[22] a description which at one time or another applies equally to Lowland Scotland, England, Wales, and Ireland. It is a method of change which has only not been equally disastrous in other parts because of the greater amount of arable land and the influence of commerce. Celtic and Teutonic have nothing to do with it.

"I do not suppose that any cruelty or injustice was ever premeditated by the legislature or the government—that there was any intention to favour the rich at the expense of the poor, but there are things in the history of our law that I cannot help censuring—the more because I believe the evil was for the most part attributable to the straining of the law by lawyers

Digitized by Google

The books tell us what impediments the humane law in favour of the 'puir pepil that labours the grunde' had to encounter from the practising lawyers of the day (Kames and Walter Ross). I think as little humanity has been shown in the divisions of commons. Looking over our country, the land held in common was of vast extent. In truth, the arable—the cultivated land of Scotland, the land early appropriated and held by charter, is a narrow strip on the river bank or beside the sea. The inland, the upland, the moor, the mountain, were really not occupied at all for agricultural purposes, or served only to keep the poor" (the whole tribe) "and their cattle from starving. They were not thought of when charters were made and lands feudalised. Now, as cultivation increased, the tendency of the agricultural mind was to occupy these wide commons, and our lawyers lent themselves to appropriate the poor man's grazing ground to the neighbouring baron. They pointed to his charter with its clause of parts and pertinents, with its general clause of mosses and moors—clauses taken from the style book, not with any reference to the territory conveyed in that charter; and although the charter was hundreds of years old, and the lord had never possessed any of the common, when it came to be divided, the lord got the whole that was allocated to the estate, and the poor cottar none. The poor had no lawyers!

"I must go back for my great grievance to the time when wide territories that had long been held without charter first were sought to be held by parchment tenure. That was not a mere change in law and land tenures—it was part of a great revolution in society. Mr Maine lays it down, and truly, that the greatest revolution in the history of any people is when the patriarchal or tribe association is changed into the connection arising from land—the territorial if you will—the patriotic bond, instead of the patriarchal. The misfortune was that in Scotland" (as in all countries?) "all such changes told against the poor. A clan in the Highlands before the fifteenth century lived in patriarchal fashion. The clansmen looked to the chief as their leader and father, but what we should call the common people of the clan held their crofts and pastures from father to son, from generation to generation,

Digitized by Google

by a right as indefeasible as the chief's. No doubt the clansmen followed their chief to battle; no doubt they did service in peace—ploughing and reaping the lands round his castle as well as their own; but it was a free service, and *some* land they had of their own. The power of the chief from its very nature depended on the good will of the whole tribe—for who was to enforce a tyrannical order? But the time came when lawyers discovered that the lands of the tribe could not be held or vindicated, or perhaps could not have money raised upon them without writ, and then came the feudal investiture. The common charter was taken of course to the chief, who got the whole land of the tribe in barony. And in the charters of the lands of a great clan the Crown charter bestowed upon the chief all the rights of jurisdiction, civil and criminal, with pit and gallows, instead of his old patriarchal authority. It was an immense advantage, speaking merely commercially, to the lord. He could now raise money upon the security of his seisin, could provide for his family, could, if need be, sell the lands which he had thus acquired in property. But it was not so advantageous for the poor clansmen, who had never thought of writing to bind their patriarchal head, and who now found themselves with no title of property, often without any written leases or rentals. They became altogether dependent on the will of the laird, and fell a long way below the position which they had held before the lands were feudalised. That, I think, was the most flagrant injustice inflicted by lawyers carrying out to the letter the doctrines of feudalism. which they assumed were the same with the old patriarchal occupation."

When the Highlander comes out in 1715 or '45, he is not fighting for French James or Charles against the German George, but for the social system against German and Roman feudalism, and his defeat means its practical extinction. The history, in fact, of the decay of the communal society in Western and Northern Scotland is a story of transfer by legal documents, when writing as a means of transfer supersedes unwritten custom, of the common lands of the tribes to the chief as absolute feudal landholder from the Crown or from some intermediary, a change assisted by the absence of com-

Digitized by Google

merce and agriculture. In this respect it differs from the history of Ireland.

NOTES.—[1] The statistics of 1880 give Orkney Islands acreage 698,726, percentage under grain 4·50; Argyll acreage 2,083,126, percentage under grain, 1·1. [2] Rent was paid in wadmal cloth and butter, scat in butter and oil. See *Old Lore Miscellany*, vol. viii. No. 1, of O. and S. Records (Viking Society), as to this and as to penny lands and ounce lands. [3] Mackenzie's *Grievances*, pp. 102–103. [4] Vol. i. p. 32. [5] O.S., p. 136. [6] O.S., p. 4. [7] *Records of the Earldom of Orkney*, by J. Storer Clouston, p. 79. [8] Saga of Olaf the Saint (Laing), ch. 110. [9] Sverri's Saga, by J. Sephton, p. 125. [10] Saga of Olaf the Saint, ch. 153. When in the nineteenth century the discovery is made of the extraction of iodine from seaweed, the chiefs proprietors claim and use it as their individual property. [11] *Scotichronicon*, Book II. ch. viii. [12] William Marshall, *General View of the Agriculture of the Central Highlands of Scotland* (i.e. those of Perthshire), 1794, p. 117. [13] Sinclair, *Statistical Account of Scotland*, vol. viii. pp. 569, 501; vol. i. p. 8. [14] Though Fordun mentions sheep one must question whether in earlier days these sheep existed, as beasts of prey lingered in the Western Highlands long after they were extinct in other parts of the islands. Speaking of the Gordon Rental of 1600 (in Kingussie and Bellie on the Spey), Innes (*Scottish Legal Antiquities*) says: "In all that vast estate reaching from sea to sea and across ranges of mountains, now everywhere pastured by sheep and cattle, there is no payment of wool or woollen cloth nor of hides or skins, nor any amount of sheep or cattle beyond the occasional mart or wedder for the lord's table." [15] *Survey of Cromarty and Ross in* 1810. [16] *Observations on the Present State of the Highlands*, 1806. [17] Skene, *Celtic Scotland*, iii. pp. 378–393. [18] *The Outer Hebrides*, by W. E. Mackenzie, 1903. [19] *Crofts and Farms in the Hebrides*, by the Duke of Argyll. [20] *Celtic Scotland*. [21] *Statistical Account of Scotland*, vol. v. p. 393. [22] *Scottish Legal Antiquities*, p. 154 *et seq.*

Digitized by Google

PART VI

SCOTLAND, IRELAND, AND WALES: A HISTORICAL RETROSPECT

(*See* EXPLANATION OF TECHNICAL WORDS, *supra*, p. xxvi)

CHAPTER XXIV

SCOTLAND AND IRELAND TO 1170

The Course of Change in Scotland.—When from England we pass to Scotland we come to one of the most troublesome parts of the subject.

The decay of communal society in England, where it was not the result of conquest from the Continent and the spread of Roman ideas, was a natural economic development due to the suitability of England for agriculture, its geographical position and consequent opportunities for commerce with Flanders and control of the wool trade. It is not necessary or profitable here to review English history, apart from the history of mediæval commerce which has not been written, and which is too vast and unknown a subject to English-speaking people to be treated of in this book.

But before we pass to Scotland, the land of the mountain and the flood, some notice of political history is necessary to make plain the change and its causes at different stages and under different conditions. I shall try to begin where I left off in my *First Twelve Centuries of British Story*—in 1154, to confine the narrative to the events bearing on the change from communal to feudal society, and to treat the parts other than England separately as far as possible. But as soon as narrative history begins, all parts of the islands must be treated together, unless the story is to degenerate

Digitized by Google

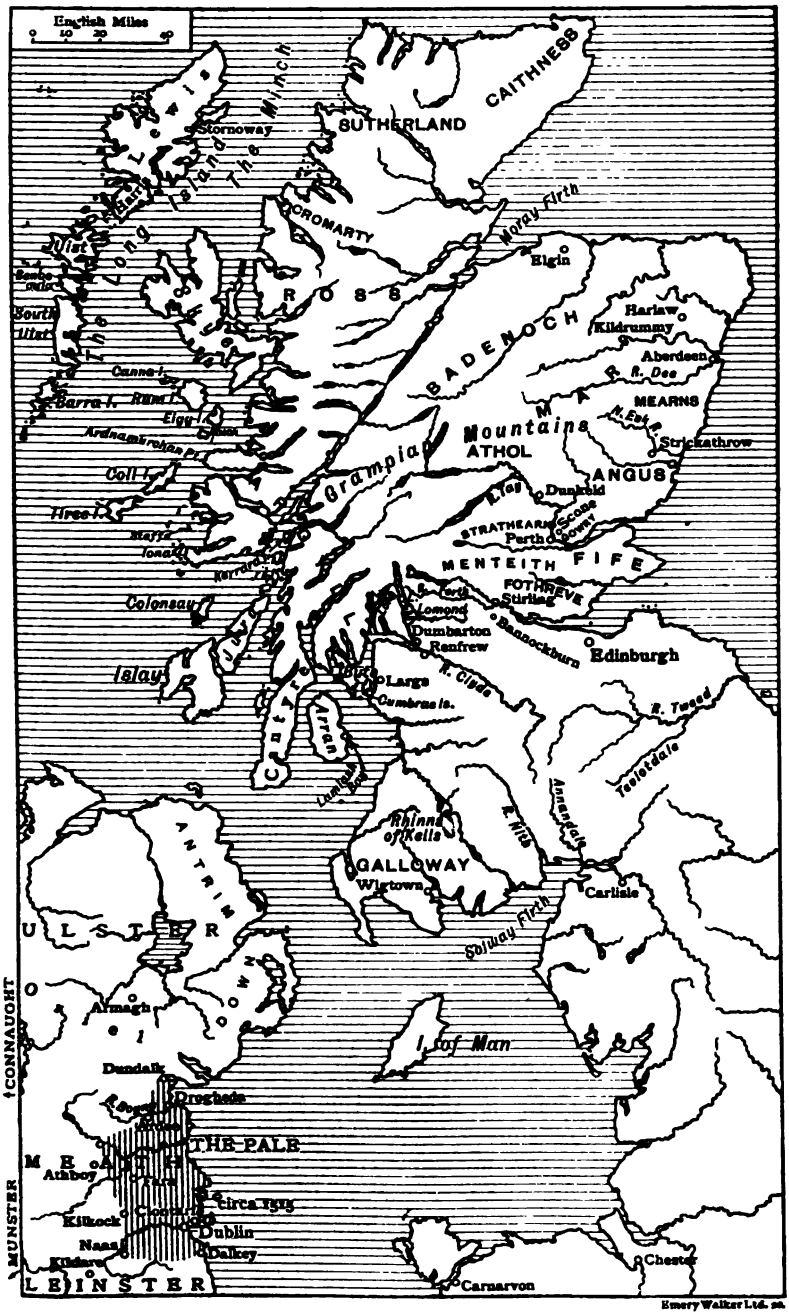
into constitutional history. Otherwise one might lose sight of the fact, for example, that the difficulties which faced the different expeditions to Ireland from Wales and England in the years following 1169 were occasioned by the combinations of force which they met, not only of the native Irish but of the mercenary soldiers from the Isle of Man and the Western Isles of Scotland, and of the Scandinavian merchant-pirates resident in the ports of Dublin, Waterford, Wexford, and Limerick. Henry's expedition had for its first object the seizure of the ports in the hands of the other pirates.

The story of the struggle in Scotland, of the very long and very hard fought battle between two systems of living, is influenced by the physical geography of the land; the persistence of the communal society is largely a matter of rainfall. It is a country having a great variety of soil and climate. It has a coast on the west like Norway, bleak and mountainous, a coast broken up into isolated districts by long fiords, making communication difficult except by water. It has many large inland lakes which serve as main arteries of traffic, and many large islands both north and west set in stormy seas. The north-west is cut off from the south-east by the Grampian ranges and the great chain of lakes which we now call the Caledonian Canal. The two great estuaries of Forth and Clyde cut off the southernmost part from the central districts. As a consequence it took a very long time before the component parts were hammered into a tolerably solid mass, and for some centuries it was a question whose hammering would be most effective.

Besides the nature of the physical formation, the amount of rainfall in the western half plays a great part by discouraging agriculture and the commerce which may have followed it (see pp. 244, 245); and the neighbourhood of the land lends a perpetually shifting chain of combinations which makes it as difficult to tell the story, as it must have been to act it in past times.

With Cantyre, Islay, and Galloway almost kissing the Irish coast and inviting an approach to the Clyde, with Man but little further away, no actors in events in the West of Scotland could be indifferent to the counterpart affecting

Digitized by Google



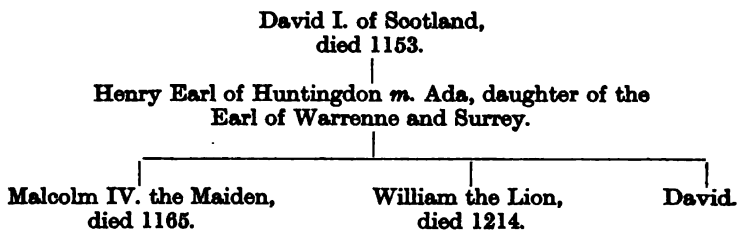
THE IRISH SEA AND WESTERN SCOTLAND.

Digitized by Google

their kinsmen on the Ulster coast; the West to hardy seamen was but the resting place and connecting link between the Irish and Scandinavians of the Irish ports and the Orkney and Shetland Islands governed by the earls. These in their turn were as near to Bergen or Stavanger, to the land to which they owed allegiance, and by as easy a sea passage, as to the Scottish king at Perth or Edinburgh; while the English king, through Chester and Carlisle, could attack the Scot by land from east or west, and through Wales and Ireland and Man on the west by sea. So the histories of all the parts march together and intertwine in a confusing way.

Here later than anywhere else in the islands the personal tie survived in conflict with feudalism, and here more than anywhere else a high-handed feudalism was used to weld society in one.

It is the story, so far as Scotland is concerned, of gradual encroachment and absorption by the people of the district round Scone, who had submitted to Rome and taken to agriculture, of their neighbours north, west, and south of them. In the struggle for supremacy between the two forms of society, the part most suitable for agriculture becomes feudal landholding, and the pastoral districts where they do not retreat before the plough retain the personal tie.



When Henry II. on his accession had reduced the South of England to order, he turned his attention to the North, and had an interview in 1157 at Chester about the possession of the northern counties of England with Malcolm IV. (the Maiden), who at the age of twelve had in 1153 succeeded his grandfather David, his father Henry dying in David's lifetime.

Digitized by Google

The support given by David to his niece Matilda the Empress, Henry's mother, in her contest with Stephen had very materially contributed to Henry's prospects of succession to the crown of England. But if Malcolm expected that this would meet with reward by any acknowledgment of his claim to the border counties, he did not know the nature of the Angevin. Henry by right of the greater force peacefully prevailed, Malcolm giving up to him the fortresses of Carlisle, Bamborough, and Newcastle, and his claim to Northumberland and to Cumbria south of the Solway,[1] the line between England and Scotland remaining from henceforth much as it runs now.

It became established where it is now by custom, a joint commission appointed in 1222 to run out a line failing to agree, though they ran the line several times. In 1237, when the Scottish claims on the borders were being discussed, Henry III. of England offered to give to the King of Scots certain manors in Cumberland and Northumberland as feudal tenancies, an offer which was accepted as a settlement, to the relief of all parties.

But to make Scottish history and the relations between England and Scotland clear as they affect the formation of society, we must go back beyond 1154. The rulers of Scotland looked to the north-west, those of England to the south-east. Only very gradually do the two governments approach each other, the approach taking the form of feudal invasion of the north through Scone.

When at first the Norwegians (or as they are generally called—the Danes) concerned themselves with these parts of the British Isles they conquered and settled those coast districts only which were most fit for cattle raising, for hunting, for fishing, for pastoral life, the replica of their own Norway. They grew crops of oats, as we know from their Sagas, but the fitness of this coast for their lives as roving seamen and as stock breeders gave the north-western parts of Scotland in the early days an immense superiority as a land for settlement over the barren eastern plains.

Some time previous to 1154, "all the islands," says the *Book of Clanronald*,[2] "from Man to the Orkneys, and all

Digitized by Google

the border lands from Dumbarton to Caithness, were in the possession of the Lochlannoch," *i.e.* the Norwegians.

For some generations, while the seat of government of this part of the islands was crudely shaping itself about Perth and Scone, the men of the West fought among themselves to decide whether their rulers should be Irish or Scandinavian, the decision varying as their personal interests or their political immunity led to conflict or to compromise, and as the men of the North played off the king of Norway against nearer enemies.

Meanwhile Eastern Scotland pursues a different development. Since the peaceful transfer of Lothian (the eastern half of modern Scotland between the Tweed and the Forth which had formerly been colonised by Angles) to the king of Scots, after the battle of Carham in 1018, the Scottish kingdom at Scone had steadily inclined to the South. Lothian especially, after William the Conqueror's invasion of England, when it became the refuge for discontented Saxons and Normans, whose military strength was welcomed by the Scots' ruler, grew in power and wealth up to the time of the Edwardian wars. It is the only really Anglo-Saxon part of the islands, if such a race ever existed.

During the reigns of Malcolm III. and his sons this influence of the Lowlands was increased by the introduction of feudal tenure in the place of tribal holding and by lavish grants by the king of land held by feudal tenure to Saxons and Normans and to the recently founded abbeys, the Saxons and Normans under feudal conditions showing themselves good soldiers against the tribal Norse and Celtic populations of the North and West.

At first the two parts East and West divided by deep rivers and high mountains dwelt apart like two particular stars.

Soon after Carham, Duncan, the son of the lay abbot of Dunkeld, and grandson of Malcolm II., became ruler of the Western district from Dumbarton to Chester, called Strathclyde, and when in 1034 he succeeded Malcolm as king of the Scots, he drew with him the part of the West coast between the Clyde and the Solway, bringing all of present Scotland south of the Clyde and the Forth under the king of the Scots.

Digitized by Google

But in spite of this submission to the Scot, that part of the extreme south-west coast of modern Scotland called Galloway,[3] the district bounded by the river Nith and the Rhinns of Kells, comprising the shires of Wigtown, Kirkcudbright, and parts of Ayr and Dumfries, was always ready for rebellion against the Scottish king, as the alliance of its chiefs inclined the territory to the king of England.

In the West, north of Galloway, and in the East, north of the Tay, the king of Scots possessed only a fitful *de facto* authority dependent on a display of force. The titular sovereign was the king of Norway. The marmoers or earls who lived beyond the Moray Firth, the rulers of the coast of Argyll,[4] the earls of the Western Isles, protected by the sea, owed obedience to no man.

They played off the king of Norway against the power of the king of Scotland, much as in later days the Norman Bruce or Comyn or Balliol played off Edward, his lord for his English or French feudal territory, against the Scottish Committee of Barons who stood for the Scottish territory devoid of a king. They called on the distant military power to protect them against the nearer danger, willing to acknowledge him as long as they needed his help and ignoring his authority and refusing help in return when the danger was past. In much the same way the Puritan of Massachusetts clung to the British king until he had driven the French out of Canada, and then turned on the power that had saved him, and threw the tea into the waters of Boston harbour.

The North and West would have been more dangerous to the Scottish king if unity had given it power. But it was but seldom that the scattered sea powers drew together under one head. The disunion of the different sections makes a story which might otherwise be interesting very difficult to follow.

The Orkneys, where there were generally earls of rival families fighting each other, the mainland north of Inverness and the Caledonian Canal, the Western Highlands and Islands north and those south of Ardnamurchan Point, and the Isle of Man, each has its different families of shifting rulers, intermarrying, waging war on each other, combining in a

Digitized by Google

variety of temporary alliances, sometimes united for a moment under one head, intriguing, attacking and plundering Ireland, England, and Scotland, and when they wanted help paying fealty to and praying for the interference of Norway.

In 1029 Thorfinn, the son of the Sigurd earl of the Orkneys who had fallen at Clontarf, and grandson of Malcolm II. of Scotland, became sole ruler of the Orkneys, and made their influence deeply felt throughout the North. His cousin Duncan, king of Scots, who represented the tendency to southern connection and feudalism, attacking him, was defeated in a battle at Burghead on the Moray Firth and killed in 1039 by his Marmoer of Moray, Shakespeare's Macbeth, who was himself descended from Malcolm in the female line. The crown of the Scots passed for some fourteen years into Norse hands. Then with the help of Siward of Northumbria, Duncan's son Malcolm III., nicknamed Canmore, or Bighead, defeated and killed Macbeth at Lumphanan in Mar in 1057, and restored the feudal supremacy.

Malcolm III. lessened danger from Norse rivals by marrying Thorfinn's widow, Injibjorg, an alliance which gave him control over the whole country after a fashion. The North-West he rules as the chief and kinsman of the peoples, or as the Ardri over many chiefs; the South-East he rules as feudal lord. In 1068 he married St Margaret.[5]

The Struggle between Norwegian and Scot.—The descendants of the two marriages, the Norwegian rulers of Moray and Ross, and the Scot Saxons who reigned at Edinburgh, kept up a steady unequal struggle for the mastery for many generations, the Norse udallers resisting the gradual encroachment of each new plantation of Saxon and Norman feudal lords.

After the three expeditions of Magnus Barfod to the West, and his unexpected death in Ireland, the Norwegian chieftains more incline to their near neighbour of Scotland who held the real power.

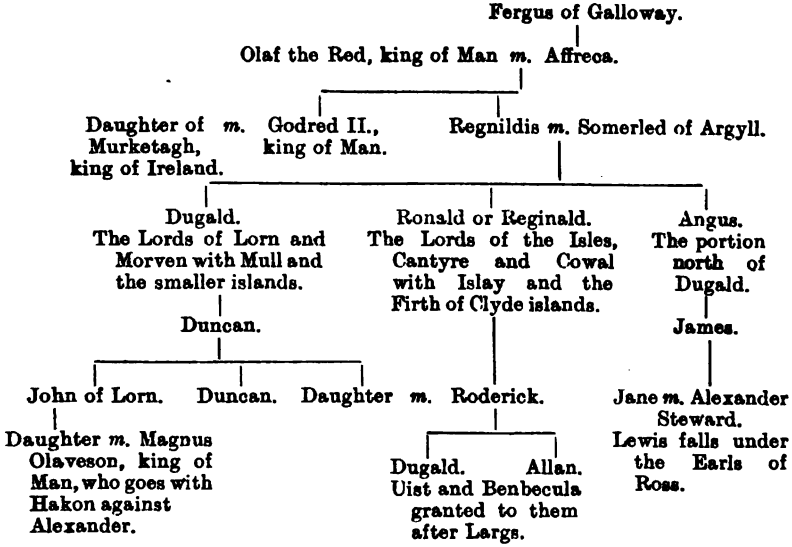
About 1150 a decisive defeat at Strickathrow on the Esk of Angus MacHeth, the Marmoer of Moray and Ross, gave the Scottish king the opportunity to seize Moray and grant it out to his advantage to his feudal barons from the South.

The Scottish king had a more dangerous enemy than the

Digitized by Google

men of Galloway or the Thane of Moray and Ross in the ruler of the Western Islands and Argyll.

Somerled (the summer pirate), who had crossed over from Ireland and become the ruler of Argyll, married about 1140 Regnildis, the daughter of Olaf the Red, the king of Man, and Affreca daughter of Fergus of Galloway.



Olaf's son, Godred, married the granddaughter of Murketagh, king of Ireland, the alliances making a formidable combination of naval force. About the time of the accession of Henry II., Somerled invaded the Hebridean Islands as against Godred (Olaf had died in 1153), the invasion resulting, after an all-night battle, in an agreement by which Man, the Long Island, Skye, Tiree, and Coll were to be held by Godred, and the rest of the Southern Hebrides by Dugald, the eldest son of Somerled. Then two years later, Somerled, watching his opportunity, invaded Man, and drove out Godred, who fled to Norway. For the moment Somerled was supreme in the isles and the dales.

Malcolm the Maiden, a boy of twelve, in addition to the aggression of his feudal cousin Henry, had now to deal with all these chiefs in revolt at once; the men of Galloway in the

Digitized by Google

South-West, the Norse Thanes of Moray in the North, and Somerled on the West coast.

Though not aggressive, as in the days of Clontarf, deprived of its sting by the adoption of Christianity, and weak by its want of compactness and absence of a central rallying point, the naval power of the western Norsemen was still very formidable, especially when for a moment inter-alliances brought the authority over the scattered territories into one hand. It was never certain when or how far these Celto-Norse of the West might not be supported by the power of Norway. In this instance they fought unassisted.

Malcolm put down successfully the revolts in Galloway and Moray, and defeated Somerled, driving him for the time into Ireland. Three years later Somerled made a treaty with Malcolm on terms practically of independent sovereignty of such importance that documents in Scotland were dated from it. But in 1164 he again invaded the East, and sailed up the Clyde with a great horde collected from all parts of his dominions on both coasts and from the islands of the West, as well as a fleet of 160 ships from Ireland.

Malcolm happened to meet him with a much inferior force near Renfrew, where Somerled was utterly defeated and killed, dying like Magnus Barfod in an obscure skirmish. From this time the Norsemen of the West and North were, in their dealings with the Scots, in great part on the defensive.

On the death of Somerled, his lands were divided among his three sons: Dugald, the ancestor of the MacDougalls, the Lords of Lorn; Ronald or Reginald, from whom were descended the Lords of the Isles; and Angus.

The result of Malcolm's war in Galloway and Moray was that feudal holdings were introduced into these parts in the place of tribal relations.

With these home troubles on his hands, matters of so much importance and promising so much better results to the overlord of the Norsemen and the men of the Isles than a quarrel with his powerful cousin, the Lord of Aquitaine, Malcolm could not afford to take his position with Henry in bad part. It at least freed him from all necessity to keep a force for offence or defence on the Southern borders.

Digitized by Google

As a result of the conflicts between East and West and North and South, Scotland became a land of mixed races. The impulse and the power of military feudalism, represented finally by the Norman Robert de Brus, was in perpetual conflict with the tribal navies of the West and the udallers of the North. Though surviving to a very late time as an economic force, the communal society gradually gave way before the South-Eastern feudalism and the Rome that supported it as a political system.

Scotland became a land of mixed races. The Norwegian, the Irish Celt, the Pict was confronted with the Saxon and the Norman from the South. David's army at the Battle of the Standard is described by Richard of Hexham in his Acts of King Stephen as composed of Normans, Germans, and English Northumbrians and Cumbrians, men from Teviotdale and Lothian, Picts commonly called Galwegians, and Scots.

Earl David gave the great district of Annandale to the Norman de Brus. He peopled the old kingdom of Cumbria with Saxon and Norman followers.

The same process of mixture of races and replacement of communal by feudal social forms went on in his reign and in the reign of Malcolm the Maiden in the lands of Fife and other parts north of the Forth on the East coast, which were filled with Saxons, Normans, and Flemings. The communal chiefs, the great marmoers of districts and their tribal churches, were gradually driven out and replaced by feudal barons and Roman monasteries.

To support his introduction of feudalism, Malcolm removed the people of Moray, says Fordun,[6] and scattered them on both sides of the Grampians, to prevent their inroads on the South. The struggle goes on through the centuries, the communal ideal giving way very slowly, in the absence of a great commerce, before feudal usage.

But it does steadily give way. By the time of Alexander III. the Gaelic language had ceased except in Galloway, Lennox, round Loch Lomond and the Western Highlands. It was not replaced by a Scandinavian tongue. There was neither sufficient popular literature nor commerce to support either Gaelic or Norwegian before the deadening and de-

Digitized by Google

structive influence of monastic Latin. So far as any language supplements this last, it is from the South, English, French, or Flemish.

Apart from the inherent military necessity which created and supported feudalism, there was no need for any change in the social conditions merely because the tribal units came under the impress of federal government; they were still in violent conflict; commerce and arable cultivation were still too slight to enforce the change. It came, but it came very slowly and partially, and it was sufficiently amenable to economic conditions not to come at all in the West except by force and fraud.

In great part it only came at all after the need for feudalism as a binding force had passed away; it then came in such form as to inflict permanent injury on a great part of the population, and check the beneficial growth both of farming and commerce. There were two periods of climax of such changes, a legal and political climax under the later Stuarts when Scotland had become a united country, and an economic climax later operating throughout the eighteenth century and well into the nineteenth, which might have resulted in salutary conditions but for the influence under which it took effect of feudal landholding out of date, and of commercial theories of rent and profit and loss which ignored manhood and social advantage as an economic asset.

Malcolm died in 1165, at the early age of twenty-four, and was succeeded by his brother William the Lion, who at first followed Malcolm's example and lived on terms of close friendship with Henry. He still claimed the possession of Northumberland and Southern Cumbria, but being refused waited like his grandfather David for the opportunity which came to him in 1173.

But before this happened several events took place affecting nearly all parts of the islands and of great importance to the men of Western Scotland, events which must be related if we are to get any sense of proportion in the history of the islands away from Westminster.

Ireland to 1169.—In the first place, in the Irish Annals under the years 1128 and 1132 there are two entries which

Digitized by Google

respectively concern two chiefs very prominent in the Irish history of a later day.

The first is 1128.[7] "An ugly, unprecedented deed, which caused the malediction of the men of Erin, both lay and clerical—for which no equal was found previously in Erin—was committed by Tiernan Ua Ruairc and by the Ui Briuin, viz. the comarb of Patrick (*i.e.* the abbot of Armagh) was openly profaned in his own presence and his retinue were plundered and a number of them slain; and a young cleric of his people, who was under a cuilebadh (translated in note some kind of vestment or altar cloth) was killed there. The evil consequence, moreover, that grew from this misdeed was that there was not in Erin any enduring protection for a man thenceforth until this injury was avenged by God and man." Then after noticing a predatory hosting by Terence O'Conor into Leinster and to Dublin (possibly in revenge), is added, "the infamy of this hosting moreover rested on Tighernan O'Ruairc with his people."

Tiernan O'Ruarc was the king whose wife Devorgilla was afterwards carried off by Dermot of Leinster, an event which has been supposed to have led to Henry's invasion of Ireland.

The second is under date of 1132.[8] "The abbot's house of Cill dara (Kildare) was captured by the Ui Ceinsellaigh, the tribe of Dermot M'Murrough, king of Leinster, against the comarb of Brighid, and burned, and a large part of the church, and a great many were slain there; and the nun herself was carried off a prisoner and put into a man's bed."

Dermot was about twenty-three years old in 1132, a young man with no very strong political following. He had been deposed from the kingship of Leinster by O'Conor, who had put in his own nominee, with the help of Tiernan O'Ruarc. This led to a contest over the appointment by the new man of an abbess of Kildare. Tiernan had married Devorgilla, the daughter of Murrough O'Melaghlin, king of Meath. Dermot had married the sister of Laurence O'Toole, afterwards archbishop of Ireland.

The Ui Briuin were the people of Leitrim which formed part of the kingdom of Brefny, over which Tiernan O'Rourke reigned, and the Ui Ceinnsellaigh or O'Kinsellagh were the

Digitized by Google

tribe occupying the district around Wexford, of which Dermot M'Murrough was chief. Although Dermot is not mentioned in the account of the raid on Kildare, the responsibility for it or for paying for it rested on him as chief of the tribe.

The two items are of interest if only to show how far Irish society had travelled from the communal state which had followed Brian Boru's brief ascendancy before Clontarf. Not only had the tribal church, with its hereditary married clergy, lost all spiritual influence, but the great chiefs and kings would appear to have lost all fear of consequences to themselves from the society over which they ruled, and in which in its best state each was only *primus inter pares*.

But the items meant more than that.

Travelled men, commercial men, could not fail to see the weakness of a tribal system which, while it punished murder, arson, or rape by payments in money (such as we may demand from Prussia for her many crimes), was impotent to enforce the penalty unless there was a central power able to organise force for its collection. The only remedy was the pressure put by the local community on their sinning chieftain, and if they themselves had taken part in the offence, as was generally the case, their only remedy was to pay their share of the cattle. Such a condition cried for feudalism, for a power which could impose the will of the overlord outside of the local community as to the penalty and enforce it.

The one thing needed to restore a healthy tone to society was a strong central government, an Ardri without opposition. But since Clontarf no one king had been strong enough to enforce his will over all Ireland. The O'Neills of Ulster, the O'Briens of Munster, and recently the O'Conors of Connaught, fought each other for the mastery over the whole country with varying fortunes, with the consequence that they had none of them been able to do the one duty to the bleeding country which justified the existence of an overlord, the discouragement of local wars, and the protection of peaceful tribes.

When Henry first landed in Ireland the country was calling for a strong central authority, for an impartial, tactful, and fearless ruler, who should control both Irish chiefs and

Digitized by Google

Norman-Welsh adventurers. It was loyal to him and his successors so long as they acted such a part.

But throughout its history, Ireland, owing to that stormy sea passage has been left to the mercy of deputies with scant authority, placemen who served their own interests before that of their country, and in these latter days a little knot of despicable party politicians who, ignored by the Irish people, are supported in their policy of irritation and obstruction by the authority of the absentee central power at Westminster. Ireland wants an Ardri who will enforce his will all over Ireland.

In the first half of the twelfth century the O'Conors of Connaught tried to become kings of Ireland by attacking in turn the kings and greater chiefs of Munster, Leinster, and Meath, and dividing the territories of each among several chiefs, on the same principle on which William the Lion and other Scottish kings divided Caithness between two rival earls of Orkney, or between the earl of Orkney and the chiefs of the Southern Hebrides and Man.

The O'Briens of Munster, the descendant of Brian Boru, fiercely resisted ; Tiernan O'Rourke supported O'Conor, and Dermot assisted Murrough O'Melaghlin, king of Meath, and the O'Briens of Munster against him. Tiernan and Dermot were from the first bitter rivals, Tiernan following the Connaught king, and Dermot supporting Meath and Ulster.

Shortly before Henry II.'s accession, Murtagh O'Loughlin,[9] the king of the Cinel Owen, the tribe occupying the district between Derry and Lough Neagh, began to bestir himself in the affairs of the rest of Ireland. He was the head of the Ulster Neills, who had formerly been alternately with the kings of Meath kings of Ireland. He received the submission of the Norsemen of Dublin and of the Norsemen of Limerick and gave them 1200 cows as their wages, the expression meaning that they were his paid mercenaries as against the other kings. We find the Saxon invaders taking wages in the same way from the kings of Connaught in the fourteenth century, and changing sides in the same way when it suited them.

In common with others, O'Conor, O'Brien, Dermot, and Tiernan submitted to O'Loughlin after O'Conor had made a

Digitized by Google

counter-raid, resulting in the loss of his son and no cows. Then Dermot in 1151 joined O'Conor in a final campaign against O'Brien, who was utterly crushed in one battle by the allied kings, and fled to Ulster. This brought in the Ulster Ardri again, and in 1153 he made treaty with O'Conor. Then he and Dermot led their men to Meath, which they divided between the former king Murrough O'Melaghlin and his son, excluding Tiernan; and after defeating him they took from him his own territory of the County of Longford and the southern half of Leitrim, and gave the chieftainship to his son. Dermot in this raid carried off Devorgilla, "she consenting," say the Four Masters, "by the advice of her brother Melaghlyn, with her cattle and furniture." The Annals of Clonmacnois add "for some abuses of her husband Tiernan done to her before."

In the following year O'Conor, by way of a side attack on O'Loughlin's power, invaded Leinster on behalf of his henchman Tiernan O'Ruarc, and handed over Devorgilla and her cattle to the men of Meath. She apparently went back to Tiernan.

Although O'Conor had acknowledged O'Loughlin, he did not cease to make war; he made a wicker bridge at Athlone for the purpose of making incursions into Meath, and he collected a fleet in the West and raided Tirconnel and Inishowen. O'Loughlin brought a fleet from Man, Arran, Cantyre, and the Hebrides, which met with defeat at O'Conor's hands.

O'Conor died in 1166, and O'Loughlin, with whom Dermot had allied himself, became for the time unquestioned Ardri. Under him Dermot held the whole province of Leinster and a vacillating suzerainty over the Norsemen of Dublin, Wexford, and Waterford. Tiernan, who had thrown in his lot with Roderick O'Conor, who had succeeded his father in Connaught, was unable to revenge himself on Dermot. So long as O'Loughlin was Ardri and Dermot advanced under his protection, Tiernan was powerless to renew the feud. But his turn came.

In 1166 O'Loughlin, who had given a guarantee of protection to the king of Ulidia (Counties of Antrim and Down),

Digitized by Google

the sureties for the guarantee being the abbot of Armagh, the king of Oriel (the part from Lough Neagh to the Boyne), and the Staff of Jesus (a crozier given to St Patrick by our Lord), blinded him in defiance of his guarantee. As a result there was a general attack made upon him; he was defeated and killed. Roderick O'Conor then acts as Ardri. He is crowned at Dublin, giving the Norsemen 4000 cows for their assistance. He goes into Leinster, takes the hostages of Dermot and of the O'Kinsellaghs, leaving him in possession of his tribe lands, and calls the chiefs together at a meeting at Athboy in Meath, at which general intertribal laws were declared.

Meanwhile Tiernan invades Leinster and drives Dermot beyond sea. The meaning of which most probably is that Dermot's tribe, the O'Kinsellaghs, refused to be responsible for the eric which Tiernan was now able to demand for the seizure of Devorgilla and her cattle long ago. The Brehon Laws are very explicit that those liable for an eric fine may outlaw the person for whom they have to pay it, thus washing their hands of further responsibility, to which provision a chief or king was no exception. In 1168 the men of Meath, who had paid 800 cows as atonement for a killing by their king, deposed the king in consequence. Further, the laws give as an example, "a crime through which a chief may be put to death; *i.e.* to lie with the wife of an external chieftain." [10] That the tribe of Dermot refused to be responsible for the very heavy eric for their chief's acts, and allowed him to be driven away for a time, is a far more likely story than that they refused to support him because of his failure to come up to their moral standard, which is generally the reason given in our histories.

Dermot fled to the people with whom the ports of Leinster had the most intimate trade relations, extending from remote times to the slave trade of recent days, the people of Bristol. From thence he crossed to hunt Henry in his continental dominions, offering him in return for assistance to acknowledge him as his overlord. Henry accepted him and gave him letters authorising anyone spoiling for a fight to help him. Armed with these, Dermot started on his hunt for allies.

He met Richard FitzGilbert, called Strongbow, owner of

Digitized by Google

the Castle of Striguil or Chepstow, whose father had been made earl of Pembroke by Stephen. Strongbow, himself under Henry's displeasure, was willing to help Dermot, but dare not without express authority from Henry, so Dermot went on into little England beyond Wales, Pembrokeshire, then settled by the Flemings who had been sent there by succeeding Norman kings either as mercenaries or as exiles from flooded Holland to act as garrison for a border fortress against the Welsh. Here he enlisted the support of a number of Norman-Welsh knights who were connected on the mother's side with Wales through Nesta, the daughter of Rhys ap Griffith, king of South Wales, the FitzHenrys, FitzStephens and FitzGeralds.[11]

Now leaving for the moment both Scotland and Ireland, we must go back to the time of Henry's accession in 1154 to deal with events in Wales.

NOTES.—[1] "Et totum comitatum Lodonenesem. Wendover. [2] Quoted App. I. to Skene's *Celtic Scotland*. [3] *I.e.* Gallgaidheal, the land of the Scandinavian stranger. [4] *I.e.* Airergaidheal, the coast land of the Scandinavian stranger. [5] Query, in the lifetime of Injibjorg. Plurality of wives was a common practice with these rulers. [6] Fordun, *Annals*, iv., edit. 1872, vol. ii. p. 251. [7] Annals of Ulster, vol. ii., R.S., 1128. [8] Annals of Loch Cé, 1132. [9] Please distinguish between Murrough O'Melaghlin, king of Meath, Devorgilla's brother, and Murtagh O'Loughlin, the Ardri, king of the Cinel Owen in Ulster. [10] *A.L. Irel.*, ii. 263. [11] See pedigree of descendants of Nesta in my *First Twelve Centuries of British Story*, p. 376.

CHAPTER XXV

WALES, SCOTLAND, AND IRELAND TO THE CAPTURE OF WILLIAM THE LION

THOUGH the tribal system was broken up earlier in Wales owing to its close connection with England than either in Scotland or Ireland, in those earlier days it existed in its fullness, no one king having for more then a very few years any superiority of national control or being able to check the unceasing war between the independent communities.

Digitized by Google

The weakness of the English Crown had nowhere been more clearly shown than in its dealings with the Welsh chiefs. Stephen had never been able to assert any authority in Wales, the barons on the borders barely holding their own and sometimes not holding it during the civil war in England. At the accession of Henry II. the Welsh were not threatening the borders; the country was more peaceful; but the usual wars were being waged between the chieftains themselves. When expeditions into the country were made by the English kings they too often resembled, both in origin and execution, the invasions of Afghanistan by the British from India.

Henry was called in by disputes between Rhys ap Griffith, prince of South Wales, and Owen Gwynnedd of North Wales. He invaded Flintshire with a large army, and sent ships round to Anglesey from Chester. But he had no easy task. In Wales, as in Scotland or in Ireland, the invading alien would-be overlord could put pressure on no responsible authority, but must hunt the bandits or patriots, as they called themselves, through bogs and woods and mountains, while they, who would not meet him in the open, fell on him in the passes, and harried his shipmen in Anglesey.

He at first met with serious reverses in both arms; but soon the defence collapsed, the chiefs, with the exception of Rhys ap Griffith, coming in and giving security. Rhys, sending his men and cattle into the wilds about the Teivy, held out for some time longer to make better terms before he submitted.

It would be of very little interest to the general reader to enumerate the acts of treachery and cruelty on both sides which accompanied the chronic civil wars between the chiefs, or between the border barons, such as De Braose or Ranulph Poer and Welsh tribes. As an exemplary incident of such border warfare, a chief named Ivor Bach, aided by treachery or gross neglect in the castle, scaled the walls of Cardiff Castle in the night, carried off William of Gloucester, the earl, and his wife and child into the woods, where he held them for ransom after the manner of the brigands of Sicily or Greece. In 1911 the mayor of Cardiff solemnly

Digitized by Google

urged that the Prince of Wales ought to be invested in that city rather than in Carnarvon as a tribute to the celebrity of this Welsh "patriot."

Peace in Wales was impossible. If the Welsh chieftains did not do so, the border barons made war, so that a series of reprisals of this kind forced Henry again to a fresh invasion in 1162. He marched through Glamorganshire aggressively, but Rhys came in at once and submitted, which must have been a disappointment to Henry, who had to return home without booty.

When, however, Becket became archbishop, and the dispute between him and Henry waxed hot, the Welsh princes united and broke out against the marchers on the borders and against the Flemings in Pembrokeshire.[1] Owen Gwynnedd of North Wales even went so far as to offer to ally himself with Louis VII. of France against Henry. The unifying power of Rome for the moment made even the Welsh forget their divisions; Henry's campaign against the Welsh which followed was a striking example of the failure which always attends the efforts of a centralised power to meet men used only to guerilla warfare by methods fitted for opposing organised armies, without providing for supplies.

Henry had made great preparations for this invasion, bringing besides his feudal levies, mercenaries from the Continent. He advanced into the heart of the country, having the woods cleared before him to prevent an ambush, such as he had suffered from in the first campaign. After defeating the Welsh he took up a commanding position on the Bergwyn Mountain near Bala.

But he had made no provision for securing supplies either for men or horses; his foraging parties were cut off in great numbers by the Welsh who hovered round him; heavy rain fell continuously; he made a disastrous retreat, plundered and harassed by the men of the tribes as he retired.

As he had no other means of showing his displeasure, he blinded and mutilated the hostages who had been given to him by the Welsh chieftains. Meanwhile the wars between the Welsh tribes and the border barons went on unceasingly.

Digitized by Google

A new page of history begins both for Ireland and Wales when in 1169, on Dermot's invitation, Robert FitzStephen, with a small band of armoured knights and three hundred archers drawn from the Flemings of Pembrokeshire, landed at Bannow Bay in Wexford, the first of three expeditions of conquest from Fishguard and St Davids.

From this time onwards, although the Welsh tribes still continue to ravage the borders, to burn, to murder the Flemings, to assault the Norman castles, and to fight, blind, and mutilate one another, they become less dangerous to the unity of Britain, as there is an outlet for their energies in Ireland on the one side, and as light armed mercenaries in Henry's French wars, in which they were extensively used, on the other.[2] Wales gradually falls under the feudal influence, and eventually accepts Roman authority through Canterbury.

When in 1171 Henry went to Ireland after Becket's murder, Rhys of South Wales met him and did homage, giving hostages, horses and cattle.[3] Henry confirmed his possessions and made him chief Welsh justiciary.

Henry did not trust to arms only to subdue the Welsh. There was a widely spread belief that the great hero Arthur was not dead, but would come again to deliver Wales from the foreign foe. Henry, to put a check on any such childish superstition, opportunely found Arthur's bones at Glastonbury (where he may very probably have been buried), with all the proper accompaniment of wondrous size of limb, immense coffin of a tree, Gwenhyrwar with her golden hair intact, an inscription, and so forth.

As an additional inducement to peace he gave his natural sister Emma as wife to David, son of Owen Gwynnedd, Prince of Wales.

The Welsh were comparatively quiet for the rest of Henry's reign, Rhys and a great many of the Welsh princes coming on several occasions to renew their homage.

In the meantime Dermot took steps for his safety in case the promises of the Norman Welshmen were not kept. Coming back accompanied by a few Flemings, after a vain attempt to resist Roderick and Tiernan O'Ruarc, he gave

Digitized by Google

hostages to Roderick for possession of ten cantreds of his own native territory and a hundred ounces of gold to O'Ruarc for his erinach or atonement for the wrong done fourteen years before. The incident was closed. It was a point (you may call it a weak or strong point according to your view) of the communal system that a wrong once compensated by payment according to customary rule, the offender was not proceeded against further. Having now two Ardris, Roderick and Henry, Dermot waited to see which was the stronger.

The Norsemen of Wexford.—When the first expedition landed at Bannow, they notified Dermot, who sent 500 men to their assistance. The combined force then attacked the Norsemen in Wexford, who after a stout resistance surrendered. They then moved to attack in turn Ossory, Offelan, Glendalough, and other parts of Leinster, assisted by the Norsemen of Wexford and by the Leinstermen now returning to their allegiance.

As Dermot had submitted to Roderick, the Ardri had no cause to interfere with him while he reduced his former province of Leinster to order. He followed only the usual course in employing foreign mercenaries. But when his hostings assumed a dangerous aspect, Roderick with Tiernan O'Ruarc and O'Melaghlin of Meath and the Norsemen of Dublin invaded Leinster and tried to persuade Dermot to give up his new allies, "and they set nothing by the Flemings." Dermot temporised, but gave his son as a hostage to Roderick, and promised, if Roderick would leave him in peaceable possession of Leinster, to send them away and to bring in no others. He probably meant to keep his word. Roderick and his allies retired, for the present satisfied.

Maurice de Prendergast, who may have heard of this compact, changed sides and joined the king of Ossory with 200 men, a prophetic forecast of the future conditions of Ireland, doomed to be given over, away from any strong central government, to the quarrels of the invaders, who in varied disputes take wages as the mercenaries of the native kings.

After Roderick had received a temporary satisfaction,

Digitized by Google

further reinforcement came from South Wales, first under Maurice FitzGerald, then under Raymond Le Gros, and in August 1170, the expedition of Strongbow.

Various raids were undertaken. FitzStephen made an expedition to Limerick to assist Donnell O'Brien of Munster, who, as the descendant of Brian Boru, claimed the whole province, half of which had been given by Roderick to the M'Carthies. O'Conor came with a fleet, but O'Brien worsted him with the help of his new allies.

The Norsemen of Waterford.—The Norsemen of Waterford, who were assisted by the Irish chiefs of the neighbourhood, attacked the new invaders. Raymond, after an unsuccessful sally upon them from his entrenchments, drove a number of cattle collected in his lines out upon the enemy, and advancing behind them, in the confusion that followed inflicted upon them a crushing defeat. Then Strongbow and the others take Waterford; the most powerful persons in the city, says Regan, are Reginald and Sitric, clearly Scandinavians. Here Strongbow married Dermot's daughter Eva, and leaving a garrison in Waterford they set out to attack the great Norse stronghold of Dublin.

The Norsemen of Dublin.—The Scandinavians of Dublin under Asgall or Hasculf their king,[4] in spite of his 4000 cows given them as wages, deserted their Ardri Roderick and sent Archbishop Laurence O'Toole to treat for peace with Dermot and "the pirates whom he brought with him from the east." A truce was agreed on. But in the face of the truce Raymond Le Gros and Miles de Cogan fought their way in and began a slaughter of the inhabitants. Asgall, with some of his people, escaped to the Hebrides, and Dermot and Strongbow seized the city. In May 1171 Dermot died.

He had agreed as the price of his assistance that Strongbow should succeed him in Leinster. But it was not likely that the tribes over whom Dermot had ruled would without a struggle accept the stranger as ruler. The Irish deserted Strongbow, and while the Leinster men attacked Waterford, Roderick O'Conor with a great levy besieged Dublin, having killed the hostages given to him by Dermot. The Norsemen of Wexford fell upon FitzStephen, defeated him and shut

Digitized by Google

him up with a small force in a fort which he had built on a rock at Carrick near the town.

About the same time Asgall and John the Mad, a Norseman from the Orkneys, with sixty ships full of Norwegians from the Western Isles, sailed up the Liffey and besieged Dublin from the sea.

The situation in Dublin was so desperate that Strongbow offered Roderick to do fealty to him for Leinster. But Roderick will give him nothing but the cities usually held by the Norwegians, Dublin, Waterford, and Wexford, setting off the one set of foreign pirates and traders against the other.

Then the unexpected happens. The garrison of Dublin under Milo de Cogan make a sally, taking the Norwegians of the Isles both in front and rear. They kill Asgall or Hasculf and John the Mad, and the fleet sails back to the Western Isles and the Orkneys, leaving the Saxon to deal with the Irish levies.

Another sally takes Roderick's camp by surprise, and the Ardri and Tiernan O'Ruarc are routed with great slaughter.

Henry's Expedition.—The next event of importance is the landing of Henry himself in Ireland in October 1171, bringing with him a fleet of 240 ships manned and armed and victualled from all his dominions. Most interesting particulars of the contributions of hogs and beans and wheat and cheese and herrings and hay and oats, almonds and spices, of canvas to cover and mats to place under the wheat, handmills, wooden towers (carried "knocked down" as the American would say), axes, pickaxes, spades, nails, carts, waggons, measures, ships' apparel, men's apparel, skins of otters and mountain cats, and divers other things contributed by the different counties all over England, will be found in *C.D. Irel.*, vol. i.

Henry assembled his fleet at Milford, "and there in the contre abode with his host longe whyle ar he had wynd to passe" to Waterford and so to Dublin. The prevailing wind, which is from the south-west, from which the roadstead of Fishguard is protected, blows direct into the mouth of the Haven, making it a difficult base from which to sail. He stayed in Ireland long enough only to receive the sub-

Digitized by Google

mission of Irish kings and to arrange the territorial ambitions of the adventurers. Then he flew back to England to combat the insurrection of his sons, the young Henry, the treacherous Richard, and the rebellious barons of England, supported by the same combination which afterwards for similar reasons faced John, of the king of France, the king of Scotland, and the princes of Wales. In both cases the Irish grantees stood firm and helped the kings against their enemies. Strongbow crossed to help Henry with an Irish force, which the author of the Song of Dermot and the Earl thinks was largely responsible for the defeat of the earl of Leicester in the east, which turned the fortunes of the war.

The defeat of the men of the Orkneys and the Isles at Dublin would seem to have afforded William the Lion of Scotland a good opportunity to assert further authority over them. But he had turned his eyes too far to the south, and one result of Henry's struggle with his sons and barons, as every student of English history will learn, was the capture of William as he tilted under the walls of Alnwick on a raid into England, and his forced acknowledgment of Henry's suzerainty.

For the first time in their history one feudal overlord claims authority over all parts of the islands,—in some parts in the exercise of undoubted authority, in others by virtue of a temporary submission to the greater force, as where the princes of Wales and Roderick of Connaught make submission, in others by taking hostages of kings and chiefs for good behaviour,[5] in others by conferring dominium by right of conquest, as where Henry gives Ulster to John de Courcy if he can subdue it.

Continental Feudalism in Ireland.—But this extension of feudalism is continental; it is not the system which William the Conqueror inaugurated for England on Salisbury Plain. The communal society exists side by side with the feudal society in Ireland, Scotland, and Wales; the Angevin overlord, occupied with continental wars, using his war energies in France with the Isles as a bank and recruiting depot, does not concern himself with the form of tenure by which

Digitized by Google

the followers of the Irish grantees, or of the Welsh border barons, or of William the Lion, hold from his tenants in chief, so long as his feudal dues are paid. He is overlord only, the feudal chief tenants dealing as they please with their granted lands.

He makes no attempt to reconcile the two rival systems of society. His own direct followers hold of him as feudal tenants. He gives Leinster to Strongbow to hold from him as a feudal tenant, a fief which descends to the great William Earl Marshal who marries Strongbow's daughter, and becomes after him not only earl of Leinster but earl of Pembroke.

Strongbow, it is true, portioned out Leinster in fiefs among the Geraldines and others of the first expeditionary forces as feudal tenants. But the Irish under them, where they paid any dues at all to the invaders except in reply to force, kept up the tribal customs of coyne and coshering. And by degrees the feudal lords left alone, away from the support and authority of the king, compromised for their dues, acquired the habit of the Irish chief as well as the Norman baron, and took the best of both systems. They lived upon their people as tribal chiefs, they intermarried, they fostered with them ; they were the first of a long series of emigrants from the larger island, who through the centuries have succumbed to the glamour of Ireland.

Henry had all the shrewdness of a great diplomatic politician. He did not unduly interfere with the sovereignty of his great vassals, unless they might be supposed to be plotting rebellion. He never bothered himself about the North-West or even about Galloway, so long as they were peaceful and did not interfere with the collection of his feudal dues. Anything beyond that was William's business, to receive Henry's support if necessary, which brings us back again, after this apparently irrelevant excursion to Ireland and Wales, to the home of Asgall and John the Mad and the men who manned the ships that attacked Strongbow and Milo de Cogan in Dublin.

NOTES.— [1] The same thing happened when John was in the height of the war with his barons and with Louis of France. [2] In 1194 Richard has to come to Portsmouth to compose fights between Welsh

Digitized by Google

mercenaries and the Brabanters. Froissart describes the Welshmen at Crecy, fighting on his own side, as "certayne rascalles (common men) afote with great knyves." [3] In view of the fact that all parties on occasion hanged, blinded, or emasculated the hostages, this giving of hostages is remarkable. [4] The Annals of Loch Cé call him Axoll MacTorcaill. Giraldus latinises it into Hasculphus. [5] Henry takes, say the Annals of Loch Cé, the hostages of Leinster and of the men of Meath and of Cavan and Leitrim (the Ui Briuin) and of the territory from Lough Neagh to the Boyne (Oriel) and Ulster (Uladh).

CHAPTER XXVI

THE ISLANDS FROM THE CAPTURE OF WILLIAM THE LION TO THE DEATH OF THE MAID OF NORWAY

It is now necessary to tell shortly the incidents of military and political history which accompany the gradual extension of the feudal power of the Scottish king over the people of the West and North. In the first instance, the story is one of conflict, when they are not fighting among themselves, between the several communities north and west of the Grampians, under their marmoers, hersirs, and other rulers, all men claiming a common interest in the land, of the one part, and on the other part, the encroaching feudal lords of the South-East, holding their lands as tenants of the Scottish king.

In this initial period the two kings, the king of Norway and the king of Scots, interfere only at intervals, as their interests as overlords are affected. The king of Scots is gradually drawn on by necessity to encroach on his neighbours and to assert his feudal authority. But he goes slowly, for he wishes to avoid conflict with the Norwegian overlord of the Islesmen. When later on the power of Norway fades away, the king of Scotland attempts to assert a greater authority over his own feudal tenants, and a struggle begins to which the communal societies of the West give fitful support on the one side or the other.

The narrative, in its earlier parts at least, may be confused, tedious, and difficult to follow as the scene shifts from one

Digitized by Google

district to another part, but it sketches the stages of the gradual absorption, through the unity of the corn growers of the East, a unity largely due to the influence of Rome and Roman ideas, of the naval and pastoral people of the West and North divided into small tribal units, and in consequence ever disagreeing among themselves.

The treaty of Falaise, by which William acknowledged Henry as his overlord, was signed in 1174. After this, with his hands free in the South, the work of feudalising the North and West went on steadily. He was given plenty of opportunity. Sometimes aggressive rebellions of the chiefs called out military expeditions, in the course of which colonies of Norman and Saxon soldiers were planted in the centres of disturbance; but just as frequently the Scottish king, after defeating the rebels, turned the leading chiefs into earls and barons to hold the lands of their tribes from him on feudal tenure.

Galloway.—Galloway was the most troublesome of these outlying parts and the latest to be brought thoroughly under control. The men of Galloway owed allegiance to no overlord, and played off the king of Scots against the king of England or the king of Norway. Henry, as a tie, married a female relation to Uchtred the son of Fergus, the chief of this country, and Gilbert, another son, took occasion to murder Uchtred his brother in a very brutal fashion in 1174. Henry sent a force against him, and he promised to pay £1000 as a fine. But it is an example of the difficulties of imperial finance in those days that at his death in 1185, £838, 11s. 8d. remained unpaid,[1] and though the amount remained on the books for some time it was eventually written off as a bad debt. It was from this Gilbert that the great Scottish patriot, the Norman Robert le Brus, the murderer of Comyn, was descended on the mother's side.

The Bruce family was a very good example of the growth of the Saxon and Norman families of Scotland, of whom so many held land on both sides of the border, families which were a permanent danger to the peace of both countries, and thorns in the flesh of both kings, such as Balliol, Bruce, Cumin, Douglas, Dunbar, Gordon, Hamilton, Lindsay, Maule,

Digitized by Google

Sinclair, Stuart, and Wallace. Unchecked by a great central power, these houses had many chances of appreciation, connected as they were by descent and by marriages with heiresses of Anglo-Norman, Highland, Scandinavian, and Irish houses, by that means joining house to house and field to field, a condition which told against the success of the leaders of communal society, who had no such opportunity for building up the possessions of their individual families except on a very limited scale apart from the common ownership of the joint family or sept.

David Earl of Huntingdon, who died in 1219, the younger brother of William the Lion, had three daughters by his wife Matilda, who was the daughter of Ranulf Earl of Chester. The eldest, Margaret, married Alan of Galloway, who for his third wife had the daughter of the Anglo-Irish noble Hugh de Lacy. Margaret and Alan had two daughters, Devergoil, who married John Balliol of Harcourt and Barnard Castle and of Nyvell in Normandy, the father of Balliol the claimant, and Mary, who married John Comyn Lord of Badenoch.

The Bruce Family.—David's second daughter, Isobel, married Robert le Brus of Cleveland, Yorkshire, and Annandale. He was a descendant of the Sires de Breaux between Cherbourg and Vallonges, who came into England at or before the Norman Conquest, one Robert, who accompanied William, receiving ninety-four manors in Yorkshire.[2] The next, Robert, received Annandale[3] from King David I. when he was feudalising Galloway, a grant confirmed to his son Robert by William the Lion. The father fought for Stephen and the son for David at the Battle of the Standard, like the Liberal and Conservative branches of a family in our day.

Then comes Robert, who married Isobel the daughter of William the Lion; then a William who died in 1215, and then the Robert who married Isobel the daughter of David Earl of Huntingdon.

Finally comes Robert le Brus, "the Competitor," who married Isobel de Clare, daughter of the Earl of Gloucester, dying in 1295; his son Robert, who was Governor of Carlisle from 1295–7; and his son, Robert I., King of Scotland.

Digitized by Google

Robert the Governor of Carlisle married Martha or Marjorie the daughter and heiress of the Earl of Carrick, who was grandson of Gilbert, son of Fergus, Lord of Galloway, and gave to his son the earldom of Carrick in his lifetime. The son Robert I. married, first, Isabel the daughter of the Earl of Mar, and secondly, Ellen de Burgo, daughter of the Earl of Ulster, tracing through him a descent from Roderick O'Conor, the Ardri of Ireland in the time of Henry II.

On the death of Alexander III. both son and father attacked the forces of the Scottish guardians at Dumfries, and in 1304, just when Edward was remitting his debts and giving him fresh proof of his confidence, the son entered into a conspiracy against him with several other nobles. In 1306 he took refuge in Ireland after his defeat at Methven.

Moray.—After this digression of pedigree we return to the communal societies. There was always a cause for war and unexpected attack from the North-West owing to the claim of the descendants of Malcolm Canmore through his Norse wife Injibjorg to the throne of Scotland. In 1181 William was faced with such an attack by one Donald Ban, the son of William, who was the son of Duncan the son of Injibjorg. It was six years before William was able to put down this rising.

The Isles and Man.—In the meantime Somerled's sons in the Isles were fighting among themselves and gathering strength which might be dangerous to the king of Scotland. In 1187 Godred, the king of Man, died, leaving a son Olaf, a minor, by his wife Affreca, and other sons of full age, Reginald and Ivar. The Manxmen elected Reginald as regent during Olaf's minority, and Reginald usurped the kingship. In him and in his alliances the naval strength of the Western powers and the danger to the king of Scots and to Henry's newly formed kingdom of Ireland reached a climax.

In 1189 Richard I., to finance his expedition to the East, sold back his rights over Scotland to William, but in the confusion into which, in the absence of Richard, the English State fell, there was no need for provision against

Digitized by Google

attack on this side. William was left free to deal with the North and West.

The Orkneys, Isles, Man, and Ireland.—When in 1198 Harald the elder, earl of the Orkneys, killed Harald the younger, William, not waiting for the Norwegian overlord to interfere, offered Caithness to Reginald of Man for its occupation and conquest. Reginald joined forces with John de Courcy, who was engaged on his own account in subduing Ulster, and who had married Reginald's sister Affreca.

They brought a joint fleet to Caithness, occupied it, and left lieutenants to govern there. But as soon as they were gone Harald came and occupied the country again.

But other events led to William's further interference. David I., in his missionary zeal, had founded bishoprics in Moray and Caithness, no doubt much needed, but posts which were not particularly safe or pleasant, generally occupied by men of some military quality. As the Bishop of Caithness had intrigued against him, Harald seized him, cut out his tongue and blinded him. When this became known a fearful penance was enjoined by Innocent III. But no one was anxious to be the messenger to the earl, so the spiritual weapon brought no remedy.

William undertook the work, went north and attacked Harald with effect, making him pay a large compensation to him, William, and mutilating his hostage Thorfinn. But he allowed Harald to retain Caithness, holding it as from him.

The Isles and Ireland.—The Western men meanwhile turned their attention to Ireland. In 1205 Reginald with a fleet of a hundred ships joined John de Courcy, who had joined with O'Neill and the Cenel Eoghain to make himself master of Ulster. But Walter de Lacy, Henry's justiciar, met them and routed them, "and they afterwards departed without obtaining power." [4]

Somerled's descendants were still fighting among themselves when in 1210 John, going to Ireland, sent a ship force to raid Man.

In that year Angus, the son of Somerled, and his sons were killed by the sons of Reginald of Man, and their territories in the Isles annexed. But on Reginald's death, Bute

Digitized by Google

was seized by Alexander the Seneschal or High Steward of Scotland. He had married Jane, the great-grand-daughter of Somerled, another step in the process.

Man.—In 1219 Reginald copied John of England, handing over Man to the Pope as a fief. He did homage to Henry III., being retained like Maccus in earlier days [5] to keep the seas clear. In 1229 Olaf, his young half-brother, killed him, expecting to succeed to his power. But here Hakon, king of Norway, interfered, sending his own official to Man with a fleet who attacked and defeated the party of Somerled and the Isles and controlled Man.

The continued insurrections in Moray and Ross of the MacHeths and MacWilliams gave William the Lion a great deal of trouble. He had friendly relations with John of England, which enabled him to deal with these nearer dangers. His daughters were handed over to John, through whom they were married to Anglo-Norman nobles, drawing closer the bonds between the two kingdoms, and strengthening the feudal powers.

Moray.—In 1214 William had invaded Moray, and received the daughter and heiress of John Earl of Caithness, the son of Earl Harald of the Orkneys. But after his death in this year, his young son Alexander II., then eighteen (1214–19), was enticed into the combination against John, and was obliged to leave operations against the men of Moray and the West to local men. In 1215 a revolt of the MacHeths and MacWilliams in Ross was put down for him by Fergus MacIntagart, who was then created Earl of Ross, another step in the amalgamation of the country. In 1236 he helped Alexander to incorporate Galloway with Scotland.

In 1221 Roderick, the son of Reginald of the Isles, joined the MacHeths in a further revolt. Alexander II., who had just been married at York to the daughter of King John, led an army into Argyll, and distributed lands there to his followers.

Sutherland.—In 1222 the Scottish king marched against the men of Sutherland, assisted by levies from Moray, which were under the command of one Hugh Freskyn. Hugh's son, William of Moravia, became Earl of Sutherland, the first of a long line of earls.

Digitized by Google

This period, when the feudal Scottish kings in their task of absorbing the communal societies of the North and West had to face the possible interference of the kings of Norway who disciplined or supported their udallers with powerful fleets from the East, the possible danger of wars developing in the South from border troubles, or by an attack in the West from Ireland, Wales, or Man, was now nearing its end.

The King of Scots and the Tribesmen of the Isles.—At the end of his reign Alexander II. made a determined effort to reduce to obedience the chiefs of the Hebrides and Man. He made an expedition to the West in force, and opened negotiations with John of Lorn, the head of the house of MacDougalls. Magnus, the son of Olaf of Man, who had eventually succeeded to Man, had married the daughter of John of Lorn. Neither John nor Magnus would give up their connection with easy and distant Norway for the near severity of the Scot. Failing to agree with him, Alexander began to pursue him through the Isles, but fell ill himself, and died on the island of Kerrara in 1249.

His son Alexander III. (1249–86) was a boy not quite eight years old. Such a minority was an opportunity for attack by his neighbours North and South, and for intrigue for his control by the chiefs and barons. Luckily for him, Henry III. of England, that weak king constitutionally, was in a position requiring him to help Alexander rather than to attack him.

England and Scotland.—In 1244 matters of dispute had arisen between the two countries, and the Scottish forces on the borders had been opposed by Henry with an army recruited largely from the Irish under their native chiefs. The *C.D. Irel.* shows not only a levying of the feudal tenants of the king, but of mercenary Irish soldiers at the rate of 2d. a day, and great supplies of corn and provisions collected in the ports of Dublin, Drogheda, Cork, and Waterford.[6]

But the kings did not fight, adopting instead the cheaper expedient of marrying two babies. The treaty of Newcastle provided that the little Alexander, then about three, was to be married to Henry's daughter Margaret. The marriage took place in 1251.

Digitized by Google

England and Wales.—As Henry had to do something with his army, he turned his force against Wales. The whole history of Wales during the reigns of Henry II. and his sons, though not devoid of interest, will not be restated here. It is summed up in perpetual raids and conflicts for superiority between the different Welsh kings; a normal state of war between the Welsh and the border barons; a control from England exercised partly by force, partly by money, partly by theological fiction, and partly by judicious marriage; an increasing use of the Welsh as mercenaries; treachery and the mutilation of hostages; and the gradual tightening of the English hold upon the country.

Henry II. gave to David of North Wales his natural sister Emma in marriage, and as David's power waned and the power of Llewellyn, the son of Iorwerth, who had been a sore thorn in the side of Henry, grew at David's expense, John entered into alliance with him and gave him in marriage his natural daughter Joan, by Agatha the daughter of Robert Ferrers, Earl of Derby. Wales more than any other part was a troublesome sore to the English kings. The discontented from England fled there and hatched mischief; the discontented from Ireland by flight there evaded the English power; and the discontented from both countries drew force from Wales for rebellion.

John's dealings with Wales were successful, and he ruled it so far as any overlord could rule, short of complete conquest. But in 1212, when he was in the height of his quarrel with the Pope, the Welsh broke out upon the border castles, burning and destroying, released, say the Waverley Annals, by the Pope from the interdict and enjoined to attack John.

In the reign of Henry III. the attempts of the barons to subordinate the kingship to the nobles acted to create disturbance and to reduce authority both in Wales and Ireland. Henry in his struggle of the Barons' War was inclined to look with disfavour on, and treated with harshness and treachery, the great house of the Marshals Earls of Pembroke, as barons too powerful for the Crown, though they had shown conspicuous loyalty both to himself and his father. The influence of the family both in Wales, Ireland,

Digitized by Google

and England was very great. As a consequence they inclined to throw their influence against the king, at least opposing him so far as their own great possessions were concerned, in his war with the revolted barons. Richard Marshal allowed his troops to fight against Henry's, though he refused to serve against him personally. The friction between Richard Marshal and the king led to a conspiracy against Richard of the Anglo-Irish nobles, who were his feudal tenants, to which the deputy or Lord Justice Geoffrey de Marisco (MacMaurice) was a secret party. This man, pretending to be Richard's friend, induced him to take up arms against the king in respect of his possessions in Ireland, and pretended to arrange in his interests a truce and a conference to be held between him and his enemies at the Curragh of Kildare (Cuirreach, a shrubby moor, a level plain). Here he found himself deserted by his own men, the deputy went over to the enemy, and he with fifteen who remained fought a Homeric battle against one hundred and forty. In the end he was wounded and taken prisoner, and afterwards died. It was a tragedy of which Henry bitterly repented, and it was the very greatest blow to the English occupation of Ireland.

Henry's expedition to Wales in 1244 only led to further wars, negotiations, and treacheries. The Welsh allied themselves with the barons in the Barons' War.

After Evesham the conquest of Wales began. David, Prince of Wales, was captured and treated as a traitor in 1283, and the conquest was completed with the death of Maelgwyn Vychan, the last of the house of Rhys ap Tudor, in 1295.

Scotland and England.—To go back to Scotland, young Alexander did not have a very peaceful time at first. He was kidnapped at Edinburgh by Durward the Justiciar, who had married a natural daughter of his father. Henry came in 1255 to interfere, but as someone must have control of the boy, it was little that he could do. Then in 1257 the Comyns seized him, resulting in the formation of a regency. In 1260 the young king and queen (he must then have been about nineteen) came to Henry's Court, where a daughter Margaret, afterwards married to Eric of Norway, was born.

Digitized by Google

Scotland, the Isles, and Norway.—In 1262 Alexander, after trying to buy the Hebrides from Norway, attacked the chiefs, putting pressure on them to become his feudal vassals. He sent the Earl of Ross to attack Skye. Hakon of Norway, in reply, in 1263 prepared a great expedition, coming with one hundred and twenty of his own ships besides the many ships of the freemen who attended him for military service.

Hakon appears to have realised that these islands, now off the main road of commerce, were of little value to Norway either for trade or revenue. But he could hardly be expected tamely to surrender them to the Scots.

On his arrival at the Orkneys he held a council, and proposed to send the militia ships, which were smaller, to attack the East coast, while he with his own large ships went to the Western Isles. But the democratic Norwegians, freemen from whom we derive our ideas of liberty, refused to serve except under him, and as he could not enforce his will, the whole expedition descended on the Western Isles.

On the 5th, while the fleet was at the Orkneys, an annular eclipse of the sun took place, which is carefully recorded by the Saga.

The chiefs of the islands and of the lands north of the chain of lakes which now form the Caledonian Canal were in the most difficult position possible to conceive. They had many reasons to take the side of Hakon rather than of Alexander. They had no kinship with the Scot, and he being a power near at hand and always pressing on them, was sure to exact revenue, and to interfere with their social customs. But Hakon would not stay with them. When his expedition had achieved its results he would go back to Norway and leave them always quarrelling among themselves to the mercy of the king near at hand. Hakon had already forced contributions from the men of Caithness, who had been compelled by Alexander to give hostages for their neutrality. In consequence there was considerable division of opinion among the chiefs of the islands. Magnus of Man and most of the Western chiefs joined Hakon at Skye, but Somerled's descendants, John the chief of the MacDougalls, and Angus who held Islay and Cantyre and represented

Digitized by Google

the line of the MacDonalds, held aloof. The Stewart, who held Bute, the key of the Clyde, refused to join.

Hakon assembled his whole fleet at Kerrara, and while negotiating with the chiefs took the castle of Rothesay in Bute and Donaverty in Cantyre, and from Bute ravaged the mainland. Then Hakon sailed round Cantyre and anchored in Lamlash harbour in Arran. Parleys followed between him and Alexander, pivoting on the control of the Clyde by the possession of Arran and Bute, the Scots being willing to cede the outer islands if they could keep these and the mainland. They probably saw that it was only a matter of time when they would have all. Negotiations failing, Hakon removed his ships to the Cumbraes near Largs, and sent a force into Loch Long, Loch Lomond, and Lennox to ravage the country.

The Fight at Largs.—Then on October 1st and 2nd there was a terrible storm which wrecked ten of Hakon's vessels. A huge transport loaded with supplies and several other ships broke loose and drifted on to the land at Largs, where there is only a very narrow strip of land below the cliffs. The storm prevented the Norwegians from salving the wrecked ships, while the Scots from the cliffs above came down to plunder them.

Hakon went over and salved the transport, but went back to the fleet leaving about 1000 men on shore.

Then a scrimmage began which developed into a little battle. The Scots, who are said to have had 600 mounted men in armour and a number of infantry with bows and Lochaber axes, drove the Norwegians before them, Hakon, owing to the storm, being unable to assist them. When the storm had abated, so that he could do it, he sent a force to drive the Scots back to the hills. On the next day the Norsemen came and carried their dead to Bute for burial, burned the stranded ships, and moved again to Lamlash harbour.

Here Hakon received a messenger from some Irish chiefs,[7] offering, if he would help them against England, to entertain him and his whole expedition throughout the winter. But the Norwegians declined the offer. Perhaps they remembered

Digitized by Google

the death of Magnus Barfod. Hakon then went among the islands, levying money and ordering their affairs. The Norwegians went home for the winter, the chiefs separated to their different islands, Hakon with a few ships went to the Orkneys, so that he might be ready for action in the spring. Here he died in December 1263.

Norway sells the Isles and Man.—After his death a mission was sent from Norway to treat for peace, but the Scots received them very coldly, and no Norwegian fleet being in evidence, Alexander took his revenge on the men of the Isles. Finally, Magnus the Law Improver, in 1266 sold all the Hebrides and Man to Alexander for 4000 marks down, and 100 marks per annum as feu-duty.

With the departure of the Norwegian power went the last connection of the Western Isles and Highlands with external trade. From this time the island chiefs had no use for their harbours except for fishing boats or for such trade in cattle with the Eastern Scots as they might have, or for fitting out fleets to make war on one another on or the neighbouring countries. From now on the inhabitants of the Western Islands sink to the condition of poor peasants who earn a hazardous livelihood by fishing and tending cattle. The change did not only affect Western Scotland. It left the Irish in the backwaters of commerce, hemmed in on the North-East and South-East by the feudal kingdoms bent upon their conquest and absorption.

In 1272 Henry III. dies, succeeded by Edward I.

In 1274 Margaret, Edward's sister, the queen of Scotland, dies.

In 1281 Margaret, the daughter of Alexander III. and Margaret of England, is married to Eric of Norway. In 1283 she dies, leaving an infant daughter, the Maid of Norway. In 1285 Alexander III. dies, his horse carrying him over a cliff in the dark. The Estates appoint a regency.

Edward I. had obtained a dispensation from the Pope for his son Edward to marry the Maid of Norway, a proposal willingly agreed to by the Scots. A treaty made at Berwick embodied the necessary safeguards for Scottish law and customs. The Maid of Norway was to be sent to England,

Digitized by Google

and to be transferred to Scotland when good order was established. She died in 1290 at the Orkneys on her way to England.

Here the first phase of the conflict between the social ideals ends, and we enter upon a new era.

NOTES.—[1] *Calendar of Documents relating to Scotland.* [2] Query an Adam de Brus came with Emma of Normandy in 1050. [3] Charter No. liv. in Lawrie's *Select Charters.* [4] Annals of Loch Cé. [5] See my *First Twelve Centuries of British Story*, p. 142. [6] *Calendar of Documents relating to Ireland*, vol. i. He promises that this service outside Ireland shall not form a precedent. No. 2679, June 11, 1244. No. 2777, October 21. [7] Hakonar Saga, Rolls Series.

CHAPTER XXVII

THE BARONS' WAR IN SCOTLAND

THE tendencies which preceded the break up of the tribal system, where there was a small amount of cultivable land, and as a consequence small communities widely separated, had begun to show in the Highlands at the end of the twelfth century. When by marriage or otherwise the Highland earldoms passed into foreign hands, the Gaelic population, no longer held together as a tribe by supposed descent with the chief from a common ancestor, broke up into septs or clans. Moray, Buchan, Atholl, and Angus, says Skene,[1] were all so broken up in the reign of Alexander II., Ross in the reigns of William the Lion and Alexander II., Menteith in that of Alexander III., and Mar in that of David II. From the time when Robert le Brus took control, Lowland Scotland became more and more assimilated to feudal England, while the Highland communities, scattered over a number of small islands and isolated glens, keeping up the reality or the fiction of kinship, were dissolving into clans, septs, or group families.

The change made any attempt at control by a federal government much more difficult, as it increased the number of interests to be considered and conciliated, and it weakened

Digitized by Google

the power of the men of the West as they fought among themselves. As the Lowland Scot, the Saxo-Norman baron, whose military power was strengthened by feudalism, carried on his intermittent struggle for independence against England, he became less patient of the tribes or clans who, safe in their glens, raided the open country and carried off his cattle. The men who fought side by side at the battles of the Standard and Bannockburn drew further apart as time went on; they had little intercourse with each other in comparison with the other parts of the islands; as the contrast between the two modes of living grew stronger, the contempt of each for the other grew greater; from time to time the Scottish kings made efforts either to remake Highland society on a feudal foundation, or to crush, sometimes by armed force, sometimes by savage treachery, the military power of the disunited chiefs.

The West took very little part in the negotiations and disputes which attended the deaths of Alexander III. and the Maid of Norway, and the tie of marriage, which counts for so much with the feudal baron, was generally absent as cause to provoke or to avoid war so long as the lands of the chiefs were also the lands of the community.

A great writer in the first days of the nineteenth century gives a description of the inhabitants of the Western Highlands which may well be accurate, as it would pass for a description of all early society where there was little cultivable land, where the climate discouraged agriculture, and where commerce, with its incentive to energy, was non-existent. "The hamlets . . . half hid among the little glens . . . were inhabited by a race who neither cultivated the earth nor cared for the enjoyments which industry procures. The women, although otherwise treated with affection and even delicacy of respect, discharged all the absolutely necessary domestic labour. The men, excepting some reluctant use of an ill-formed plough, or more frequently a spade, grudgingly gone through, and as a task infinitely beneath them, took no other employment than the charge of the herds of black cattle in which their wealth consisted. At all other times they hunted, fished, or marauded, during the brief intervals of peace, by

Digitized by Google

way of pastime; plundering with bolder license, and fighting with embittered animosity in time of war, which public or private, upon a broader or more restricted scale, formed the only business of their lives, and the only one which they esteemed worthy of them."[1] The latter part of this description is equally true of feudal society away from commerce and the church.

It is impossible to treat of the events in the islands from this time without taking into consideration the affairs of Southern Europe. The whole face of European society had changed since the pontificate of Innocent III. Though there had been a considerable stiffening of the attitude of the greater kings towards the political pretensions of the Papacy, the study of the revised Roman law with its imperial basis, reinforced by the experience of the Crusades, caused a complete change of thought not only in law but in all relations of society in which highly centralised authority in conflict with local self-satisfaction could be affected. The Roman law, the Roman tradition, and in England the feudal development by which the Crown tried, often with small success, to increase its strength at the expense of the local magnate, all tended to discredit the communal life and to wrest to the king the initiative which had been the jewel of the people. He began to legislate, and to legislate in Roman style.

The whole trend of political life in the day of Edward I. was to put in terms of law the force which had often been expressed in terms of violence. He was a travelled king, as no one of his predecessors had been; he had suffered as a prisoner and a combatant the evils which had resulted from baronial revolt; his reign sees, in Scotland, in Ireland, in France, and Wales, as well as in England, a determined attempt, not only to sweep away communal custom where it conflicted with feudal usage advantageous to the Crown, but to accept no feudal usage where it was inconsistent with the king's dominium, his supreme authority, which, however he might quarrel with the Church, he claimed, not as the superior of a band of kinsmen, not as the head of a homogeneous nation, but as the head of an empire of men speaking different languages and asserting descent from different races,

Digitized by Google

as the king or overlord consecrated to his office by the Church. He raises the kingship again to the position of supremacy which it had held under Henry and John. But the king has passed from his position as head of a community of kinsmen to the position of head of a feudal baronage, a change which shows itself with the greater force in his dealings with those parts of his dominions where the communal society is a living system which refuses to give way to feudalism.

The English king where he interferes, and the Norman-Scottish king who fights with him and ousts him, gets rid of the communal society from this time, not by peaceful supersession as the survival of the best fitted system, but by destruction of customs and institutions either by force or by forms of law.

The change did not come at once in any part.

After the hanging of Prince David of Wales as a traitor in 1283, Edward took into his own hands all Wales which was not already granted to the lords of the border or march lands. He created no new baronies to begin another barons' war against him, but vested the whole territory in the Crown as lord paramount. And he passed the Statute of Rhuddlan for this territory, comprising Anglesey, Cardigan, Carmarthen, Carnarvon, Denbigh, Flint, and Merioneth, a code of mixed laws from the customs of both nations, Welsh and English, a compromise for the present with the customs used by the people.

By the treaty of Berwick, after Alexander's death in 1285, the Scottish laws and customs were in like manner safeguarded.

But in Scotland Edward is now faced not with any Scottish nation, for none (*pace* the Scottish historian) then existed as such, but with a number of Anglo-Norman barons with lands in France, England, and Scotland, eager for independence of the Crown and encouraged to rebel by recent events in England, claiming in view of their landed possessions in Scotland, or by virtue of a distant relationship to the Scottish kings, who for generations had intermarried with the English house, to succeed to their power over the northern half of the island.

When the Maid of Norway died, Robert le Brus claimed

Digitized by Google

the Crown, and came with a force to Scone. Edward then called his barons, including Balliol, Bruce, Comyn, and De Ros, to attend him at Norham. What passed is attested by John de Cadomo, Notary Public of the Holy Roman Empire.

Edward claimed to be the overlord of Scotland, which, considering the intimate connections of the two crowns for many generations and the absence of any claimant for the throne of near blood, was not surprising. The prelates and barons admit his claim, showing, as it seems to me, that they would rather be under his strong authority then be exposed to a condition of constant civil war induced by the rule of some Norman baron such as Bruce or Balliol, in view of what had recently happened in England. The Communitas (it is not known what that meant) made some inconclusive reply.

There were ten competitors for the crown under Edward, all of them Norman nobles. Burton says of them: "To Scotland they were aliens, and they belonged to a class of aliens peculiarly offensive to the people, of whose evil wishes regarding them they were well aware." It would certainly have been the height of folly in Edward, knowing as he did the story of his predecessors' struggles with their feudal tenants, to allow his own tenants—Norman nobles—to seize as an independent sovereignty the crown of Scotland to which they had no right by election or by any claim but the most distant hereditary connection. The nearest in blood who might have been entitled to unquestioned succession were descendants through natural children of William the Lion or Alexander II.

Edward decided in favour of John Balliol, and in November 1292 he did homage and was crowned at Scone. It is not necessary to detail all the causes or irritation which followed. In 1295 King John made an alliance with France, in which he had great possessions, his son Edward to marry the daughter of the Count of Anjou, brother of Philip V. In agreement with this treaty he sent armies to ravage the Northern counties.

Up to this point Edward would not appear to have intended anything more than to hold down the Norman barons in Scotland. But Balliol now renounced his fealty, and Edward

Digitized by Google

set out to conquer Scotland, and went through the country from Berwick to Aberdeen, receiving homage from the clergy and nobles. He returned, taking with him the Black Rood from Edinburgh, and the Stone of Destiny from the Abbey of Scone. King John came in and surrendered, and afterwards retired to his estates at Bailleul in France.

I do not propose to follow closely Scottish history from this point any further than is necessary to illustrate the communal and feudal societies. The North and West of the country do not appear to have been at all consulted as to any terms in the negotiations and disputes between Edward and his feudal tenants. The whole affair would seem to have been a barons' war in Scotland, a revolt of the Norman barons against the Crown more permanently successful than the similar revolt against Henry in England. The origin of the Wallace movement is uncertain, but it is quite possible that this knight of Renfrewshire raised the North and West against the English invader when the East was content to welcome his peace. Perhaps he represented the Communitas. Evidently Bruce had greater influence in the West than Balliol. The division which he commanded at Bannockburn was that of the men of Carrick, Argyll, and the Isles.

In 1290, after the death of the Maid of Norway, when Edward sent the Bishop of Durham to receive the men of the Western Islands to his peace, the sons of Allan MacRoderick, great-grandsons of Somerled, refused to recognise John Balliol as their overlord. The Earl of Ross was sent to attack them, and captured two of them.

Then comes the rising of Wallace, joined by Douglas in the West, and in Aberdeenshire, north of the Tay—is it a rebellion of the people of the communal society of the West against the external feudal superiors?—and the disastrous defeat of Edward's forces (he was in Flanders at the time) at Stirling Bridge, a dress rehearsal of Bannockburn. The danger of any paltering with such rebellions was shown by Wallace's raids into Northumberland and Cumberland, and his helplessness to restrain the barbarity of his followers.

Here only superior force brings obedience to authority, authority which is likely at any moment to be violently upset

Digitized by Google

by the swing over to the other side of the vast majority of spectators to the fight. It is a fight between the feudal chiefs only. In all the wars which follow, whether with Wallace or with Bruce, the Earls of Ross and Sutherland who at first fight or look on on Edward's side, and the men of the Isles who for the most part fight among themselves and are merely spectators of, to us, the greater contest, change sides without hesitation if the balance seems to incline in favour of either combatant.

In 1301 Edward sends an expedition to subdue his opponents in the Western Islands, and after Wallace's defeat by Edward at Falkirk, the fleet of the Cinque Ports is sent to the Isles. But orders are given that all the inferior people are to be received into the king's peace. He only imposes his terms upon the superior chiefs as his feudal tenants, leaving the relations between them and their kinsmen to be settled by custom.

Throughout Wallace's career it would not appear that he or those acting with him were ever formally recognised by anyone responsible for Scotland. The Anglo-Norman Scottish barons could take advantage of his success, but desert him if he failed. Edward in 1303 made an unresisted march through Scotland up to Caithness, the Norman nobles submitted to him, and he declined to acknowledge the supreme authority over the Scottish Church of the Pope, who had consecrated Lamberton, a nominee of Wallace, as bishop.

In 1305, just before Wallace's execution, Edward called a Parliament, and consulted among others Robert le Brus, Earl of Carrick, as to arrangements to be made for representing Scotland in a future Parliament, representatives of the different classes to be appointed separately for the districts North and South of the Forth. The laws of David were to be revised, two justices were appointed for the district South of the Forth, two for the district between the Forth and the Grampians, and two for the North. It might have been happiness for the countries if a union had been effected on such lines and Scotland not given up to Scottish feudalism for centuries.

The petitions from Scotland to the Parliament in the same

Digitized by Google

year in London [2] give no sign of any disturbance except where monasteries or private persons ask to be recouped for damage done in the late war or for wool taken by the king's officers. Some of the petitions throw a light on the conditions to be overcome before the unification can be completed. The men of Galloway complain of interference with their special customs by the feudal lords, customs which are afterwards confirmed by the Bruce ; [3] and there is a petition of the king's demesne tenants [4] asking that they might hold the king's demesnes in Scotland in the same manner as their compatriots in England, "ita quod non amoveantur de anno in annum sicut modo sunt," which looks as if they were tired of runrig. Edward put it off to another Parliament.

All is apparently quiet and reasonable. The English king seems to be about to repeat in Scotland his schemes for unification and supremacy in Wales.

But there is always France to reckon with. Balliol, Wallace, and Bruce in turn invoke the assistance of the French king against their overlord. Edward negotiates truces with France from time to time and has married Margaret of France. But the danger is always there to be guarded against, the English king perceiving here a divided duty.

Then Bruce flies, and shows at once the dangerous enemy with whom Edward has to deal by his murder in the church of Comyn for refusing to help him in his treason. The so-called war of independence begins, which ends, so far as English conquest was concerned, with Bannockburn and Edward Bruce's invasion of Ireland.

After Bannockburn the lands of those who had supported Edward were forfeited and given to Bruce's supporters. Those who changed sides were not without their reward. The Earl of Ross, who had seized Bruce's wife and daughter from sanctuary, and handed them over to Edward, has Lewis and Skye given to him [5] when he goes over to Bruce, and his son marries Bruce's daughter.

As the English power weakens in Scotland under the second Edward, the Scottish feudal barons are coerced to the side of the Bruce. William, the second earl of Sutherland, turns to his side. The Western chiefs, where they are not

Digitized by Google

transformed into feudal barons, continuously become weaker by their shiftings according to self-interest and their want of unity at one another's expense. John of Lorn, for instance, the most powerful chief in the Isles, joins Edward Balliol after the battles of Dupplin and Halidon Hill, and receives Lewis and Harris from the Earl of Ross as his reward.[6]

But after the crushing defeat of Bannockburn, the Northern feudal baron seeks to extend his conquests in other parts. Edward Bruce, Robert's brother, invades Ireland. As if it had not been sorrow enough for the poor Irish to have to deal with one band of organised plunderers, they now lay between two.

Feudalism, as it existed in England throughout the Middle Ages, gave political as well as military strength and peace to the nation, a strength and peace due to the change introduced by William the Conqueror, ensuring the supremacy of the king, not only over his tenants in chief, the great barons, but over all those who held land on military service from them.

It avoided the weakest link in the tribal and feudal armour, the arrogant independence of the chief and baron of national authority.

On the other hand, as it continued to exist on the Western Continent as in France and Germany and the adjoining countries, feudalism continued also in Scotland under Bruce and his successors, and in Ireland under the Anglo-Norman barons, who in the king's absence were uncontrolled. Such a system, in which the greater men, independent in their regalities, exacted feudal dues or customary contributions at their pleasure from the lesser men who held land under them, and carried on wars on their own account, or acted as mercenary soldiers for their neighbours in tribal quarrels, kept alive the worst weaknesses of the tribal system both in war and civil government, without retaining the social strength which it drew from kinship and communal responsibility. In Ireland the entire or frequent absence of the king, and his financial weakness, destroyed the balance of power necessary for good order.

Moreover, this continental feudalism, which, imported from France, grew in Ireland and Scotland out of the weakness of the Crown, resulted in a compensating reaction recom-

Digitized by Google

mending itself to all the lesser people, by which the king, unable to abolish the independent authority of his lords, raised himself with the help of the Roman Church to a supremacy over them as the anointed by Divine Right, and not as the chief elected or acknowledged by the nation. It was a position which depended for its successful assertion on the power of the king to seize or share the revenues and feudal dues of the greater barons, and it presupposed a perpetual conflict of interests.

Personal character no doubt counted for much in mediæval administration. But it is entirely a mistake to suppose that each king's difficulties and failures in dealing with his greater barons, whether in England or elsewhere, was due to any great extent to "weakness" or "unworthiness" and so forth. He had to expect always a conflict over finance and rights of justice with the great men who represented local authority, and with the municipal and commercial interests which, as commerce grew, he and they sought to control. He or they according to our modern historical views might be in the wrong. But being in the wrong did not necessarily mean failure.

His unsuccess might be due to one of many things. It might be due to the poverty of the Crown, leading especially under a minor king to vacillation of counsel, extravagance in administration, and disaster in war. This would seem to be the chief cause which prevented Henry III. from revenging the treachery which led to the murder of Richard Marshal, and which compelled his humiliation before the coalition of his rebellious barons as he struggled with the management of his scattered dominions on insufficient means.[7] Sometimes it was due to want of military preparation or to a too confiding diplomacy in a day when the man on the spot well prepared, like the German of to-day, could strike his blow before the king, at a distance with the wind against him, could cross the Channel. The wind plays a great part in the relations of England with France and Ireland. Edward I., unprepared, loses Aquitaine in this way at one stroke, as his grandfather King John had lost Normandy, disclosing to his feudal tenants his inability to help them when exposed to a sudden attack.

Digitized by Google

Sometimes it might be due to the factor of a combination of baronial power by intermarriage and inheritance of land, as when Edward II. or Richard II. are faced by a coalition of nobles whose possessions by successive grants and marriages had united in one hand.[8]

Sometimes it was due to the pressing necessity of urgent loans to carry on wars, begun with the consent of the baronage, which had developed unfavourably, and to alliances for encouraging foreign trade, as when Edward III., faced with the varying fortunes of wars in Flanders, France, Aquitaine, and Scotland, and with disturbance and rebellion in Ireland, meets opposition both from the great nobles and churchmen and burghers of towns when he calls for exceptional grants of money for meeting exceptional conditions at a critical time.

In no case is there involved any principle of the progress of liberty or development of national life, though out of these struggles between the national king and his opposed barons has been built from the seventeenth century our theory of popular government, which from the perfection of its balance and counterchecks has become the archetype for all settled governments based on consultation of the people.

The modified feudalism of England, so far as the modification could be upheld by the king, provided, as that country increased in wealth and military power from her capacity for corn and wool growing and from her commercial intercourse, a basis for free institutions. This did not entirely pass from the English, even when the Stuarts brought from Scotland the exaggeration of kingship as the superior of many independent powers, not even when the Hanoverian kings reflected from Germany the unutterable corruption and degradation of their continental feudalism.

So far as any such system could replace the communal society founded on kinship, this has done so in England. It is a system of checks on the autocratic power which is never safe in the hands of any one man, whether king or demagogue. It has created a just balance between the absolutism of kingship, the dangers of aristrocratic autocracy, and the power of the demagogue, during that condition of temporary anarchy which confused thinkers call democracy, a balance which,

Digitized by Google

when well kept and not distorted or destroyed by falsehood, is capable of bringing liberty and happiness to the world. The temporary destruction of such balance, either by the imprudent action of the king and his officials in the attempt to make adjustment of new conditions and to provide for emergencies, or by the attempts by great or rich men to create an opposition to the Crown which would enable them to enlarge their possessions or to dictate public policy, makes up the bulk of what is called constitutional history.

Disraeli, speaking in 1845 with reference to an entirely different set of conditions, used language which emphasised the good points of the English system where it existed under a central government strong enough to repress disorders. "You have thrown upon the land the revenues of the Church, the administration of justice and the estate of the poor; and you value that territorial constitution, not as serving to gratify the pride or pamper the luxury of the proprietors of the land, but because in that constitution you and those you have succeeded have found the only security for self-government; and more than that, the only barrier to that system of centralisation which has taken root in and enslaved the energies of surrounding nations."

The balance swings alternately backwards and forwards as events in Europe, as well as events in the islands, foreign alliances, popular and unpopular, of kings, as well as home coalitions of nobles leading to baronial aggrandisement or quarrels, exceptional needs for money as well as increased revenues which were the result of commerce, tell for the strength of the Crown or of its opposers. The advantage leans to the leaders of either side who are quickest to see the tendencies of contemporary movement.

When Edward I., after the experience of the barons' wars, comes back from the East with the prestige of a Crusader, he is assisted in upholding the supremacy of the Crown not only by the tendencies of the time but by wide experience gained from his administration during his father's lifetime of his outlying dominions. Besides drawing revenue from the Peak and Bristol, he had ruled over Ireland, the Channel Islands and Aquitaine, using the revenue from

Digitized by Google

either to meet emergencies in the other as occasion required, and moving his officials and his feudal tenants as soldiers from the one to the other.

His letters in 1283 from Aberconway in Snowdon to divers people in Guienne and other parts of the Continent show the close connection between the different parts under his control and the use of the moneys raised in one part for necessities in another. He gained special experience of the necessity for strict economy and avoidance of war, for his revenues from the different appanages never met expenses, leaving him to sponge on his father for funds to make up the deficiency.[9]

He is careful not only to avoid war with his French suzerain, but to set the example to his independent nobles by an exaggerated obedience to his own feudal lord in France.

Still throughout his reign the swing has set in in the opposite direction; the baronial opposition, headed by his own blood, grows ever more restive; the great lords become stronger, the towns more mutinous under repeated demands for money and men; by the time his son Edward comes to reign, the Crown, ever on the edge of bankruptcy, has lost its position of superiority. The king's own kinsmen either dictate policy or thwart political or military operations; they curry favour with the moneyed commercial classes, bitterly opposing the foreign ability which is the only check on their coalitions of power. In the end they depose Edward and murder him.

It is a system of checks, but of checks which to be safe must balance, a system of checks which may be easily upset; yet so long as there is a society there can be no liberty within it without the quiet given by the firm control of a ruler.

If the Edwards had been successful in putting the stamp of the English feudalism on the Scottish regalities; if their justices had continued circuits in Moray and Galloway; Scotland, then at Alexander's death at the height of her progress and prosperity, might have gone forward with England and shared in her advance.

But after Bannockburn the country not only retrograded in material ways but became the prey of factions of nobles

Digitized by Google

wholly independent of the Crown and often fighting one another for the possession of the king's person. The earlier Stuarts, who all with the exception of James V. met violent deaths, when they had struggled into a perilous supremacy over their Lowland nobility, exercised their Divine Right by enforcing continental feudalism on the men of the West and North, replacing the kinsman chief of custom by the independent feudal earl.

This whole process in Scotland of gradual absorption of the communal societies by the feudal kingship has owed its comparatively peaceful course to local conditions.

The king, though often weak in military power, was present in the islands, seated on the great waterways, and possessing and controlling the most fertile arable lands; his immediate dangers from Norway, Ireland, and England compelled him always to regard military efficiency as his first duty at home; his authority increased by the pressure of such competition in warlike usage; unlike the English king, he is not distracted from the union of Scotland by the loadstone France as a near enemy; if Rome interferes either by help or hindrance, her influence was against the scattered communities of the West, or it can be easily bought.

The relation to the king of the great holders of regalities, who were the king's outposts in the struggle, the Norman and Saxon grantees, the chieftains transformed into earls and sheriffs, was that of continental feudalism; they dealt with him almost on the terms of independent sovereignty; but he was near them: his force could reach them both for castigation and for help; in time of need they could have his present support at all times against the North-West, and were able to return him assistance in his disputes with his foreign enemy.

Above all, the Western communities were poor and scattered, divided by deep waters and high mountains, cut off from agriculture by rainfall, and from the shifting routes of distant commerce by the stormy passages of Sumburgh Roost, Fair Isle, or the Scillies. Their absorption, so far as it was in accordance with economic causes, was a matter of time only.

Digitized by Google

NOTES.—[1] Skene, *Celtic Scotland*, vol. iii. [2] R.S., No. 98, edited by F. W. Maitland. [3] See Appendix E, The Laws of Galloway. [4] *Husbandorum Regis*, No. 400. [5] *Calendar of Documents relating to Scotland*, vol. iv. p. 400. [6] *Calendar of Documents relating to Scotland*, vol. iii. p. 213. [7] See Appendix F, The Government of Gascony. [8] See Appendix G, Baronial Combinations. [9] His revenues from Gascony, for instance, were, says M. Bemont, outside the revenues of the royal demesnes, "Les droits de circulation et d'entrée dans certaines villes, et avant tous les autres les coutumes grande et petite de Bordeaux." He also levied throughout the land "un fouage, un impôt réel et proportionnel sur l'agriculture."

CHAPTER XXVIII

COMMUNAL AND FEUDAL SOCIETY IN IRELAND TO 1367

WHEN we pass over to Ireland the conditions are reversed.

The king is absent, always separated by contrary winds and a stormy channel from his great vassals. After Henry's first coming and the two expeditions of John, the English kings cease to set foot in Ireland. The only exceptions are the attempt of Edward II. to cross, frustrated by contrary winds; and the two crossings of Richard II., unfortunate precedents owing to the results of his absence from England.[1]

In Ireland the absence of the king has always prevented any but a continental feudalism, the only check on the mutual destruction of the great lords being their weakness in the presence of the communal society, which they were unable to destroy and with which in each successive generation they tended to coalesce. The help which they received from England was very small indeed in proportion to the exhausting levies of men and money made on Ireland by the English king, often at critical junctures of the feudal fortunes, for his expeditions against Scotland and France.

This might not have mattered if the Anglo-Irish had been in sufficient strength among themselves to complete the absorption, or had been united in their efforts against the communal societies, which it was not humanly possible that they should be.

Mr Bagwell, in his *Ireland under the Tudors and Stuarts*,

Digitized by Google

like many other equally noted historians, scornfully gibes at the Irish for "their total incapacity for anything like national organisation." Such a lack had nothing to do with the Irish, but was the weak point of their form of society. However, the gist of the sarcasm lies in the fact that it was the total incapacity of the Anglo-Irish barons to combine or organise warfare which prevented their success.

Mageoghegan is nearer the truth when in the Annals of Clonmacnois, writing of an expedition in 1311, he tells us that he gathers from his MS. that "there reigned more dissensions between the Englishmen themselves in the beginning of the conquest of this kingdom than between the Irishmen, as by perusing the wars between the Lacies of Meath, John de Courcy Earl of Ulster, William Marshall and the English of Meath and Munster, MacGerald, the Burkes, Butlers, and Cogans may appear."

But above all it was the strength of the communal society of Ireland, the reality of the social ideas which underlay the archaic forms of its fast decaying civilisation, the ethical value of its ancient customary law, the fertility of the soil and the high state of cultivation, the strength and unity from every standpoint so far as communal society permits of unity, which prevented any success of the English or Scots in Ireland and led on to the devastation of the country through the centuries by successive groups of aliens.

The contrast with Western Scotland in soil, in climate, in ease and nearness of communications, is enormous. The fertile soil of Ireland becomes the granary (as it might be at this day) for England's troops in their Scottish and French wars. In 1296 Edward draws for his forces in Scotland 8000 quarters of wheat, 10,000 quarters of oats, 10,000 casks of wine, besides beef and pork. It is the fertility of Ireland and her great agricultural resources which have brought her sorrow.

It is the recruiting ground as well. In his expeditions to Scotland in 1296, 1302, and 1303, Edward draws from Ireland without any return the men and the leaders there so much needed.

There is no room in this book for a history of Ireland,

Digitized by Google

but of such history the years of the invasion by Edward Bruce is an epitome. It represents Irish history for 200 years.

The invasion was met from Ireland alone, the overlord in England sending no assistance. In the first place, Bruce's kinsman, the Earl of Ulster, persuaded the English deputy to leave to him resistance to invasion. He moved to meet Bruce with a force from Ulster, supported by Irish from Connaught under their native king.

Bruce disposed of the Connaught allies by bribing the king with promise of an independent Connaught, and he played at the same time with another powerful claimant to that throne. The earl is defeated, quite possibly by collusion, by the Bruce, and the Connaught levies go home to indulge in a civil war and to drive out the English from their territory.

Then while the Irish of Connaught, Munster, and Meath, stirred up by both parties, are busy with tribal wars, the Anglo-Irish are defeated again and again by the invader, to whose assistance comes for a time King Robert of Scotland. With the sea at their back, no help from England, and a variety of local wars on their hands, the English garrison are never able to bring their whole force to bear on any one point.

Famine follows war in the unhappy country, and when in 1318 Bruce is killed in battle and the invasion vanishes, the Irish Annalists with one voice record: "There was not done from the beginning of the world a deed that was better for the men of Ireland than that deed. For there came dearth and loss of people during this time in all Ireland in general for the space of three years and a half, and people undoubtedly used to eat one another throughout Ireland."

The invasion of Edward Bruce, short as was the period of time, was the turning point of Anglo-Irish relations, followed, as it closely was, by the legislation of Kilkenny, intended to set apart irrevocably the English from the Irish, a step which led for a century and a half to absolute disaster for the English colony.

Keeping in mind the contrast of conditions between Scotland and Ireland mentioned above, let us review before

Digitized by Google

proceeding further the various steps in Irish history as they relate either to communal or feudal society.

In the early days of the invasion there was no such enmity between the two peoples as need lead to the bitterness which afterwards developed. The English king claimed feudal authority over the Norman barons and knights to whom he granted lands or seignories. It was in respect of them that Magna Charta was declared in Ireland. They were subject to all the legal results of feudal order, to forfeitures of land, to wardship and dower, to military service for their fiefs.

But otherwise he was the Ardri only, the overlord who negotiated with the Irish kings and chieftains on almost equal terms, leaving them to rule over their own tribes and septs without interference so long as they made to him the agreed acknowledgments of his overlordship. He made no pretence, so far as they were concerned, to regulate their laws. Soon even his authority over his feudal tenants and his rights of jurisdiction in the lands granted to them were for the most part destroyed by grants of regalities or palatinates which created independent sovereignties.

It mattered little to the tribesman, safe in the enjoyment of the traditional rights secured to him under the same custom which regulated his payments to the chief, to whom he paid the fixed customary dues for protection Most probably at this time the ties of kinship which underlay such custom had ceased to be more than a pleasing tradition between chief and man. It would not have been a difficult transition to English and continental usage.

That the taking of the communal customary dues was of equal advantage to the newcomer as to the Irish tribesman is clear from the ease with which the feudal invaders throw off their onerous obligations to the English king and settle down as the chiefs of the Irish society. In spite of the incessant efforts of the English rulers to recall them to the feudal duties, they show themselves in each generation nothing loth to leave feudal laws behind them, to adopt the Irish custom, and to ally themselves with the kings and chieftains of the land. Strongbow marries the daughter of Dermot of Leinster; Hugh de Lacy marries the daughter of Roderick

Digitized by Google

of Connaught; John de Courcy allies himself with the kings of Man and the Western Hebrides; and Richard FitzAdelm de Burgo (MacWilliam), the ancestor of the Burkes of Connaught, marries Una the granddaughter of Cathal Crovdearg, king of Connaught.

As to the influence of the English overlord, thanks to the alliance between the barons and the church at Runnymede, which by its lowering of the Crown was the fruitful source of the many civil wars in England for three hundred years, he is too poor to do anything in Ireland for the next centuries either with money or men to restore the kingly authority. He uses the country merely as a bank from which to draw what dues he can get, or light-armed troops for French or Scottish wars, and he leaves the great Anglo-French grantees to fight among themselves for the mastery, which they do with the aid of the native Irish, or to take pay as mercenaries for the Irish chiefs in their tribal wars.

Left to itself such a condition would have worked out its own salvation. But as each generation brings its contingent of hungry adventurers from England to Ireland to settle on the rich lands of the East coast, as the like class are passing over from Flanders and France to England, the disputes as to the occupancy of the land affect a far larger part of the society, as the turmoil caused by the plundering raids on both sides make uncertain even cattle breeding or feeding. The native Irish and the old settlers who have adopted the Irish customs, who are displaced by newcomers, swoop down from the mountains on them, raid their cattle and reoccupy or render worthless their lands.

Throughout this period feudalism makes no way whatever. Even in that part of Ireland which acknowledges the king's authority, only the chieftain class are governed by feudal law. There is time for a compromise, for a natural growth. There is still no breach which time and good management cannot close.

But no good management comes to Ireland. It was her misfortune that, with her face set to the West, she was tied to a larger island which had its soul in the East; in its expansion or alliance with the South-East it ignored as far

Digitized by Google

as possible the stormy western seas which separated it from a decaying and troublesome civilisation. When forced to take an interest in the remote island, no attempt was made to continue as in England the best of both systems; the common law of Ireland was rudely thrust to one side as a hated thing; and the men sent to rule her were as often as not unfit political appointments, or if fit were not supported either by men or money.

As time goes on, when Edward I., under the influence of Roman law and Roman doctrines of dominium, holds, as prince, Ireland, which he does not visit, with beloved Gascony and various parts of England as his appanage; when, as king, returning from the Crusade versed in all the memories of English civil wars, he has to deal with Anglo-Irish subjects who will claim their feudal independence against him to the full, the English government seeks to enforce over the whole land, to the exclusion of native custom, the feudal services and the feudal forfeitures which are so profitable to the Crown. The great Anglo-Irish grantees steadily resist, and take shelter under the communal customs of the Irish law as chiefs of the septs. "They had tasted of the free gaiety of a country which had escaped the feudal yoke." They began that savage conflict between the two social systems which has enured to our day, the inevitable conflict between the societies founded on the ownership of the land by the community and on the ownership of the land by the individual, which under different physical, economic, and local conditions was by comparison harmless or at least not so openly bitter in Western Scotland.

There arises out of it in Ireland the fourfold division of the inhabitants which strikes the eye of an observer in 1600 —English-Irish, meer (or pure) Irish, degenerate English, and wild Scots.

Until the union of the two crowns under James I. and VI., the wild Scots, crossing from Cantyre, paralysed the efforts of the English advance guard in Ulster; the degenerate English, those powerful nobles, the Burkes, the FitzGeralds, the Berminghams, and others, who adopted the communal customs of Ireland, obtained practical independence of the

Digitized by Google

foreign power; the meer Irish quarrelled among themselves or supported on one side or the other their Anglo-Irish neighbours; even the English-Irish, those who remained on the constantly shrinking strip of Eastern coast, were in chronic revolt against the authority of the officials and deputies appointed by the king beyond seas, the king who never came; they were at all times ripe for any fortunate movement of aggression against the kingly authority.

The deputy, from the moment of his appointment, was the target of attack for every Anglo-Irish leader; he must prepare to enforce his authority without stint; he must jealously regard any attempt at advice or interference; he must take sides at once, and change sides at need; he was always in serious want of money and men; as soon as he was appointed everyone else set to work to complain of him to the king. And he was jealous of any interference with his authority by any other appointee of the king.

When John complains to his father in 1185 that the king's deputy, Hugh de Lacy, had prevented the Irish kings from sending to him either tribute or hostages, a cause of trouble stated in all the Irish Annals, he puts forward a cause for his partial want of success (which was equal to that of any other English king) far more probable than the extremely silly story of Giraldus, adopted by all English and many Irish historians (even such men as Mr Bagwell) in their insane hatred of John, namely that some young men pulled some chiefs' beards, and that some chiefs, instead of retaliating with the battleaxe as they would assuredly have done, sulked and went home. I do not know any better example of the inability of the Whig constitutional historian to use his commonsense than this steady acceptance of this childish Welsh fancy as history.

The English, and later the Anglo-Scottish, government takes advantage of the turbulence and perpetual war occasioned by its own weakness and neglect of authority, and saves itself to the fullest extent the use of the military force needed to enforce order by setting the various sections to quarrel with one another, as it does to this day.

Fulford, Bishop of Waterford, challenged to excuse

Digitized by Google

inaction in wars between Connaught chiefs, answers to Edward I. that in policy he thought it expedient to wink at one knave cutting off another, and that would save the king's coffer and purchase peace to the land.[2]

Shane O'Neill is profusely thanked when he defeats the Scots who hold the king's Northern fortresses to blackmail: but when he is murdered by Alexander Oge, who lay in the Glynns with eight or nine hundred Scots, the pious looker-on writes to Cecil that "God so disposed his pleasure as he suffered that traitor (not this time Alexander Oge) to receive his end among those Scots, who cut and hewed him it is said extremely."

Lord Justice Arnold in notes on Ireland sent to be considered by Cecil (Jan. 29, 1565), assures him that he acts with the wild Irish as with bears and bandogs; so that he sees them fight earnestly and tug each other well, he cares not who has the worse.

From the time of Bruce's invasion the English power, which has shown itself incapable of affording the peace and protection which is the only ground for its existence, steadily dwindles until the authority of the Crown is reduced to a mere strip along the Eastern coast, which becomes the refuge for the worsted of either party in the meaningless struggle between the great feudal English families whose bloody slaughters are dignified by the title of the Wars of the Roses.

For the rest, the great Anglo-Irish nobles continued the practice which, from the first days of the invasion, in the absence of royal authority, had faced the foreign kingly power. They allied themselves of necessity with the native Irish, they fostered and intermarried with them, they adopted their habits, customs, and laws, accepting the position of the tribal chief.

Such a condition might have been bearable and ultimately productive of good if the feeble garrison between Dublin and Dundalk had had any such sense of military discipline, of unity of purpose, as actuated the members of the Hanse in the Steelyard in London. But (I quote from the State Papers of as late a date as 1537) all the English march borderers, *i.e.* those living on the borders of this narrow

Digitized by Google

strip by the sea, use the Irish apparel and the Irish tongue, and for the most part use the same in the English pale. Nine years before this date the Archbishop of Cashel comes to petition the king that coyne and livery may not be levied in his province.[3] The feudal system of the Anglo-French had no more chance of driving out the communal system of Ireland than of its eastern type in India. It could overlay and regulate, but when it attempted to destroy, it failed.

It would seem further that this perpetual conversion from feudal to communal usage would soon have come to an end if at any time in the history of Ireland there had been given a chance for the successive waves of settlement in the country to remain with any security in any one spot to develop a society on the lines on which European society was developing. Ireland is a very rich country except where its fertility has been absolutely destroyed by the Anglo-Scot invader. But whatever the subject of dispute, whether pastoral use of land, agriculture, cattle breeding, woollen trade, or glass manufacture, no chance of rest has ever been given to Ireland.

But before referring ever so slightly to the political and economic causes of communal decay, such as the movements of population, which may have their military counterpart in the cruelties perpetrated by the brute German on the peoples of Belgium, France, and Serbia at the present day, and the wrestling of the peoples over commercial gains, I would review the feudal and communal societies as they showed themselves at a critical moment of transition in the middle of the fourteenth century.

NOTES.—[1] The English constitutional historian as a rule wholly ignores all these expeditions. [2] Hanmer, 1278. [3] The Duke of Norfolk to Wolsey, 1528, State Papers, Irish Series.

Digitized by Google

PART VII

THE AFFAIRS OF BRITAIN, FRANCE, AND FLANDERS IN THE FOURTEENTH CENTURY

(*See* EXPLANATION OF TECHNICAL WORDS, *supra*, p. xxvi)

CHAPTER XXIX

FEUDAL SOCIETY AT MATURITY. THE WARS OF EDWARD III. THE WAR OF THE THREE JOANS

THE affairs of the British Islands, France, and the Low Countries in the period 1328–64, when feudalism was in the fruiting time which precedes decay, are from every point of view instructive of the contrast between the two forms of living. They illustrate the methods of mediæval warfare both by sea and land, the use of feudal and communal levies and of mercenary troops, and the many sides of the feudal relationship which were bound up with and enforced by military power. They show the value of matrimonial alliances under feudal rules of succession as a means of obtaining military supremacy or a desired neutrality, much as we see it used to-day by the Prussians in Greece, Bulgaria, and other countries. The period points to the efforts of the Church to check war and to modify its horrors, to the worthlessness of truces and of the pledged word. It especially emphasises, I think, the contemptuous disregard in which all that portion of society which under the feudal system tilled but did not own the land, and those others who by trade provided them with the means of subsistence, were held by the fighting men.

Digitized by Google

This period has the great advantage of illumination from a very modern special correspondent, the Rev. John Froissart, born at Valenciennes in Hainault, for a long time attached to Queen Philippa's court, enjoying intimate relations with prominent men of high station who took part in the action described by him. He travelled in England, Scotland, France, and the Low Countries, and gathered news as greedily and as impersonally as the Norsemen "gathered property," without, so far as one can see, any intent to use it for political or ecclesiastical purposes. He is generally accurate and painstaking, but he frequently makes mistakes, as any man collecting information from all sources must do. Where his statements are questioned they can be checked not only by the monastic chroniclers, such as Adam Murimuth and Robert of Avesbury, but by the numerous written records of the time.

The Decay of the Feudal System.—At this time feudalism was losing all connection with the cause of its origin, the better organisation of the State for war. For short campaigns at home the feudal levies were freely used, against the Scots or Welsh or Irish; but apart from such use the system had merely become the excuse for a continuous game of war played by a small clique of gamblers at the expense of the people at large, an excuse for the transfer of territory from one king or king's nominee to another, without any regard whatever to the interests of the people transferred with the land. On the part of the kings it could never have been said to have been in any sense defensive warfare. As the principle of the individual ownership of land, the basis of the power of the kings and great feudal nobles and churchmen, enabled them to amass wealth by war and commerce, the mass of the people, sinking further into poverty, ceased to have even the fiction of kinship with those who led them and despoiled them. The results of the destruction of communal life showed eventually in such movements as the Jacquerie and the Free Companies.

The accompanying pedigrees will show that the feudal rulers, who exploited the people of the different districts, were intimately interconnected by marriage. The bargain

Digitized by Google

and sale of children for territory went on from their earliest years, and the Church assisted to endorse the system by a sweeping table of affinities, always to be dispensed with for money if the alliance was not likely to turn out profitably either for the Church or for one of the contracting parties.

There was no longer under feudal usage any community of interest between ruler and people. The rulers had come to regard their respective territories with the inhabitants as objects of sale and exchange for the aggrandisement of their families by marriage or by treaty in war, much as a secondhand furniture dealer might regard a chest of drawers, something to be acquired to be sold again if convenient at a profit. This habit of exchange of territory as personal property with the inhabitants occupying it and payment by intermarriage becomes gradually an acknowledged principle in the dealings with territory and peoples by their rulers, and it obtains up to the present day in Europe wherever the absolute ruler remains.

The Influence of Trade. — One thing only checks the perpetual slaughter—want of money to pay expenses when plunder fails, money which can only be obtained either by robbery or on terms from the traders who are making it. So this period also illustrates, though this is much more difficult to trace in records, the use of the complications of this feudal military system to cover up commercial designs which the rulers of the different countries had upon the trade of the others.

While the kings affected great contempt for the trading community and plundered without mercy wealthy towns in their military campaigns, they were well prepared to borrow money and receive assistance from the burghers in return for trading privileges and compliments, and they made pretence in a lordly way of being democratic traders themselves. They were quite ready to take part in commercial adventures if they were likely to be lucrative, and to repudiate their debts if the venture failed.

It is not for nothing that the Lord Chancellor of to-day sits upon a woolsack; Edward's wars were fought on and for wool; the profit from wool and woollen manufactures

Digitized by Google

was the cause of the wars which the historian puts down to all sorts of constitutional, personal, and ecclesiastical causes. As to-day, so then, the Low Countries, Flanders, Hainault, Brabant, Guelderland was the lamb accused, as a legal pretext for devouring him, by the wolves around him of making the stream that flowed to him from above impure.

The supply of wool had been for centuries almost a monopoly of England, and she had not been content with supplying the raw material, but had tried again and again to compete in the manufactured product. In the Pipe Roll of 31 Hen. I. we find payments to the King's Exchequer from guilds of weavers at London, Lincoln, and Oxford, and in the reign of Henry II. we have notices of them at Winchester, Nottingham, and Huntingdon. The kings encouraged the formation of guilds of weavers, granting them privileges, and using them to organise and control trade, and to arrange fiscal trade dues.

Very early the German merchant towns as now combine politics with trade and control policies by loaning money and goods to needy kings; and very early the English seaman rebels against the dominance of the German, and fights him with very unequal success until Elizabeth and her wise advisers defeat the Hanseatic League.

As early as 1157 the people of Cologne had a Hanse and Guildhall in England; other towns joined them; Lübeck began the great Hanseatic League; cloth was the basis of all; it continued until a very late date to be the money of such places as the Orkney and Shetland Islands. In 1197 the trade had so increased that it was important enough to call for the Assize of Measures, regulating the width of foreign cloth. Then, as did all governments in those days, the right to break the law was sold to persons able to pay. Before 1240 Flemish cloth merchants were protecting themselves by forming an association called the Hanse of London. These attempts at foreign domination were met by the prohibition of export of wool.[1]

But there were not enough expert workmen in England to manufacture the English wool, to supplement the de-

Digitized by Google

ficiency of English manufacture, and to prevent any control of the wool trade by other countries. The English kings formed personal alliances with the rulers of the great manufacturing districts of wool, the Low Countries. The wars between England and France and Spain were waged for centuries by their kings to a great extent with this object in view. In 1325 Isabella, the queen of Edward II., went on a mission to France, taking with her her son, afterwards Edward III. The Despencers obtained her dismissal from her brother, the King of France, and she then went to the court of the Earl of Hainault at Mons, whose wife Joan of Valois was her first cousin. Here the prince became betrothed to his future queen Philippa.[2]

John of Hainault, the younger brother of the earl, recruited a force of mercenaries for an expedition to England from the different states of the Low Countries, with which he captured the Despencers and Isabella's husband. In 1327 Edward III. succeeded his father.

Wars of Succession.—In 1328 the last of the three sons of Philip IV., brothers of Isabella, died, leaving only daughters, and a question of succession arose which came up frequently in different forms in all countries. The question was whether the lower descendant of an elder branch, the grandson or granddaughter (*e.g.* Edward III. or Charles the Bad of Navarre) should succeed in preference to the son or daughter of a younger branch (*e.g.* Philip of Valois); and also whether the daughter of an elder branch (*e.g.* Joan de Penthièvre) should succeed in preference to the son of a younger branch (*e.g.* John of Montfort).

In whatever form the problem might arise, however interesting it might be in theory, the only grounds for settlement were the force and wealth at the disposal of the claimants and the advantages to the great barons of the kingdom who were nearly allied by blood or marriage to both or to either. John, son of Henry II., the younger son, became king by right of greater force in preference to the son of his elder brother Geoffrey; the crown of Scotland was adjudged by Edward I. to John Balliol, the grandson of an elder daughter, in preference to Robert Bruce, the

Digitized by Google

m., married.
d., died.
daur., *daurs.*, daughter or daughters.
chn., children.
D., duke.
C., count or countess.

(Surrendered Brittany to Henry in 1166.) Conan IV. of Brittany.

Henry II. of England.

m., 1st, Geoffrey.—*m.*, 2nd, Ranulf of Chester.—Constance *m.*, 3rd, Guy de Thouars.

Arthur. Eleanor.

Alix *m.* Pierre de Dreux.

John I. of Brittany, 1237–86.

John II., 1286–1305, *m.* Beatrice, daur. of Henry III. of England.

1305–12. Arthur II. of Brittany.

m., 1st, Marie, Vicomtesse de Limoges.

m., 2nd, Iolande de Dreux, C. of Montfort.

John III. of Brittany. Guy, C. of Penthièvre. John, C. of Montfor *m.* Joan, daur. o Louis, C. of Flanders.

Philip III. of France, *d.* 1285, *m.* Mary, sister of John, D. of Brabant.

Philip IV., *d.* 1314. Charles of Valois.

Louis X., Hutin, *d.* 1316. Philip V., Le Long. Charles IV., Le Bel. Isabella *m.* Edward II. of England.

Philip of Valois. Joan *m.* William, C. of Hainault. Margaret *m.* Guido, C. D'Artois. Isobel *m.* John III. of Brittany.

John, *d.* 1316. Joan *m.* King of Navarre. daurs. daurs.

Joan *m.* Charles the Bad.

daur. *m.* David, son of Robert Bruce. Edward III. *m.* Philippa of Hainault. daur. *m.* Reginald, D. of Gueldres.

William, C. of Hainault. Philippa *m.* Edward III. Margaret *m.* Lewis of Bavaria, Emperor. Joan *m.* William, C. of Juliers.

Charles of Blois *m.* Joan of Penthièvre.

Joan of Brittany, C. of Penthièvre.

John IV., born 1340 *m.*, 1st, 1355, Mar garet, daur. of Edward III. *m.*, 2nd, 1366, daur of Lord Charle Holland and Joan C. of Kent, widow of the Black Prince *m.*, 3rd, 1386, Joa of Navarre, daur of Charles the Bad By her he had eight chn.

Margaret *m.* John IV. of Brittany.

Joan of Navarre *m.*, 1st, 1386, John IV. of Brittany. 2nd, 1402, Henry IV. of England.

Digitized by Google

son of a younger daughter; the war of the Three Joans was fought in Brittany from 1341 to 1364 over a claim of succession between Jeanne de Penthièvre, the granddaughter of a first marriage, and John of Montfort, the son of the second marriage. No principle was involved; no rule of practice for all existed. So when Charles le Bel died, Philip of Valois, the son of the younger son, assumed the crown of France.

The question was open for dispute if anyone chose to raise it, whether Charles the Bad, King of Navarre, the son of Louis X.'s daughter Joan, who had been passed over as a child at the time of Louis's death (a claimant who had strengthened his position by a marriage with his first cousin Joan), or Edward, the son of Philip IV.'s daughter Isabella, had greater right of succession than Philip of Valois, the son of the younger son of Philip III.

But Edward was but fifteen or so, and had no such strong position that he could afford to force a claim to the throne. The townsmen of Bruges, Ypres, Courtrai, Douai, Ghent, Lille, and other towns of Flanders, who would have been his willing allies against France for pay, had been in revolt against their Count and had just suffered a terrible defeat at the hands of Philip, who had gone to his assistance; and Edward had his hands full in Scotland. He made a protest, but he did homage to Philip for his French possessions. The matter might have remained as it was but for the entanglements caused by the alliances made by the two kings.

War with Scotland.—Edward on his accession had at once to meet difficulties in Scotland. A truce with Scotland had been signed in 1325 to last for thirteen years. But Robert I. made no difficulty in breaking it on Edward's accession in 1327 by a great raid over the border led by Randolph and Douglas. Edward marched with a large army to meet it, including a force of men from the Low Countries under Sir John of Hainault. But the Scots gave him no chance of meeting them in battle.

They were no feudal forces which met Edward's heavy cavalry. Throughout the Scottish wars these light-armed

Digitized by Google

raiders, like the Boers who opposed us in South Africa, had a final superiority over the men who designed the drawn battle of armoured men in continental warfare. Mounted on small ponies carrying bags of oatmeal and finding their meat in the cattle of the country, they moved too fast and too silently for the English army. Their object was to burn and plunder rather than to fight, and when they had satisfied themselves in these objects they retired to Scotland. In the next year Edward agreed by the treaty of Northampton to acknowledge the independence of Scotland, and to give his sister Joanna as wife to the child David, Robert's heir, in consideration of £20,000. It looked as if there might be peace on all sides, but no such thing was possible in the then conditions of England and Scotland. The border scuffles between the two countries, which were continuous, offered a ready cause of offence when war was wanted by either side, and were always liable of themselves to blaze up into a general war.

Robert I. died in 1331, David being then eight years old. In 1332 Edward Balliol, the son of the King John of Scotland, was induced by some border barons to invade Scotland, which he did from England with some temporary success. When he was driven out, Edward took up his quarrel, and in 1333 the Scots were defeated with great loss at Halidon Hill. Balliol remained king in possession until 1339.

Feudal Warfare in France.—After Halidon Hill young King David with his child wife was sent off by the Scots to France, where Philip made an alliance with him against Edward and took the opportunity to attack Guienne. Edward on his part turned for assistance against Philip to the natural allies of the English wool growers, the manufacturers of the Low Countries, and negotiated for help with the Earl of Hainault, his father-in-law, the Duke of Brabant, his first cousin, the Duke of Gueldres, his brother-in-law, the Marquis of Juliers, the Archbishop of Cologne, the Bishop of Liége, and others both in Germany and the Low Countries, treating especially with the burghers of the Flemish towns who were in a state of chronic unrest and rebellion against their earl.

Digitized by Google

All these allies promised him assistance. But they knew that the whole force of Philip's attack would first fall on them, and on being challenged to give the assistance which they had promised, replied that they saw no reason why they should attack France. They suggested that there was an old ordinance that no king of France should keep anything belonging to the Empire, that France had possession of Cambray and certain castles of the Empire, and that if Edward could persuade the Emperor to challenge Philip, they as the Emperor's feudal vassals would join him at the Emperor's orders. Edward took up the suggestion.

The Emperor Lewis of Bavaria, who had married Philippa's sister, made Edward the Vicar-General of the Empire, giving him the power to call on the lords of the Empire for assistance. But it may be imagined that the allies, most of whom were as closely connected with France as with England and much more open to attack, were very lukewarm in the quarrel. Still, in 1337 Edward declared war against Philip, and in 1338 he entered into a treaty with the Flemings, under their democratic leader Jacob van Artavelde, the head of the revolution of the townsmen against the Count of Flanders.

Here again there was a difficulty to be overcome. The Flemings explained that they were pledged on oath, under a penalty of two million florins, to the Pope not to act against the king of France, on pain of excommunication; but if Edward would take the title of King of France, and as such release them from the money penalty, they would risk the excommunication and join him. To which Edward agreed.

The Flemings did not propose to give him active assistance, but they were to be very benevolent neutrals, allowing him to invade France through their country, and selling him supplies for wool. This alliance, however inevitable, seems to have been a source of weakness to Edward, as an alliance with the revolted burghers tended to weaken the sympathy with England of all the absolute rulers of the countries neighbouring on Flanders.

Sporadic hostilities went on on both sides for some time. Bodies of the allies invaded France, burning and looting the towns and destroying the country, and the Normans at sea

Digitized by Google

attacked Southampton and the south coast towns and talked of another Norman invasion. Then as now the rôle of England lay in keeping open the waterway, which she was hardly able to do in the face of the mercenary fleets of Genoese, Bretons, Picards, Normans, and Spaniards in Philip's pay.

Waging Feudal War.—At last, in 1339, the war appeared as about to open in reality. Edward with such of his allies as stood by him advanced with a great army into France, burning and destroying all the French towns which were undefended with solid walls and moats, and looting them. Very many towns, "large, rich, and full of draperies," appear from the pages of Froissart to have been enclosed, if at all, only by a wooden palisade often much out of repair. If pots of lime and logs of wood and stones did not beat off the enemy, the town fell. If it had given much trouble and had delayed the advance long, every living creature in it was killed; to take instances from Froissart: "Origny St Benoit, a tolerably good town but weakly enclosed; so that it was soon taken by assault, robbed and pillaged, an abbey of nuns violated, and the whole town burnt." Later on: "Lord Lewis of Spain takes Guerrande in Brittany. It was so ill fortified that it could not make any defence; it therefore was soon taken by storm and pillaged without mercy. Men, women, and children were put to the sword" (Froissart, ch. 83). It is always safe to deduct 75 per cent. from any such statements. Charles of Blois, besieging Nantes, has the heads of thirty knights, whom he has seized, shot from catapults over the walls. When he takes Quimper he allows the troops to massacre fourteen hundred men, and he beheads his prisoners.

When Edward reached the borders of France, he experienced the futility of feudal tenancy. The young Earl of Hainault, nephew of Philip and Philippa's brother, who as a vassal of the Empire had followed Edward to the boundary, took his leave, saying that as he had been sent to and his aid requested by his uncle Philip of Valois, whose ill will he wished not to incur, he would go serve him in France as he had served the king of England in the Empire, a change hardly surprising, as in the event of Edward's retirement his

Digitized by Google

territories would be the first on which Philip would revenge himself. Kings meaning real warfare employed mercenaries.

Edward then sent a message to Philip asking him to appoint a day for battle, which was done. The two armies advanced to meet one another, and Edward took up with his much smaller force a strong position to await the attack.

Philip was advised not to attack; Edward was too weak to leave his position. So after looking at one another for some time, both armies turned back, Philip to France, and Edward to Brabant, and then to England. The Earl of Hainault then left Philip and joined Edward.

After this both sides contented themselves with burning and with plundering the unarmed people. But Philip stationed a large fleet at Sluys in order to prevent Edward from landing. Edward sailed over, and with a force barely a fourth of the enemy, his ships so arranged that between every two vessels with archers there was one with men-at-arms, with the assistance at the end of the day of a number of ships from Bruges, completely defeated and destroyed Philip's fleet. The French dead were computed by someone at 30,000 men.

The allies then laid siege to Tournai. But they did not take it, for in September 1340, when it was reduced to great extremities, a truce was brought about by the efforts of Joan of Valois, the sister of Philip and the mother of Queen Philippa. It was renewed up to June 1342. During this siege of Tournai the Scots had taken Edinburgh by stratagem, and in 1341 David returned to Scotland, ready to strike at England whenever Edward was deeply engaged with France.

The War of the Three Joans.—The truce did not stop the war, but only changed the place of operations. John III., Duke of Brittany, who had followed Philip as his feudal vassal, died on his way home. He left no children. There were two claimants for the dukedom: Joan of Penthièvre (see pedigree, p. 363), who had married Charles of Blois, Philip's nephew, and John of Montfort, who had married Joan, daughter of the Earl of Flanders. Then began the war of the three Joans, which lasted intermittently until 1364.

John of Montfort at once seized the most prominent towns of Brittany, and took possession of the duke's treasure. Then,

Digitized by Google

knowing probably that Philip would support the claim of his nephew Charles, he crossed to England and offered himself as feudal vassal to Edward, who promised to aid him as his liege man. An entry into France by way of Brittany was a very valuable advantage for Edward.

John is summoned by Philip to Paris to submit to the decision as to the succession of the Court of Peers. He goes, and is accused of treating with Edward; he lies, and denies it, but is not believed; he is ordered to remain in Paris; scenting danger, he flies to Brittany. The Peers at Paris, at Philip's order, ignoring any question of right to the succession, adjudge the duchy to Charles, on the double ground that John had offered fealty to Edward and that he had disobeyed Philip's order to stay in Paris. Philip supplies Charles with forces with which to fight John of Montfort.

So it comes to pass that Edward, the claimant as successor through the elder female, spends the truce in providing support for the younger male, while Philip, who reigns in France as the representative of the younger male, supports the elder female.

Charles of Blois entered Brittany with his forces, including three thousand Genoese under the command of knights from Genoa, and besieged Nantes. In a sally, John of Montfort was taken prisoner and confined in Paris. Under ordinary conditions the war would have been at an end. But the conditions were not ordinary. Women interposed, and women who did not feel themselves bound by the absurdities of feudal warfare, women who did not look upon war as a game, but who meant business. They were women as incomprehensible to the managers of the European gaming tables, as antagonistic to the methods of their game, as their militant sisters of the twentieth century have been to the croupiers of Westminster. The wife of John of Montfort, Joan of Flanders, a woman who, Froissart tells us, had the heart of a lion, takes his place as leader. Taking her little boy John, born in 1340, afterwards John IV. of Brittany, she throws herself into the fortress of Hennebon. Edward, occupied with the Scots, who were taking his border fortresses, and with their affairs, had not given much assistance to his liege man, but he now orders

Digitized by Google

Sir Walter Manny, a knight of Hainault who had entered his service, to collect mercenaries for an expedition, and to take with him two or three thousand of the best English archers. Little John of Montfort is to marry one of Edward's daughters.

Meanwhile the Countess Joan stoutly defends Hennebon. Froissart pictures her in full armour and mounted, the forerunner of another Joan some eighty years later, galloping through the streets of Hennebon organising the defence and encouraging the garrison. She makes a sally at an unguarded gate, while the besiegers are engaged elsewhere, and with three hundred horsemen attacks their camp and burns their tents and stores. Then, unable to re-enter the fortress, she rides off with her men to another town, to return a few days later with a larger force with which, in the dawn, she enters Hennebon:

The town was hard pressed and on the point of surrender when Sir Walter Manny's force, which had been detained at sea for forty days by storms, arrived to save it. But for the courage and will of the countess, countering the wiles of the Bishop of Leon, who wished in the interests of Charles of Blois that the town should surrender, it would have done so. When the English succours arrived, Sir Walter, after having dinner, attacked and destroyed a machine which had been throwing stones into the town, and when, after a very smart action, he and his friends retired, the countess came down from the castle to meet them, "and with a most cheerful countenance kissed Sir Walter Manny and all his companions, one after the other, like a noble and valiant dame,"—a very courageous act.

After this the war went on both by sea and land with varying success; in the autumn of 1342 a truce was arranged, and the Countess Joan went to England, taking with her her little son. She soon came back with a larger expedition of Count Robert d'Artois, who was assisting Edward, though he had married Philip's sister. Louis of Spain, in the pay of Philip, was stationed off Guernsey with a mercenary fleet to intercept them, and a hard-fought naval engagement followed, the combatants being finally separated by a violent storm. The Spaniards, in taller ships, threw down upon their enemies

Digitized by Google

great bars of iron and annoyed them very much with their lances. According to Froissart, the Countess of Montfort, "with a rusty sharp sword in her hand, combated bravely." But I should be inclined to take this as an example of word-painting by your special correspondent. If Joan had a sword, it would not be rusty.

The usual alarums and excursions follow. Count Robert d'Artois is wounded, and dies, and Edward comes in person. He besieges towns and holds the open country. He has a very large army and a great fleet. The Duke of Normandy is sent with a still larger army to help Charles in Nantes. We may expect a big battle. But instead of it, as usual, in January in 1343, a truce for three years for Brittany is signed at Malestroit.

But the truce lasted no time. At the truce there had been an exchange of prisoners: Oliver de Clisson, who had been a prisoner in England, was exchanged, receiving a safe-conduct from Philip, for Lord Stafford. In cynical violation of the treaty, Philip seized Oliver, who had changed from the side of Blois to that of Montfort, and beheaded him and ten other of Montfort's partisans, without trial, at Paris. Edward threw up the treaty at once, and renewed the war.

The immediate result was to bring another Joan on the scene. Oliver's widow, Joan of Belleville, took an immediate revenge. She went with a force of her neighbours to a castle held for Charles; she was admitted, as the garrison had not heard of the murder. She put all the inhabitants to death. Then, leaving her little boy, afterwards the famous constable, Oliver de Clisson, with the Countess of Montfort at Hennebon, she went upon the war-path both by sea and land, attacking Philip's troops and sinking Philip's ships wherever she could find them. We have no knowledge of her end. She was outlawed and all her possessions confiscated by Philip, "mais elle, les bourreaux du roi ne pouvaient l'atteindre, elle continuait de se venger fièrement, largement, sur terre et sur mer, aux dépens des sujets de Philippe VI." Neither outlawry nor death had any terror for such women. They were the militant suffragists of those days.

After the truce of Malestroit, John of Montfort was released

Digitized by Google

by Philip, on the condition of not going to Brittany or leaving France, a money penalty for breach, and a surety kinsman being provided. The effect of this was to dissolve his party, the leaders making their best peace with Charles. Edward's interest for the present ceased, but when John escaped to England in 1345, Edward again furnished him with troops and ships. He overran the country, but Charles of Blois, being reinforced, he was defeated, and died at Hennebon, having, says the *Histoire de Bretagne*, made a will appointing the King of England guardian of his son John. Edward had so much on his hands in all parts of his dominions and abroad, that he sent no help then to Brittany. Indeed, if we may believe the latest historian of Brittany, M. de Broderie, he kept Joan of Flanders a prisoner in Tickhill castle. After her husband's death she had under feudal law no *locus standi* and her personal ambitions might interfere with Edward's plans of campaign. According to Froissart, Edward was urging the Flemings to disinherit her brother, their earl Louis, and his son Louis, and take the Black Prince for their earl. But they declined. It was a dangerous game. But it was not likely to make him more favourable to Joan of Flanders herself.[3]

He had his hands full in the islands. The Scots, in his absence, were steadily reducing the English power in Scotland. Edward had experience of the men who carried their meal on pony back and cooked the carcases of other people's cattle in the hide. He had had the opportunity of learning, as had few mediæval kings, the value of personal presence when war becomes a reality and not merely a parade of feudal tenants, to be settled by churchly negotiations and broken treaties. He attended himself to Scottish campaigns.

[1] The first prohibition was in the Oxford Parliament in 1258. [2] As Edward and Philippa were second cousins, they had to pay for a papal dispensation for their marriage. [3] "N' ayant plus devant lui qu'un enfant encore loin de sa majorité, Edouard III. s'affranchit de tels ménagements." He made war in Brittany henceforth in the interests of England.

Digitized by Google

CHAPTER XXX

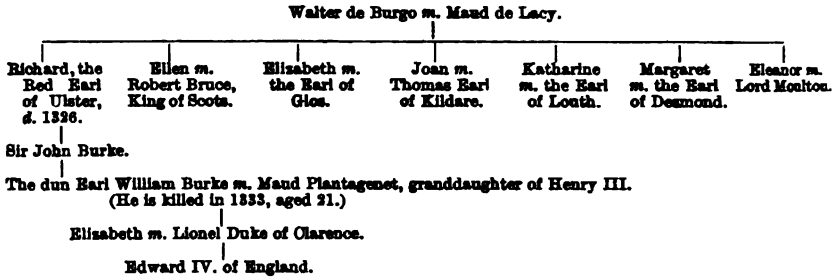
THE SUBJECT CONTINUED

The Affairs of Ireland.—Except for the use of Irish troops in the French wars, while this invasion of France and Flanders was proceeding, Ireland, as usual, was left very much to its own resources. Here for two centuries, as a result of the invasion of Edward Bruce, the English government lost ground daily, until the royal power was obeyed, if at all, only in a narrow strip on the East coast. The older English colonists, receiving little or no support, turned daily more to their Irish neighbours, adopting their customs, dress, and language, giving up their position as feudal tenants to become Irish chieftains; the government in reply promoted new English officials of the men of the moment, of little value except as politicians, over the heads of the experienced and powerful Anglo-Irish, to the detriment of the political and social morality of both. There had begun then in Ireland that changeable and uncertain policy of the English ruler which has encouraged a chaos from conflict of authority, a policy continued unabated to the present day.

In the place of a firm exercise of the royal authority, the English kings had been compelled through weakness to adopt a policy of encouragement of local disorder, by the allowance or by the creation of great regalities. The balance of power obtained by the jealousies roused between the great families of the conquest served to preserve to some small extent the king's authority, through the weakening of them and their Irish allies by perpetual local war.

From the middle of the thirteenth century this policy continued in increasing degree, owing to the troubles between the king and his revolted barons in England, and its results were intensified by the alliances by marriage between the great houses. In 1245 the great possessions of Strongbow were divided among the five heiresses of the Marshals, great-granddaughters of Dermot;[1] in 1264, Walter Burke, the grandson of William FitzAdelm de Burgo, the so-called conqueror of Connaught, became Earl of Ulster in right of his wife Maud, daughter of Hugh de Lacy the younger.

Digitized by Google



In 1316 the Geraldine, John FitzThomas, was created Earl of Kildare, with palatine powers.

In 1327 James Butler was created Earl of Ormond, and Tipperary declared a county palatine in which he could exercise legal jurisdiction; in 1330 Maurice FitzGerald was created Earl of Desmond, with a like power in Kerry.

But the elevation of the heads of the great families into feudal earls did not of necessity either tend to the support of royal authority or bring any nearer any amalgamation of social ideas. No sooner had these great powers been created to curb the Anglo-Irish as well as the native Irish, than the English ruler by his viceroys began to undermine their authority and make war on them, nullifying the good effect of a strong authority, and the great men retorted by adopting the position of Irish chieftains. As early as the middle of the thirteenth century the Geraldines of Munster, ever at war with the Irish MacCarthies, took up the position of chiefs of an Irish sept, and their bitter rivals, the Burkes of Connaught, the ancestors of the Earls of Clanrickarde and the Viscounts of Mayo, in like manner became Irish in dress, language, and customs.

In view of the plantations and other later events, and the language used from time to time about the Celt and the Teuton, language so often used to cover up the Anglo-Scottish failure in Ireland, it must be kept in mind that each generation saw the conversion into Irishmen of the older adventurers who had thrown in their lot with the country. To quote Mr Bagwell (*Ireland under the Tudors*, i. 71), "there is probably no country in Europe in which the population is so thoroughly mixed as it is in Ireland."

Digitized by Google

In 1333 a great blow to the English power was given by the murder of William de Burgo, the Earl of Ulster, who had just succeeded his grandfather, the Red Earl, at the age of nineteen. He had taken prisoner Walter Burke, the Mac-William Burke of Connaught, and had allowed him to starve to death in his castle of Inishowen; the Anglo-Irish murdered him in revenge. He left an only daughter, which was an opportunity for his Burke kinsfolk in Connaught, who had thrown off feudal conditions, to seize his immense estates in Connaught and Ulster for the use of the whole Burke sept, and openly to declare themselves independent of the English crown. In spite of the efforts of the viceroys to reduce them, they remained so. The O'Neills resumed control of eastern Ulster. These successes so much encouraged the Irish in other parts of the country, that the settlers of the pale only retained their position by paying blackmail to the adjoining septs. From this time until 1361 no consistent effort was made to bring peace in any form to the country.

Edward in Flanders and France. Crecy and Calais.—At this time also Edward had his hands full in Flanders. He had been trying to persuade the Flemings, through Van Artavelde, to accept the Black Prince as their earl in the place of the present earl. Van Artavelde, who was in favour of the project, could not bring over the citizens. The upshot was that the mob of Ghent murdered him. The Flemings then proposed that Edward's daughter should marry the son of their earl.

Above all other parts of his scattered dominions, Edward was just now fully occupied in France. War had begun in Gascony, where Philip had sent a large force to oppose the Earl of Derby. Edward, wishing to reinforce his troops in Gascony, summoned all the vassals of his kingdom, collected forces from whatever quarter he could that were willing to enter his pay, and sailed for Guienne. But a storm blew him out of his course, and he attacked Normandy, burning, destroying, and looting the rich towns, Caen in particular, which was said to be larger than any town in England except London. Philip sent for help to Bohemia and Germany and Luxemburg, to the Earls of Flanders and Namur and the Duke of Lorraine.

Digitized by Google

Marching north, pursued now by Philip with a very superior army, Edward only escaped destruction by the timely knowledge of a ford across the river. His army was overtaken at Crecy, beyond Abbeville, by Philip's immensely superior force. Those who are interested in the description of battles should read the account of the battle given by Froissart. "What I know and shall relate in this book," he says, "I have learnt chiefly from the English, who had well observed what confusion they (the French) were in, and from those attached to Sir John Hainault, who was always near the person of the King of France." His account is thus checked from both sides.

The Genoese crossbowmen, who began the battle for the French, were tired with a very long march, and their bowstrings wet with rain. The English archers, with the long bow, threw them into such confusion that they turned back, and the French men-at-arms, anxious to get to the front, cut them down as they retired, the shower of English arrows falling on both, "so hotly and so thycke that it semed snowe." When the French were in this confusion, Edward's light-armed mercenaries from Wales and Ireland, "certayne rascalles that went a fote with great knyves . . . went in among the men of armes and slewe and murdredde many as they lay on the grounde, both erles, barounes, knyghts and squyers, whereof the king of England was afterwards dyspleased, for he had rather they had been taken prisoners." The battle ended, like Bannockburn, in the defeat of a larger immobile force of heavily-armoured knights by the archers and light-armed troops which Edward had had time to put in a good position for defence. The slaughter of the French nobles cost Edward a son-in-law, for among the slain was the Earl of Flanders, whose son refused to marry the daughter of the man who had killed his father, and escaped to Philip. Edward then laid siege to Calais, and took it, a success of more value to him than any battle. He had now an independent gate of entrance to the Continent, and could afford to take a higher line both with the Low Countries and with Brittany.

Soon after Crecy, David of Scotland, invading England, was defeated and captured at Neville's Cross.

Digitized by Google

The War of the Three Joans.—There had been some sort of a truce in Brittany, but in 1347 the war recommenced, and at a battle at Roche Darien, Charles of Blois was captured, and carried as a prisoner to England. After this Edward placed in Brittany a captain-general to superintend all military and civil affairs, and Philip did the same. The treaty of Calais between the two kings, made in September 1347 to last until April 1351, did not extend to Brittany.

But there as elsewhere war languished. The fearful plague which overran the whole known world, known to us as the Black Death, crept up from the south into France in 1348, and carried off a majority of living people. Though the two kings did not give up their game even in the face of such a general affliction, it was impossible vigorously to carry on military operations. However, in 1352 there was another decisive battle at Mauron, in Brittany, where the party of Charles of Blois was wholly defeated, so many leading men being killed on both sides that very little more in the way of serious fighting took place in Brittany for some years.

Joan of Penthièvre was not discouraged either by this defeat or by her husband's captivity. Where the game of war was at a standstill she tried the course of diplomacy. She called together the States of Brittany, that is, such as chose to support her cause, to a meeting at Dinan, in her appanage of Penthièvre, and persuaded them to send an embassy to Edward for the release of Charles. A release of a wealthy prisoner could always be obtained if the parties were willing to pay for it.

Here we come across a curious bit of diplomacy as it affected feudal relations. Edward released Charles on a heavy ransom, one of the conditions being that he should not attack the Countess of Montfort or her allies. He went back to Brittany, and, as he could not bear arms himself, made efforts to obtain help from France, without success. The historian of Brittany,[2] relying on the rather poor authority of Robert of Avesbury, gives as part of the treaty the fealty of Charles to Edward, that Edward acknowledged him as duke, and that Charles's son, John, who was then in Edward's hands, was to marry Margaret, Edward's daughter. Avesbury probably mixed up

Digitized by Google

the two Johns, as young John of Montfort married Margaret in 1355. But it is quite likely that as a settlement favourable to himself, Edward, who had all parties in his hands, acknowledged Charles as duke for his life, with remainder to John of Montfort, who was yet a minor, a not unusual means of settling a troublesome question of feudal succession. When in 1360, by the treaty of Bretigny, Edward renounced his claims to the throne of France, the basis for this arrangement fell through. On June 22, 1362, Edward handed over the duchy to John of Montfort, who agreed to an alliance with Edward, and that he could not marry without his consent.

The Mercenaries.—But peace had its dangers no less feared than war. At every truce, in every time of relaxation of the war operations, the mercenaries, released from all discipline, unpaid and hungry, were turned loose on wretched France to destroy it. After the battle of Poitiers, in 1356, and the capture of King John of France (Philip of Valois had died in 1350) these bodies of men saw no prospect of good pay or rich pillage in that unhappy country. Under the feudal system they formed no part of the social state; they were of no kin to the people of the country, no considerations of present or future social ties restrained them. Under the name of the Free Companies they marched from place to place, robbing, murdering, burning, and taking ransoms.[3] One instance is sufficient. A knight, nicknamed the archpriest, in command of such a body of men, after plundering all Provence, came to Avignon, where Pope Innocent VI. resided. The pope was in great terror. "When the archpriest and his troops had pillaged all the country, the pope and clergy entered into treaty with him." The archpriest entered Avignon, "where he was received with as much respect as if he had been son to the king of France. He dined many times with the pope and cardinals, who gave him absolution from all his sins; and at his departure they presented him with 40,000 crowns to distribute among his companions."

All unhappy France was overrun by such men, English, Welsh, Navarrois, Fleming, every race and nationality of Western Europe; Brittany suffered as much or even more than the others.

Digitized by Google

Brittany in the Treaty of Bretigny.—In the treaty of Bretigny, in 1360, between England and France, no mention was made of the war of the succession in Brittany, except that it was left to the two kings to settle it by persuasion and interest. It would appear that they did their best, though one may quite believe that Edward did not want a settlement of this war, as its continuation would help to protect the islands from the ravages of the Free Companies, who by that treaty were left without an occupation.

"They presumed," says Froissart, "that henceforward all men-at-arms attached to them would be obliged to surrender every fort and strong place which they at present held and possessed in the kingdom of France, and that they would retire to whatever parts they chose; it was therefore much better and more profitable that these warriors and pillagers should retire into the duchy of Brittany, which is one of the richest and best foraging countries in the world, than that they should come to England, which might be pillaged and robbed by them."

In consequence of the care taken by the kings of France and England to avert from themselves the consequences of their game of war, the Free Companies did most of their pillaging and robbing in Champagne, Burgundy, Guienne, and Brittany.[4]

The Jacquerie in France.—The French dauphin Charles, who ruled for his captured father John, was in no position even to think of checking the Free Companies. The French Revolution was being rehearsed before him at Paris in the murder of the marshals by the Parisian mob, headed by Provost Stephen Marcel. Charles the Bad of Navarre, the Philippe Egalité of the fourteenth century, was claiming the crown for himself, and joining himself with the Free Companies and the mob of Paris against Charles the dauphin. Famine, anarchy, and revolution reigned over France.

Connected with the mob of Paris arose a fearful insurrection in France called the Jacquerie, twenty-five years before the same plague spread to England in the days of Richard II. Marcel, even if he did not originate it, assisted it. The common people did, in burning, killing, violating,

Digitized by Google

and pillage, all that the chivalrous knights and barons had done to them, but they did it more thoroughly, more brutally, and without any consideration of rank. Froissart, who has passed by with honour the equally horrible acts of the king's soldiery on the unarmed people, is overwhelmed with horror at the excesses, the awful excesses of those who retaliated. They were put down as they had to be with a cruelty so appalling that their own historians exclaim against it. It was the final result of a feudal system of society which had long outlived its usefulness, either from a political or military standpoint, being supported by mercenary troops to enable the commercial or political gambles of the feudal nobility to be continued.

The War of the Three Joans.—In Brittany the war finished itself. The poor people who had suffered so much urged a division between the two candidates, the one strong in the north, the other in the south, to enable them to unite against the common foe. A treaty was drawn up to this effect to end the war.

But Joan of Penthièvre would not hear of it. "I married you," she is reported to have said to her husband, "to defend my inheritance, and not to yield the half of it. I am but a woman, but I would lose my life, and two lives if I had them, rather than consent to any cession of the kind"; and on his leaving to resume the war, she reminded him in the presence of his followers: "You are going to defend my inheritance and yours . . . and the barons of Brittany, who are here present, know that I am rightful heiress of it. I pray you affectionately not to make any ordinance, composition, or treaty whereby the duchy corporate remains not ours." Charles obeyed; the pitched battle of Auray followed, where in 1364 he lost his life and the duchy. John of Montfort became Duke of Brittany, acknowledged by Charles V. of France, and Brittany ceased to be the gate by which Edward of England, under the claim of feudal superiority, could safely enter France.

But there remains one beautiful touch to redeem this savage and barbarous story. When later the king of France attempted to take away the independence of Brittany,

Digitized by Google

Joan of Penthièvre, supported by great interests, had her opportunity for triumph. But the soul of the woman was too great to betray her country. She refused to take her revenge, but supported young John IV. of Montfort in his resistance, leaving an example which almost renews one's faith in human nature.

The Statutes of Kilkenny.—After Bretigny some attempt was made by Edward III. to regulate by deputy the affairs of the English colony in Ireland. His son Lionel Duke of Clarence, who had married the heiress of the Earl of Ulster, was sent to Ireland with a large force as viceroy. But it was an attempt to regulate only the relations between the powers of the deputy who represented the shadowy authority of the king, and the Anglo-Irish, resident in the country, as apart from the "meer" Irish. These Anglo-Irish were in each generation more nearly approaching the Irish in manners and habits and user of customary law, every day the more revolting from feudal dependence upon an absentee king, a king faced with the dangerous discontent of the same class in England, a king whose viceroys never had sufficient force to control the owners of the independent palatinates supported as they were by the "meer" Irish among whom they lived.

If any one of the greater Anglo-Irish barons had been able to attain sufficient pre-eminence over his fellows, an independent feudal kingdom such as the Bruce had established in Scotland might have sprung up in Ireland. But the strength of the Irish social system, irreconcilable with the decaying feudalism of England, worked both ways. It was sufficiently strong to check the creation of a new kingdom of the feudal baronage, while the chieftains of the Irish septs were always ready to assist the heads of the palatinates or other Anglo-Irish who had married and fostered among them against the always unpopular king's viceroy.

The English government made no effort to control the native Irish; they were treated as outside enemies to be destroyed and extirpated. All that was attempted was to remedy by enactment from without, which the English government was not prepared to enforce, a tendency among the

Digitized by Google

old Anglo-Irish resting on social conditions within, an attempt to insist by legislation that a centrifugal motion of society should become centripetal.

The weak point of the Irish national movement of to-day is that, from the political standpoint, Ireland never has, in the course of her history, become the political unit which is called a nation, the whole tendency of her institutions being towards the independence of the local authority and separation of each district from the others by its subjection to its own local laws. That she is a nation in the sense of possessing a great national literature would appear from her revolutionary movements being headed by men of great learning in Celtic literature, by poets and historians. But in the conflict of brute forces in the world such things do not count.

The attempt of the English king to control the independence of the Anglo-Irish lords was so great a failure, that until some way into the sixteenth century his authority in Ireland steadily decreased, the feudal courts being non-existent over nearly the whole of Ireland.

This call of the king's English in the pale to lure back to the fist the hawk who had flown to the Irish beyond was embodied in a series of statutes enacted at a Parliament held in Kilkenny in 1367, a Parliament which is wholly ignored by the Irish annalists.

The provisions of these statutes show us some of the vital points of conflict between the two social systems, and, as it seems to me, the hopelessness of the one then overcoming the other without the steady and prolonged application of physical force and the keeping of good faith which it has never been Ireland's lot to experience from the Anglo-Scot.

The main purpose of these statutes was to separate the English-speaking people, subject to and accustomed to English feudal law, as a peculiar people from the man of the communal society, who, strong in the customs declared by his Brehon, seduced the Anglo-Irish resident by marriage and fosterage from his position of feudal tenant paying dues to the king.

So in the first place the Acts solemnly forbid what they

Digitized by Google

cannot possibly prevent, that no Anglo-Irish—whether those in the pale, or those who, scattered throughout Ireland and unsupported by the royal power, had become accustomed to what at first might have been a bitter necessity, the adoption of the communal customs and laws which had hardly ceased to be custom in their original country—shall enter into marriage, concubinage, gossipred or fosterage with the Irish, shall sell them arms or provisions, or use the Irish language.[5] The penalty for breach was the seizure of the offender's lands, a very easy way of obtaining forfeiture for the benefit of newcomers. Under the same penalty he was not to ride without a saddle.[6] Hurling and coiting were forbidden as games under penalty of fine and imprisonment.[7]

Other provisions were directed against the acknowledgment of the tribe or sept as the unit instead of the feudal king, and against the common use of unenclosed land. The chiefs were to give up their retainers and kinsmen who commit crimes to the king's officials; in a case of debt by an Irishman to another, whether English or Irish, he personally and not the sept was to be responsible; and provision was made against the conveyance of lands to avoid the feudal forfeitures, and there were gruesome penalties for treason and felony.

Then the Acts dealt with what was no doubt one of the chief difficulties in the settlement of border squabbles. Everyone (it seems a pious wish only) was to attack any raider on the waste land from either side; but no Irishman was to pasture or occupy (*pasture ou mayneaurye*) lands belonging to the English on the marches. If he did so, the cattle might be driven off and distrained. He was to keep on his own side of the pale.

Provisions admirable if they could have been enforced all round, but, as it was, only telling against the helpless English of the pale, were enacted against keeping mercenary soldiers, against maintenance of bad characters by the great men,[8] for the regulation of sergeants, against the use of the palatinates as sanctuaries for robbers, for the regulation of the fees of officials, to encourage the use of the king's courts instead of the Brehon's, for an inquiry by justices of con-

Digitized by Google

spiracies, maintenance, etc., as in England, against "idlemen," *i.e.* the freemen or small gentry attached to the chief, who, as his dependants, take coshering among their fosterers and friends. It is suggested that they shall support the royal purse by hiring waste land from the king. The Statute of Labourers is forestalled, and the price of merchandise regulated.

Lastly, there are provisions, important in the light of after events, that no Irishman is to have ecclesiatical preferment or to be received into any religious house in the pale. As if it were not a sufficient evil for the unhappy country to suffer the conflict of the opposed social systems, the evil of theological hatred was to be added.

If in later times the Ulster Scot suffered in his conscience or his pocket from the predominance of papal authority in Ireland, it was traceable to the use of the Roman power by the English invaders as a means to hammer the Irishman. Colonies of friars had followed the steps of the invaders; a lavish abuse of excommunication was a means of support of the sword; and even if not strictly true, the story told by Campion that St Patrick striving with St Peter to let an Irish gallowglass into Heaven had his head broken with the keys is *ben trovato*.

The Effect on the English Colony.—But so far from having the desired effect, all these well-meant and in some respects useful provisions resulted in a combination against the king's authority by the Anglo-Irish lords throughout the country and by the native Irish, in the defeat of the king's viceroy, and in the gradual narrowing of the pale and an increasing decay of the English powers until nearly the middle of the sixteenth century.

But for the treason of Henry Bolingbroke and the murder of Richard II., that king, who seems to have had a better capacity than most of the kings of our French dynasties for understanding Ireland, might have conciliated and united the different races and factions. But in the dreary waste of years which followed Richard's murder, Ireland became the plotting chamber for the two factions of the Yorkist and Lancastrian barons. The Pretenders, whether real or false, for the quavering throne of England, Lambert

Digitized by Google

Simnel and Perkin Warbeck, invaded England from Ireland, and carried on their intrigues from thence.

As the foreigners continued in each reign to pour from the Western continent into the increasingly wealthy England, the English continued to invade what was fast ceasing to be wealthy Ireland. Even when the men of the pale could only hold their own at all by paying blackmail to the Irish septs around them, and when the great barons, who should have been consolidating the English authority in Ireland, were being drained away from it for French and Scottish wars, the men of the two baronial parties were rending Ireland for their different factions.

The course of change is well summed up in a letter written in 1536 by the Lord Deputy and Council of Ireland to Henry VIII.[9] "Your Highness," they say, "must understand that the English blood of the English conquest is in manner worn out in this land, and at all seasons in manner without any restauration is diminished and enfeebled, some by attainders, others by persecution and murdering of Irishmen, and some by departure from hence into your realm of England. And contrary wise the Irish blood ever more and more without such decays increaseth."

The communal system free from the destroying influence of feudal attainder, the community resident in their own country among their own kin, displaced in each generation the absentee landlord and converted to Irish ways the tenant who ought to have paid feudal dues.

But a worse matter for Ireland than the decay of the English race was the destruction of her pastoral and agricultural wealth, and its exhaustion by export for England's foreign wars, since the English invasions had been followed by Plantagenet rule.

[1] NOTES.—They all married. Matilda, the eldest, married Hugh Bigod, Earl of Norfolk; Eva, the youngest, married William de Braose; her daughter married Roger Mortimer, from whom many of the royal houses of Europe descend. [2] We have not got the text of the treaty; we only know it imperfectly through some "mots des chroniqueurs." [3] See the account of the Free Companies given in Froissart, ch. 47. [4] In England the result was the enactment of 34 Edw. III., c. 1, which to the disgrace of English law is still used by fiction for police purposes in magisterial courts. See my *Tort, Crime, and Police*, p. 256 *et seq.*

Digitized by Google

[5] Quite recently, in 1916, an Irishman, who came from a remote district of Ireland to join the Irish Guards, and in answering with small knowledge of English an English officer with no knowledge of Irish, slipped into the Irish language, was given C.B. as a punishment. [6] State Papers, vol. ii. pp. 3, 216. An Ordinance for Ireland, 1534. "Item, that every gentleman of Inglyshrie which may dispende £20 by the yere shall ryde in a saddell and wear Inglyshe apparel within the same upon peyne of forfeyture of 100s. excepte in warre." There had never been peace for a day. [7] A number of boys were recently, in 1917, marched by the police of Dublin before the magistrates for having hurley sticks. [8] See my *Tort, Crime, and Police*, pp. 146, 148, 151, 189. [9] State Papers, vol. ii. part iii. p. 338.

The Madness of Joan of Flanders

It is beyond the limits of this book to enter into the question of Joan's detention in England as a mad woman from 1343, raised by M. de la Broderie (*Hist. de Bretagne*, vol. iii. p. 488). There is not *the very slightest evidence of any description* that she was mad. It is wholly an assumption. The records offered show that Edward paid her debts in London in 1343, not that she was resident there. Later, the records would appear to prove that the Duchesse de Bretagne was residing in Tickhill Castle.

When Edward left Brittany, Froissart says particularly that Edward gave her in charge to the two brothers de Spinefort, William de Cadoudal, and others. Edward was guardian of John VI., and he had no need to consult Joan of Montfort or to consider her in any way. Under feudalism she had no *locus standi* of any description, and she may very likely, being a very high-spirited woman, have made herself dangerous to Edward's plans of Brittany as a vassal state. When John de Montfort died in 1345, Edward was freed from the necessity of consulting the interests of Brittany, and he waged war for the advantage of England. Most probably after her husband's death she went over to England, where her children were in Edward's keeping, and he confined her in Tickhill to prevent her interference with his plans. Women who would not play the game according to the gambling rules of those days had to be put out of the way.

Digitized by Google

PART VIII

THE DECAY OF THE COMMUNAL SOCIETY. POLITICAL CAUSES

(*See* EXPLANATION OF TECHNICAL WORDS, *supra*, p. xxvi)

CHAPTER XXXI

THE RUIN OF IRELAND

Ireland's Prosperity in the Thirteenth Century.—When Edward I. ascended the throne Ireland was still a rich and prosperous country. The corn of Ireland supplied the English armies in Gascony, Wales, and Scotland, as her men filled the ranks of those armies. For instance, in March 1294 Edward orders [1] the treasurer to provide from about Cork and Youghal twelve or more shiploads of good wheat and oats for Gascony, and to send to the king in Wales such victuals as he can. Later, he orders the supplies intended for Wales, save hay and beer, to be sent to Gascony. Later in the same year, a ship of Ross, laden with 200 quarters of wheat and 200 quarters of oats, is to be sent to Bayonne. In January of the next year, another ship from Ross with 200 quarters of wheat follows. Then follow, in July 1296, two ships from Rosponte, loaded with wheat, beans, and oats, and in September of the same year the king urges the despatch of similar ships filled with wheat, oats, beans, and peas, for the same purpose.[2] Between February and August 1297 the king is advised of the despatch of sixteen ships from various ports, loaded for the most part with wheat, and so on through the calendar. Men are called for on a similarly liberal scale, as for instance [3] a number of horse and 10,000 foot soldiers are called for at one time.

But as time goes on, under perpetual misgovernment, the

Digitized by Google

absence of federal authority and civil wars between the great Anglo-Irish families, the perpetual plundering raids made by Irish and Anglo-Irish and Scots, aided by the Black Death, which did not spare Ireland, the plenty of the land began to give place to famine and desolation.

The Causes of its Rapid Decay.—By the time when Henry VIII. turns partial attention to the country, when his minister Thomas Cromwell is receiving presents of merlins and goshawks for the use of his influence to obtain confiscated lands, the entries in the State Papers have changed from English drafts of food and men from Ireland to dire complaints of want of money and men in Ireland to carry on the government. Under the Tudors and Stuarts, Ireland, in the place of an exchequer and recruiting ground, had become a heavy burden on the hands of England, and later of the United Kingdom of England and Scotland, a burden which did not to them appear to repay the cost. As it is to-day, so then; they would not govern it, and they could not let it go. Throughout the reign of Henry VIII. one prolonged cry for more money and more men comes from the king's officials in Ireland.[4] The difficulties of government and the discontents in the island had increased out of all proportion to the means of meeting them. In 1520 Henry writes that Francis I. of France has offered to send troops to Ireland; in 1534 Kildare, in rebellion, asks aid of Charles V., claiming that Ireland was a fief of the Holy See; in 1536, after the suppression of the Geraldine rebellion, the officials say that £7000 is not sufficient to discharge the arrears of the army, and that the men are mutinous for non-payment of their wages. In one year, 1537, three entries bewail the want of funds and of troops.

But Henry was too busy with his Field of the Cloth of Gold, his disputations with the other Pope in Rome, and his matrimonial, foreign, and commercial alliances and quarrels on the Continent, and with his mean and treacherous intrigues against James V. and the Scots, to be able to do for Ireland what his father had done for England, namely, establish the authority of the Crown by putting down with the strong hand the great Anglo-Irish nobles, independent in their palatinates, who by their internecine wars kept Ireland from making any advance

Digitized by Google

in peace or wealth. The one policy which had been successful in England, administration by the smaller men, who were the king's servants, impartial men independent of the local magnate, when fitfully tried, was either fretfully abandoned or only half supported with means.

On the other hand, when any attained a position from which he could control disorder, he was encouraged to commit it. The great Anglo-Irish nobles, even when made viceroys, were incited to make plundering raids for cows against the Irish and to burn the entire country, being allowed to retain as their own property the lands which they could gain by these raids. The bear and bandog policy, the setting of one Irishman against another, was continued; the feudatories fought and plundered one another, each calling into their aid their Irish neighbours, laying the blame in their report to the king for the disorders on their native allies.[5] While England under the strong hand was leaping forward in agricultural wealth, in Ireland the perpetual raids, organised by the great nobles, made agriculture dangerous and discouraged any use of the land except for pastoral purposes. If the king's men had lands outside the pale, they could only enjoy their crops subject to blackmail paid to powerful neighbours.

In the various armistices and agreements made from time to time with the great lords and the Irish chiefs, their allies, it was often provided that the Irish customs, which would not fit in with feudal landholding, should be put away, so that the king should get his money; but no effort was made to draw the Irish to the English level by honest treatment and good rule; the habit had already begun of breaking the pledged word with rebels, and, on specious excuse, executing men who had surrendered on an unwritten promise or expectation of pardon. The Irishman, whose language they could not speak, whose civilisation they despised, was, even before the discovery of the new world, treated as a savage, to be expelled from his lands for the benefit of adventurers from the larger island or of a soldiery whose pay was in arrears. Conquest and the plantation of powerful colonies of aliens were the only means which seem to have suggested themselves to the foreign king.

So complete in time became the destruction, so ghastly

Digitized by Google

the effect on the country, that a generation later the passage in the Irish Annals, commenting on the death of Edward Bruce, might have stood as a motto for Irish history, as the picture of the horrors which in each century, when they really set about it, followed the savage attempts of the Anglo-Scots to extirpate the people whose communal form of society would not fit in with their feudal system. As Prendergast has expressed it, in his *Cromwellian Settlement*, "The English seem to have thought God made a mistake in giving so fine a country to the Irish, and for over 700 years they have been trying to remedy it."

The Successive Famines.—In each century, in the reign of each English or Scottish king, there are the same entries. Says Spenser: "Out of every corner of the woods and glens they came creeping forth upon their hands, for their legs would not bear them; they looked like anatomies of death; they spake like ghosts crying out of their graves; they did eat the dead carrions, happy where they could find them; yea, and one another soon after, insomuch as the very carcases they spared not to scrape out of their graves; and if they found a plot of watercresses or shamrocks, there they flocked as to a feast for the time, yet not able long to continue there withal; that in short space there were none almost left."

But he defends the abominable cruelties of the English on the truly Teutonic ground that "this is very necessary to be done for the soon finishing of the war," though he admits that if the great Queen (whose memory has suffered through such acts) knew it, she would not only stop such things, but "also con them little thanks which have been the authors and counsellors of such bloody platforms." It is of these Elizabethan wars in Ireland that Lecky, the Protestant Unionist historian, writes that they were "carried on with a ferocity which surpassed that of Alva in the Netherlands, and has seldom been exceeded in the page of history." "It needs indeed," he says, "the widest stretch of historic charity . . . to judge this history with equity or moderation."

Fynes Morison, writing shortly afterwards, reports in 1602 "a most horrible spectacle of three children (whereof the eldest was not above three years old) all eating and gnawing

Digitized by Google

with their teeth the entrails of their dead mother, upon whose flesh they had fed twenty days past, and having eaten all from the feet upwards to the bare bones." Some old women in Newry, he says, used to make a fire in the fields, and divers little children, driving out the cattle in the cold mornings and coming thither to warm them, were by them surprised, killed and eaten. A common spectacle, he says, to see multitudes of these poor people dead with their mouths all coloured green by eating nettles, docks, and all things they could rend up above ground.

Coming down a little later, in 1652–3, in the time of that great upholder of liberty Oliver Cromwell, the plague and famine in Ireland had swept away whole countries, that a man might travel twenty or thirty miles and not see a living creature.[6] Those left were seen to pluck stinking carrion out of a ditch, black and rotten; and were said to have even taken corpses out of the grave to eat. An eye-witness tells how a party at night, finding a ruined cabin, saw through the window a company of old women and children seated round a fire on which a dead corpse lay broiling, off which they cut collops and ate. "Ireland now lay a wilderness. Five-sixths of her people had perished. Women and children were found daily perishing in ditches, starved. The bodies of many wandering orphans, whose fathers had embarked for Spain and whose mothers had died of famine, were preyed upon by wolves." In 1652 a public hunt in the barony of Castleknock of the numerous wolves lying in the wood only six miles north of Dublin was ordered by the State.

When Swift, not more than seventy years later, wrote his awful *Modest Proposal for preventing the Children of Poor People from being a Burthen to their Parents*, there must have been very many living who had heard all the gruesome particulars of the Cromwellian time from the survivors. Yet the condition in the eighteenth century under Anglo-Scottish rule would hardly appear to have been better, judging by the facts stated by the writers of that day. Their houses dunghills, writes Sheridan in 1728, their victuals the blood of their cattle —which they bled regularly for food—or the herbs of the field. Of the fearful pestilences of 1740 and 1741, when about a

Digitized by Google

third of the people died, a resident Protestant clergyman writes that the dead have been eaten in the fields by dogs for want of people to bury them.

I have so far anticipated by quoting these repeated horrors: first, because the accounts of Irish affairs, given by the English constitutional historian, by his ignorance of the real conditions, utterly misleads the English reader; he generally begins only with the Tudors; he ignores the Irish records; he writes solely from the standpoint of the Englishman, with an unutterable contempt for the Irishman, of whom he is determined not to know any good thing; he has eyes fixed on Stubbs, and the raising of money, and the misdeeds of English kings, and he ignores what will not fit in with this. What they read in English histories about the Celt is all their knowledge of Ireland as a rule possessed by English people.

But I have more particularly quoted them here because these evidences of famine and desolation bring into contrasting light the strength of the Irish communal society as shown by its powers of recovery from destruction. For the very men who tell of these horrors are filled with admiration at the extraordinary capacity of the Irish for agriculture and the pastoral life. Its desolation has come from the determination of the English to destroy that system.

Testimonies to the Capacity of the Soil and to Irish Industry.—Spenser speaks of Ireland as a populous and plentiful country if it were only given a rest; and of Munster he says, that it is used to export great plenty of corn, and the country people themselves great ploughers and small spenders of corn. At the same time, he admits that the country is so wasted that for two years the new army, which he desires to dragoon the people and to destroy the country afresh, would have to be victualled from England.

Fynes Morison says of Ulster, that it was in all parts green and pleasant to behold and exceedingly stored with cattle, and of Ireland that the fields are not only most apt to feed cattle but yield also great increase of corn. They abound in flocks of sheep.

Mountjoy, cutting down and destroying all the corn in Leix, Morison says, "it seemed incredible that by so barbarous

Digitized by Google

nhabitants the ground should be so manured, the fields so orderly fenced, the towns so frequently inhabited, and the highways and paths so well beaten."

Sir Henry Dockwra, writing of his ravages in Ulster in 1602, speaks of his "spoiling and burning such a quantity of corn and number of houses as I should hardly have believed so small a circuit of ground could have afforded if I had not seen it."

Sir Thomas Phillips, travelling in 1607 from Coleraine to Dungannon, expresses his astonishment at the hill-sides covered with cattle, the valleys full of crops of grain, and the woods swarming with swine.

Sir John Davis writes to Lord Salisbury, that they had finished planting in Fermanagh, "which is so pleasant and fruitful a country, that if I should make a full description thereof, it would rather be taken for a poetical fiction than for a true and serious narrative."

In short, the Anglo-Scottish invader, through a series of centuries, reduces Ireland to a desert; each time the earth in the hands of the Irish cultivator refuses his rule of desolation and famine and again proves the fertility of the soil, and the energy and skill of the cultivator. Yet the Anglo-Scot, like Ahasuerus or Darius, cannot change his methods. Why is this?

The Reasons of the English Failure in Ireland.—What is the meaning of this strange phenomenon? The people of England have advanced further and with more steadiness than any other modern nation in the broadening of the social basis; they have shown all over the world, in India, Canada, British Guiana, Egypt, South Africa, their exceptional aptitude for directing with the least friction and the utmost freedom the affairs of peoples alien to them in growth, race, and religion. Except in Ireland.

Here, throughout the ages, "the Anglo-Norman settlement on the East coast of Ireland acted like a running sore, constantly irritating the Celtic regions beyond the pale, and deepening the confusion which prevailed there." [7] Lecky says of this element, represented to-day by the English or Anglo-Irish lawyer politicians of Ulster, "Like a spear-point

Digitized by Google

embedded in a living body, it inflamed all around it, and deranged every vital function." It is acting in the same manner at this moment.

What are the causes of this exception to the generosity and justice of English rule ?

The root cause is the impregnable innocence of English, Welsh, and Scottish people of any of the salient facts relating to Irish history, and their obstinate refusal to allow the truth to be told to them by anyone who has studied it away from the prejudice of theological disputation. They know nothing of the unfortunate influences which, long before any differences of religious organisation came to widen the breach, acted in the past and continue to act in Ireland to the detriment of peace and unity and good government.

No Anglo-Scot can deny to himself that British rule in Ireland has been throughout, even up to this latest day, a positive, conspicuous failure, forming a most striking contrast to its great success in other lands at all times.

Unwilling to admit that he is in any way responsible for this failure, he attempts to explain it away and justify it by laying the blame for it on the Irish as a " Keltic " race.

Strong in his ignorance of Irish history, and perhaps dimly conscious of the shameful treatment of the Irish Roman Catholics in past centuries, he transfers from himself the failure of his rule by assuming that it is the result of an inevitable conflict between political claims of the Papacy and the patriotism of the Ulster Protestant; he persuades himself that the Irish are a pestilent race of perverse Papists, an incorrigible, barbarous people, who from some inherent racial defect refuse the blessings of liberty and progress offered to them by the " Anglo-Saxon," through the dragooning of the people from Ulster and Dublin Castle.

It is true that, from the end of the sixteenth century onwards, the curse of theological quarrel overlies the many causes of friction in Ireland, and that, owing to the penal laws against the Roman Catholics operating to drive them from commerce and from the ownership and inheritance of land, it became a prominent agency of trouble.[8] But it is not, as the Roman Catholic priest and the Ulster Orangeman

Digitized by Google

would have you to believe, an original cause of trouble; it is not anything but a superadded cause to the original cause, the divergence of social ideals. Still further beyond and above all this, away from the want of firm and steady rule from the larger island throughout, and the disorder and confusion implied in the favouring of one political section such as Ulster against the rest of the country, the difficulties of Ireland, at least from the fifteenth century, have been less the result of wickedness on the part of anyone or any race or any religious belief, than the ultimate sequence of an economic movement.

A chief cause of the disaster of Ireland (and with her of Britain) throughout the ages has been that as the most westerly land of Europe she has been the ultimate heir of the movement from the East of the swarming nations in search of new land for settlement, in her case weak swarms which could not outlive the mediæval summer. It is the belated inheritance of a healthy European movement of society which has since crossed the Atlantic to another world, a movement founded on a belief in the common user of the land by all.

In its beginnings this movement rested upon and took its strength from the communal form of society, with which it confronted a decaying empire weakened by commercial independence and individual claims of "right" unqualified by duty to the society.

This communal society we see first in the Germania of Tacitus. But by the time it reached the ultimate West, the idea of the community of social life, still strong in Ireland, had given way elsewhere in Western Europe before a new mould of political invention which gave greater freedom to individual effort and to the rash energy of commercial adventure. In Western Europe the power of the Popes grew largely from their prescience in seeing and adjusting this change. They supported the English government against the native Irish civilisation. In Ireland the difficulties were increased and the features of the change distorted by the fact that the power to control and adjust had to operate across a wide and stormy channel infested with pirates before the use of steam had bridged the ocean.

Digitized by Google

The process has been reversed. The communal society described by Tacitus, slowly moving down on the lands of the Roman world, was a society of kinship, of mutual protection and assistance, of a common agriculture, of customary regulations agreed to by the whole people, a society in which the rights of the individual were subordinate to those of the small local community of which he formed part. As the seventeenth century approaches it is at deadly grips with a renaissance of Roman ideas of imperial rule and of individual right in Western Europe; it is contemptuously regarded as an initial evil by the vendors of a splendid literature which had its roots in the thought of the Roman classics; it decays and dies because its existence jars with the new images of freedom in commercial bargaining, in theological speculations, in social formations, which have taken hold on the European mind.

Out of the overturn of ideas comes in the end the plantations of the Stuarts and of Cromwell, the perpetual "move on, please" of the Anglo-Scot policeman, the selling into slavery of Irish boys and girls, and later, as the commerce of the world expands and becomes more eminent, the repression and destruction after the Restoration period of every form of industry to which the persecuted Irish Roman Catholic hastened to adapt himself. Finally, the famine period of the nineteenth century during which England exported corn from the starving country, and the westward emigration from the poverty-stricken land of their fathers to the freer soil of the United States.

Now the circle would appear to be complete and the so-called new world on the Western coast of America faces the most ancient civilisation in Asia.

The Influences against Communal Society mature in the Sixteenth Century.—By the days when the Tudors came to the throne of distracted England, all the causes which told against any peaceful solution of the wide breach between English and Irish civilisation were coming to a head.

Feudalism as a military force was dead, as a foundation for social life it was antiquated and unreal, while the persistency with which the Irish social system continued to

Digitized by Google

absorb the Anglo-Irish garrison, in spite of the efforts of each successive viceroy to repress it, would appear to give the Irish social life the advantage of survival. But the decay of feudalism left the communal system to face another turn of political conditions even more fatal to its existence than the anarchy of feudal custom. The whole tide of European public life was turning against the continuance of any mode of living in which the checks on the chief executive were so absolute as to paralyse its powers to repress disorders; the challenge to the existence of society expressed in the phrase, "Ulster will fight and Ulster will be right" was becoming discredited; in every country the strong central authority was exerting itself to compel obedience to the decisions of the majority, and was controlling and uniting the smaller units.

The Tudors, and after them the Stuarts, had the opportunity given to them of blending the two peoples in one, of peacefully combining the two social systems, if their preoccupation in other directions had permitted it. Possibly they might have attempted it and succeeded if Ireland had still been the granary and recruiting ground of Plantagenet days. But although the country was very fertile, conditions had so far changed that Ireland was no longer a source of help with food and men, but a heavy burden on the English exchequer, and, with the increase of commerce, a peril as a naval base for England's enemies.

Other influences were at work against which the existence of Irish social institutions by the side of the English was as water running uphill. In the first place, was the influence of language and literature. The English language was blossoming into the full flower of the perfection reached as the seventeenth century opened. There was no room at such a time for two languages. The tongue which had driven out French as a Court tongue, which was rivalling Latin as a tongue in which learned men could write, was not likely to treat with respect or patience a language not based on Latin, of whose ancient literature the English have always been wholly ignorant. Irish as a language stood alone. It was dying as a literary medium for want of any

Digitized by Google

neighbour tongue to fertilise it with the pollen growth of the new spring, or any carrier to bring it from afar. The legal lore, the sagas of the ancient heroes, the poetry, even the empirical science, lost power of life. It and all the ideas which it embodied died away as a literary force before the strength of the English of the pale rooted in the classics of the ancient Roman writers.

Yet in that tongue, and not in the English or Latin, was contained the past history, the poetry of Ireland. As a political influence it remained. The knowledge of the language among the Irish people and through it of the past history of their country kept alive among those who could use it antagonism to the English feudalism, while the English and Lowland Scots in every generation have failed in their often well-meant efforts at conciliation by their whole-hearted ignorance of the literature which will not march with the tongues based on Latin. The Anglo-Scottish politician apparently cannot ever understand that the learned scholars, teachers, historians, and poets, who are sent to penal servitude for trying to control the passions of the people with which they sympathise, are leaders because of their knowledge of Irish literature, and through it of past Irish history, of the famine and the land seizure and the broken faith, of which the Anglo-Scot was then and still remains ignorant.

To these causes were added amongst others as agents of destruction the influence of theological dispute, as the Reformation movement causes a wider rift—the weakening of the theory of kinship by the permanent residence in the country of another people subject to another law, unadopted by but intermarrying with the tribe—and the refusal to the Irish of the fluid state of society resulting from the growth of commerce.

In respect of each of these three last influences, the two societies came into a direct, unyielding conflict. It was a conflict to which an end could have been put at any time by the men of the pale admitting the Irish to the benefits of the changed conditions of the world. But the breach was too wide and the men of the larger isle too self-satisfied to make an approach.

Digitized by Google

NOTES.—*Cal. of Doc. relating to Ireland*, iv. 197. [2] State Papers, Irish, 318, 321, 323. [3] State Papers, Irish, 269. [4] See, for instance, S.P., vol. i. 1520, Nos. 13, 15, 77; 1521, No. 26; 1522, No. 33; 1535, No. 34; 1536, No. 83. [5] Speaking of the quarrels between the Geraldines and the Butlers, Mr Bagwell says (i. 146): "There were also accusations of intriguing with the O'Mores, of spoiling a village in Kildare, and slaughtering the people even at the altar, of using the castle of Arklow to rob the lieges by land and sea, of levying illegal taxes, and in short of behaving as Anglo-Irish nobles generally did." [6] Prendergast, *Cromwellian Settlement*, 149, quoting the printed declaration of Council, 12th May 1653. [7] Maine's *Early History of Institutions*, pp. 54, 183. [8] *E.g.* 1 Anne, c. 26, sect. 15, no Papist to be capable of inheriting or making title to any lands or rent, etc.

CHAPTER XXXII

THE RUIN OF IRELAND—*continued*

THE TRIBAL CHURCH. COMMERCE. INTERMARRIAGE

The Tribal Church.—It was only the power of the world-church at Rome breaking up the tribal system by an army of monks of all peoples belonging no longer to a tribe but only to the church, which welded the tribes into nations, nations which promptly fell to war with their creator. When the movement began which ended in the Reformation, it was a reforming movement of nations opposed to the corruption of the Papacy and its claims over the known world. But the nations revolting had for some time given up the communal form of society; they had been for long under the Roman discipline; they continued in the Roman mould, and with certain exceptions in the Roman doctrines. They modelled themselves on Rome.

The Irish tribal church continued in its strength to stand apart from the Roman framework in practice if not in theory, long after the weaker units of Western Scotland had conformed to the church of St Margaret and St David. We need not look for any national church in any part of the islands in which the tribal system existed in the strength of separation.

It is true that the church in Ireland was a missionary

Digitized by Google

church, responsible for the conversion of almost all parts of the islands except Kent and Essex. But its organisation was that of the tribe to which it owed allegiance. The church of the tribal system was a tribe within a tribe,[1] a caste or clique to which the tribe had given land or fees in return for spiritual benefits, a tribe of which the members succeed to the abbacy of the church so long as there should be a person of them fit to be abbot,[2] a system which resulted both in Ireland, Scotland, and Wales in benefices being held by a family as an inheritance.

In fact, the tribe stood to the church in much the same relation as the lord of the manor in England stood to the parochial benefice for which he had given land and means of support. The abbot was always, in the first instance, of the tribe of the saint from whom the church sprang, and the initial duties of the church, though its independent members might undertake missionary work to the heathen Saxon in Britain or the pseudo-Christian Burgundians in Gaul, were towards its own tribe at home. Its close local connection was the very reverse of the Roman church, which fought against all local ties. In return for "preaching and offering and the receiving of every son to instruction and every ceile subject to them to repentance," [3] the tribesman was expected to give tithes [4] and first-fruits and alms and honour price. As firstlings the church claimed the first-born son, and another if more than ten.

To the son so taken the church stood in the relation of the chief for services rendered in respect of the lands of the tribe. The church like a chief could pronounce judgment, proof, and witness on its dependants; it had like a chief a right of inviolable precincts,[5] and like the church in England could give sanctuary to criminals, and might allow them to escape without asking questions. Gifts to the church from each grade of chiefs were regulated,[6] and gifts of land to the church for maintenance (corrodies) are provided for.[7]

The effect of the community within the tribe, responsible only to the chief or king and physically protected by him,[8] tended to weaken the tie of kinship as the sole bond of union, even before the organising power of Rome finally divided

Digitized by Google

them absolutely from the laity. But as the church was part of the tribe, allegiance to her did not mean, as it came to mean in national life under Roman influence, that loyalty to the lay unit of society was incompatible with allegiance to ecclesiastical authority.[9] This was due to the fact that to a considerable extent both were under the same cover of kinship.

But no church, especially a missionary church to the heathen with any appreciation of the necessity of discipline, could rest satisfied with an organisation resting on kinship. There are evidences throughout the Brehon Laws that the living part of the church, that section which in the Roman counterpart produced the successive monastic orders and afterwards the friars, tended to become a caste apart, building up for itself a hedge of privilege and caste ownership, which led to the change in the primacy of Celsus, who preceded the reformation of St Malachi.

The references to the church are comparatively few in all these Irish tribal writings, as the unwritten customary law settled matters between man and man outside church influence. But that the tribal church had influence is shown by the provision [10] that if a professional man, such as a poet or lawyer, who would almost certainly be a churchman, held lands in right of his profession, he might give two-thirds to the church.

Shut out from political influence by tribal formation, it is very probable that the extreme most modern equity in matters of contract, suretyship, and such matters shown in the Ancient Laws of Ireland was the form in which ecclesiastical influence, which was in close communication with Roman thought, even if it refused to submit to Roman authority, showed itself.[11]

If the tribal church lacked influence in politics, it did not necessarily follow that apart from politics social life was devoid of saintly piety. There is a very curious provision in the Ancient Laws of Ireland, the "abarta," that a workman on completing any work and delivering it to his employer should give it his blessing.[12] There was apparently a minimum wage at that time in Ireland, and if this blessing

Digitized by Google

was omitted, the workman was subject to a fine of a portion of his fee equal to a seventh part of an allowance of his food while employed, the food to which a workman was entitled being settled by law in proportion to the rank of the art or trade which he professed.

Its Independence of Rome.—There was no bias whatever towards Rome in the tribal church or mediæval Ireland. On the contrary, it was a church, or rather a collection of churches, adversely independent of Roman ways of thought and action, dwelling scornfully apart from papal pretensions, and even in its decay expressing isolation of theological ideas.

Its organisation and its discipine wholly differed from that of Rome. Its system of double monasteries of men and women, frequently under the headship of a woman, was peculiar to it. "Wherever the apostles of Irish monasticism went,[13] this form of organisation followed—not because it was one which originated and peculiarly belonged to the Irish" (but query, did it not ?), "but because it could live only in the purest spiritual atmosphere."[14] It was from these monasteries in Ireland and Wales that not only these islands but practically all Western Europe received spiritual Christianity.[15]

Furthermore, the Irish church differed sufficiently from Rome even in doctrine to produce some first-class heretics, as she afterwards produced first-class Roman ecclesiastics, such as St Malachi. They were not only heretics of the type of the great John Scotus Erigena, who could not reconcile the perpetuation of evil by punishment after death either with the omnipotence or the infinite goodness of God, but heretics such as Virgilius, the apostle of the rude Carinthian boor, who carried his opposition to orthodox Roman doctrine to the extent of believing in an Antipodes, in a people on whose heads the men of Europe were walking.

Nor did the Irish church either encourage the vogue of Roman pilgrimage, nor, to the sorrow of Ireland perhaps, a participation in the crusade which came about through Rome. "The stream of Saxon pilgrims set steadily to Rome. But the stream of Irish travellers set in other directions than that of Rome. Rome occupies the least share in their thoughts

Digitized by Google

and writings. Their liturgy and their hymns and their psalmody were their own. Every name of great note in the list of Irish saints or doctors abroad, save the one instance of Dungal, is found either in collision with Rome or taking a line wholly independent of her." [16]

But the same writer points out that the ineffective Canterbury prelates of the first mission were as a door that opened a way for a spirit far more potent than their own; [17] the Roman church victorious, permitting no freedom of thought or spirit and working by its penalties with the English invader, drew the Irish within the magic circle; and if the Saxon had not been too insistent on his superiority and too anxious to force the conquest of the country with insufficient means, the schism of theology need not have been added to the schism of political and social life.[18]

There was no doubt an antipathy between the magnificent ecclesiastics who followed Henry and the Irish bishop who came on foot, followed by the one white cow which gave him milk for his support; between the church that represented obedience to far-reaching central authority and the church which represented missionary labours acknowledging no such authority. But it was an antipathy no more insuperable than that which divided St Margaret and St David from the Culdees. If the tact and true sympathy and appreciation of changing conditions which carried Scotland safely to unity had been shown in Ireland, there need have been no schism there. In Ireland all influences tended not to absorption but to division. By the seventh Canon of the Synod of Cashel, in 1172, all acts of religion were to be conducted according to the usages of the Anglican Church, a provision which could only be effective as far as the arms of the invader extended.

The provisions of the fourteenth century,[19] that no Irishman was to have ecclesiastical preferment, and that no religious house in the pale was to receive Irishmen, while they encouraged the expansion of the wandering friars at the expense of the official church which could be better controlled, led, when the breach came between England and Rome, to the aligning of the Irish through the friars on the side of the dis-

Digitized by Google

tant power from whom they could expect little oppression, a power often allied with the enemies of their near enemy, as against that near power from which they could expect nothing but treatment as outlaws; just as the men of the Orkneys and the Isles clung for so long to the distant King of Norway, who would only claim an often unpaid tribute against the brute force of the Scot king close at hand.

The Friars and the Reformed Clergy.—Communion with Rome, as represented by the Friars, came to them in its easiest form, a structure not confined to fixed dioceses, interfering as little as possible with their communal system, and their monastic church. The reformed Church, on the contrary, when the Reformation came, rested on the freedom of the individual to set society at defiance, not only in matters of opinion but in the acts resulting from them. This in itself was a very strong influence working against agreement; and it was helped by two other checks to unity: the one the violence of true theological hatred, which had not yet passed into the political and commercial stage; and the other the character of the first officials, who represented what afterwards became the most learned church of Berkeley, Usher, Todd, and Stokes.

Spenser, who complains of the Irish clergy because they followed tillage and other work, admits that no decent Englishmen came over to replace them; that the livings were very poor, the position of the English minister very dangerous; that the people could not understand him nor he them; and that these clergy were generally "bad, licentious, and most disordered."[20] It is a great wonder, he says, "to see the odds which are between the zeal of Popish priests and the ministers of the Gospel. For they spare not to come out of Spain, from Rome, and from Rheims, by long toil and dangerous travelling hither, where they know peril of death awaiteth them, and no reward or riches are to be found, only to draw the people unto the Church of Rome; whereas some of our idle ministers, having a way for credit and estimation thereby opened to them, and having the livings of the country offered to them without pains and without peril, will neither for the same, nor any love of God, nor zeal of religion, nor for all the

Digitized by Google

good they may do by winning souls to God, be drawn forth from their warm nests to look out into God's harvest, which is even ready for the sickle, and all the fields yellow long ago." He tells of the "ruined churches, whereof the most part lie even with the ground."

Not all the good work since done by the Irish Protestant church can undo the evil of the early conditions. The Irish church has become and remains only the church of the English alien, the people of the "running sore." It represented learning, but it was learning not available to the ignorance of people untaught by Rome; the piety and charity of its sons was that of an alien persecutor; it stood for the alien and the individual against the society. So it came to pass that, delivered from the offices of the church, and thrown back on the Mass, the Irish in this, as in all other things, drew apart from the men of the pale.

Long before the Reformation movement came to widen the breach, the two peoples had been forced by the action of the English officials to live apart, not only politically but in religious duties and worship; and when that movement had spent itself and any force that remained lay in the Roman reaction, of which the Papacy in Ireland took full advantage, the Anglo-Scottish garrison, engrossed by the prejudices of their game of Parliamentary party politics which supported them, made pretence that the religious danger yet existed, and by Test Acts and various other evil means persecuted for more than two centuries the Irish Roman Catholics, so as to drive from office and hinder in commerce dangerous rivals in trade.

Commerce.—The dwellers in Ireland, the meer Irish, who were not the rivals of the pale, were early trained to live apart also the life of trade and intercourse with other peoples.

This was inevitable in the early days of the occupation, before time and opportunity had been given to the English king for settlement and organisation of government and defence. Henry II. at his first coming had seized into his hands the seaports formerly in the hands of the Scandinavians, even from his own federal vassals.

There was nothing unusual or unexpected in such action.

Digitized by Google

The seas were full of pirate ships, ready to impose blackmail on the merchants at sea and on land, and the Irish ports were open to attack from Scotland and Wales. The mediæval king derived large part of his revenues from port dues, and for him it was a necessity as an island sovereign to keep open the ports of entry and to control the flow of commerce. Until he had had time to reduce the natives to his obedience, their exclusion from his gateways into the country, which enabled him to put force on the chiefs who were outside his authority, was a necessity.

But when that condition of affairs had disappeared, when an enlarged commerce with other nations had succeeded to the isolation of a time when the use of the land was largely pastoral and when trade was limited to those things only which could not be produced at home ; when Ireland came to export large quantities of food to feed the English armies in France and the greater island, the same policy on the part of the English kings continued against the native Irish beyond their feudal jurisdiction. As far as possible they were excluded from any use of the sea.

No attempt was made, no attempt ever has been made, to reconcile the Irish of the communal society to the Anglo-Scottish ideals by encouraging them to take part in the greatest solvent power on social life—external trade. As the commercial rivalry became more pronounced among the nations of Europe, and the field of eastern and finally of western enterprise enlarged the scope of endeavour, the intolerance of the English State and of the English traders of any competition from Ireland and Scotland became increasingly prominent. This is the Irish question.

With Scotland the conditions differed. Up to 1715 it was a hostile, a foreign rival. Not separated by the sea, the Scots, since their expedition to Darien, have by the Union been enabled to take advantage of British opportunities. But Ireland, from the twelfth century an integral part of the British dominions, has never been permitted to share in British prosperity. Just as in this year of 1917 the contract entered into on behalf of Great Britain *and Ireland* by which the Cunard steamships called at Queenstown has been re-

Digitized by Google

scinded without any consent of Ireland, so it was in the past. When, in the time of the Cromwellian plantation of Connaught, the town of Galway, together with other Irish seaports, was offered for sale to satisfy debts due from the Cromwellian government to the merchants of Liverpool and Gloucester, it was advertised that no town or port in the three nations, London excepted, was more considerable. It had many noble uniform buildings of marble; it lay open for trade (it lies so still) with Spain, with the Straits, with the West Indies. It had at the time an Irish population.

But the long history of the systematic suppression and destruction of every form of industry, which the Irish have undertaken, cannot be told here. Perhaps a Channel Tunnel might solve the question, tempting English and Scottish capital to invest in the glorious harbours of the south and west, in rivalry to Belfast and Liverpool.

Intermarriage and Fosterage.—One other solvent of society, perhaps as it affects population the strongest, by which two social ideals might have been fused, was intermarriage.

Strong in their social system, the Irish welcomed and courted intermarriage with the stranger. The Anglo-Irish who intermarried with them were willing to do so, as they obtained thereby an accession of fighting force, which enabled them to set at defiance the power of the king's deputy and to evade payment of feudal dues. As chiefs controlling great territory, occupying large tracts tilled by the natives, and participating in the communal contributions, they were in a far easier condition than as isolated posts of a hostile garrison, which could only expect half-hearted support from the king's deputy, and perpetual raids and blackmail from the Irish. Free intermarriage between the two might have gone a long way towards a welding together of the two social systems, then both in a state of transition and decay.

But just as the Irish accepted the admission of strangers who were good fighting men to their community, men who straightway left feudal customs and became Irish, the English and the Anglo-Scot, with an instinct of self-preservation, used all powers of force, politics, and religion to prevent the passing over from their feudal system of landholding and inheritance

Digitized by Google

of those who ought to pay feudal dues to the king, whose children should pay for wardship and marriage, whose lands could conveniently lie in peril of forfeiture. They sacrificed, not unnaturally perhaps, the unity of the people to the money advantages with which the feudal lawyer could endow them in a system of living which the next generation broke in pieces.

Yet here was the force which could have broken down the wall of tribal kinship and its effect on the communal use of land to which even in those days there were large exceptions.

The contract of marriage in the tribal community is the border line between the kinsfolk and the alien. One chief cause of the great jealousy felt by the community for the entrance of any stranger was that he might claim a share in the common property, whether he be foreign merchant or feckless wanderer, or the result of adoption or marriage.[21] In consequence, alienation and inheritance by women has always been rather a vexed question, as tending to admit strangers into the community of landowners.

The general rule under tribal custom where women inherited was that the daughter took half a son's share in the father's property, and that in default of sons or of male issue, daughters would take all. Any such allowance of partition or of inheritance of the land of the community was carefully guarded, and limited in its interest.[22] The absurdity so much resented by women that the child born in lawful wedlock belongs to the father, and the child born out of wedlock to the mother, is an archaism which our mediæval magistrates' law inherits from the time when the acknowledged son belongs to the tribe of the father, the unacknowledged to the tribe of the mother.[23]

In all ancient societies of which we have historical records the descent in the first instance is in the male line. For this reason glosses which admit female inheritance are probably later. So long as the division of the land was among the tribe in its larger sense and not among the family, women could not inherit.[24]

But as the strength of the tribe will consist of the number of its fighting men, every provision will be framed so as to admit by adoption or other means fit men into the fighting force and therefore into the property-holding membership

Digitized by Google

of the tribe. However imperfect, owing to the jealousy of strangers, the rights might be of a woman who had married an alien, in respect of tribal property the son of such a woman would take a share as the grandson of her father, and the grandson, going with his alien father to the fight or to the hunt, and learning in his fosterage the customs of another community, would introduce a new view; he could not fail to modify the intolerant distrust of the man outside the family circle, which was at the bottom of all tribal dissension of the tribes or septs, as it is to-day of the political parties which represent them now in their worst aspects; he disturbed, very likely to great advantage at that stage of society, the bonds of kinship by introducing foreign blood as entitled to share in tribe lands, or in lands held in individual ownership intermixed with tribe lands, to which the only title was an undefiled pedigree orally handed down for many generations.

Very likely, if left to themselves, the men brought up under feudal custom might have gradually met and absorbed communal ideas by these agencies as they lived among and adapted themselves to the native Irish and Scandinavian. But the disturbance caused by the English authority too weakly enforced prevented any settlement, and the Roman church placed its irrevocable ban on the communal society, as it does to-day as far as possible on unity by marriage between Protestant and Roman Catholic.

NOTES.—[1] The annoit, dalta, and compairche churches, the rough equivalents of the tribe, group family, and family? [2] The gift of tribe land for a monastery or church was not a gift to a community, but to a person, the patron saint, as to Patrick who was a stranger, a fuidhir. If, as in such case, there was no member of the tribe of the saint ready to become abbot, the abbot is chosen from the tribe who owned the land, and in default from the mother church from which the daughter came. *A.L. Irel.*, iii. 73, 75. [3] *A.L. Irel.*, ii. 345. The Irish word *manach* is translated tenant of ecclesiastical lands, but the term itself appears to have nothing to do with land but to have some connection with monachus, and to denote labour and service. The commentary goes on to speak of the church's saer stock and daer stock ceiles (last line, p. 345). But the author of the commentary seems to have had some doubt himself as to the meaning of the word (line 27). [4] At the Synod of Cashel in 1172 a canon alluded to the existing payment of tithes. [5] *A.L. Irel.*, iv. 227. [6] *A.L. Irel.*, iii. 45. [7] *A.L. Irel.*, iii. 53. [8] When a bishop dies, all his property belongs to the king. *A.L.W.*, II. xii. 9. [9] On entering the church the tribal monk

Digitized by Google

did not escape the tribal liabilities, and the tribe still claimed his money compensation. If a student for the ministry is killed, his body fine, according to urradhus law, is for his tribe. The chiefs shall not obtain anything of what the cain law adds. *A.L. Irel.*, iii. 71. The cain or interterritorial law regulated the chief's fees, the urradhus local law the amount of the body fine. The fifth decree of the Synod of Cashel, 1172, exempted the clergy from contribution to any eric for their kindred. [10] *A.L. Irel.*, iii. 51. [11] An apparent proof of its independence, and by the way an argument in favour of early date, is the allowance of interest on loans; it is to be paid on loans for a definite time when the time has come. *A.L. Irel.*, iii. 493. [12] *A.L. Irel.*, i. 132, note 3. [13] For an account of the work done and abbeys founded by the Scots of Ireland from the fifth to the twelfth century, see "L'Œuvre des Scotti dans l'Europe Continentale," par R. L. P. Gougand, O.S.B., in *La Revue d'Histoire Ecclésiastique*, ix., Nos. 1, 2. [14] Mary Bateson, "The Origin and History of Double Monasteries," *Trans. of Royal Hist. Soc.*, 1899, xiii. 197. [15] "The technical transmission of our Apostolic Succession may be through Augustine. The living stream of Gospel truth mainly passed to us through British channels. Of one thing there can be no doubt—that had it not been for British missionaries and for the independent missions of Birinus there would not have been one Christian Saxon fifty years after the mission was planted outside the boundaries of the Kentish kingdom." Haddan's *Remains*, p. 316. You pass from the Roman Augustine to the Greek Theodore. [16] Haddan, p. 292. [17] Haddan, p. 317. [18] See Appendix J, "Ireland of To-Day." [19] Statutes of Kilkenny, ch. xiii. and xiv. [20] Spenser, *View of Ireland*, pp. 123, 203. [21] *A.L. Irel.*, ii. 285, 287. A man might have other wives on failure of issue, as well as a chief wife, following patriarchal custom. But he and she pay fines and presents to the chief wife (*A.L. Irel.*, ii. 395), and if the second insults the first over her childlessness, the first wife may beat her until the blood comes—*ibid.*, v. 142, and compare Genesis xvi. 4–6. [22] See *A.L. Irel.*, iv. 39, 41, Commentary; *A.L.W.*, Ven. II. i. 64, 59; *T.A.C.N.*, cc. 6, 10, 14, 66 bis, 80 sect. 4; Goudie's *Antiq. of Shetland*, p. 84, note; *Origines Islandicæ*, Landnamaboc, II. iii. 5; Are's *Libellus Islandorum*; *La Famille Celtique*, par M. d'Arbois de Jubainville, bk. i. cc. 6 and 7; *O. and S. Records*, Clouston, p. 142. [23] *A.L. Irel.*, v. 453–459, unless invited by the tribe of the father. *A.L.W.*, Ven. II. xxxi. If a woman unsuccessfully swear a child on a man as father, the child ranks with the kindred of the mother. As the proportion of the common land was in proportion to the number of the family, the bastard or even the adulterine bastard was not easily rejected. The son of women irregularly married took if acknowledged by the father. The father and kindred must deny him by solemn oath. Where her kindred were responsible for her having married a foreigner, her sons could share with her kindred through their mother (*A.L.W.*, Ven. II. i. 59) and paid and received fines for injury as her children, only their maternal kindred joining in this. See Appendix H, "The Kinship of Mother and Child." [24] *A.L. Irel.*, iv. 39. But the contract was a secular and fairly equal one, and the wife might be heir to her husband. See as to Indian customary law, Jaganatha's *Digest*, Colebrooke, iii. 458, and Manu, ix. 60, 69, 70.

Digitized by Google

CHAPTER XXXIII

THE RUIN OF IRELAND—*continued*

SCOTLAND FROM ROBERT BRUCE TO JAMES VI. AND I.

A Summary.—To restate then,—when in the first days of the invasion of Ireland feudal customs had been introduced as a new reality to a society which was probably moving in that direction, the English kings and their great barons had used tact. Accepting the position of Irish Ardri, Henry and John had dealt with the Irish kings in a spirit of compromise of social institutions which went some way towards union; when later the absent Plantagenet Edwards ruled Ireland, the attempt was made to force the already decaying feudal society on reluctant Ireland as the price of settlement, culminating in the fiasco of the Kilkenny Statutes, as the settlers turned from the feudal system from which they had escaped to the freedom of the communal society.

From the fourteenth century onwards officials of the English kings, and the Roman Church supporting them, enforcing the feudal form of society, refused to give opening in Ireland to any of the moderating influences which, in spite of its severity, attended the Norman Conquest of England. They accepted no compromise with the institutions which lay under the life of the people of the country invaded; they forbade, under hideous penalties of treason, fosterage, intermarriage, the payment of dues in supplies and entertainment, even the difference in dress and hair and fashions of riding, and laid a ban upon or discouraged all the agencies which might have worked for amalgamation.

As the feudal system utterly decayed and became degraded under the Tudors and Stuarts into a means of raising revenue and acquiring coveted lands by legal subtleties leading to forfeitures for treason or for rebellions which have often been provoked by them, the English and the Anglo-Scots who followed stopped all openings for conciliation, and forced the decayed feudalism with its consequences on the Irish, when it was a dying and negligible force except for discord among themselves.

Digitized by Google

Plantation as a Commercial Adventure.—There was henceforth no course left open to them but to people the country from time to time with garrisons from the larger island, either ridding themselves of the present habitants by slaughter and famine, reducing the land to a desert, or holding them down as serfs for cultivation. As an alternative to conciliation they made plantations of colonists.

Plantations in Ireland were no new thing; each generation had seen a new viceroy, attended by a new force of armed men, and a new spoonful of settlers, attempt to plant in the country beyond the eastern coast colonies obedient to the king's power in England. And each generation had seen failure. Those who stayed adopted the Irish civilisation and became, as the proverb has it, *Hibernis ipsis Hiberniores.*

As the communal form of society more and more decayed, and individual ownership became a sacrosanct foundation, the seizure and possession of lands was more and more used not for individual occupation and improvement, but as the subject of commercial speculation by sale and barter. It is the commercial instinct which forces the plantations. Not even the Cromwellian soldiery stay on them. The donees of the plantation lands have no more intention of living on them and cultivating them than the shareholder in a coffee-planting company or in a gold-mining company has of giving his life to coffee-planting or mining. The money spent in consequence of a grant of lands was as much a trading venture as the fitting out of a ship for a voyage to the far East. The plantation was a commercial speculation, and the Irishman was used and continued to be used as long as it was profitable as the native for exploitation, as a modern cocoa company at the present day does business with the Bible in one hand and the time-book for indented labour in the other.

As time went on, as England increased in beauty and wealth, and in all those evidences of wealth, in material comfort, in the enlargement of scientific ideas which followed the release from mediæval Rome, in artistic sense of painting, music, drama; as agriculture brought ease of living; it became yearly a more difficult matter to get reputable recruits as settlers for a country in which, in the absence of

Digitized by Google

the prince, the local men of power were in daily conflict with the king's authority, and in which the pioneer, trader, and agricultural farmer colonist must either pay blackmail or be in daily danger of raids from the cattle man, his Irish neighbour. Ireland in the eighteenth century became to England what Texas of the nineteenth was to Britain. To go to Ireland was equivalent to "gone to the dogs" (G.T.T.). When in 1551 Cranmer tries to find a candidate for the Archbishopric of Armagh, he can find nobody who is willing to go.

The Breach with Rome.—Then at a time when the Anglo-Irish chiefs, the leaders, who whether as Irish chiefs or English earls stood for the only possible accommodation of social principle, were testing the strength of the Tudor government by frequent rebellions and offers of accommodation, came the breach with Rome. It was not only the questionable character of the men who were the Reforming clergy in Ireland, who could not be drawn from their warm nests to counter Rheims and Spain. The destruction as idols,[1] by men who like the Kensitites of to-day think that they draw men to Christ by insult to the symbols of Christianity, of the objects of devotion of the people such as St Patrick's Crozier, ancient survivals which appealed to the uninstructed, broke the last strand of the cord which bound the two islands and the two nations, and threw the Irish into the arms of the Friars and of the Jesuits. It was a destruction carried in Ireland to an extreme almost as violent as in England. From henceforward it was a war not only between social systems but between social and individual ideals.

Then although time, when the first fury of theological hatred had passed, might have healed this breach, though it is still secondary, though the military troubles in Ulster continue in Mary's reign, in spite of the restoration of the old religion; though the chiefs in other reigns than hers were tempted to side with the Reformed religion by receiving the tribe lands in fee; though Mary did not restore the lands of the monasteries; though Philip and Mary had made themselves a plantation of colonists in Leix and Offaly,

Digitized by Google

seizing the lands of the Irish chiefs to form King and Queen Counties, followed by a long war made memorable by one of the most loathsome acts of treachery committed by the English on the Irish chiefs recorded even in Irish history, the massacre of Mullaghamast; on the heels of the breach with Rome came a fresh cause of conflict; then began the great struggle for existence by Elizabeth with the whole power of Spain and with the German Hansa, which financed Spain.

The Position of Elizabeth.—There is an element of self-protection in the motive which prompted Elizabeth in 1588 to establish a settlement of Englishmen in Munster on lands seized as forfeited from the Earl of Desmond, a plantation which was a garrison against Spanish invasion, rather than a commercial adventure, a garrison wiped out ten years later in the Tyrone rebellion. In this, as in other matters, we cannot judge Elizabeth by the standard of other English sovereigns. She was in a position held by no other English sovereign since the days of John.

Excommunicated by Rome; surrounded by spies and traitors and revolutionaries; forced, while undoubtedly leaning to Catholic doctrine, to look for allies among the Protestant powers; attacked alike on the ground of the legitimacy of her birth, the right of her sex to rule, the orthodoxy of her faith; living in a day when treachery and lying were the acknowledged pillars of European diplomacy;[2] and inheriting, in the knowledge of her ministers, the tradition of her father's principles of ill-faith and his practice of shameless barbarity and opportune ruthlessness;[3] she was compelled, in dealing with Ireland, to prepare for an invasion, not only of England, but of Ireland which lay directly in the way of the Spaniard, and from its geographical position was the subject of immediate danger to England.

That she was badly served by some of her officials, especially in Ireland, is unquestionable. But the high tribute to the great Queen is that, under the conditions existing, she was able to bring her country through a crisis the most terrible with victory. And a tribute yet higher is the failure of the successor to this bright occidental star. Armed with the force of the whole islands, he not only availed nothing

Digitized by Google

but lost the confidence of his own people at home, and the respect of his neighbours and enemies abroad, and left us an evil legacy of bad faith, false issues, and tangled policies.

With James VI. and I., who, freed from the terrors of Spain, independent of the Hansa, with a people keenly adventurous in a world of commerce madly expanding, a king who for the first time combines the military and naval strength of the whole islands, plantation takes on a new feature; it becomes a commercial adventure. We must cross over once more to Western Scotland where the plantations begin and take a short retrospect.

The Separation of West and East in Scotland.—Robert Bruce, who had gained a kingship by successful rebellion as a feudal baron against his own king, and Bruce's successors upon the throne seized by violence, could not afford, even were they able (which was seldom) to control too closely the powers of the lords in the more distant and difficult part of their dominions. The isles and the coast lands west and north of the Grampians remain almost as a separate kingdom, the value of the independence being set off by their isolation from the agricultural part of Scotland.

This meant that the Isles and Highlands dropped for the great part out of Scottish history; it became a little world to itself, proud of its safety from feudal dues—"we will nothing pay for wearing our own noses,"—and looking upon men of the Lowlands as slavish diggers whom it was a virtue to raid and rob. Hence, although the Scots kings were powerless to conquer and absorb them, they returned the raids in kind with interest when they were able, and tried to bind the practically independent heads of the septs by written solemn treaties to a peace.

But a chief difficulty of dealing with the communal society always arose, namely that the sept would not acknowledge any treaty made by their chiefs which ignored any part of their customary rights, and no Lord of the Isles was ever strong enough, when he had solemnly made it, to enforce such a treaty on his people.

In each generation, as the relations of the Scottish king become more close whether in war or peace with England,

Digitized by Google

he becomes more impatient of the society to the West and North, disorderly no doubt, always represented by the Scottish historian as the essence of turbulence, but in reality not any more if as much so as the nobles of the Lowlands, who in each reign kidnapped, fought, and murdered their kings.

When David II. came back from France in 1369 after his long stay in feudal England, he made a raid into the Highlands, and his independent neighbour John of the Isles met him at Inverness. They made a treaty which John's following ignored. Fifteen years later, in the reign of Robert II., an Act was passed to suppress Highland Katherani,[3] like most mediæval Acts of Parliament a pious wish.

Five years later yet, in 1389, so little progress had been made that in the truce between France, England, and their allies, the King of Scots is stated to be the ally of the King of France, and the Lord of the Isles the ally of the King of England.

In 1411 a test of strength between the two sections, feudal and communal, took place. Alexander, the Wolf of Badenoch, Duke of Albany, the brother of Robert II., was the king's lieutenant over Scotland north of the Forth. He claimed the earldom of Ross, Scotland north of the Moray Firth, in right of his late wife, Euphemia, the widow of the Earl of Ross. In her lifetime, as a great Highland chief, he had acted in full conformity with custom, defied the church over a dispute about lands with the Bishop of Moray, and being excommunicated had brought a Highland army to Elgin and burnt the cathedral. This Earl had a bastard son who followed in his footsteps, and made frequent raids for plunder into the Lowlands, in one of which he stormed the castle of Kildrummy on the Don, and carried off the Countess of Mar. She married him, and he, becoming a feudal Earl of Mar, changed methods, became respectable, and asserted his feudal rights over the West.

When the younger Euphemia, Countess of Ross, went into a convent and brought the line of the Earldom of Ross to an end, Donald, Lord of the Isles, who had married her aunt Margaret, claimed it and prepared to enforce his claim.

The Duke of Albany sends a message to Donald telling

Digitized by Google

him that if he wants Ross he must fight for it, and Donald replies by bringing a large army of Highlanders to occupy Ross. He sets out to burn Aberdeen, and overruns and ravages all Moray. Then he moves along the ridge of the Grampians to Harlaw, while the Earl of Mar, with a small disciplined force of armoured men, waits for him in the plain below. Donald's army descends upon him, but the rushes of the waves of Highlanders, fighting independently, as Tacitus gives it to us in their families and clans, make small impression on the feudal force in armour. After an all-day fight, Donald retires to the Highlands, and the Earl of Mar takes possession.

James I.—The independence of the West and North was the more complete because for several centuries Scotland suffered terribly from minor kings. One boy after another ascended a rocking throne only to be kidnapped and bullied by the great heads of families in their several interests, and on attaining his majority to turn his back on all that had been done in his infancy, to effect a general gaol delivery to the block of heads of houses and their adherents, and possibly to make a big raid into the West or South to show his strength.

With the accession of the first James of the Stuart line the conditions as regarded the people of the West underwent a change. The younger son of Robert II. was sent as a child, in 1405, to France for safety. But on his way he was captured by an English ship, and he remained for nearly twenty years a prisoner in England, where he fell in love with and married Jane Beaumont, daughter of the Earl of Somerset, the brother of Henry IV. In 1424 he was released on payment of £30,000, came north, a poet and most probably a philosopher, and was crowned at Scone.

In his exile he had learnt to conform himself to the English system. With the first James comes to Scotland the full flood of feudalism. He legislates. He sets forth laws in Scots tongue, while the English were still using Norman-French. He orders Quo Warranto in Scotland; holders of baronies and lands must show their titles He makes the usual butchery of his uncle's sons, his cousins; acts which if they had been done by Highlanders or Irish would have been cited as conclusive proof of their barbarism.

Digitized by Google

Three years after his coronation he called a Parliament at Aberdeen, and summoned to it the Lord of the Isles with a number of Highland and Island chiefs. They were foolish enough to trust to his honour, came, were seized, imprisoned, and for the most part murdered. In spite of the loss of their leaders by this seizure, the men of the West were able to continue their raids on the arable lands of the South, making the usual pretence of submission when James threatened an expedition.

But the Highlanders were not the only ones who resented the extension of kingly feudalism. A conspiracy of great nobles was formed against James, and in 1437 he was murdered at Perth, his death being marked by the devotion of a woman, Margaret Douglas, who put her arm through the bars of the door from which the bolt had been withdrawn in order to give the king time to escape.

James II.—Another minor king gives the call for the usual kidnapping and rebellion. After a long struggle with independent nobles, James II. invites Douglas to Stirling, and murders him with his own hand.

What follows must be read in Scottish history. It is a story of civil war between a treacherous king and a house that knew no submission; of barons and great men who broke their oaths and shifted from one side to the other as it suited their advantage; of changes of the balance of power by opportune marriages (as when Douglas marries his brother's widow); of all those shiftings and changes which, if they had been the result of tribal wars, would have been the text for the exhortation by the historian on the incapacity of the tribes to show a united front to the enemy.

In 1460, when he was besieging Roxburgh, James II. was killed by the bursting of a cannon, and was succeeded by James III., aged eight years.

The Lord of the Isles had assisted James II. at the siege of Roxburgh, but, on his death, he invaded the Orkneys with a great force, and sent his son Angus Og with a levy of men of the Isles and Highlands to raid Inverness. He was proclaimed King of the Isles, and he claimed to rule over Inverness, Sutherland, Caithness, and Ross.

Digitized by Google

This raid was apparently in consequence of a secret treaty with Edward IV., then at the height of his power. He secretly proposed a partition of Scotland between the lords with whom he was treating, the Lord of the Isles to hold all north of the Forth, and Douglas all south, as his feudal tenants. Henry VI. and Queen Margaret had about this time fled to Scotland. No notice was taken of this secret treaty during the king's minority, but in 1474 it was discovered, and the Lord of the Isles was cited to appear before Parliament. As a result he gave up the Earldom of Ross and the sheriffdoms of Inverness and Nairn. But he was evidently in a very strong position, for he was created a feudal baron as Lord of the Isles, and the patent was taken to his bastard as well as his legitimate sons.

Another step in the amalgamation of Scotland was taken by this King of Scots. He married Margaret, the daughter of Christian, King of Norway. For her dowry King Christian gave up all claim to the Western Isles and mortgaged the Orkneys and Shetland to the Scottish king, a mortgage which has never been redeemed.

James IV.—In 1488 James III. came to the normal end. He was murdered, and James IV., a minor, when he reached full age, made, like his predecessors, an overturn of all acts done during his minority. In 1493 he went in force to the Isles, and there received the usual submission and homage of the chiefs. James was probably aware that this was an empty form, for he was not content with this, but set out to reorganise the government and to subvert the customary law of the islesmen. He gave the control of the Isles to the Earl of Argyll as lieutenant, and he made great efforts to divide the chiefs by raising causes of quarrel. His efforts in this respect were in vain. Angus Og, the son of John Lord of the Isles who had helped James II. at the siege of Roxburgh, had been killed in 1485, but he left a pregnant wife, who was captured and taken care of by her father, the Earl of Argyll. Her child, Donald Dubh, or the Black, escaped in 1501 from the custody of the earl, and took the position as leader of the chiefs in the Isles. Failing to divide the chiefs, James prepared a great naval force to reduce them, and, by an Act of Parliament in 1503, he appointed justices for the Isles to

Digitized by Google

administer feudal law, dividing the Isles into two judiciary parts—north and south.

The Earl of Huntly, who had been made sheriff of Inverness, was told to "plant" all lands occupied by broken men—that is, men who had no chief responsible for them; which would look as if the communal system was breaking up in the isolation caused by the insular form. That the king should take charge of the lands of a headless tribe, of men who had no one to answer for their acts, was a step quite in accordance with the Brehon law, and in fact all mediæval law, which demanded that every member of the community should be represented by a responsible head. Every man without a chief to the king (*supra*, p. 173). The earl was to let their lands on a five years' lease to tenants who should be true men. The result of all this was a three years' war in the West, which only ended in 1506 by the taking of Stornoway and the capture of Donald Dubh. The North Isles were then put under the Earl of Huntly, and the South under the Earl of Argyll.

James V.—In 1513 James IV., who had married ten years previously Margaret of England, was killed at Flodden, leaving James V., a minor.

Then followed a period during which the Scots king wavered between the Earl of Argyll as lieutenant for the Crown and the chiefs of the Isles as his agents, and formed coalitions with the Irish chiefs against Henry VIII., who in his turn plotted with the chiefs of the West and with Argyll.

In 1540 James sailed by way of the Orkneys to the Isles and took hostages from the chiefs, but later, during that worst of all Henry's treacherous actions towards Scotland, the raid of 1545,[4] the men of the Isles and the Highlands from the West under Donald Dubh, who had been released, attacked the Scots.

Queen Mary.—In 1542 Mary Queen of Scots was born and James V. died. With the reign of Mary Queen of Scots came the Reformation movement, which had so long been preparing, and the bitterness of its differences for the time swallowed up all other matters. But by 1603, when James VI. of the Reformed Church of Scotland united under his rule for the first time the whole of the Islands, all the salt had gone out of the religious disputes.

Digitized by Google

The venom and the wrangling remained; Germany was still to suffer the martyrdom of desolation, from which her moral sense has never recovered, in the Thirty Years' War; but the religious divisions of population, so far as they were not put altogether to one side for commercial or political reasons, were being only used by the kings and the peoples to excuse schemes of conquest, to raise money by selling dispensations or remitting penalties, or to assist commercial schemes.

Other influences led to the control of the lands beyond Muneth becoming for the time a matter of chief importance and the opportunity for a new departure.

The Effect of the Discovery of the New World.—The outlook upon the world of the times of James VI. was as the full awakening of men who being asleep had dreamed. The people of the old world had become aware of the full reality of a new hemisphere opening upon them. All the old fables were clearing away or were becoming astonishing reality, and new imaginations, more wonderful than any they themselves could have foreseen, were upon the people. They saw new worlds and new worlds peopled; peopled by a pastoral people, a people who, like the men of the Western Isles, cultivated no soil but lived by hunting and fishing and the breeding and training of cattle.

They look at the communal societies close at hand in Ireland and Western Scotland once again by the light of the new communities of which travellers brought them tales. Of these people they can know only what they learn from the reports of a few seamen, but so wonderful is the overturn that the imagination runs riot. They can only fill in the picture of the unknown land from the lands which they know, and they can see that undoubtedly there is a similarity of outline in their pursuits to the troublesome tribal communities at home which will not fit in with their feudal system.

The contrast between the communal societies of the West, with their local theoretically elective chiefs, with their local popular institutions, their unwritten customs, their contempt for the feudal order and armour and artillery in war, and the feudal society presided over by the anointed ruler by divine

Digitized by Google

right, becomes more intense. The refusal of the pastoral tribes to be incorporated in their Roman and feudal system becomes more irritating. And they know that all the European adventurers had dealt with these new peoples by extermination without any effort to mix with them peacefully, as impatient peoples always do when intellectual conceit leads them to believe that they have a mission to rule and to destroy. Whatever opinion you may have of James and of the actors and advisers who aided him in his schemes, you must keep before you the fact that he could not have freed the darkened windows of his mind from this new vision, or from the belief that his duty as the anointed king was to enslave them or to replace them by a higher and more civil people. It was apparently the vision before the eyes of the German Emperor and his people when they began the present war, and from the same cause—bumptious ignorance of the world.

It was a vision which was undoubtedly floating in some form before the view of the adventurous men and the writers of that age. When Shakespeare wrote *The Tempest*, sometime I understand about 1610, I cannot but believe that he had in his mind not so much the Bermoothes and Virginia and Funchal, but the Western Hebrides and Ireland, and that these latter furnished the matter for the conception of the Isle of Prospero. The remote West, the communal societies of the Scottish Highlands and Isles and Ireland, their language and their mode of living, had become so strange to those living under feudal custom that fancy painted the unknown as savage peoples embodied in the creation of the monster Caliban.

> "A devil, a born devil, on whose nature
> Nurture can never stick; on whom my pains,
> Humanely taken, all, all lost, quite lost,"

says Prospero, forthwith putting fresh punishments and tortures on the degraded being; Stephano and Trinculo may well be the poet's humorous caricature of the degenerate English who joined with the native inhabitant against the true lord who had mastered the island. But a chief ground for choosing these parts for Prospero's island is that Gonzalo's fancy of

Digitized by Google

the model island government, with which he amuses the melancholy king, is a wild but none the less a very real caricature of the communal society of the West which the Englishman and Scotsman of that day were unable and unwilling to comprehend.

Gonzalo. Had I plantation of this isle, my lord,
And were the king on't, what would I do?

. . . . . .

I' the commonwealth I would by contraries
Execute all things; for no kind of traffic
Would I admit; no name of magistrate;
Letters should not be known; riches, poverty,
And use of service, none; contract, succession,
Bourn, bound of land, tilth, vineyard, none;
No use of metal, corn, or wine, or oil;
No occupation; all men idle, all;
And women too, but innocent and pure;
No sovereignty;—

. . . . . .

All things in common nature should produce,
Without sweat or endeavour: treason, felony,
Sword, pike, knife, gun, or need of any engine,
Would I not have; but nature should bring forth,
Of its own kind, all foison, all abundance,
To feed my innocent people.

It may also, as it was put into the mouth of the one honest and faithful courtier, be a veiled satire on the king who was dealing with such a society.

With the plantations going on under his very eyes in the Islands, it is more likely that Shakespeare's mind was on them than on the very remote and as yet unknown and unoccupied lands of which no social system had been told by the mariners.

NOTES.—[1] "The detestable idolatry used to an idol called the Holy Cross." [2] Elizabeth had a good example in this respect in the guardian of the moral ideals of Europe, the Pope Alexander VI. A prince, says Machiavelli writing at the beginning of the century, ought not to keep his parole when the keeping of it is to his prejudice and the causes for which he promised removed. He comments on the success of such a policy, and gives one example which is still fresh in our memory. Alexander VI. never did nor thought of anything but cheating, and never wanted matter to work upon; and though no man promised a thing with greater asseveration nor confirmed it with more oaths and imprecations and observed them less, yet understanding the world well he never miscarried. As a later example, after the signing of the treaty of Limerick, Dr Dopping, Bishop of Meath, preaching before the Lords

Digitized by Google

Justices in Christ Church, Dublin, reproached them for the treaty, and argued that Protestants were not bound to keep faith with Papists. Some years before Thurloe had written to Henry Cromwell of themselves: "men of our religion have little luck at treaties." [3] *Acts of Parl. of Scot.*, i. 186, 187. [4] Henry, unable to spare an army to attack Scotland, sent in 1545 a strong raiding force to burn and destroy the most populous part of south-eastern Scotland, "putting man, woman, and child to fire and sword without exception when any resistance shall be made against you." The work was done very thoroughly, Edinburgh and other towns and the southern abbeys such as Kelso burnt and sacked, and wholesale murder of unarmed people committed. Burton's commentaries are: "It had inflicted a world of misery on the people of the country. It had done an amount of destruction to which there is no parallel even in the remorseless ravages of border warfare. . . . ." What Henry's servants had to find was how to make their money go furthest in extinguishing human life and spreading misery in all available shapes of mischief. Students of English constitutional history should study the relations of Henry VIII. to Scotland throughout the reign of James V.

CHAPTER XXXIV

THE PLANTATIONS

JAMES VI. and I. began his programme of asserting the supremacy of the feudal world over the rest of the Islands by an attempt to plant settlers from the feudal tenants of the Lowlands in the Western Hebrides and Highlands.

By an Act of the Scottish Parliament of December 1597, prefaced by the statement that the inhabitants had neglected to pay their feudal dues to the king, it was enacted that "the inhabitantis of the Isles and Hielandis suld schaw their holdingis." The feudal law had come to regard a grant from the Crown, or from the donee of the Crown, as evidence of absolute ownership, and to look on all who held under such a title and could show no written proof as yearly tenants only.

The chiefs were to appear at the Exchequer and produce their written titles to the land. Many held land without a strictly legal title; most of them had no title except that of immemorial custom embedded by pedigree in memory and

Digitized by Google

verse; and many of those who had accepted written titles had lost them by neglect in the perpetual ebb and flow of feudal forfeiture and struggle. There were claimants outside who had a feudal title, however feeble, and saw the opportunity of getting something for nothing, and those of them who had the assistance of a shrewd Lowland lawyer manufactured imaginary titles through the female, from Saxon, Norman, or Scandinavian ancestors.

The Plantations of the Island of Lewis.—As the titles for the island of Lewis were defective, it was selected for plantation, of which, whether the inhabitants, says Burton truly, were driven forth as wanderers elsewhere or put to death in their old homes, the first step in the process was one of sheer cruelty to the natives.

The Act was followed by a contract between James and a syndicate of Lowland Adventurers, one of whom was the king's cousin, the Duke of Lennox, for plantation of the island. The contract is in James's best style of the estate agent describing a labourer's cottage in an open field as a gentleman's residence standing in its own grounds, so its description need not be taken literally. His Majesty, it says, "perfytelie understands" that the lands are "be speciall Providence and blissing of God, inrychit with ane incredibill fertilitie of cornis and store of fischingis and utheris necessaris, surpassing far the plenty of any pairt of the island." But they are possessed by inhabitants "quha are voyd of ony knowledge of God, of His religion, and naturallie abhoiring all kynd of civilitie," etc., and (this is the point) "violently possessing his Hienis proper landis without payment of maill (feu-duty) or grassum (the fine on entry) theirfoir." The syndicate is to pay to the king a rent of 140 chalders of barley, and no part of the Islands or Highlands is to be "disponit in feu tak or utherways, bot to Lowland men," a provision which in no single case, whether in Ireland or Scotland, anyone ever attempted to carry out. In the same year an Act of Parliament was passed, of which the preamble expressed the intention of "ruiting out of the barbarous inhabitantis occupiaris of the same of befoir, void of all religion and humanitie."

This last phrase was characteristic of the age. Men had

Digitized by Google

rebelled against the misused authority of the then Catholic Church of the West, had abandoned any ideal of unity of religious faith, and had put, in sharp contrast with the claim of the society to men's obedience, the right of the individual to complete freedom of thought and action for his own example.

The movement brought forth splendid examples on both sides of men and women who went to torture and death for faith and freedom; men and women of both parties who are living patterns for us of sacrifice for an ideal. But the period coincided with great commercial expansion, in which the men who had thrown off the claims of the society to their services were very naturally the foremost adventurers. And the age produced among some of these, as all such movements do, a wealth of cant about religion, a calling on the God who becomes a scapegoat whenever it was advisable to find excuse for some especially dastardly action which brought profit to the doer, a claim that all whose forms or ideas of worship differed from their own were "void of all religion and humanity."

The same phrases run through the official utterances, whether it is Henry VIII. and Elizabeth insisting upon conformity to the forms which they had substituted for the old religion, or James and Cromwell stealing lands, slaughtering men and women, and selling boys and pure girls to slavery in the West Indies. God in their cant is their avowed ally, and the people whom they rob or murder are "void of all religion and humanity." It was the distinctive quality of that age, and it still exists in some parts as a most evil influence in our own.

The planters were to hold the land rent free for seven years. They went to the promised land and took possession. But the ungodly people of the land were too strong for them; the plantation absolutely failed. After a turbulent struggle for existence against active enemies and want of provisions, the Lewis men, in 1602, suddenly stormed the fort which the syndicate had erected at Stornoway, killed a large number, and allowed the rest to escape on terms of payment. They put James in a very awkward position by very wisely taking hostages for their terms.

Digitized by Google

James, who had no army and no money, proposed to his Parliament that they should vote him £20,000 to pay an army for the reduction of Lewis, and, on their refusal, that base money should be coined to pay such an army. Failing this, he fell back on the more compliant Privy Council, and issued a proclamation for a general levy. Nobody wanted to go; the usual excuses of the crops and the merchandise were made; the syndicate would much rather have let the sleeping dog lie. James would not free them from their contract to the loss of his barley rent; but the expedition, luckily for the men of Lewis, was so delayed, that it was definitely put to one side by the death of Elizabeth and the accession of James to the throne of England in 1603.[1]

Another attempt was made, accompanied by great virulence of journalistic abuse on the part of James, in 1605; a plan for a general murder of the Lewis men, and a settlement in their place of Lowlanders in this land of incredible fertility. The proposal of James was that the Marquis of Huntly should reduce the isles "not by agreement with the countrey people, but be extirpatioun of thame."[2] The result of this was that, in 1607, the colonists evacuated the country, leaving the native in full possession.

The period that follows is summed up by Mr Burton, who though trying to hold an even balance does not seem to be friendly to the Highlands, as "after this attempt, the Government fell back on the old policy of strengthening the great houses, and helping them to aggrandise themselves by the process known in Germany as mediatising";[3] the process, he says, writing before 1870, by which Prussia became one of the great powers. The needy king tried to raise money by sale of the islands to various adventurers. New charters were made, granting them to the persons who were to subdue them by slaughter of the inhabitants. Such efforts were helped by a very characteristic act of Stuart treachery. The chiefs invited to dine on board the king's ships were seized as prisoners. But James's perfidy, as in Ireland, was only partially successful, and in 1609 he was compelled to release the chiefs, that they might assist with their influence Andrew Knox, who had been appointed the Bishop of the Isles, in his

Digitized by Google

effort to bring about a settlement, not this time by wholesale murder of the islesmen. The Statutes of Icolmkill, to which he induced the chiefs to agree at Iona, were very good of their kind.

That these men of the West were not the savages which James would by his land advertisements have you to believe, is proved by several matters in these statutes. They had a language and literature of their own (chap. vi.); they drank French wines in large quantities (chap. v.);[4] they encouraged bards who kept alive the great deeds of former men (chap. viii.); and they still had a belief in human liberty (chap. ix.). The bishop settled peacefully by these statutes, except for Lewis, which James was determined to subdue, the affairs of the Isles.

Another attempt was accordingly made to colonise, an attempt which failed after bloodshed and treachery as hopelessly and as tragically as before. The Isles then fell back into the hands of the Highland chiefs and great lords of the Western mainland, and so remained until the '45.

James, however, did not stop at the extermination of the people over whom he claimed to rule by the special dispensation of Providence. He had an instinct which led him to anticipate the action of the Anglo-Scot Liberal Government of 1915–16. An Act of December 1616 to get rid of Gaelic, enacts that "the Irishe language whilk is ane of the chief and principall causis of the continevance of barbaritie and incivilitie amongis the inhabitantis of the Ilis and Heylandis, may be abolisheit and removit." To effect this most desirable end, it was one of the conditions throughout insisted on that the Highland chiefs were to send their children to the Lowlands to be instructed in broad Scots, and that no child should have heirship to the father who had not received that education.

Irish History. The Plantation of Ulster.—Hand in hand with the attempts of James to exterminate his countrymen in the Western Isles, was to go the plantation of Ulster in Ireland. We must cross once more to Ireland.

I have no intention of doing more than barely to touch on the causes which brought about this or the later Crom-

Digitized by Google

wellian plantations, but I most seriously warn students of history to take with the utmost distrust any accounts of them by the Anglo-Irish of the pale. It is only too often attempted by these to excuse what cannot be justified, by the use of the words Catholic and Protestant, representing the infamy as the outcome of a distressing conflict between religious views.

Although the mass of the two different parties may have had different forms of faith, their wars did not originate over religion, though both the Roman priest and the Ulster politician may serve their own interest by pretending it. When English or Anglo-Irish histories tell of wars and attacks and massacres of Protestants by Catholics, or *vice versa*, the men called Catholics are the men who had been robbed of their land, or their descendants; and the men called Protestants are the men who robbed them, who have ever since been pretending that they did it from motives of true religion. It is hardly likely that the Irish would abandon their religious faith for that of the Ulster undertaker, however good it might be, or for that of the Cromwellian soldier.

Where this cannot be made, the explanation of the Irish accounts are wholly set to one side, and the barbarous action is explained as retaliation for fictitious acts of barbarity on the part of the Irish against the Anglo-Scot, such as the fictitious story of the Ulster massacre in 1641, which has been again and again disproved.

The most complete and just account of the Plantation of Ulster will, I believe, be found in the modern works of the Rev. George Hill, published at Belfast, especially his work *The Plantations of Ulster*; the most complete account of the Cromwellian Plantation, Prendergast's *Cromwellian Settlement*. The amount of theological venom injected into this savage contest has made an impartial account extremely difficult, but on the part of the Irish neither plantation had anything to do with religion. Ireland was planted because the Anglo-Scot wanted the fertile lands, and took them.

Ulster had remained independent of England altogether under its rulers the O'Neills, until, in 1542, Con O'Neill, the chief, was made into an Earl of Ulster. On his death the

Digitized by Google

country was divided on the claims made to the succession by a legitimate son Hugh and an illegitimate son Shane. The English government played the game of the bear and the bandog, acknowledging and urging either, as his power became the stronger. A War of the Roses followed, in which Shane O'Neill killed his brother and hunted away his sons, one of whom was named Hugh.

The English government got possession of this boy and brought him up in England as a possible weapon against Ulster rulers. He served against Desmond in the Elizabethan wars, and he appears to have been willing to become anglicised and to give up the title of O'Neill, which would mean, according to the doctrines of the English law at that time, that he surrendered the rights of the sept in the soil,[5] and took an interest as feudal earl only. If his action had been allowed to work itself out, the communal society with the chief at its head might in Ulster have gradually merged into feudal holding under a native earl.

When Shane died, the tribe elected his cousin Turlough, an old man, as the O'Neill, but in 1584 he and Hugh, with the consent of the English government, divided Ulster. This was a prudent act of the English, for the "wild Scots" of the Hebrides were a permanent danger to the English rule in the north of Ireland, and Turlough by himself was not a very suitable choice for them, as he had married the widow of James Macdonald, a chief of Skye, a woman who was also aunt to the Earl of Argyll. On Turlough's death, Hugh became sole earl, and he appears to have tried fairly to combine the two contrary positions of feudal subject and communal ruler. But the forces which always made settlement impossible were at once set to work.

The difficulty of Irish government has always been the same. The people of the larger island made, and make, no effort to see the Irish standpoint. The delegated authority is always uncertain how far his acts will be acknowledged or repudiated by the absentee superior in England; he is always on the point of recall or resignation; he is always on the lookout for treachery both from friends and enemies, for the plots real and imaginary with which he is plentifully supplied by

Digitized by Google

rumour full of tongues; he assumes, and the people of the larger island throughout, that the Irishman is an inferior and evilly-minded creature, and that trickery and treachery and charges of disloyalty are the best and only means of dealing with him; and in Elizabeth's day such was the recognised means of government approved by the highest authority. So Elizabeth's officials with rare exception made no pretence of handling the Irish noble by a policy of straightforward honesty, such as might appeal to a man who, placed in a difficult position, desires to act honestly by two opposed interests. See note 2 of Chap. XXXIII.

After the failure of the Spanish Armada, the earl was accused of treason for saving the Spanish sailors who had been wrecked on that inhospitable coast, who were being murdered by the English officials in cold blood.[6] In the following year, 1589, as an instance of the methods of the queen's officials, he was ordered to appear before the English deputy in Dublin for putting in force English law against an Irishman. He had in the exercise of his jurisdiction as feudal earl hanged one Hugh Gaveloc, the son of Shane O'Neill, who had conspired to accuse him of treason to the English government. He came, but hearing that it was intended to arrest him, he slipped away and went back to Ulster.

The Ulster chiefs evidently had no wish to try a fall with the growing strength of the English government. In spite of all incitements to rebellion by the deputy and the English officials in Ireland, both O'Neill and his rival O'Donnell did their very utmost to avoid war. But the behaviour of the deputy rendered war inevitable. The crowning act of treacherous folly was the murder, by FitzWilliam the deputy, of Hugh Roe MacMahon, the acknowledged chief of Monaghan. He had committed a crime which was the opposite of that charged against Earl Hugh. He had used the Celtic law of distraint [7] to recover certain rents and dues illegally withheld from him, and for this use of the Brehon law he was hanged. "Among the many deep stains," says Mr Hill, "that attach to the rule of the English in Ireland, this one survives in the most vivid colouring." The gist of the whole matter was that officials of the sovereign in Ireland did not consider it

Digitized by Google

good diplomacy to keep their word with the Irish in any matter whatever, or to treat them with anything but treachery and insult, and the Irish had ceased, as at the present day, to put any trust in their word. See Appendix J, "Ireland of To-Day."

Elizabeth, whose success resulted from her commonsense in recognising the inevitable, recalled FitzWilliam and sent Russell to arrange matters; but although she refused to conform to the Roman Church, she now insisted on conformity in religion on the part of the Irish to the usages of the Church of England, and in spite of the loyalty of the chiefs she put great military garrisons into Ulster.

Of all the men who were an incentive to disorder, the soldier of the Tudor times was the worst, on the common evidence of the English writers of the day. As a result, O'Neill and O'Donnell could not control their people, who were absolutely united in their opposition to English rule. A rising took place, and a war followed which lasted from 1595 to 1602. Then the Earl of Tyrone and the others were replaced almost in their former position; James on his accession received Tyrone in London, and there appeared the prospect of a final and permanent settlement.

James may have thought that he could use the Irish earls for his designs on the Western Islands. But he was subject to every passing influence and doubled like a hare. The earls were closely connected with the rebellious Highlanders, who had just evicted James's plantation of Lowland adventurers from their lands of "incomparable fertilitie"; the Macleods of Harris had assisted Hugh Roe O'Donnell in the war against Elizabeth; and the Englishmen who had fought against the O'Neills were indignant that the lands of Ulster were not to be divided amongst them. They were assisted in overthrowing the peace by a new deputy, Sir Arthur Chichester, who to judge from his acts would appear to have been the most unfit man for the place at that time,[8] if one is to believe that James had really honest intentions.

Legal flaws were found to render void the patents under which the chiefs held their estates, and finally the two Earls O'Neill and O'Donnell left the country with a number of followers.

Digitized by Google

On their flight James issued a proclamation, renewed two months later, assuring the inhabitants that they should be protected and preserved in their estates notwithstanding the flight of the earls.[9]

In the teeth of this proclamation the six counties of Armagh, Cavan, Coleraine, Donegal, Fermanagh, and Tyrone, nearly four million acres of land, were partitioned among adventurers from England, Scotland, and Ireland, who were to pay rent to the Crown for the profit of James. All the Irish proprietors and tenants were evicted, and forced to rent holdings as they could on the lands of the natives seized by the alien, it being so arranged that they rented lands not in their own districts but in others (*supra*, p. 50).

The lands were parcelled out to English and Scottish "Undertakers," London citizens, Englishmen of the pale in Ireland, Protestant clergy, different towns and forts and schools and Trinity College, Dublin. The Commissioners, writes the Protestant Carte, quoted by the Protestant Lecky (i. 27), appointed to distribute the lands, scandalously abused their trusts, and by fraud or violence deprived the natives of the possessions the king had reserved for them.

In those cases in which the natives had been allowed a life interest in any of the more barren parts, the undertakers on their deaths turned out the children, and these took to the woods, became "Tories" and levied blackmail on and murdered the planters.

Swift, writing of this Ulster plantation some one hundred and twenty years later, thus describes it:—"The value of the lands was consequently very inconsiderable till Scotch colonies came over in swarms upon great encouragement to make them habitable; at least for such a race of strong bodied people, who came here from their own bleak barren highlands, as it were into a Paradise. Here by degrees they acquired some degree of politeness and civility from such neighbouring Irish as were still left after Tyrone's last rebellion."

But for our claim for the championship of small nations in this war, I could ignore the regular course of Irish history, and pass directly on to the Cromwellian plantations, the

Digitized by Google

foundation of the Irish position of to-day. But the present condition of Ireland can only be understood by a knowledge of the past, and its condition confronts us as a menace from every aspect of our European relations. What will the enemy say to it at the negotiations for peace? In consequence I must in a few words pass in review some historical facts which have attended in each century the plunder of Irish land.

James had only followed the course which, with the English sovereign, had become usual and rational, in directly breaking faith with his Irish subjects, to whom he had pledged his word, and seizing their lands for his Scottish adventurers. The same precedent of the tearing up of solemn treaties and agreements and disregard of the pledged word of the king has been followed since by every king and by every Parliament. If anyone wishes to go into this subject beyond what is related here or to check any of the statements made, I recommend them to read the very conclusive first volume of Lecky's *History of Ireland*.

Proposed Plantation of Connaught.—Sir John Perrott, one of the few really honourable men of Elizabeth's time, had succeeded in 1585 in making a compromise about the lands of Connaught between the communal and the individual systems of landholding, by which the best features of both were gradually to approach each other. The present life interests of the chiefs, who were turned into feudal landowners, were preserved, and the ownership of the soil, including the commons, was to be secured to the freemen like the bondes of Norway

But as Mr Lecky remarks, "The measure had been taken before the scheme for seeking confiscations by legal quibbles had been devised, and it had been somewhat carelessly carried out."

The Connaught proprietors had neglected to enrol their surrenders. James hastened to take money for supplying the defect. But owing to the neglect of the officers of the Court of Chancery the surrenders were still not enrolled. It was then threatened on this account to plant Connaught in imitation of Ulster. The only hope for the Connaught

Digitized by Google

landowners was compromise and submission. They offered James a further sum, and on his death they offered to Charles £120,000, a huge sum in those days, for what were called, in the flatulent language of the time, three Graces: (*a*) A prescriptive title against the Crown by possession for thirty years; (*b*) a freedom from litigation about enrolments; and (*c*) right for Papists (almost all the old English families were Papists) to sue and practise at law without taking the oath of supremacy. Charles took the money. "The sequel forms one of the most shameful passages in the history of English government in Ireland." Wentworth withdrew Graces (*a*) and (*b*), and prepared for a plantation of Connaught in the king's interests, forcing juries by briberies and terrorism to bring in verdicts for the king. "It had become clear," says Lecky, "beyond all doubt to the native population that . . . the land which remained to them was marked as a prey by hungry adventurers, by the refuse of the population of England and Scotland." Then followed the Scottish Covenant against Popery, the attack by the English Parliament on all the authority of the king, and the rise as a military force of the "Saints," the extremist Dissenters who eventually established a military tyranny under Cromwell.

The Rebellion of 1641.—A belief well founded, and according to Carte and Leland encouraged in order to obtain new confiscated lands, both by the acts and language of the Lords Justices who represented a powerful party in England, that both the English and Scottish Parliaments intended the extirpation of the Roman Catholics, led to the great rebellion of the Irish of 1641.

In the first instance, undoubtedly the rebellion was a rising by the Irish of Ulster against the land-grabbers who under James had been put in possession of their lands. It was a war about land. The Irish turned out all the English settlers, plundering them of everything that they possessed, and driving them into the towns which remained in possession of the English. Then arose the fiction of the Ulster massacre, which figures as fact to the full in the pages of Macaulay, Froude, and others. Lecky, who had gone very fully into the matter, after mentioning a report of the two commissions

Digitized by Google

of inquiry, remarks : " No one, I think, who reads this report with candour can doubt that the popular story of a general, organised, and premeditated massacre is entirely untrue." But although the story was untrue it had a very powerful effect, for it was to the interest of those on the spot that it should be thought to be true, and it was not possible for the people of England and Scotland to know its falsity. It had the effect of a reality, inflaming beyond expression the passions on both sides. The war that followed was horrible in the extreme, the cruelties and beastlinesses on both sides, especially when Cromwell came to Ireland, being almost beyond human belief.

It began as a war about land, and remained so. But it soon took on also the aspect of a war about religion. Urban VIII. from a safe distance had issued a Bull exhorting the Irish to martyrdom, rather then they should acknowledge the king's supremacy; and on the other hand the English Parliament did its utmost from the very first to impart into the struggle all possible theological colouring, passing a resolution that no toleration should be granted to the Roman Catholics in Ireland, and by that means driving into the rebellion many Catholic gentry who would otherwise have been loyal both to king and Parliament. In 1643 the Irish rebels made a truce with Charles I., Ormond weakening them in Ireland by taking over a large body to meet the Scots who had been bribed by the Parliament to invade England. But from various causes, largely owing to the difficulties raised by the Papal Envoy, it only ripened into a peace in 1648. By this treaty Charles pledged himself to restore to their possessions, with exceptions, the Roman Catholics who had submitted to him. His promises were confirmed two years later by Charles II. from Breda.

The war ended in 1652, when the Irish armies one by one surrendered on the terms of a treaty signed at Kilkenny by which all, with a few exceptions, were received into protection on laying down their arms ; those who should not be satisfied with the conclusions the Parliament might come to concerning the Irish nation, and should desire to transport themselves with their men to serve in any foreign State at amity with

Digitized by Google

the Parliament, should have liberty to treat with their agents for that purpose. But the Commissioners undertook faithfully and really to mediate with the Parliament to their utmost endeavours that they might enjoy such a remnant of their lands as might make their lives comfortable who lived amongst them, or for the maintenance of the families of such of them as should go beyond seas.

The Cromwellian Plantation of Ireland.—In contravention of the whole spirit of the treaty the Parliament confiscated all the lands of the Irish and divided all Ireland except Connaught among the adventurers who were to plant as settlers, and the Cromwellian soldiers who were to receive lands in satisfaction of their arrears of pay. Some of the lower classes were to be allowed to remain to become the serfs of the English, but all the aristocracy who had assisted Charles, the leaders of the Irish people with their families, were transplanted to Connaught, at that time the most wasted part of Ireland, under circumstances of grievous cruelty and hardship. By the Act for settling Ireland, August 2, 1652, death or banishment with absolute forfeiture were declared against the chief nobility, including such Protestant noblemen as the Earl of Ormond and all the gentlemen who had borne arms for the king. The lesser men forfeited two-thirds, and those who had borne no part in the war, but remained quiet, forfeited one-third as not having manifested "a constant good affection by some outward acts" in favour of the Parliament and against the king. All these had to transplant to Connaught. Thousands were legally murdered by the Cromwellian, and the gaols were crowded with those who refused transplantation, or had in some point acted adversely to the scheme. It was pointed out at the time that a considerable part of those so transplanted were "of ancient English extract who had been of old and until the late plantation of new English determined enemies of the Irish."[10]

There were one or two facts which give a lighter touch to the darkness of this savage and inexcusable Act. Edmund Spenser had justified the brutal cruelties of Elizabeth's day on the ground that they were necessary to be done for the

Digitized by Google

soon finishing of the war. He had gloated over the awful sufferings of the Irish. His grandson was transplanted to Connaught as an Irishman.

Intermarriage by soldiers with the Irish girls was guarded against by heavy penalties. The soldiers pretended that the Irish wife had been converted by them to the true Puritan faith. But the generals of the English army knew their men and did not trust to the word of the saints on this point. Ireton orders (given at Waterford 1st May 1651) that any officer so marrying shall be held incapable of command or trust in this army if the change of religion of the Irish girl "cannot be judged (by fitt persons such as shall be appointed for that end) to flow from a real work of God upon their hearts, etc." If a reader has any vision, let him picture the sergeant-major examining the Irish girl, he knowing no Irish and she no English, in the tenets of the faith of the Independents. There was no doubt of a good deal of real conversion—of the saints by their Irish wives.

In 1697, seven years after the battle of the Boyne, the Hon. Robert Molesworth wrote as follows of the degeneracy of the English in Ireland:—"We cannot so much as wonder at this when we consider how many there are of the children of Oliver's soldiers in Ireland who cannot speak one word of English. And (which is strange) the same may be said of some of the children of King William's soldiers who came but t'other day into the country. This misfortune is owing to the marrying Irishwomen for want of English. . . . 'Tis sure that no Englishman in Ireland knows what his children may be as things are now; they cannot well live in the country without growing Irish." [11]

As the penal code of the eighteenth century developed, this Irish tendency was guarded against by provision diverting the property to wives and children who would pretend that they were converted to the Protestant faith.

But the English government did not trust to famine and murder and transplantation alone for their success in Ireland. The departure of the Irish soldiers had left great numbers of women and children unprovided for except by the lands which had been seized by the soldiers. The English govern-

Digitized by Google

ment had agents throughout Ireland employed in seizing women, orphans, and destitute persons to be sold as slaves in the Barbadoes and the English plantations in New England. The merchants of Bristol had agents for the same purpose. Between six and seven thousand of such people were so sold. The Commissioners helped them by giving orders on the masters of workhouses for women who were marriageable and not past breeding. The orders were only revoked when the slavers began to seize the children of the English.

In 1655 Penn occupied Jamaica. Women were wanted for the settlers there. Thurloe applied to Lord Henry Cromwell, then commanding in Ireland, to secure a thousand "young Irish wenches" to be sent to Jamaica. Henry Cromwell replied concerning the young women, "*though we must use force in taking them up, yet it being so much for their own good*, and likely to be of so great advantage to the public, it is not in the least to be doubted that you may have such numbers of them as you think fit to make use on this account." Between them the villains kidnapped and shipped the thousand girls and thousand boys from Galway.

The Cromwellian plantation may be said to mark the end of the communal society in Ireland. "Above all, the great end at which the English adventurers had been steadily aiming since the reign of Elizabeth was accomplished." The land was confiscated. In the Western Highlands and Isles of Scotland the communal society lingered on in various forms well into the eighteenth and in some respects well into the nineteenth century, until extinguished by economic causes.

The Broken Pledge of the Anglo-Scot.—Yet though the eviction of the Irish from the land was now complete, for a few pages I must go on with the story.

At the Restoration the question came up for settlement of the promises made by Charles I. and confirmed by his son to the Roman Catholics of Ireland. Charles had been restored by the help of the Presbyterians, and the men in possession were too strong for him. He abandoned any attempt to carry out his father's promises, and appointed an English Commission to examine into the claims of innocent Papists, a class very stringently defined and restricted.

Digitized by Google

Four thousand Irish Catholics claimed restitution. Six hundred cases were heard; the claimants were so successful that a tremendous clamour was raised, and it was declared (this is the usual course) that there would be a great Protestant insurrection in Ireland, that in fact Ulster would fight and Ulster would be right. So Charles gave way. Parliament brought in a Bill disqualifying all the Irish whose claims had not been heard. Swift tells how some time before 1731 many groundless reports were industriously and seasonably spread of an invasion threatened by the Pretender in the north of Ireland, and that the Presbyterians threatened that if the Pretender should invade those parts of the kingdom, they would sit still and let us fight our own battles.

James II.'s Parliament of 1688 endeavoured to restore the owners dispossessed in the Cromwellian settlement, compensating purchasers out of the lands of the Whigs who had supported William against James, the English Parliament a few days before passing a similar Act against the supporters of James. Then came the battle of the Boyne, and the siege of Limerick. This gave another opportunity for a permanent and honourable settlement, and led to the most shameful of all the breaches of faith of the English kings and Parliaments with the Irish. The Irish leaders at Limerick were in a very strong position, a large French fleet was approaching, winter was near, and William's position both in England and on the Continent was very difficult. He was anxious for a settlement, and a treaty was drawn up and signed for William by the Lords Justices and Generals, which guaranteed to the Irish Roman Catholics such privileges as they had enjoyed in the reign of Charles II., taking the oath of allegiance to their majesties and no other. They were to exercise and practise all pursuits and professions as fully and freely as in that reign, in which they had sat and voted as members of both Houses of Parliament, sat on juries, and exercised professions.

William, to his honour, only partially broke the treaty. By 3 William and Mary, c. 2, Roman Catholics were forbidden to sit in the Irish Parliament. 7 Wm. III., c. 5, 10 Wm. III., cc. 8 and 13, further restricted them; and then in the reign

Digitized by Google

of Anne was passed what Lecky describes as "the ferocious law of 1703 which first reduced the Irish Catholics to a condition of hopeless servitude," followed by a series of enactments of sovereigns who successively broke the solemnly pledged word of the English government. Although these infamous penal laws were expressed to be passed for the safety of the Protestant religion, that being in no danger, at any rate from the Irish, they were in reality measures intended to prevent any enterprises on the part of the Irish which might interfere with the supremacy of English or Scottish trade. They belong to the consideration of economic causes.

Why Ireland and Western Scotland differ.—Before leaving this part of the subject, I would ask and try to answer a question, namely: How does it come about that the two parts of the islands, one the Western Highlands and Islands and the other Ireland, have had such different histories, suffered such different developments, though to a great extent they suffered the same treatment? Is it race? Are the Irish really a wicked people, who are in their nature rebellious? Or, if it is not race, how comes it that the Irishmen of Ireland, including a majority in Ulster, are Romanists, while a majority of the Irish of Western Scotland are Presbyterians? Why was it that as against the feeble and divided clans of the islands James was unsuccessful, as against the statesmen of the English dales, while his plantation of Ulster went forward without a check, as did the destruction of the udallers of the Orkneys? Why is it that the Western Highlands and Isles have patiently accepted their fate of ruin and effacement, while the Irish in each generation throw themselves furiously and helplessly against the bars of the cage?

There are several answers to these questions.

There was no pale in the Western Highlands. The running sore, the alien element of feudal society, remained in the East. It was never really established west of the Grampians, not even after the '45.

The Scottish king had no army but the feudal array, and his great feudal lords were too jealous of his authority and too strong to permit him any such army. He was always too weak and too poor, and too much occupied with fencing with the

Digitized by Google

English on his southern borders, to exercise any steady pressure on the holders of the vast tracts of Highland strath and flood, who, like the Burkes, Desmonds, and Geraldines in Ireland, stood between him and the communal society of the West.

They in their turn were too close to these Western men, too much allied with them, too dependent on them, to be willing to destroy the institutions by which they lived. They might hold feudal baronies of James or Charles, but in the first instance they were chiefs of the communal society, and they had no mind to depress unduly the powers of the chief. Owing to physical conditions, in the place of being compelled as in Ireland either wholly to abandon the rule of the pale or the custom of the Brehon law, they held on to their equivocal position, and grew in strength, so far as they were not attacked by other great lords.

For the same reasons, when the Reformation movement divided all parts of the islands, it affected very little the Isles of the West, on whose men religion had always sat lightly. The clans followed their chiefs into the new religion as they followed them into battle.

But above all causes of difference the chief cause remained, that Ireland was a fruitful, cultivable country, with a large proportion of rich arable land, except so far as the Anglo-Scot has from time to time made of it a desert; while the Highlands and Islands, in spite of the land agency advertisement of James about their incredible fertility, were pastoral lands only of no great fertility, in which agriculture from the nature of the climate never held a main part. The proposed colonists of Lewis, who had more sense than James and less need to get a living by a ceaseless struggle for supremacy, soon saw this elementary fact, and held back from enterprises which would involve them only in bloodshed and loss, while the inland or Lowland Scot, coming from the poverty of his own country to the richness of the Ulster farms, outlived the English colonists from the wealthy south and made a permanent settlement.

The contrast is easily seen when one compares the amount of the arable parts of the six counties of Ulster, amounting to something over 400,000 acres, with the cultivable corn lands of the Western Highlands, in 1880, for instance, of Moray and

Digitized by Google

Ross—1·1 per cent. The Ulster lands were worth appropriating under the pretence of religious enthusiasm, and the combined force of England and Scotland were sufficient for the work.

The Treatment of the Waste in Plantation.—The confusion by the investigators over the acreage of the Ulster confiscation has resulted from not realising the value and extent of the forest or waste in agriculture. When as in Ireland it contained a large proportion of good cultivable land, the lands allotted by measurement were the lands under arable cultivation only, leading to immense disproportion between the amount stated on paper in the actual grant and the amount actually held; for instance, in the case of Trinity College, Dublin, 10,000 and 96,000 acres. The unfenced woods and pastures passed with the grant, the same result being attained to the grantee, as has already been pointed out by Innes (*supra*, pp. 293–5). Strafford, examining the patents in 1633, found that they did not as a rule express more than one-tenth of the land actually possessed by the patentees.

That this was intentional is shown by a collection of orders and conditions to be observed by the undertakers sent in 1609 by the Council to Chichester. After setting out the proportions in which the land was to be distributed, the paper says, "to every of which proportion shall be allowed such quantity of bog and wood as the country shall conveniently afford." Undoubtedly, creaghting, the tribes like gipsies wandering through the country with their flocks and herds, grazing them on the unenclosed pasture and paying a rent for such grazing to the chief of the sept whose lands they used, was a custom still in full force all over Ireland. Spenser mentions it with deep disapproval, but the "bloody platforms" of the English government was not likely to have led to any decrease, nor the number of Tories created by the Ulster plantations. How much "quantity of bog and wood" the country could conveniently afford for such a purpose may be judged from the statistics of 1916. Ulster shows: pasture, including grazed mountain, 3,054,211 acres; woods and plantations, 57,616 acres; barren mountain, *i.e.* not grazed, turf bog, marsh, town and building land, etc., 668,253 acres.

In England, then, the influences against the communal

Digitized by Google

society were enclosures and arable cultivation; in Scotland the change was the result of the use of legal forms in written charters and grants; in Ireland they were violence, theft, and treachery.

NOTES.—[1] Lord Fyvie, 29th April 1603. "Since your Highness's departure from us (thanks to God), all is in reasonable good quietness." Abbotsford Club Collection, quoted in Mackenzie's *History of the Outer Hebrides*, p. 216. [2] *Reg. of P.C.*, vol. vii. pp. 160–162. I have followed Mr W. C. Mackenzie's *History of the Outer Hebrides*, verifying his quotations. The scheme was accompanied by a solemn repetition lecture by James to his unenthusiastic Council, admonishing them "as tutoris are accustomat to repeat their lessonis to their childrene." [3] "Mediatise," from Webster's *International Dictionary*: "Under the Holy Roman or former German Empire, to cause (a prince or state) to hold mediately instead of immediately of the Empire; to reduce to a position of a mediate vassal of the Empire; hence to annex (a state, etc.) to another, the former sovereign being allowed to retain his title and usually some governmental rights." I suggest as a further and clearer definition, to use a catspaw to rob someone of territory. [4] See Burton, *Hist. of Scotland*, vol. vi. p. 30, note. [5] I would refer to the statement of the position in regard to this important point in note to pp. 26 and 27 of Hill's *Ulster Plantation*, and the quotations from the *Cal. of Carew MSS.* [6] Annals of Loch Cé, 1588. The Saxons killed all who were not drowned of the crews of those ships that were wrecked. [7] See my *Tort, Crime, and Police*, pp. 75–82. [8] See the grievances of Ulster as set forth by the earls in 1593, p. 38 *et seq.* of Hill's *Ulster Plantations*. See as to how Chichester filled his own pockets, the case of Sir Cahir O'Dogherty in Hill's *Ulster Plantations*, p. 60 *et seq.* Burke's description is "The war of chicane succeeded to the war of arms and of hostile statutes, and a regular series of operations was carried on, particularly from Chichester's time . . . for the purpose of the total extirpation of the interests of the natives in their own soil." "The trade of the Discoverer arose." [9] "The people being apt to think that the offences of their Lords are punishable on them, how innocent soever, were likely to run into disorder, and to remove their fears they have commissioners to assure them by proclamation of his Majesty's gracious disposition towards them, so long as they continue loyal, and that by this course they may live more happily than before." *S.P. Irel.*, James, vol. ii. p. 267. [10] Some faint idea of the cruelty of the transplantation may be realised by those who will read the instances given in Appendix IV. of Prendergast's *Cromwellian Settlement*, the petitions for dispensation from plantation. There were of course numerous dispensations. In one instance a whole town, Cashel, was so exempted. But the God of the Puritan was fully equal to the occasion. Dublin, May 1654: "The Lord, who is a jealous God, and more knowing of as well as jealous against their iniquity than we are, by a fire on the 23rd instant hath burnt down the whole town in little more than a quarter of an hour, except some few houses that a few English lived in. . . . The persons that got their dispensations from the transplantation died the day before the fire of the plague." Prender-

Digitized by Google

gast, p. 49. [11] Quoted by Prendergast, p. 130, note. Swift's account (On the Bill for the Clergy residing on their Livings) runs as follows:—"The first invaders had almost the whole kingdom divided between them. New invaders succeeded and drove out their predecessors as native Irish. These were expelled by others that came after, and upon the same pretensions. Thus it went on for several hundred years, and in some degree even to our own memories."

The Ulster Massacre

Mr Lecky, in the first chapter of his *History of Ireland*, has treated the fiction of the Ulster massacre so fully and so impartially, that I should not allude to it but that it still continues to appear not only in the pages of Froude and Macaulay but in histories taught to English children. Not only so, but Cromwell, whose massacres of the Irish, says Mr Lecky, deserve to rank with the most atrocious exploits of Tilly or Wallenstein, is held up as a great example to be admired and followed to-day in the press, in books, and in public speeches.

The Selling into Slavery of Irish Girls

Mr Bagwell asserts that the probabilities are that this infamous scheme was not carried out, and he suggests that "perhaps Cromwell thought that the time for importing settlers had not yet arrived." There would not appear to be the slightest ground for believing that it was not carried out, or, if it was not, that it was from any reluctance on the part of the Cromwells and their supporters. The following are a few extracts from the *Thurloe State Papers*, vol. iii.:—Sept. 11th, 1655, Henry Cromwell to Thurloe: "I have endeavoured to make what improvement I could in the short time allotted to me, touching the furnishing you with a recruit of men and a supply of young Irish girls." Sept. 18th: "I shall not need to repeat anything about the girls, not doubting but to answer your expectations to the full in that." Vol. iv. p. 75: The Committee of Council have voted 1000 girls. Oct. 16th, Henry Cromwell to Thurloe: "We shall have upon the receipt of his Highness his pleasure the number you proposed." P. 100, Thurloe to Henry Cromwell, of the West Indies: "The ships which are next to go thither will be appointed to take on board them the Irish women and girls." P. 191, Nov. 13th, 1655: "For the proposals about the transplantation, I judge them most rational and Christian. Your Lordship knows how slow we are, which is the reason that about the girls is not ready." P. 343, Dec. 1655: "We hear nothing from Jamaica; and whilst we do, we are at a stand as to sending anything thither; only some ships are in preparation, and two are already gone with such things as we judge most necessary for their subsistence." Apparently the new colonists wanted food even more than concubines. Of the export of Irish people to the West Indies *in the character of* masterless men, vagrants, rogues and vagabonds, which began in 1653 and lasted until the Restoration, Mr Bagwell says, "*They were not slaves* but were forced to work for wages, and could not leave the islands to which they were sent." If they were not slaves, in God's name, what were they?

Digitized by Google

PART IX

THE DECAY OF THE COMMUNAL SOCIETY. ECONOMIC CAUSES

(See EXPLANATION OF TECHNICAL WORDS, *supra*, p. xxvi)

CHAPTER XXXV

THE CHIEF INFLUENCES OF CHANGE. THE INTERFERENCE OF POLITICS

SIDE by side with the results of the changes, frequently violent, caused in any locality by political action, and working independently, there always exist natural causes of change which act for the decay and dissolution of institutions, producing effects which are often attributed to the righteous or foolish or wicked action of some prominent man. Many scenes in history attributed to the actions of men's minds are in reality effected by elementary causes utterly beyond men's powers, which they would gladly control.

Even where the more far-seeing minds discern the directions of natural movements, there is very little chance of any united action being taken by any society to offset or to affect them with sufficient promptitude. If the society is controlled by a popular government and free discussion discloses the true direction of effort, too much time will be taken up in persuading the non-thinkers to consent to the necessary steps; if by an autocratic government, it will be an offchance whether the few who control lead in the right direction; and in addition there will always be the difficulty that other competing societies, not feeling the natural movement in the same degree, put pressure in some direction which impedes action. Is not the present world war the result of just such a conflict of ideas?

Digitized by Google

As these economic causes, operations of nature, are always at work in various forms and directions, it is not possible for any historical writer to put any period to them, but only to give illustrations of their action, always of course warning the reader that the deductions of cause and effect which he draws from the facts must be matter of opinion only.

By far the most important of these natural causes of change is the movement of population. In fact, all the operations of nature which affect social life may be said to be summed up as dependent on this one cause.

No man, as Dr Johnson said, loves labour for itself; we are all lotus eaters so far as we dare be; except for the last infirmity of noble minds, and the social instinct of self-sacrifice infused into us by religion, we all will do as little work as may be required to supply ourselves with present necessities, or with their increase rendered necessary by vanity and emulation, and we will always put the work on somebody else if we can.

Increase of population, which has no bounds of empire, but unless dammed by policy or folly finds its own level like water whether at home or abroad, disturbs complacency by diminishing our little supply, as men who may be more patient or wiser than ourselves compete with us in the production or sale of the articles on which we depend for support. A greater effort has to be made, an extension of the circle of toil, a remodelling of its conditions; somehow the competition from beyond must be met and surmounted.

The easiest solution of the problem, one which presents itself to all ages, is by conquering the interfering worker and regulating his industry in the interests of the conqueror,[1] an influence very strong in every direction in our own commercial times.

The representatives of what is called the "working" man, while proposing to give self-government in the name of Freedom and the People to vast, unsurveyed names such as Armenia and Mesopotamia, forbid under all the penalties of sabotage, which can be imposed by united tyranny, the freedom to British workers to obtain market value for their labour in contravention of trade-union regulations; the combinations

Digitized by Google

of united capital crush out the smaller man, employing him when they have ruined him as a branch manager of their syndicate; the German apologist, who has seized the competing looms and furnaces of Belgium, France, and Luxemburg, excuses their annexation on the ground of Germany's economic development, and calls wholesale murder of unarmed seamen and merchants, women and children, freedom of the seas, since they interfere with his commerce.

In the Middle Ages, in like manner, each community safeguarded by conquest or by regulation of the efforts of others its means of life from a progressive and prosperous neighbour.

So long as each little society independently rested on unwritten custom representing the sense of convenience of the community, such efforts to counter the course of nature had little harmful effect. But as the communal society decays, written legislation attempts to override nature, which is to be subdued if it will not give way. The statute book, whether mediæval or modern, will well repay study to those who are interested in the effort to make water run uphill.

I do not deny but that this instinct has been successful occasionally, when the process of obstruction of nature has been carried on persistently and over a great period of time by one nation over another, as in the case of Ireland, or as the result of commercial jealousy, without any opportunity for the regulation of natural causes which results from the competition of other societies.

So we see the splendid harbours of the South and West of Ireland lying idle, the Cunard steamers taken from Queenstown, Milford Haven deserted in the interests of Liverpool and Manchester; or, if you care to go further afield, the neglect of the finest harbour of the Mediterranean, Port Mahón.

But to this instinct of idleness now and in the Middle Ages there is an exception. Local selfishness is, and was, offset by the moral instinct imposed by the Church impressing that the benefit to your neighbour is a benefit to yourself. That is what all human society in all time is unwilling to admit, and what all religions for all time are teaching. But this teaching only affects society as a whole as increase of population induces a wider trade.

Digitized by Google

The Effect of Increase of Population.—When population increases, its effect on social development operates not in one but in many directions.[2]

In the first instance, to go back to pastoral society, a larger number of cattle or sheep will be bred upon the common pasture, and as the chief will possess the greater part of these, his power will grow in proportion to his possessions. As agriculture increasing breaks in on the communal life, the increase of population calls for more bread and more beer, and the common pasture is invaded to make new fields for grain. As soon as this takes place, the resulting developments are speedy and revolutionary in their effects.

Very soon, indeed, the members of the society who are strong and have strong work oxen produce more from the cultivated land than is necessary for their own consumption. They seek a market, and it is likely that the sept is not a sufficient market. They will seek one outside, and that means that, instead of farming being merely a means of supplying the wants of the members of the society and no more than that (except for indispensable things from without such as salt and iron), farming for profit breaks in upon the society of kinship. Then the great solvent of commerce breaks up the communal society. I believe it is M. de Lavergne who says: there is one law only which admits of no exception, and which everywhere produces the same results—the law of markets.

When this occurs, one of two things happens. Either the expectant trader holds his surplus for a future market when he may obtain a price or a better price at home, a practice much objected to by the society, or he takes in exchange the means of trading elsewhere instead of accepting some goods of which he has already sufficient. In other words, instead of corn or cattle he wants money.

To this day, the genuine trader, especially the man who deals with needy and uncertain people, and in small amounts, prepares to turn over his material—his live stock or crops or other matters—at a further profit again and again rather than rest on his money, unless he can loan it at a high rate of interest at once for a short time. It is only among the idle rich, or among professional people who make a living by

Digitized by Google

their brains, that so-called investments, money loaned for a long period at a low rate of interest, prevails.

The trader, the man whose capital is too tiny to supply necessity, the man who lives by manual work, has to turn over the capital of his cow or his strong arm or his bit of cash just as often as he can find a man who will give him a little more than he gave for the dry cow when she was in full milk, more wages than he now receives, or a higher interest or better security for the short loan.

This lies at the root of the objection of the manual worker to become a profit sharer (or, as he spells it, a profiteer) in the business for which he works. The returns received by the capitalist, the money lender, would not for him be a sufficiently quick or high return on his small capital. The smaller the capital, the higher the interest, the quicker it must be turned over, the more relentless the creditor. He takes his fellow-servant by the throat, saying, Pay me that thou owest.

Farming for external profit is accompanied by two other solvents of the communal society, both largely dependent on population. The very frequent gifts of the waste land by the king or chief, acting no doubt in the first instance for the society, to the Church, to great men, to strangers of all kinds, gifts not based on kinship, not founded on community of user of the land, bring into play two great forces, leases, and a very powerful agent—the competition rent.

Leases.—Though no stress is laid upon it, the hiring of land both for pasture and agriculture is mentioned in the Irish laws. Hiring would be a very natural course where land was apportioned by families, and a family was unable to cultivate all the allotted land and unable to sell. Hiring probably occupied a larger space in land economy than appears from the Tracts. The same might be said of our Law Reports at the present day.

Yet the leasing of land for a term breaks into the very core of communal landholding. When an increase of population leads to encroachment on the waste forest, especially when a weakened sept encourages strangers to protect it against alien domination, the chief puts his dependants upon the freeman's common pasture-land on terms of clearance and

Digitized by Google

improvement. When in England, for instance, after the Black Death, wages rose to a degree which made the customary communal farming unproductive, the lord squeezed out the freeman with his customary bovate from the use of the waste, and leased to a tenant with capital for a term of years, very possibly to the same freeman on new terms.

It is to the monasteries that we must look for the greatest furtherance of this change. The monasteries, which were the great farming corporations of those days, possessed of very large tracts of land, both arable and pasture, breeding stock of all sorts on a great scale, and engaged in every kind of wholesale industry, from shearing sheep to packing salmon for export, saw very early the advantage of granting leases for terms of years, or very commonly for three lives, to the tenants of their farms. Such leases, where any part of the land was waste, called for improvements, and as a consequence presupposed, in addition to the usual customary services, exceptional services and commercial rents. The lease further broke in upon communal custom by creating a very large class of men, holding through individuals or from a society not bound by ties of kinship, whose length of user of the land was absolutely independent of redivision which might be made among freemen.

In every case the lessee held a tract of land which was of quantity incompatible with the usage of communal society; he held for a term which was independent of his life interest; and he paid in addition to customary services a rent based on the commercial value of the land to his individual grantor.

Such economic laws of change always operate against the man with small capital. In Tudor times the lord, the man with wealth accumulated by an extended trade with new worlds, buys out or forces out the small freeman and lays his land down to grass for sheep farming on a great scale. The king and his ministers attempt without success to control economic conditions by legislation, and Latimer preaches at them for their want of success.

Steadily throughout English history goes on this struggle over the use of the land, the small man only holding his own when natural conditions favoured him. When in the

Digitized by Google

last half of the eighteenth and early nineteenth centuries large fortunes were made by an abounding trade, the rich merchant invested his money in land at a low rate of interest, and the smaller man not being able to meet the competition went into the towns or built up the British Colonial Empire. Immigration to towns and emigration to colonies are practically identical means.

The Competition Rent.—An even greater cause of change, utterly incompatible with the communal society, was the competition rent in the place of the rents or dues fixed by custom.

The rent of land according to the Brehon laws was one-third of the produce for arable and one cow in seven for pastoral land. The uncanny modernity of the ancient Irish custom is shown by the provision for compensation for unexhausted improvements, the land is to belong to the tenant "until the time of his manure or dung has been taken out of it." [3]

In the very ancient Senchus Mor [4] three rents (ciss) are spoken of, (*a*) a rack rent from one of a strange sept, (*b*) a fair rent from one of the sept, and (*c*) a stipulated rent paid equally by the sept and the strange sept. There is no commentary on this paragraph. I suggest that the meaning is that in letting land or hiring stock to one of a different group family (*a*) the hirer would be called on to pay additional food, cattle, or money to the family, besides being responsible for the cess or customary dues to the chief which the holder of the land paid as a freeman; that a similar transfer to one of the same family (*b*) would be subject only to the recognised charges, the fair rent, in fact, of the Irish Ulster tenant right; and that where (*c*) the lands of a community were farmed by them in common with another group family, not I imagine an uncommon arrangement, as it is hinted at several times in the laws, the division of the cess and any additional payment would be matter of arrangement.

The pre-eminence of feudal law and land tenure in our social and political history has resulted in confusing the customary dues paid to the chief by the freeman and the contemporary holding by the same freeman as his inherent right, of a specified part of the common soil allotted to him

Digitized by Google

by the chief, with the competition rent payable by the tenant to the lord in return for a grant of land as a matter of bargain between two individuals.

Tribal dues paid to the chief as such and the use of the common soil allotted by the chief to members were two things which had no connection with one another, except that one was the duty and the other the right of every freeman. Both were incidents of common life defined by immemorial custom, alterable only by consent of the community. On the other hand, the feudal service very early developed in England a competition rent for the use of the land as the increase of population and export trade with Flanders and France raised the value of land. The customary dues only came to be regarded at all as rent under the influence of the gospel of absolute monarchy over the soil which grew up over Europe, as it was applied by James the Sixth and First in turn to the Western Highlands of Scotland, to the Orkneys, to Ireland, and to the Northern counties of England.

But the tribal dues have become stationary, increasing only with the increase of population on the land; money tends to fall in value, and land with increase of population and enlarged trade to rise; so both king, Church, lord, and chief incline to supplant the freeman paying small dues for his small measure of land, his bovate, oxgang, penny land or other measure, for a farmer who may be himself at a competition rent to farm twenty such measures. If the farmer has not sufficient stock, the lord may supply it to him for a service, money or produce rent.

Other Causes of Change.—Many other causes turn affairs in the same direction. Agriculture requiring more capital than pastoral pursuits, the landowner looks for a tenant who has capital and not by any means of necessity only cattle as such. The large farmer, occupying great tracts of land and doing business on a large scale, takes the place of the customary tenant with his small holding, and requiring better use for his capital makes farming more intensive, and rebels first against forest conditions and wandering wild beasts, and later against unenclosed arable fields.

Digitized by Google

The beast can go to market on its own legs; the corn or the wool require to be carried; roads and rivers, seaworthy ships, become of increased importance as means of communication; intercourse with foreign countries increases. And with fairs and markets and the growth of towns comes another cause for the replacement of local authority by a federal power, the desire of the merchant and the shipper to get rid of the incessant leakage of all sorts of tolls—pontage, stallage, murage, passage, lastage, quayage and tronage, *theolonium tolmetum*, etc., all the little irritating exactions of the district lord at the hands of unpaid deputies which harass the trader, tolls which form the body of exemptions or grants of all sorts to all kinds of men and corporations. Not that the tolls disappear; the towns become depôts for trade, and jealously guard the privilege of being the place of sale by exactions of all kinds in their turn.

Commerce makes the usury ideals of the Church, which aim at the protection of the indigent from the harsh pressure of the man who lends, impossible. Where the law of the Church is not actually repealed, it is evaded by all sorts of means. This alone is a great and interesting study.

Money becomes increasingly necessary as the medium of exchange, and being easy to make and to debase inclines to fall in value as land rises; and as men begin to talk glibly about liberty and equality, coupling the two in an absurd connection which dates back at least to a degraded period of East Roman bureaucracy, the poor men are becoming poorer, the rich richer; law made from outside binds the poor man that has no friends, and supply and demand, the calico gospel to be embodied much later in Adam Smith's day in a world of treatises on money making, control the area, more and more confined, in which the man who had no money must spend his energies as the labourer. Kinship disappears, and with it goes the reason for the anomalous position of the Jews, who are expelled from England by Edward I.; the king and the needy churchman can borrow money more easily and with less sense of a contradiction in ideas from the Italian Christian,[5] custom begins to disappear under the outpouring of law, whether written statute or

Digitized by Google

case law; democracy in the true sense has long gone; only the Church, with its discredited remedies for social evil, feebly stands for a society as restraining the individual greed; and the Church itself is too much concerned with worldly advancement, too closely connected with the tainted bureaucracy of the Papacy, to have any great influence of restraint.

To crown all, comes the fall of Constantinople and the resulting discovery of new worlds, reproducing in the sixteenth century a riot of adventure, followed by commerce, similar to the outbreak of the Norse in earlier times, telling heavily in favour of individual effort as against the stationary reluctance for enterprise which was and is one of the features of communal society.

None of the above conditions arise to any great extent until the increase of population and with it the increase in the value of land led men to look abroad for advantage and profit, and by inducing the factor of the export market to encourage the use of money as a medium of exchange in the place of produce.

The greatest change of all comes when trade with the neighbouring village gives way to a more extended commerce with a distant town or with a foreign port, requiring a medium of exchange which may not be cattle or corn but an easy means of trading elsewhere.

The prime cause of the increase of commerce was no doubt the Crusades, but such influence only gradually told. By the end of the twelfth century this and other agencies, such as the connection with France by the marriage of Henry II. and Eleanor of Aquitaine, were becoming influences of importance.

From the first England, conquered successively by the Danes and by the Normans, and through England, Wales and South-Eastern Scotland owing to their relations with the Continent and with Rome and the commerce with Flanders, all in varying degree experience the force of these natural causes of change, and move gradually in the direction of the individual freedom requisite for commerce, subject only to the occasional set-back caused by some political convulsion. But the other parts of the islands, the Orkneys, Ireland, and the Western Highlands and Isles of Scotland,

Digitized by Google

have been subjected to these natural influences under conditions which have resulted in a much slower development, an arrested growth, or a silent stagnation.

The story of the decay of the communal society in the Orkneys has been already told on pp. 282–6.

Ireland and Economic Causes.—I do not wish to weary readers by iteration of unpopular Irish history. The communal society in Ireland was so wholly wrecked by the date of the Restoration that what follows would be outside the limits of this volume if the perpetual breach of faith and persistent persecution of the Irish had not kept its memory alive up to this time. In a very few words I will enumerate only a few of the persistent efforts made to destroy from time to time every enterprise of the Irish built up by the industry of the people which conflicted with the interests of the larger islands. The efforts of the Irish to rebuild the prosperity destroyed by the men of the pale and by James and Cromwell, and the determination of the English and Scots to crush their efforts, can be read in the pages of our great historian Lecky, and in the works carefully suppressed of Hely Hutchinson and others. Reading these writers, it will be seen that where the subordination of Irish industry to English or Scottish trade and manufacture could not be effected by direct trade legislation, which would at least have been an honest form of oppression, it was gained by putting the whole population under a ban as to land ownership and tenancy (if the Catholic improved his land beyond a limit of value it passed to the Protestant Discoverer), the holding of office and the acquisition of the capital necessary for trade, the exercise of professions, the education and care of children as guardians, by disqualifying Acts directed against Roman Catholics, in direct breach of most solemn treaties. It was a form of persecution which was purely a commercial agency in support of the Anglo-Scottish supremacy, having no root in difference of religious belief in an age when religion was merged in the political struggle for commercial advantage, an age in which by a very natural reaction from the strain of the Reformation kings and rulers showed an open, undisguised contempt for religious beliefs.

Digitized by Google

Of the Irish population, deprived both of the franchise and of education and of all forms of occupation and put under the heel of the Anglo-Scottish minority, the Tory Dr Johnson remarks: "There is no instance even in the ten persecutions of such severity as that which the Protestants of Ireland have exercised against the Catholics"; the Whig Burke writes: "All the penal laws of that unparalleled code of oppression were manifestly the effect of national hatred and scorn towards a conquered people whom the victors delighted to trample upon and were not at all afraid to provoke"; the historian Lecky describes it as universal, unqualified, and unlimited proscription, and points out the feature which divides this from all other historic persecutions. Other such were directed against minorities. "It was the distinguishing characteristic of the Irish penal code that its victims constituted at least three-fourths of the nation, and that it was intended to demoralise as well as to degrade." In this it has undoubtedly succeeded.

If the Irish of to-day are behind the Scots and English in education, if they are slow to take advantage of opportunities for enterprise, if they are political dreamers (I do not say that they are all these things, but it is generally supposed that they are; they are undoubtedly more chaste and less criminal than others), then such a condition is the result of the refusal in the past to allow to the whole nation the ordinary rights of humanity, and to the refusal now, at the bidding of a section of an English political party, to allow them right of self-government which is the admitted inheritance of every full-grown nation. "The mass of the people gradually acquired the vices of slaves. They were educated through long generations of oppression into an inveterate hostility to the law, and were taught to look for redress in illegal violence or secret combination. Under the long discipline of the penal laws, the Irish Catholics learnt the lesson which, beyond all others, rulers should dread to teach. They become consummate adepts in the arts of conspiracy and disguise."

In consequence of the long-continued suppression of natural energy, the operation of natural causes has been

Digitized by Google

checked. The increase of population has not operated in Ireland to induce individual effort; the surplus of people, all the energy of the country, has exhausted itself in emigration to the United States or the Colonies, or has resigned itself to idleness and the neglect of opportunity which results from despair, or has followed the manufacturer into countries where trade was allowed, and sought employment elsewhere than in Ireland.

There is a solemn irony in the reputation for idleness which has fallen upon the Irish people, though by the iteration of their commercial destruction they may by this time have deserved it. We shall no doubt soon hear of the laziness of the people of Cork and Queenstown, deprived of the stimulus given to many by the Cunard steamers. If they are idle, it is our doing. On every occasion on which they have attempted to create wealth the ruling country has destroyed the means in its own interests.

After the Restoration the Irish cattle trade began by its prosperity to interfere with English profits. The importation of Irish cattle into England was prohibited by an Act 18–19 Chas. II., c. 2, of which the preamble declared "the importation of cattle a publique and common nuisance, as tending to the great prejudice, detriment, and impoverishment of this kingdom." Of this Act Pepys in his Diary comments on October 8th, 1666: "The House did this day cause to be engrossed the Bill against importing Irish cattle; a thing it seems carried on by the Western Parliament men, wholly against the sense of most of the rest of the House, who think if you do this you give the Irish again cause to rebel." The Act was only repealed in the reign of George III.

But the Irish did not rebel. They turned their attention to sheep and woollen manufacture with such success that in 1699 an Act prohibited the export of Irish wool or woollen manufactures, the preamble proclaiming that great quantities of woollen manufactures are made in Ireland and the English plantations and exported to the detriment of English trade with foreigners.

William III. wrote to Lord Galway, the deputy, so to

Digitized by Google

manage with the Irish Parliament "that you make effectual laws for the linen manufacture," which was being founded in Ulster, and "discourage as far as possible the woollen." The linen manufacture made no progress beyond Ulster, while the absolute prohibition of the export of Irish wool proved so detrimental to the interests of the English themselves, that in 1739 the prohibition was relaxed, the Irish manufacturers competing from foreign countries with the advantage of an enormous amount of smuggling.

The effect of these regulations for the suppression of Irish trade was shown in the decay of tillage and a heavy emigration from all parts of the islands. The British government had to fight in the American colonies the men whom they had driven from their homes in the islands. In America they were able to retort on the suppression of the trade. The Irish at home were not able.

But a blow even more severe than the destruction in England's interests of the trade in cattle and the trade in woollen goods was the destruction of the Irish shipping interests by the laws forbidding her people to sell to others the fruits of their labours. In 1663 a Navigation Act prohibited Ireland from taking any part in the trade with the colonies, the import of any goods to them being forbidden except in ships built in England and manned by English sailors, or from them without first landing in England. This prohibition was strengthened by further Acts in 1670 and 1696. All this was in accordance with the commercial principles of the day. Debarred from colonial trade, the Irish turned to the rest of the world. But in 1699 the climax was capped. It was forbidden by the English Parliament that the Irish should export their woollen manufacture, which had now become their staple industry, to any country in the known world. Well might Swift write, some thirty years later, that the magnificent ports and rivers of Ireland were of no more use than a beautiful prospect to a man shut up in a dungeon.

A period of absolute stagnation followed. "A country blessed with a temperate climate and fruitful soil, abounding with excellent harbours and great rivers, with the necessaries

Digitized by Google

of life and materials for manufacture, and inhabited by a race of men, brave, active, and intelligent . . . crushed for commercial reasons by the Anglo-Scottish Parliament, fell into that hopeless despondency that hangs over the brow of unemployed industry." "Whoever travels in this country and observes the face of nature and the faces and habits and dwellings of the natives, will hardly think himself in a land where either law, religion, or humanity is professed."

The object of this chapter is to trace the decay of the communal society as it came in contact with the economic forces which told against its existence.

Beyond therefore indicating the means which have throughout prevented those forces from having their natural sway in Ireland, which have checked the growth of population in the island and made poverty in a naturally fertile land, there is no need to follow the pitiful story further. We may leave to one side the short period of prosperity commencing in 1781, before the Union, when for a short time the Irish Parliament achieved independence of Westminster, and the subsequent story down to the famine of the last century, in which millions died, and more millions emigrated to new worlds, while England and Scotland looked on.

Let it be carefully kept in mind by honourable Englishmen and Scotsmen, who can free themselves from the partisan abuse used by the Ulster politician to prevent unity in Ireland, that the causes of Irish discontent and bitterness, the reasons for their holding apart from our present-day crusade, are not differences of religion but that the policy of Great Britain towards Ireland for five hundred years has been, the confiscation of the lands of the Irish, the denial of the privileges of manhood to the Roman Catholics for commercial reasons, the exclusion of the Irish from the ports and from all commercial expansion, and the restrictions on Irish manufactures, trade, and enterprise. See Appendix J, "Ireland of To-Day."

NOTES.—[1] *Cal. Doc. Irel.*, vol. i., No. 220, A.D. 1242. Ships are to be forced to unlade at Waterford as they are now using to unlade elsewhere. The Cunard steamers which have found it convenient to stop at Cork have in 1917 been forbidden to stop there. Leet Court of Beverley, p. 52. Chandlers are presented for making agreement that none of them shall sell a pound of candles for less than one another

Digitized by Google

[2] Statistics of population:—

	In 1801.	In 1901.
England and Wales . .	8,892,536	32,527,843
Scotland	1,608,420	4,472,103
Ireland	5,395,456	4,458,775

[3] *A.L. Irel.*, ii. 127, 137. [4] *A.L. Irel.*, i. 159. The word *finé* is translated tribe. The group family is more likely to have been the unit. [5] See Y.B. 16 Edw. III., vol. i. xxxi and 108.

CHAPTER XXXVI

ECONOMIC CAUSES IN WESTERN SCOTLAND

THE history of Western Scotland, as the society suited to its pastoral needs met the political and economic change, is even more sad, I think, than that of Ireland. Ireland, a rich country, from her very possibilities of wealth obnoxious to the stronger neighbour, has suffered longer and has suffered far more, and continues to suffer. But at least her suffering, her destruction, has come from outside, from an alien and a hostile nation, who from her geographical position possess both her body and soul.

Western Scotland, a purely pastoral region, off the road of commerce, where agriculture was a very subsidiary occupation, with no great harbours like Ireland opening to the West and calling her to the new world, with scant population and poor communications, has been exploited and sold by its leaders, its tribal chiefs.

The problem here was a very difficult one, which had been felt long before the revolution caused by the '45 made it a political question. The population always threatened to outgrow the means of life; the possibilities of alleviation by increase of commerce or by emigration were in those days very small indeed; and the men of the West had in consequence become a constant thorn in the side of their Lowland neighbours by their plundering raids and demands of blackmail, conditions which it was impossible should be allowed by the federal power to continue.[1] The only means adopted of meeting the difficulty had been, as in Ireland, military suppres-

Digitized by Google

sion, accompanied by such incidents as the brutal massacre of Glencoe at the orders of William III.

Let us try to look at the subject from all points of view. It is not, as in Ireland, a contest between a government beyond seas forcing plantation, grievously breaking faith, calling in the aid of ghastly massacres, of famine, of exportation for slavery, of all the horrors of the worst ages of warfare, and in the seventeenth and eighteenth centuries covering it all, as the running sore of Ulster does to this day, with a pretence of religious fervour and an accusation of impending attack of the wolf by the lamb. It was in Western Scotland a conflict of social systems created and continued by permanent natural economic causes, and affected by transient influences arising out of politics and European war and the discoveries of science.

There are certain outstanding facts which cannot be gainsaid or ignored. A great part of the country is rough, rocky, hilly, and barren, giving only a bare subsistence to cattle or sheep, and suited only to those breeds which are hardy and active foragers and not choice feeders. It is easily overstocked. The climate in the Central Highlands is very severe. In the valleys along the streams where the soil is good and productive the rainfall is a perpetual discouragement to arable cultivation. Marshall, in his *General View of the Agriculture of the Central Highlands of Scotland* (*i.e.* Perthshire, the part lying nearest to the arable districts), in 1794 (p. 16), describes it as "a small proportion of arable crops; a greater proportion of green pasturage and meadow; a vast extent of heath, intermixed with herbage and scattered with rocks and stones; with some extensive tracts of natural and planted woods."

Under these conditions of soil and climate the communal form of society had continued to suit the country and had remained. The hill pastures were enjoyed in common by all the occupiers of the small township holdings which I mentioned above (*supra*, pp. 289–92). All, says Marshall, as late as 1794, was unenclosed, except sometimes "march dykes," stone walls between the lands of neighbouring proprietors; but he says the separations were not intended as fences against sheep,

Digitized by Google

which still overran the country during the six months of winter, when the entire district might be said to lie in the most perfect state of common.

It was upon this common use of the hill pastures that the Highland farmer depended for his existence, and it is by the seizure of these that his destruction is effected. Like the small farming class of the other parts of the islands, he is crushed by exclusion from the waste (*supra*, pp. 267, 279, 293–5).

The Danger of Overpopulation.—The continuation of the system depended on some means being found by which the surplus population, as it became too great for support from the soil, could be disposed of, pointing to emigration as the remedy. But, on the other hand, an equally indisputable fact, of which, owing to the views then taken of political economy, and to the interests of the chiefs and Lowland sheep farmers which accorded with it, little notice was taken, was this: that if those who had power succeeded, as happened, in destroying and driving away the men who by historical tradition and inheritance of social ideals were attached to the land, it would be extremely improbable that any other class of men would be willing permanently to occupy so poor a soil with so bleak a climate in so remote a region. Agricultural writers, even though advocates of large farms, saw this danger. Marshall, in the work already quoted, strongly urged keeping the people there, saying that they were attached to their native country, and that, if once depopulated, the Highlands would not be easily repeopled, as strangers would not have the same attachment.

Still another important fact was that the chiefs had become very largely absentees, only visiting the country for a very short period of the year or at intervals of several years. They inclined to become, instead of chiefs, rent chargers.

After the '45 the clan system was politically broken up, but without anything being put in its place except obedience to the political economy of the day. The chief ceased to have any legal or political authority as chief of the clan, but he acquired the position of absolute proprietor of the lands of the clan, entitled to all the profits to be got out of the land as owner. His was the only title acknowledged.

Digitized by Google

Under the old system he had been comparatively poor, in contrast to the Lowland Scot or English proprietors of arable lands and to the captains of industry of the South; but he was proud of poverty resulting from fidelity to his position as head of a community which forbade him to increase, without their consent, the contributions of the freemen paid to him in respect of their membership of the clan. These customary dues as yet remained the basis on which the holdings of the tribesmen were apportioned, or, as it had come to be called and considered, rent for the land.

The chief and the clansman alike had despised the Lowland merchant sacrificing all to personal profits, as much as the Lowlander despised him and his black cattle. But when his patriarchal authority was destroyed, when he ceased to be the head of the group family, but was politically and socially put on a level with his followers, the chief gradually made up for the change by adapting himself to the commercial spirit of the age. Owing to the tie between the chief and the clansmen, who had in the recent war fought and suffered together, very little change took place until the generation had died out. But if the process was slow, it was sure. The new men acted on commercial principles, and, says the Earl of Selkirk,[2] "as an unavoidable consequence, the Highlands in general must soon fall into that state of occupancy and cultivation which is most conducive to the pecuniary interest of its individual proprietors."

The Chief becomes Absolute Owner.—There you come at once in contact with the idea which was being steadily impressed from without on the converted chief, his assignee and his factor, that he should view the land as an individual proprietor entitled to all the profit to be got out of it. The land had ceased to belong to the sept; it was no longer a tie between him and his people; it was his as absolute owner. He had no one to consider but himself, and he was urged to approach this most difficult problem solely from the standpoint of the absolute individual owner who had to do the best he could with his own property.

The crux of the entire question, from the point of view of the practical economist who did not desire revolutionary

Digitized by Google

methods, was the regulation of the hill pastures, so that they should not be overstocked by the animals of the Highland Club farmers. This was in the first instance the business of the chief. In each of the officiaries, each consisting of an ancient barony, says Marshall, speaking of the divisions of the great Highland estates, resides a ground officer, generally a principal tenant. He is a bailiff and more, seeing to repairs of roads, settling of disputes, etc. He calls in to settle disputes, birleymen, sworn appraisers and valuers. It was the chief's duty to see that this was done. I refer to pp. 351–354. If there was overstocking, the chief was responsible for it.

But the chief had become an absentee in Edinburgh or London, enjoying a milder climate and the pleasures of town society or English country life. There was no longer the reciprocity of rights and duties which made the then existing conditions of user of the land a possible foundation for society. He had become a rent charger, having rights without any corresponding obligations; the only test of the prosperity of the country was to be the amount of the rent which the absentee owner could squeeze out of the holders of the land; and every circumstance of the century helped to harden him in the belief that he was not only legally but politically and socially just and right, and that the savage evictions of the Highland tenantry for a century and a half were an "improvement."

Unfortunately, in the handling of a question of such supreme difficulty, the soulless political economy of the age governed everything from first to last. It was the age of the individual money maker, of Adam Smith. Society was nothing; manhood was nothing; if there was a surplus population, they must seek the market for their labour, and find a home elsewhere. Everything was to be sacrificed to the benefit of the individual owner.

When landed estates belonging to individuals are on a large scale, they do not want surplus population. Like the big shop managed on commercial principles, the desire is to attain the greatest possible profit at the smallest cost. Where a society owns land, the profits must be subordinated to the employment to be found for the members, and to their social welfare.

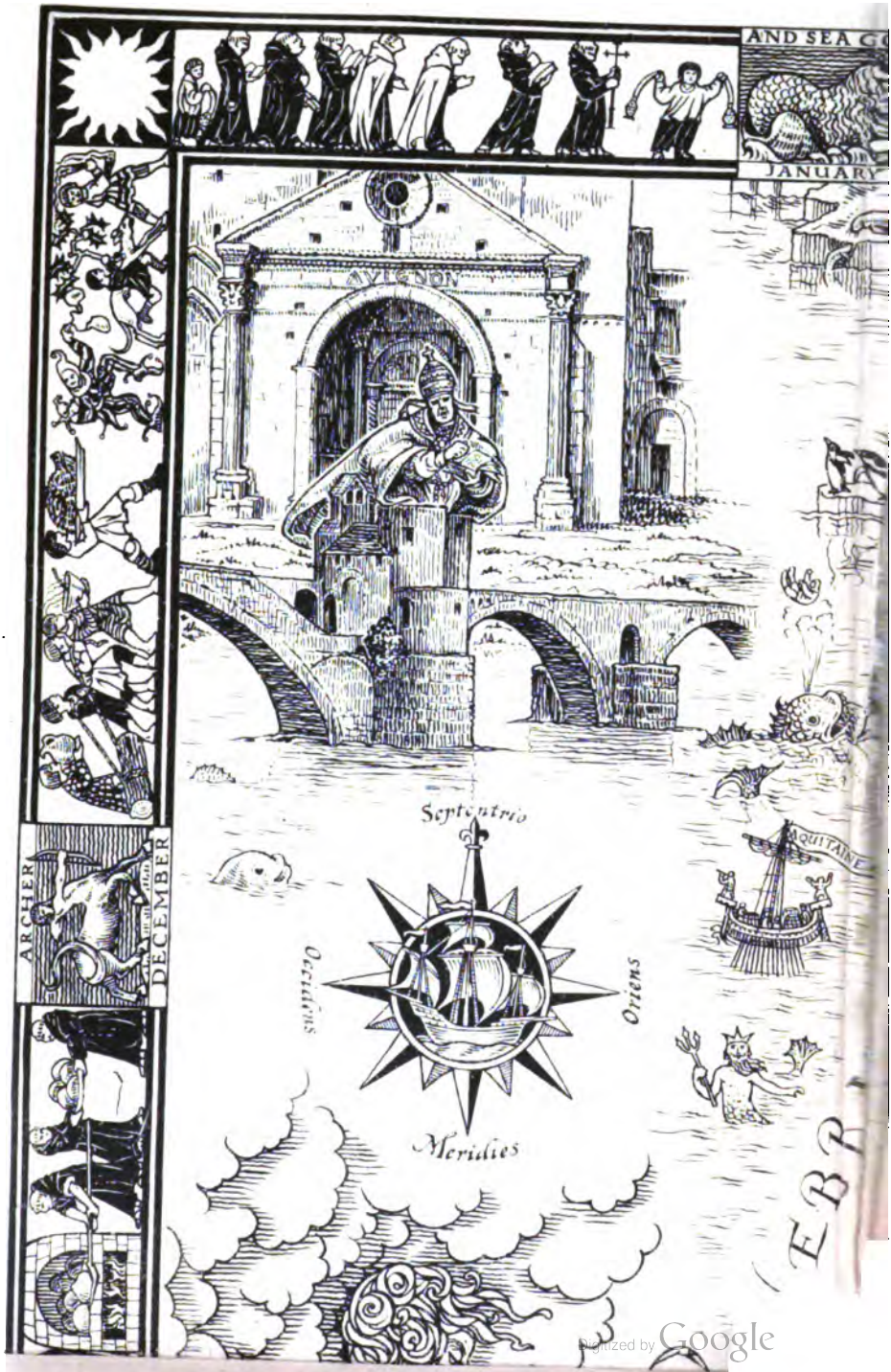
Digitized by Google

So the proprietor lets to the man who will give him the highest rent; the tenant is expected to use as few men as he can work with. The accumulation of money becomes the only touchstone. For him the test is not the manhood or health or wealth of the society. From first to last the question centres not round the real difficulty, the threatened excess of population, but round the competition rent. Can more be made for the chief, the absolute owner, out of large mixed farms, out of Lowland sheep herded by strangers, out of deer, than from the customary dues paid by the men whose ancestors as the chief's kin had held their little farms from the time when the chief was one of themselves?

The observations of the Earl of Selkirk, in 1806, are most interesting reading, for they are the work of a man who, appearing to be wholly unconscious of past conditions, put his theories about the conditions of the present into practice.

Like Moses he led a colony of emigrants to the Red River of Western Canada, but, unlike Moses, he left them in the desert to be massacred by the Indians, and fled back himself to the fleshpots of the East. His observations show that the whole question was for him and those in his position the amount of rent to be obtained. Here are a few quotations: p. 34, From the great and continual rise in the value of grazing cattle, many who, in taking their leases could only calculate on a bare subsistence for themselves, have been enabled to pay their rent with tolerable ease; p. 36, the rents that are now to be paid will not allow the occupier to submit to any unnecessary expense . . . the families to be maintained on the ground must, in his own interest, be reduced to the small number who are sufficient for the tending of his flocks; p. 37, the proprietors will find it to their own interest to throw several farms into one. The occupier of the very small farm has no means of paying an adequate rent—and so on. Speaking of the number of horses (App. cxxiii), he says: by throwing several farms into one, the number of these expensive and unproductive animals is immediately reduced. Were there no other advantage than this, the occupier would be enabled to pay a higher rent in proportion to the extent of land . . . to an absentee landlord.

Digitized by Google



Digitized by Google

Digitized by Google

This was the view of the converted chief. On the other hand, the tacksman's and cottar's right was also based on a claim of proprietorship, but not as an individual. He held his piece of arable in runrig, and he claimed his right as a member of the community to range his cattle on the hills beyond. They were not in any respect treated separately. He paid one sum or rent in produce to his chief for both. He declined to regard the chief in any sense as an absolute proprietor.

Between these two opposed beliefs there could be no doubt as to the winner; the chief had not only all the force of what was called the law, the written documents of title, on his side, but all the economic conditions told against the poorer freeman. Under the stress of foreign war, all the authorities who wrote on agriculture or political economy were urging large farms and concentration of capital. The chief could not only put money into his pocket, but he could feel a sense of righteousness in doing so.

It would not appear that there was any decrease of stock upon the range, that the spending of much money on improvements, which were of no value for stockbreeding, was any gain to the land, that there was more arable cultivated, that the timber was better conserved,[3] or that, in any respect, the canons of good farm or estate management were better observed. But the chief fell in with the economic change which was coming over the Highlands in the eighteenth and nineteenth as it had come over England in the fourteenth to the sixteenth centuries, the substitution of the one man of capital for the many small holders who had customary rights which often conflicted with the lord's profit or pleasure, and the substitution of a competition rent depending on the prices which could be obtained for produce in a southern country of commercial wealth for the customary dues paid to the lord.

The Successive Steps in the Change.—He began by the easiest form of increasing profits, by squeezing out the middlemen, the tacksmen as they were called, generally his own kinsmen, who sublet the farms to the smaller tenants. He began to farm his territory direct by leasing it to a factor for a rent, the factor making his profit, often a fortune, out of

Digitized by Google

the business. The rents being paid in produce such as barley and poultry gave a good opportunity for the factor's profit on exchange. To appreciate, says Mackenzie, in his *Outer Hebrides*, the demand of the Lewis men for the dismissal of Seaforth's factor (a demand made under threat of emigration to America) it is necessary to explain the unique position of that official. He had secured a lease of the factorship with its numerous emoluments for a number of years; and the office proved a veritable gold mine to him. He had a complete monopoly of the trade in black cattle and of the white fisheries. The tenant had to sell his cattle before he could pay his rent. No tenant was allowed to sell his cattle (until his rents were paid) to anyone not empowered by the factor to buy; and if any person attempted to purchase with ready money, the cattle were arrested and were not permitted to be sent out of the country until every penny of the rents had been collected. The owner was an absentee.

Some of the tacksmen emigrated to America, taking the smaller tenants with them; but the emigration was, at first, not great, for the lord did not want it, and the affection for the land among these cadets of the greater house was strong.

Very soon another phase of the revolution occurred. A great temptation was offered to the chiefs as landowners from the agisting of the flocks of Lowland sheep at a competition rent in the place of the modest tribute paid to his honour by the men who ranged their stock on the club farms upon the thousand hills. This meant depriving the Highland farmers of their hill pasture and confining them to their small crofts in the valleys, or removing them to cottages by the seaside.

Consider what was the result of this change to them. They had hitherto been farmers, owning by means of their hill pastures and club farms herds of breeding cows and other stock, by which they were able to pay their way when their potatoes or oats failed them, feeling all the responsibility of ownership, all the patriotism it engenders, exercising hospitality, warmed by the social tie of kinship to wealthier men. Like the English peasant spoken of by Mr Prothero, the Highland farmer was standing in rags but standing on

Digitized by Google

his feet. From this position they were to be driven out to make way for strangers who would pay to the absentee chief a higher rent, driven out to be treated as cottagers dependent on casual daily labour at the will of those who had transplanted them, or of those to whom they had leased or sold the land.

The temptation to the chiefs was very great indeed. The difference between the tribal dues from the club farms and the rents offered by the Lowland sheep farmer was enormous. The highest croft, says the Report of the Commission on the Highlands speaking of Sutherland, pays £7, 16s. The lowest farm stands for £290. A classic case, I believe, is that of the summer grazing in Glengarry, for which the Kintail Highlanders paid £15, but for which a Lowland sheep farmer offered £350. The increased rent did not mean any increased value in the land or any higher farming, which with such a locality and such a climate was not likely. But it meant, what the apologists for the evictions called an "improvement," a much larger rent into the pocket of the lord.

This did not alter the view taken by the freeman. The £15 to him represented the dues paid to his chief as an honour (as Tacitus says) and not as a competition rent. And so, even though without hope, he fought for his rights.

Writing of the men of Ross, who in 1792 had risen and driven off the sheep which had been brought to stock their farms turned into a sheep walk, the Earl of Selkirk goes on to say: there is scarcely any part of the Highlands that has not in its time been in a state of irritation as great as that of Ross-shire in 1792. What was the remedy?

We come upon another unquestionable fact; the communal contributions were, according to the political economy of the day, out of date. The contributions to the chief had remained stationary; the farmers on the spot had all the advantage of ownership on payment of small dues, and they could take advantage of the rising prices owed to European war and increased commerce. Why not? The chiefs had become permanent absentees called by larger interests to the South, only exercising the privileges of chiefs when as

Digitized by Google

officers of the British army they led the Highlanders into battle against a foreign enemy, often highly esteemed in England on this account. Their expenses in the southern country had outrun the receipts from their Highland proprietors.

So far as the society was concerned, no harm was done by the farmers being freed from heavy rents in a country where capital meant cattle or sheep. But the theory that the value of land was its rental value called for a clean sweep of the old system, and the Roman idea of the absolute dominium of the lord had extinguished wholly the tradition of common ownership and common interests.

It became a general habit of most of the Highland chiefs or proprietors from the last quarter of the eighteenth throughout the nineteenth century to evict the Highland freemen from their hill pasture and arable holdings, and to turn the land into large sheep farms for their personal benefit. Where they were not able to do so it was the result of the strenuous, violent resistance of the occupants.

The facts collected in Mackenzie's *Highland Clearances* about these evictions in all parts of the Highlands, together with other contemporary accounts, the Reports of the Commissions and the trials of alleged rioters, form a most lamentable picture on which I have neither time nor inclination to dwell. The evictions appear from cumulative evidence to have been carried out with an extreme of cruelty. The proprietors in whose names the evictions were made were in large measure absentees who acted through factors; the new tenants, to give them legal authority, were sometimes made Justices of the Peace; and in many cases the clergy, who had hitherto held their pasturage in common with the freemen, got their advantage by supporting the landlords (see *supra*, p. 49). They could have checked the clearances, but they benefited by them, getting enclosure of their hill pasturage, increased arable land, and buildings.

To hasten the removals, Macleod says, the factors burnt the heath pasture so that the cattle should have no feed, at the same time by the burning destroying the fences of the arable lands so that the crops could not be protected.

Digitized by Google

Speaking of the evictions in Sutherland in the very severe winter of 1816, he says, "I have seen scores of these men employed for weeks together, with the snow from two to four feet deep, watching their corn from being devoured by the hungry sheep of the incoming tenants; carrying on their backs—horses being unavailable in such a case, across a country without roads—on an average of twenty miles, to their new allotments on the sea-coast, any portion of their grain and potatoes they could secure under such dreadful circumstances." Donald Macleod says, "I was an eye-witness of the scene. Strong parties for each district, furnished with faggots and other combustibles, rushed on the dwellings of this devoted people and immediately commenced setting fire to them, proceeding in their work with the greatest rapidity until about three hundred houses were in flames." He describes the scene, the people striving to remove the sick and helpless before the fire should reach them, the roaring of the affrighted cattle, hunted at the same time by the yelling dogs of the shepherds amid the smoke and fire; "I myself counted 250 blazing houses, many of the owners of which were my relations and all of whom I personally knew."

As a result, "ancient respectable tenants," says General Stewart,[4] "who passed the greater part of life in the enjoyment of abundance and in the exercise of hospitality and charity, possessing stocks of ten, twenty, thirty breeding cows with the usual proportion of other stock, are now pining on one or two acres of bad land with one or two starved cows."

But Sutherland was only one part of the vast area over which this revolution was effected. The evictions, the burnings, the forced emigrations, the transplantation of the poor have gone on over the whole of the Highlands for a century and a half. Probably the worst accounts of any are those of the treatment of Glengarry, Knoydart, the property of the Bairds in 1853. Leckmelm, in the parish of Lochbroom, was bought by Mr Pirie, a paper manufacturer of Aberdeen, in 1879. He took the land into his own hands, seizing the hill pasture and simply allowing the tenants to

Digitized by Google

remain in the cottages where they might have no living animal, not even a hen, but must live in the condition of serfs, doing such work as he might choose to give them.

His notice to the tenants to this effect ordered them, if they wished to remain in the cottages, "to prevent your sheep and other stock from grazing or trespassing upon the enclosures and hill and other lands now in the occupation or possession of the said Mr Pirie."

As one more contemporary account in a lecture given in Aberdeen on these evictions of Mr Pirie in December 1880, the Rev. John Macmillan, Free Church Minister of the parish,[5] said, "The first move was to dispossess the people of their sheep. As long as tenants have a hold of the hill pastures by sheep, and especially if it be what we term a commonage or club farm, it is impossible to lay it waste in part."

The process was the same as it had been in England from the fourteenth to the sixteenth centuries and in Ulster in the seventeenth.

The first step was to drive them off the waste or forest. In the trial of the Bernara rioters (Blackwood, 1874), the crofters were ordered to remove from "fens, grass and houses, with their respective shares of moor grazing thereto attached, and from their respective shares in the summer grazings or sheiling ground on the farm of Earshadder." The common grazing rights, says the Minority Report of the Royal Commission on the Highlands, 1883, form the real obstacle to "improvement."

The Rev. John Macmillan went on to say: "During the first ten years of the great war Skye had given 4000 of its sons to the army. It had been comforted that 1600 Skyemen had stood in the ranks at Waterloo. To-day in Skye, far as the eye can reach, nothing but a bare brown waste is to be seen, where still the mounds and ruined gables rise over the melancholy landscapes." In 1882 the people in Skye were by notice forbidden to walk on the sheep grazing farms and were forbidden to keep dogs.

Game and Deer Forests.—One of the bitterest elements in these evictions from their homes must have been the refusal by the lord, whether the descendant of an old chief

Digitized by Google

or a new paper manufacturer, to allow the freemen to make use of any of the game or fish with which the woods and the lochs abounded. Evicting the men for deer forests to be preserved for the use of the lord began very early. Here Scotland imitated Plantagenet and Tudor England in the eighteenth century. In 1784 the Duke of Atholl cleared Glen Tilt. This was a very fertile valley occupied as usual by a township farm, each family having a piece of arable land, and holding the pasture in common. They had the right to fish and hunt. They were accustomed to take their cattle in the summer season to a higher glen which is watered by the River Tarf. The Duke appointed Glen Tarf for a deer forest, and built a high dyke at the head of Glen Tilt. The deer increased and jumped the dyke. The people complained. The Duke added another thousand acres to the deer forest until gradually he wiped out all the tenants.

Marshall in 1794, mentioning the feeding of mountain deer, observes that "little advantage is derived from this mode of occupying land," and expects it to go out. He did not foresee the wholesale evictions which were to take place on this account.

Writing in 1882 on the Nationalisation of Land, Dr Russel Wallace asserts that more than 2,000,000 acres of Scottish soil were then devoted to the preservation of deer. "On many of these forests there is the finest pasture in Scotland, while the valleys would support a population of small farmers. At the same time the whole people of England (? Scotland) are shut out from many of the grandest and most interesting scenes of their native land, gamekeepers and watchers forbidding the tourist or naturalist to trespass on some of the wildest Scotch mountains."

The Royal Commission on the Highlands, 1883, sums up the matter by reporting that in past times the "sub-tenant . . . on the vast unappropriated waste . . . could pasture a greater number of live stock"; now he "has been confined within narrow limits sometimes on inferior and exhausted soil." The waste for the most part is still unappropriated and unimproved except for the keepers and watchers and land and water bailiffs, who prevent the habitants of the soil

Digitized by Google

from using the wild creatures and the fish preserved by the lord, and for the flocks of Lowland sheep substituted for the cattle of the Highland club farms.

The following advertisement from *Land and Water* of June 12th, 1915, is an example of this prohibition of use of the wild food, fish, bird and beast, to the people who for many generations have inhabited the country, for the sport of wealthy aliens at the present day, to the profit of the chief.

SUTHERLAND ESTATES

SHOOTINGS AND FISHINGS TO LET FOR SEASON 1915

LOCH CHOIRE, BEN ARMINE, and DALNESSIE FOREST. 68,000 acres. Excellent Grouse Ground. 75 Stags. Good Fishing on the Rivers Mallert and Blackwater. Good Lodges. This might be let in three to suit Tenants.

NORTH DUNROBIN (part of Dunrobin Forest). 11,300 acres. Forest Ground and Grouse Moor. Grouse and other Game. 10 Stags. Salmon Fishing on River Brora. Accommodation in Hotels at Golspie or Brora.

SOUTH DUNROBIN (part of Dunrobin Shootings). 10,240 acres. Grouse, Blackgame, Pheasants, Partridges, etc. 10 Stags. Accommodation in Golspie Hotel or Private Residence.

SCRIBERSCROSS or DALREAVOCH. 15,700 acres. Good Grouse Moor. Five Stags. Salmon Angling on Rivers Brora and Blackwater. Good Lodge.

LAIRG. 32,000 acres. Grouse and other Game. Six Stags. Salmon Angling on Upper Shin River. Good Lodge.

SHINNESS. 18,230 acres. Grouse, Blackgame, etc. 10 Stags. Salmon Angling on the Rivers Tirrey and Fiag. Trout Fishing on several Lochs. Commodious and fully-furnished Lodge.

TRESSADY. 21,950 acres. Excellent Grouse Moor. Five Stags. Salmon Angling on Upper Shin River. Large and fully-furnished Lodge.

DORNOCH. 8120 acres of Grouse Ground. Arable Lands, Woods, etc. Grouse, Pheasants, Partridges, etc. Trout Fishing on Lochs. Accommodation in Hotels or Houses in Dornoch, close to celebrated Golf Course.

BEN HEE and CORRYKINLOCH FOREST. 30,750 acres. Grouse and other Game. 40 Stags. Fishing in Lochs. Fully-furnished Lodge.

BIGHOUSE. About 35,000 acres, Grouse, Snipe, etc. 10 Stags. Salmon Fishing on River Halladale. Commodious and fully-furnished Lodge.

Digitized by Google

LOCH NAVER. 18,000 acres. Good Grouse Ground. 10 Stags. Accommodation at Altnaharra Hotel.

LOCH LOYAL. 19,000 acres. Grouse and other Game. 12 Stags. Commodious and fully-furnished Lodge.

BORGIE. 19,000 acres. Grouse and other Game. 10 Stags. Salmon Fishing on the River Borgie. Comfortable and fully-furnished Lodge.

RIBIGILL. 8000 acres. Grouse, Blackgame, Woodcock, etc. Three Stags. Salmon Fishing on Kinloch River, and Trout Fishing on several Lochs. Accommodation in Tongue Hotel.

TONGUE. 11,600 acres. Grouse and other Game. Trout Fishing on several Lochs. Good Lodge.

THE HOUSE OF TONGUE. Gardens and Grounds. Fishing on Kyle of Tongue. Large accommodation. Charming residence.

KINLOCHBERVIE, and part of Gualen. 35,000 acres. Good Sporting and Fishing Place. 10 Stags. Good Lodge.

Further particulars from JOHN MORRISON, Factor, Golspie, N.B.

There is no doubt whatever that the change from cattle breeding in club farms on lands of which the holders had been possessed for many generations was accompanied by an extreme of barbarous cruelty. The problem then was the same as it remains now; but the bleak nature of the climate and the general poverty of the soil are such that there are few inducements to anyone to settle, and less than none if the rights of hunting and fishing are to be vested away from the inhabitants in a few generally absentee individuals. There is no opening for agriculture and no advantages for industrial development unless the water power can be used to create electricity or large encouragement given to fisheries. The only excuse offered by the advocates of the chiefs has always been the single-mindedness of the absentee, and the value of the "improvements," that is, the vast sums of money wasted both by the government and by private landowners in various unnecessary schemes swallowed up in the land without return by people who did not realise that the land was not available for agriculture. Possibly some of the descendants or assignees of the chiefs may have been benefited. I cannot say. There is nothing to be added further, except that while the treatment of the people has certainly succeeded in checking the population (a loss, for

Digitized by Google

instance, in Inverness County of 2832 persons between 1901 and 1911, an increase of population in Sutherland in the eighty years between 1801 and 1881 of 53 persons), it has also destroyed all social ties between the people and their natural leaders without any such material advance as would compensate for the loss. The emigration continues on an alarming scale, so that the Duke of Sutherland is reduced to offering land to soldiers, of course reserving to himself all the shooting and fishing.

Up to 1831 the population, in spite of the large early emigration, did not as a rule decrease. Every natural influence had told in favour of larger populations. The prevention of smallpox by vaccination, the call for intensive cultivation to produce food through the long wars with France and the years that followed, the cultivation of the potato, and lastly, the industry created by the discovery of extracting iodine from seaweed, all told against a wholesale emigration.

This last is an example of the difference in the use of the common materials in feudal and communal society. In the latter the community had the right to the use of the profits of the sea-shore as of the mountain waste. But the Highland proprietors assumed the property in the seaweed, and let it out to the tenants of the crofts at a rent to be paid to themselves [6] (*supra*, pp. 285–6).

The real problem of the Highlands, the undue increase of population, would never appear from first to last to have influenced the so-called proprietors as a principle. They looked only to the money rent to be gained for unimproved and unfenced land into which they had not even put a spade.

NOTES.—[1] It was disgraceful to steal from one of the same group-family or class but not from one of another class. In the account of Glenorchy and Inishail, on the borders of Perth and Argyll, the *Statis. Acc. of Scotland*, vol. viii. p. 359, says: "The Lowland people have long believed, lived by plunder, and will hardly credit that there is perhaps less thievery and picking in the Highlands than in any part of the king's dominions." Speaking of former times, the writer says of cattle raiding, "as this was often only a retaliation for similar injuries, and patronised by the heads of clans at variance with each other, it subjected the spoiler neither to punishment nor disgrace." He instances MacIan, who after Culloden watched over Charles Stuart for weeks, robbing for him at the risk of his life, when he could have got £3000 by

Digitized by Google

betraying him. He was executed at Inverness for stealing a cow. [2] *Observations on the State of the Highlands*, 1806. [3] As a most charming account of a Highland lord who honestly tried to do his duty, so far as it was consistent with an idle life in London and Edinburgh, and a reckless expenditure of money on fashionable life, ending in bankruptcy and an Indian judgeship, at the beginning of the nineteenth century, I would most highly recommend the *Memoirs of a Highland Lady: The Autobiography of Elizabeth Grant of Rothiemurchus, afterwards Mrs Smith of Baltiboys*. Part of its interest in the present connection lies in the destruction of the timber. [4] *Sketches of the Character and Manners of the Highlanders of Scotland*. [5] Mackenzie's *Highland Clearances*, p. 314 *et seq.* [6] The Earl of Selkirk says of the kelp industry (p. 135), "It is cut on rocks along the shore. The rocks in most cases are reserved by the landlords, who let them from year to year, or more frequently employ labourers to make the kelp at a stipulated allowance per ton."

CHAPTER XXXVII

A CONCLUSION. SOME OBSERVATIONS

THE communal society which I have tried to describe was one of which the chief occupation was the breeding of cattle, and in much lesser degree the cultivation of the soil. The society was self-supporting, its trade and exchange of products being confined to the provision of necessities and the purchase from Norsemen or near neighbours of such articles as were not procurable at home. The feudal society was one in which trade, strong federal government, farming for profit for foreign markets, and a variety of other causes combined to destroy the communal basis.

When the pastoral life was broken into by grain-growing, bringing commerce in its train, the tribal system, though it yet remained as a social and political shell fitting with the still great proportion of pastoral employment, lost its reason for existence as the exponent of current thought, and became a stationary survival out of place with the movements of society. That it has remained at all as an influence in a country such as Ireland, capable of great agricultural development, has been due to the consistent repression by the Anglo-Scot at any

Digitized by Google

attempt at the commercial or industrial development of that country up to the present day.

Except for the effects of such a policy as time went on all these matters which I have mentioned as agencies of differences between England and the rest of the Islands were being daily modified in the direction of nearer agreement.

There were no doubt large exceptions almost from the first in both systems. Military service soon ceased, owing to the employment of mercenaries, to be the reason of being of the feudal system, which was really only a state of transition from communal society lasting a few hundred years. The only permanent results of the system have been our present custom of landholding and the subordination of women.

On the other hand, the power of the kings and chiefs steadily increased at the expense of the free tribesmen, owing to their control of the forest waste, or unoccupied common lands; the payments mentioned by Tacitus as made by the freemen of the tribe in support of the chief became more onerous as the control over the chief was weaker; in various forms individual ownership of land battled with the communal holding. The changes were spread over a very great period of time, but the uncertainty of date of our authorities forbid the setting down of any exact period in which the change took place, nor would it be of any value if we could do so.

. . . . . .

The disadvantages of the communal society lie on the surface. Wherever it has been in the past, and it may be traced in every country in Europe, it is a hindrance to the investment of capital in land, so far as extra capital may be required for commercial farming for profit; it checks a thorough cultivation of the land and stands in the way of improvements. Non-division of land causes the able and laborious to work for the idle and incapable, unless some kind of serfdom is practised for the latter, and it may appear an injustice in times when the population is largely on the increase for unmarried members of the community to have to divide the products of their industry with the married ones who have unproductive families. On the other hand,

Digitized by Google

to quote a Russian writer, "It develops a feeling of mutual interdependence and joint relationship without which no system of social reform can have any chance of success . . . these communistic bodies escape from the disheartening influence of economic competition."

A Russian View of Society.—The advantages of the communal society over ours may be best summed up in the language of an English writer on Russia some thirty years ago, when Russia was slowly giving up her communal condition,—as expressing the views of the Russian village community on agriculture: "The nations of the west are at present on the high road to political and social anarchy, and England has the unenviable distinction of being foremost in the race. The natural increase of population, together with the expropriation of the small landholders by the great landed proprietors, has created a dangerous and ever-increasing proletariat—a great disorganised mass of human beings, without homes, without permanent domicile, without property of any kind, without any stake in the existing institutions. Part of these gain a miserable pittance as agricultural labourers and live in a condition infinitely worse than serfage. The others have been for ever uprooted from the soil and have collected in the large towns, where they earn a precarious living in the factories and workshops, or swell the ranks of the criminal classes. In England you have no longer a peasantry in the proper sense of the term, and unless some radical measures be very soon adopted, you will never be able to create such a class, for men who have been long exposed to the unwholesome influence of town life are physically and morally incapable of becoming agriculturists."

The truth of this indictment, written when the facts in support of it were not so blackly defined, will be admitted in varying degree by most people. It is surely not too late even now to make a national effort so to regulate the use of the land, as to give a larger number a stake in the soil which they are called upon to defend from an alien enemy. The enclosure of the numerous commons, the unused wastes on the road sides, the enormous number of unproductive parks (on the

Digitized by Google

average, I should say from my experience in driving through the southern counties of England, one to every five miles or much less), not only consume an immense amount of cultivable land put to very little use, but deprive all but a few of the common of pasturage which, perhaps of little value in itself, tends to create the sentiment of ownership among the poor without which no great country can continue to exist.

. . . . . .

I offer some observations on the land question as of one who has given much thought to the subject over many years. If of no value for other reasons, they may point to paths to be avoided.

I am not in the least concerned with what is called State Socialism, which is the reverse of the mediæval communal society, the vesting of all control over the materials of life and labour, and even over the means of expressing thought, in a central authority partially representing the confused and contradictory interests of a miscellany of individuals, who have no other common interest, a State authority which speedily passes from being a passable servant to become a tyrannical master. Such a system can only be reasonably effective where the society is not too large for the equitable adjustment of variations which are required in the interest of the weaker sections. No use of the land can be standardised, as it is subject to endless local variation of so delicate a nature as to vary from season to season.

As an example of such local variations, one which has always seemed to me very striking: anyone travelling round the Italian coast from Salerno by way of Amalfi to Sorrento passes through a steep wooded country, pastoral in character, scattered with lemon and orange groves. When he reaches Castellamare, he comes into a level district devoted to truck farming, with fields of cauliflowers, each plant sheltered from frost by brush or mat. A few miles further north and he strikes the dreary waste of the Campagna with its silence and hard grass and broken aqueducts; a few miles further still at Ostia there are the most beautiful wheat-fields I have ever seen; and again a little further north grapes and olive

Digitized by Google

groves. Even all this cultivation varies as the land rises towards the backbone of the Apennines.

Not every country produces in so small a space such a variety of crops and methods, but there is always sufficient divergence to make it very dangerous to entrust legislation, or management resulting from legislation, about the use of land to a central authority, which will not be qualified by local knowledge, nor very likely by general experience, for dealing with the variations of cultivation and use. The disastrous "improvements" attending the Highland evictions were due in great part to this cause. Internal land matters should be dealt with by the men of the locality and not by politicians who bolt and bang and bar the doors without even understanding which is the hinge and which is the lock.

The Vesting of the Waste in the Local Community.—I suggest an extensive devolution of all matters connected with the internal economy of the land, especially matters relating to the use of the land for food. I would urge that, with certain large exceptions, all lands which are not being used by the holder, no matter how long he may have been in possession and holding a title to them, should be vested in a board elected by the residents in the county, the board to be composed of an overwhelming majority of persons having relation to the land as owners, occupiers, or labourers.

I know that this sounds a very revolutionary suggestion. But to those who are aware of the enormous amount of land lying waste all over these islands, not only in private hands but as vast stretches of waste land along the roads and elsewhere in the hands of companies and of the State, the suggestion will not appear as daring or as disturbing to the natural law of property as may appear at first sight.

The law that the individual, who has improved the land, has fenced it, digged about it and dunged it, has a first claim to the returns, is a law of nature which is never broken without disaster to the nation which consents to the breach.

I am assuming that the individual ownership of improved lands would not be interfered with, and that the greatest care would be taken to vest only in the community those lands which are unused and unimproved, not the sheep

Digitized by Google

pastures which may be the necessary supplement of the moorland farming, or the water meadows and salt marshes for cattle, and that any owner of land who is willing to plant woods for timber and to protect them from vermin should be encouraged by absolute guarantee to invest his capital in the land. No class of men in the country have throughout been more patient, more truly patriotic, more ready to adapt to adverse and unexpected changes than the landowning and farming class. In the terrible days of the seventies of the last century the landlord carried the farmer and labourers on his capital, and never lost hope in the face of Free Imports and heavily taxed Exports.

The landowner who is resident lives a restricted life without much social pleasure, subject to a great amount of social obligation. As a rule he upholds a very high standard of manners and morals, and he sinks capital in the land at far lower rates under our fiscal system than could be obtained by investment in trade. "We may say in opposition to Mr George's notion that the land as the free gift of God should belong to all men, and be held by the State for the benefit of every citizen, that the land in many parts of England is as much a manufacture when compared with its original state at the time of the Conquest as the silk gown of a judge in Westminster is a manufacture from the spinning of the worms that feed on mulberry trees in Tuscany; and that the soil thus created has been in not a few cases a free contribution from the extraneous wealth of the landlord as much as the result of the tenant's labour expended on the soil."

For this very reason the spectacle of great tracts of land lying idle is as much an injury to the interests of the patriotic landowner and cultivator of used and improved land as the prostitution of the name of God by the Ulster politician is an injury to the Christian faith.

There are great tracts of land, such as Romney Marshes or parts of the fens of Lincolnshire, which appear to the eye of the town dweller to be put to little use, but which in reality are lands of special value working to their fullest capacity. There are other lands which as pasture can be put to more

Digitized by Google

profitable use than as arable land in the district in which they are situated. The use is a question for the locality.

But there are also other great tracts useless in their present state to the community, which encourage dangerous misunderstanding about property in land. The town dweller with the ignorance as to the nature and aptitude of land, which is increasingly common among the immense masses herded in our large towns, thinks that immediate returns could be made with little labour and at small cost out of such land, and he calls for general land nationalisation. He has never been made to understand that, whatever other industry may be worked with a small capital, the land requires much money and frequent replenishing. It is a bank from which we are constantly drawing, into which we must as frequently pay in deposits. So long as the men of the locality have the responsibility of putting to good use the waste lands, of finding the labour to cultivate, the capital to pay outgoings, the markets for returns, they are not likely to have much sympathy with the State demagogue with his expensive departments, who would appropriate all landed property, whether it has been put to good use or not, as political prizes among his followers.

Things necessary for Improvement.—There are certain requisites for successful improvement in the use of land which are the same everywhere and at all times.

One most absolute essential is that all the parties interested shall have the will to improve. It applies in turn to the resident worker who depends for his living on his daily labour on the land, to the farmer on a large scale whose contribution to improvement consists in high feeding of improved breeds of cattle, risking great losses on variable crops and uncertain seasons, to the landlord, as he is named, who is called on for the mechanical work of draining, fencing, building, and so forth, the matters not immediately productive in themselves but necessary in the highest degree for any improvement.

The large farmer, according to our modern ideas, is a man who has capital to invest and expert knowledge of the management of a farm to go with it. It is a purely individual enterprise; he must look after himself, and in most instances,

Digitized by Google

apart from the ruin induced by politics, he can be safely left to do so. If he enters into the business without the will to make the best of his capital and his business, he has nobody but himself and the politicians to blame for failure.

Efficient labour, again, is an essential requisite for the goodness of land. For steady improvement labour too must have the will to improve and not be merely the day worker without any interest in the soil, who does the ordered work to obtain his daily bread, without pride in its well-doing or in the improvement of the land except either through the inherited tradition of better days gone by or so far as new methods give him leisure or better wages. Any means that can be devised to give the labourer an interest in the land will tend to improvement of the land. Small holdings held as their own by labourers would be an immense incentive to competition. But for such small holdings either combination by the small holders is necessary or a supply of capital from outside. The weak point of all communal effort is the unwillingness to spend and to risk capital. The man with very little capital beyond his own sinews is most unwilling to risk any in experiments, from which, with a practical inside knowledge of the matter, he doubts the returns or quick returns. He is dependent for his living on the soil, and he dare not risk the little he has on anything for which he cannot see a certain profit. He expects, if he is a farmer, the assistance of the proprietor who is not dependent for his living on the land, and in a very large majority of cases he obtains it. With any good landowner, and most landowners at least in England are generous and patriotic men, there is with every contract to let land an implied contract that the landowner will stand behind the farmer in the expenditure of the sums necessary for improvement as far as his means allow him.

The proprietor, the landowner, the chief, must also have the will to improve, not merely to be an absentee rent receiver like the Highland land improvers.

Here you come upon a difficulty which is never attempted to be understood by the modern State socialist. A free use of capital is an urgent necessity for land, and it is extremely

Digitized by Google

difficult to coax it to go there. And as against the individual who may be willing to invest the capital, the politician with his theories of Free Trade and State ownership is, under our system of log-rolling legislation, a standing menace.

The capital must be there to invest, capital willing to receive small and possibly remote returns. It cannot be expected that a man with means, if he has any vigour or ambition, will be content to bury his talent in the earth without some inducement being offered to him to offset the sacrifice both of time and money for which he could obtain better returns elsewhere. Some advantage, such as local honour, local privilege, authority over a district, has in all civilisations from immemorial time been offered to men of wealth and position to induce them to take a personal interest in land improvement. That the owner of land should take a personal interest in the land, should be resident personally to infuse enthusiasm into farming, should lead in improvements, should be willing to spend freely of his means for experiments and new methods, is a necessity for any success which rests on social effort. It is through ignorance of this fact that the revolutionary and the socialist always fail.

Only by the example of such men does improvement come. The small holder who makes his living out of the land will not attempt risks without the example set by the resident landowner of sacrifice resting on long tradition. It is, I take it, part of the inducement to such residence that the home park, the demesne (the forest surrounding the residence of Ambiorix, the wood of the chief's fort) has so outgrown in many cases the necessities of isolation, retaining in its area an amount of dead grass land, some of which could be put to use for cultivation. With regard to such land I would only point to the remarks of Stonore J. and Hillary J., quoted *supra*, p. 271.

These conditions and difficulties, surrounding the use of capital for investment in land, form to my mind a strong argument in favour of vesting waste land in the farming men of the local community.

Poor Land.—There is such a thing as "poor land," which for some reason will never give adequate return. I have seen

Digitized by Google

in the United States what was called "dead land," a beautiful, black, fertile-looking loam. Speaking of this, I do not think that a Scotch bailiff very much exaggerated when he used to say that after scattering the manure on the land he could go to the mouth of the drain and see it running into the river. Nobody seemed to know the defect or to be able to supply the remedy, except that the application of lime freely would for a year or two give a second-rate crop of maize. But such land is very rare.

What is generally meant by poor land is not unproductive land, but land unmanufactured, unimproved, which is capable of improvement, land which will not compare as an investment with other and more quickly-producing soil. It is cold or thin land or untouched land, land which wants the plough, bringing the sun and rain to percolate and warm the soil. To use a previous illustration: taking the rail from Waterloo to Weymouth, the line passes through an almost unbroken reach of unoccupied and unused land. It is not by any means of necessity "poor" land. But it is raw material, land which will bring returns very slowly and at great cost. It was poor only in the sense that other investments would bring not only a greater but a far quicker return, and the life of man is so short that he can seldom be persuaded, unless he has very much surplus wealth, to use his opportunities for advancement by laying up his money in something which will only benefit posterity. Most of this land is quite capable, when the sun and rain have been admitted by the plough, of giving returns. But they will not be large, they must be waited for, and only the community which has the long life can afford to wait for them. Such work is done occasionally by patriotic individuals, but only to a very small extent. The work is too great to be done by private individuals.

Looking to the future, looking to the enormous proletariat of these islands engaged in factory work, the bringing into cultivation of this unimproved land is almost the only hope with which to meet the slowly but surely increasing population of the British Isles.

Most of the men who are giving their services to the State in this war have no interest whatever in the land, no incentive

Digitized by Google

apart from our national ideals to patriotism. But they have for a time been living in the open air away from the factory and the office. They know as a rule nothing of the difficulties of dragging a living from the land, and they will be encouraged by the blatant demagogue to believe that by confiscation of the land they can make themselves rich or earn an easy living. He will point them not to the waste but to the best land, the improved farms.

There is much food to be raised in this country in this way, and on land, on which crops cannot be raised to satisfaction, much timber, of which before the war we imported some forty million pounds worth annually. Timber takes even a longer time to make its returns than corn.

The alternative to improvement of this land is either a great pestilence or the very undesirable one of living on the labour and by that means falling to the level of other peoples who have a lower standard of living than ourselves. They will supply us with food while our land lies idle, and while our people are idle—for of a certainty the balance of trade will continue to be against us when so much of the world is willing to work for lower wages and to lead a more restricted life, while our petted workers are still striking for more bonuses and seeking more political advantage to give them higher wages and shorter hours of work. To let land, however poor, lie idle and live on the labours of lower peoples is the very nadir of Empire. It is an Eastern ideal, not a British one.

These reasons appear to me to offset all the drawbacks which can be urged against such a scheme, provided that the improvement is done by and for the benefit of the local community, and through it to the State to which it pays taxes. Such dealing with the land would to a certain extent be on the lines of the East European village communities, as well as of the communities of the past here. Like them it could be used as an encouragement to private ownership on improvement, an encouragement to the poorest peasant to feel that he has an inheritance in the land for which he works and fights, and as with them it would be open to much abuse, as all such things are, abuse which would have to be guarded against.

But we want no unemployment after this war, no sur-

Digitized by Google

plusage of unskilled labour to be a danger, no dangerous dependence on foreign food, no bait of misrepresentation to be used by the demagogue to deceive idle hungry men. Against any deficiency of return must be set the healthy life of many of the coming generation who if the society means anything might otherwise spend themselves in the slums of large cities, the decrease of parish relief and voluntary assistance, the self-respect which comes from dealing with the improvement of land, and lastly the great good to the soil itself, the benefit brought by the warm sun, the rain, and the air.

I am well aware that the subject bristles with difficulties which require patience and experience and hope to surmount them. The fundamental principle of private property is never broken in upon without the most serious injury to the community, and once touched, there is no limit to the destruction which may be caused. But to create private property there must be some acts which point to a reduction into possession. I am not speaking in any legal sense; I do not include in such acts the putting up of a notice warning off trespassers, or advertising in a newspaper, or closing a well-used road once a year. I mean acts which show improvement or the desire to improve, so that, to quote the Irish Brehon laws once more, "in right of urine or manure he shall possess the land."

All land settlement, all land occupation in all ages seems to have taken the same course; first the clearance by common effort of those lands which required the least labour for clearance, which means that much of the richest land with the heaviest timber on the hill slopes and in the narrow valleys where transport is difficult is left to the growth of timber until the lumberman comes with his oxen and hauls the log to the river. While these valleys are waiting for clearance, the property in the land originally cleared gradually passes from the community to the individual as a reward for improvement of the land or for some political or military act, or as part of a system resting on self-defence or communal expediency; and with the cleared and improved land passes as a pertinent the unenclosed and unimproved land.

Digitized by Google

Game Preserving.—Hence it comes about that even at this day a landowner can take in farms to make a deer park, and that the whole population of Highland counties can be driven from the lands occupied by their forefathers to become day labourers in cottages by the sea, and prohibited even in that condition from using as food the fish and wild birds and animals which abound in the lands occupied by the new men, a cruelty covered up by a huge waste of money by absentee proprietors, called improvements.

This matter of the use and preservation of game is a very difficult subject, one on which it is very easy to write unfairly. There would not appear to be any possible ground on which objection could be made to the owner of improved lands hunting and preserving the wild animals on the manufactured soil, though even here he is keeping alive a great source of irritation if he refuses to allow the labourer to trap a rabbit or a pheasant which is eating the lettuces in his garden, or to knock on the head the fox which carries off his chicken.[1] Every villager is from long instinct and association an inveterate poacher; that is, he claims the right to kill the wild animal on the common land or on the land he tills. The position in this respect remains the same as when Wat Tyler and his followers in 1381 "petunt a rege ut omnes warennæ tam in aquis quam in parco et boscis communes fierunt omnibus, ita ut libere posset, tam pauper quam dives, ubicunque in regno in aquis et stagnis, piscariis et boscis et forestis feras capere, in campis lepores fugare, et sic hæc et hujusmodi alia multa sine contradictione exercere." [2]

When the question is the preservation and propagation of tame pheasants for profit, the question is, like the balance between the forests and the assarts in mediæval cultivation, how far the amount of food destroyed by the pheasants is offset by their own value to the community. So far as the instinct of hunting the wild animal is concerned, a Leghorn chicken would give better results than a heavily fed pheasant, without possibly so much chance of the proprietor being shot by his friends from the town who imagine that they are having sport. But with a fairly long experience of farming and country life, I cannot agree with a great sporting

Digitized by Google

authority that pheasants eat mangolds more than is necessary to get rid of the insects which infest them, or that the building of cottages drives away partridges. It is a matter for the exercise of common sense and mutual forbearance and local knowledge. Making the game preserver liable for the damages proved to be done by his tame birds would probably meet the case.

But such sport stands on a very different footing from the claim to deprive the whole community of the use of vast districts of unimproved land, that it may be let for the profit of absentee individuals for the sport of wealthy aliens. Such unimproved land ought to revert without compensation to the local community.

On very similar grounds I question the right of any individual to preserve injurious vermin such as foxes to the destruction of the industry of poultry breeding, or to exterminate beneficial birds such as owls to protect tame pheasants. If this be treason, make the most of it.

In conclusion, after considering the foundations of society, the moral standard attained, the conditions for leadership, the gradations of rank, the guarantees of kinship and marriage, the military order, the gradual approach of commerce with strangers, the framework of custom and law, the relations of all classes to the land and the uses of the land for the benefit of the community and its gradual absorption in individual owners, I would refer once more to the national ideal which has grown up in these islands in past times, the combination of the utmost breadth of individual freedom with a devoted duty to the society. It is so high an ideal, demanding so great and constant self-restraint and self-sacrifice, that it is hardly surprising that there should be a perpetual conflict of interest in action, or that men should be impatient of the evils which they see around them conflicting with the ideals, evils which they think could be abolished by violent methods. As the people from these islands spread over the world and reproduce in new parts their form of society and its ideals, the evil reappears with the good. We have infected the whole civilised world with our ideal of the social framework, we are fighting now in this

Digitized by Google

present year 1918 to preserve it from a lower form of social design, and it rests with us to uphold it at any cost of blood and treasure for future generations. If we fail, the whole world is the loser.

There is nothing to be gained at such a time by dwelling on the ills and the faults which attend all high endeavour. It is better to remember that in times of stress unity of purpose and patience with imperfect conditions is a gain to good, that there is a soul of goodness in things evil would men but patiently distil it out. The danger in all such crises comes from individuals controlling groups, who cannot see the difficulties, though they see the defects, and so imagine that their dream and their interpretation will point to perfection.

The men who, when the crisis is over, will be remembered with love and gratitude by the community are those who, like our King, have the great strength to keep silence, yea even from good words; sinking in the performance of the office the individual for the common good, and standing in the background of the society they serve.

NOTES.—[1] The depredation by game and vermin on the labourer's garden or allotment may seem to city dwellers a small thing, but I believe that it is of all causes of discontent and disunion by far the most important. It brings home to the labourer his absolute dependence on the will of the landowner, as he dare not complain for fear of being turned out of his cottage. But how to give him a fixed interest is the most prickly difficulty of all, calling up the awful spectre of rural housing, a perennial problem on which the Elizabethan legislation might be read with advantage. It is wasteful and expensive for the landowner to put up cottages or to enlarge them without the certainty of an immediate and permanent tenant, in view of the restrictions, sensible possibly for slums in towns, which are imposed on such building by State regulation. If attempted by the State, rural housing would undoubtedly be the worst and most expensive jobbery ever undertaken even by a Government department. No labourer ought to have any remedy either from the State or from local authority in such a case unless he pays rates and taxes like other men. Rights and liabilities must go together in a healthy society. [2] Knighton, *R.S.*, 92, vol. ii. p. 137

Digitized by Google

APPENDICES

APPENDIX A

FOLKMOOTS

It stands to reason that, as no building of the time would hold the suitors where all freemen were expected to attend, all ancient popular courts were held in the open air, either on a mound, on a low hill, under a sacred tree, in a sacred fort, in a stone circle, or at a marked tree or stone on the borders of several territories, so that intertribal matters could be discussed with convenience to both sides. Some great open space was roped in by stake cords to keep out the crowd, the chief men and the litigants consulting within. The account of the Norwegian Gula Thing in *Egil's Saga*, p. 110 (edit. W. C. Green, Elliot Stock, 1893) is that "where the court sate was a level plot, with hazel poles planted in a ring, and outside were twisted ropes all round. This was called 'the precincts.' Within the ring sate twelve judges of the Frith-folk, twelve of the Sogn-folk, twelve of the Horda-folk. These three twelves were to judge all the suits." In the Landnamaboc (*Origines Islandicæ*, iv. 4) it is stated of the Thorsness Settlement that men hallowed a hill, on which no man or animal must be killed, on which courts and moots were held. In spite of the prohibition of killing, the moots often ended in disputes and battles. Land was set apart for the maintenance of the All moot, with a common for wood and a heath pasture for keeping of horses (*Libellus Islandorum*, iii. 1, *Origines Islandicæ*). These moots had a lawman, judge or deemster (as he is still called in the Isle of Man), and benches of godes of twelve (as the Keys in the Isle of Man). In the *Egil's Saga*, ch. lxvii., the place for the wager of battle was marked by stones lying round in a ring. In the account of the combat in chap. lxviii. at the Gula Thing a sacrificial bull is brought in and slain by the victor. The very detailed account in the *Nial's Saga* of the Court and its precincts bears the same character. I would suggest that Stonehenge was such a place of public meeting, being as a corollary a temple for worship, a place of execution, a trading fair, a place for collecting, branding,

Digitized by Google

and sacrificing cattle, and a trap into which to drive deer when hunting. Whether such a theory for the origin of stone circles is correct or not, it is more sensible than putting them down to the Druids, who undoubtedly used them, or imagining sun worship in cloudy countries.

Such places of assembly are found all over the British Islands. Besides centres for national meeting, such as the Moot Hill of Scone, the Lia Fail at Tara, the Tynwald Hill of Man, and so forth, numerous moot hills, circles of stones and trees as centres of meeting for tribal settlements exist all over the islands. Such a place of meeting may be marked by the three shire stones north of Batheaston on the borders of Somerset, Gloucester, and Wilts. Any reader who is interested in the subject may be referred to Gomme's *Primitive Folk Moots*, where he will find numbers of examples mentioned, authorities quoted, and references given.

As examples of trees note the oak at Kincora cut down by Malachi II., and the elm at Gisors cut down by Phillip Augustus.

To leave woods on the boundaries between two territories would appear to have been usual; it would not be safe or convenient to cultivate within reach of a possibly hostile community, and fuel and timber would be required when the conferences were held between two states.

In the original text of the Senchus Mor, i. 134, three kinds of woods are mentioned: (1) the sacred wood of the fort, the sacred wood of the tribe which encircled the king's dun fort, like the sacred wood spoken of by Tacitus and the wood round the palace of Ambiorix mentioned by Cæsar (*D.B.G.*, vi. 30), a wood reserved to the chief for which honour price is paid to him for a tree cut; (2) the wood common to the family or sept; and (3) the wood distant on the boundaries. The Thingwald, the wood in which questions of interterritorial regulation were discussed, appears to survive in Tingwall in Shetland, Dingwall in Ross-shire, Tinwald in Dumfries, Tynwald Hill, St John's, Isle of Man, etc. By the date of the commentary on p. 164 of the Senchus Mor, the three woods seem to have disappeared, and the injuries are classified by the part of the tree, trunk or large or small branch. (See also *La Loi Salique*, cxxix. art. 27–30, edit. Hessels, col. 154–162.) Most likely the text is of pagan date.

Le T.A.C.N., ch. 33, would appear to intimate that the borders of the territory were to be left wooded. No timber is to be cut "el trepas de la marche" without the consent of the duke or his justice.

Digitized by Google

APPENDIX B

THE OGAIRE CHIEF

As an example of the minute regulating of the rights and obligations of the various grades of chiefs in ancient times, I would refer to the regulations given in the Crithgabhlach (*A.L. Irel.*, iv. 307) as to the lowest grade of Irish chieftain the Ogaire. Some commentators think that the Crithgabhlach, from which this is taken, is very late, and that the state of society which it represents may never have existed. It is not likely or even probable that at any one time all the restrictions laid down were carefully observed, but the same might be said of any of the sumptuary laws and other social regulations which were part of the daily life of the Middle Ages; the regulations are quite in keeping with the simplicity of communal society, and the carefully drawn conditions for each class of chieftain do not look in the least imaginary, even if they were not always accurately carried out. They are not more unlikely than the provisions of 10 Edw. III., c. 3; 37 Edw. III., c. 9; nor so minute as the whole series of English laws relating to cloth making. "Three 'seds' (a sed is a certain standard of value generally computed in cattle) are the price of his honour (*i.e.* the amount of the payment called honour price, varying according to rank, which was made for injury to his person), but they must be seds of the cow kind. Injuries for which they are paid to him are detailed. Eight cows are his proportionate stock. His food-rent is a 'dartaidh' heifer at Shrovetide. He pays [the subsidy to his chief as mentioned by Tacitus, *supra*, p. 30] a hog's belly in bacon along with a cow, or a whole hog in bacon, and three sacks of malt, and half a sack of wheat. He can give protection to his own grade. He has refection (*i.e.* what afterwards became the excessive evil of coyne and livery, the right to go with a certain number of attendants for a definite certain time to a follower's house and live on him) for two men in milk and stirabout or in corn. He is not entitled to butter. A mug of twelve inches of sour milk upon new milk (is due) each time, and a lawful cake or two cakes of woman's baking. He has two on sick attendance (two attendants in sickness). He has a fourth part of ploughing apparatus, *i.e.* an ox and a ploughshare, a goad and a bridle, the ploughing unit being a four-horse plough." The right of sanctuary was only to prevent vengeance in hot blood. The person giving it rendered himself liable to damage if it accrued in consequence of his shielding the criminal.

Digitized by Google

APPENDIX C

TOWN OR TOWNSHIP

"THE 'town' may be said," says Mr Clouston, Introd. *Ork. and Shet. Rec.*, p. lv, "to have formed the unit of property for an odal family of good position" in early times. "A town, then, is a portion of ground, partly arable and partly pasture, separated generally from the hill or common moor by a massy turf dyke round the whole, containing a greater or less number of houses . . . each house being occupied by a different udaller or tenant, and having attached to it various proportions of the arable lands . . . originally and still generally in run ridge . . . with patches of grass land, etc." Peterkin, *Notes on Orkney*, p. 5, 1818; quoted by Clouston, p. lv *ut supra*. For the Western Highlands refer to p. 289 *et seq.*

APPENDIX D

MILLING AND FISHING

RIGHTS of milling and rights of fishing as attached to certain lands play a very large part in these common rights and easements, and have no small relation even to constitutional history.

The matter of milling and mill dams not only shows the manorial system in the very strongest contrast to communal society, but appears to have been one of the tyrannies of the feudal lord most resented by those who had to submit to it. For instance, in the insurrection of 1381 the rioters carry off the millstones from the mill of St Albans Abbey. Y.B. 30–31 Edw. I., p. 64, is a case of replevin for the seizure of stock. The defence by the Abbot is that the plaintiff was bound to grind all his wheat at the Abbot's mill and did not do it; and see *ibid.*, pp. 146 and 212.

T.A.C.N., c. 60, De Molins, provides that no one is to make a new mill on his lands nor mill dam (*gort*, lit. a hole) which wets the land of his neighbours or does them harm. After reciting that it had come to the ears of the senechal that the lords who had rights of milling (*seche mote*) force men to come to their mills who live two, three, or more leagues away and take by force toll of meal, and that he cannot do away with this because of long prescription, it is ordered that men should not pay the toll of or use a new mill against their will.

How very injurious to the community the exercise of the rights of milling could be is sadly recorded by Jocelyn, telling of the action

Digitized by Google

of Abbot Samson. "He built up the bank of the fishpond at Babwell so high, for the service of a new mill, that by the keeping back of the water there is not a man, rich or poor, who has land near the water, from the gate of the town to Eastgate, but has lost his garden and his orchards. The pasture of the cellarer, upon the other side of the bank, is spoilt. The arable land also of the neighbouring folk has been much deteriorated. The meadow of the cellarer is ruined, the orchard of the infirmarer has been flooded by the great flow of water, and all the neighbouring folk are complaining thereof. Once indeed the cellarer argued with him in full chapter upon this excessive damage; but he, quickly moved to anger, made answer that his fishpond was not to be spoilt on account of our meadows" (Jocelyn, p. 201). Yet one doubts if Jocelyn would have been moved to write this if the cellarer and infirmarer had not suffered.

In *Som. Pl.*, p. 608, a man raises a dyke which prevents access to a spring, and deprives commoners of herbage in place enclosed by the dyke.

(Train's *Hist. of Isle of Man*, 1636): Lord Strange orders the destruction of all new corn mills, "that his lordship may have his ancient rents preserved to him" (Stat. of 1636).

Under the communal customs of the rest of the islands there was no restriction on any free man milling for himself unless he interfered with some customary easement of his neighbours, as when a mill, built too far down on a stream, prevented the fish coming up from the sea to spawn.

Decree of the Lawthing of Orkney, 1496. Order that the mill of Magnus of Corstath "salbe brookin donne for evermore," because it stopped the "passing up and down of all fisch in the tyme of the roding" (spawning); but the mill of William of Corgill is to be "upholdin as scho was of before becawse that scho standis (at the) hed of the rod" (Clouston, p. 74, No. XXXII.). The next Decree shows a compromise between William of Corgill and Magnus Akynson. Akynson's mill had interfered with Corgill's fishing, and Corgill had shut off Akynson's water. The effect of the decree was that Akynson kept his mill, but allowed Corgill to fish in his waters below (*ibid.*, pp. 75–76, No. XXXIII.).

In a declaration as to the right to mill at a certain mill on payment, the persons milling admitted that they had paid no toll, but asserted that the owner had "bayth at paroch kirk and hede courtis prohibeit" them to mill "excep we come one our owne peruell" (Clouston, pp. 99–100).

The restrictions on milling are generally connected with rights of fishing. Icelandic Laws direct that "nobody shall put a net across the river to prevent the fishes passing through, or put bow nets or brushwood in the river or embank it in any way so that no opening remains, unless owner of the whole river."

Digitized by Google

The Irish laws (*A.L. Irel.*, i. 125, 141) show us a common mill of the community; and see *supra*, p. 261.

(*A.L.W.*, Ven. II. xix. 9): The king may make weirs on the waters of his aillts (unfree men) and take their hives, *i.e.* the honey. (*Ibid.*, Dim. II., xxiii. 7): Whoever shall set a net in a river which shall not belong to him is to have a third of the fish, and the two parts are to go to the proprietor of the river.

By Statute of Robert I. (*Acts of Parl. of Scotl.*, vol. i.) those who have (croas) cruffis (by the modern Salmon Fishery Acts, licences for box, crib or cruive cost £10) or fishings or stankis (stagna) in waters where fish go up and down, the core and machine placed there are to be the measure of at least 3 inches by 2 inches, on pain of forty days' imprisonment and heavy amercements. By Statute of Alexander I. "it is statute and ordanit be King Alexander at Perth, on Thursday before Feist of Sanct Margaret, with consent of the Erles, Barons, and Judges of Scotland, that the midst of the water sall be free, in sa mekill than ane swine of three yeares auld, and well fed, may turn himself within it in sic ane maner that nather his grunzie nor his tail tuich ony of the banks of the water."

By Magna Charta, c. 33, all Kydells (weirs for catching fish) to be removed from the Thames, the Medway, and throughout England except on the sea-coast. This provision was an extension of orders for removal of Kydells on the Thames at London made in 1197 (1199, to all the rivers), and not of necessity a response to some special wickedness of John.

"In the River Tone there are large salmon as high up as Lochern. There are five dykes with wooden traps in them to catch salmon on their way up. These traps ought to be taken up every week from Saturday evening to Monday morning to let the salmon through." (Sinclair's *Statis. Account of Scotland*, 1793, p. 1486, an admirable example of the strict observance of the Sabbath.)

APPENDIX E

THE LAWS OF GALLOWAY

The gradual extinction of the separate law of Galloway is a good illustration of the eating up of the communal custom by feudalism. In this Parliament of 1305 the community "de Gawey" seek a remedy for a certain and injurious law ("une estraunge e torcenuse ley qe est appele surdit de sergeaunt"). An inquiry is ordered into the custom as to what would be best *ad utilitatem populi*. The petition says that the barons and great lords of the country use this evil law to the great grievance of the land (*R.S.*, vol. xcviii. p. 171).

Digitized by Google

The Assize of William the Lion (c. 3, *Acts of Parl. of Scotl.*, i. 372) suggests the division of jurisdiction of liberties and regalities in Scotland. Galloway men are to answer the challenge of Scotland at the bridge of Stirling (*ibid.*, 378, Assize of William the Lion, c. 22). If any Galloway man be convicted under the battle or in any other way of the king's peace broken, the king shall have of him 240 kye and iii "gatheriones." (*Ibid.*, 482) Robert I. at Glasgow, 1324: The men of Galloway to have the right to trial by jury instead of compurgation, according to Galloway law. King's officers to purge themselves per integram acquietanciam Galwidie debitam et conseutam. In other matters the laws of Galloway to apply. (*Ibid.*, 551) Robert II., 1384: Archibald Lord of Galloway promises to give up all the dilaciones, exceptiones defectus et essonias wont to be used, but he reserves to himself in other respects the law of Galloway protestando pro libertate juridici sui et dominii. (ii. 9) James I., 1425: With the consent and deliverance of the three estates all and sundry the king's lieges of the realm lief to be governed under the king's laws and statute of his realm only and under no particular laws nor special privilege nor by the laws of other countries and realms. The tenor of this statute is commercial, dealing with the travelling merchant. (ii. 43) James II., 1455, sweeps in amongst a number of lordships and castles Galloway and annexes it to the Crown. (ii. 214) James II., 1489: The taking of cawpis by the kin in Galloway forbidden unless they can produce authority to do so.

APPENDIX F

GOVERNMENT IN GASCONY

His difficulties in Gascony are told by M. Bemont in his introduction to *Les Rôles Gascons*. In 1242 "Le Roi criblé de dettes quitta la Gascoyne sans avoir réglé aucune des questions qui pouvaient y menacer non seulement l'ordre intérieur mais aussi la sécurité extérieure." In 1248 he sends Simon de Montfort. As a result "les factions dans les villes, en particulier à Bordeaux, furent abattues les chefs de bandes vaincus ou jetés en prison, les voisins turbulents tels que le vicomte de Béarn Gascon VII. réduits à merci; mais a dureté de son gouvernement excita de telles clameurs parmi les vaincus, que le roi, fatigué de son beaufrère et *des incessants demandes de subsides* lui retira son commandement Juin 1252." Of Matthew Paris's accounts of these facts M. Bemont says (p. lxvii), "Il manqua d'exactitude dans les récits des faits, il les conte avec verve, rarement avec précision." Simon comes back to England to plot mischief

Digitized by Google

against Henry, allying himself with the Welsh princes. The only weakness of Henry III. (*pace* the constitutional historian) would appear to be that he had not the means to follow the example of Henry II. and John, and smite the barons. Richard had wasted all the money in Palestine.

APPENDIX G

BARONIAL COMBINATIONS

EDWARD I.'s only brother Edmund had immense possessions as Earl of Lancaster and Derby. After the victory of Evesham he received the confiscated titles and estates of Simon de Montfort and Robert Ferrers. "By arranging," says Prof. Tout (*Edward I.*, p. 76), "the marriage of Edmund's heir, Thomas, with the heiress of his most trusted follower, Henry Lacy Earl of Lincoln, Edward still further increased the greatness of the Lancastrian House and made possible that extraordinary combination of power which Earl Thomas, as head of the Lords Ordainers, was able to bring against Edward II."; and which, he might have added, and not the wickedness or weakness of any king, was responsible for the whole struggle which came to a temporary end with Henry VII.

APPENDIX H

THE KINSHIP OF MOTHER AND CHILD

A VERY curious case bearing on the relation of the woman to society was argued in the reign of Edward VI. The Duke of Suffolk left goods to his son, who died without will or child, leaving his mother and a half-sister by another mother. The mother administered as being next of kin—*prochin del kynne*—but the sister disputed it, and the cause, being an important one, was fully considered both by the King's Courts and by the judges of the civil law. "Et sur grand argument en la Spiritual Court tam per leges peritos Regni quam per peritos legis Civilis," the administration to the mother was solemnly revoked on the ground that the Duchess was not of kin to her son (*Brooke's Abridgement*, Tit. Admon. 47). As a consequence, in divers other cases the brothers and sisters ousted the mother. *Swinburne on Testaments* (part 7, sect. 8, pp. 912–918), discourses at length on the reasons for this decision, quoting of

Digitized by Google

course Abraham, Isaac, and Jacob, and intimates that the decision had in his time fallen into disrepute. But the principle remains. In our modern Magistrates' Courts the mother, *unless unmarried*, is still treated as of no kinship to the child, except when she is sent to prison because it is verminous, or does not go to school. Sterne in his *Tristram Shandy* uses the case to raise a *reductio ad absurdum*, "for Mrs Shandy, the mother, is nothing at all akin to him; and as the mother's is the surest side, Mr Shandy of course is still less than nothing."

APPENDIX J

IRELAND TO-DAY

LET us not make the mistake of supposing that this is merely matter for lamentation over the past. The management of Ireland on the principle of the bear and the bandog goes on to-day, and will go on until the Englishman and the Scotsman awaken to the fact that the fulfilment of his pledged word and the enforcement of the King's writ in every part of the country, in Ulster as well as in other parts, is of greater commercial value to him than the advantages gained by one political party or another in their struggle for a shameful prostitution of the British Constitution.

Keep in mind the events related in Chapters XXX.–XXXV. of this book; that from the days of Edward I. the English invaders dealt with the Irish not as with honourable opponents, but on account of the form of their social life conflicting with their own, as with outlaws and savages who were to be driven out and destroyed; keep in mind that as each generation of English adopted the Irish communal system they fell under the same ban as being "meer Irish"; that the wars waged by the English against these people, which the Protestant historian Lecky describes as more brutal than those waged by Alva in the Netherlands, were accompanied by massacres of women and children, by the laying waste of the whole country, and the selling of the young into slavery; keep in mind that for five centuries the King and Parliament persistently and repeatedly broke the solemnly pledged word to the Irish; that the efforts of the Irish to build up industries and endeavour betterment were again and again frustrated in the interests of the larger island; that the people being kept poor and their land waste and their ports idle, famine in each generation raged in a fair and fruitful country. Keep these things in mind while I put before you a few facts. For

Digitized by Google

two generations and more the Irish of all classes, with the exception of a little knot of party politicians of English or Anglo-Irish birth in one corner, have been seeking to revive the Irish Parliament, to obtain the delegation to a Parliament sitting in Dublin of Irish affairs, just as such affairs are disposed of by the many Parliaments (twenty-eight in all, I believe) which sit for other parts of the British Empire. There have always been three parties concerned in this movement in Ireland, one, the great mass of the Irish, until recently practically the whole nation, who, seeing no hope on one hand of total separation because of their geographical position, or on the other hand of fair treatment of Irish affairs by the Parliament at Westminster, try to obtain the end by persistent legal and political agitation; second, an extremist party plotting here and in the United States for absolute severance, a party born of thorough distrust of the honour and pledged word of the Anglo-Scottish politician and nurtured in despair. This party varies according to the treatment by the Anglo-Scot from a negligible set of anarchist dynamiters to a predominant majority whose ideals are approved of by the entire people, though they may regret their actions.

Lastly, there is another extremist party in Ulster which violently opposes Home Rule, not on any merits or any genuine fear of its effects but because the grant of it would mean the disappearance of their little political clique, the "running sore" spoken of by Sir Henry Maine. This extremist party is and always has been openly disloyal to the Imperial Government. But although negligible as an Irish factor, it is very powerful as the wing of a political party at Westminster, who would lose votes by its disappearance, and is able almost always through Anglo-Scottish influence to nullify or destroy any measure which tends to a peaceful settlement of Ireland.

The moderate Irish party who disclaimed all idea of separation gave loyal and unswerving support to the Liberal Ministry through a long series of years, in the vain hope that the pledges made to them would be redeemed. Finally, the Home Rule Bill was put on the Statute Book as an Act in May 1914.

But it has never been allowed to become law, and there is little reason to believe that it ever will become law. The leaders of the Ulster malcontents and their supporters opposed this measure by every means in their power; they consistently threatened revolt and secession and civil war if it were passed. Especially did they point to the assistance of the German Emperor against the King's troops. "If the worst comes to the worst (Rt. Hon. T. Andrews, P.C., *Morning Post*, Dec. 19, 1910), if we are deserted by Great Britain, I would rather be governed by Germany, etc." "There is a spirit spreading abroad (Captain Craig, M.P., *Morning Post*, Jan. 9, 1911) which I can testify to from my personal knowledge that Germany and the German Emperor would be preferred to the rule of John

Digitized by Google

Redmond, etc." "If they were put out of the Union (Major F. Crawford, *North Down Herald*, May 3, 1912), he would infinitely prefer to change his allegiance right over to the Emperor of Germany or anyone else who had got a strong and stable government." Note that this man calls for a strong and stable government such as would have coerced the Ulster Rump to obey the Imperial Government. "He intended when he went over there (to Ireland—Sir Edward Carson, June 1912) to break every law that was possible. Let the Government take their own course. He was not a bit afraid of them, for a more wretched, miserable, time-serving, opportunist lot never before sat in Parliament." "If I were an Ulster Protestant (Mr, now the Rt. Hon. Sir F. E. Smith, an Englishman, the son of an English barrister, Cloughfern, Belfast, July 12, 1912), I would rather be ruled from Constantinople by the Sultan of Turkey than by a politician like Mr Devlin."

But this party did not confine itself to mere insults to the British Government. They subscribed to a Solemn League with a Covenant for resistance, of which it is only necessary to quote the *Northern Whig*, their daily paper. "When the Home Rule Bill becomes an Act, three-fourths of the people of Ulster must become either traitors to the Covenant which they have solemnly signed or rebels to the Crown." When the Bill became an Act, those who signed (about three-eighths) decided on becoming rebels to the Crown.

On August 27, 1913, the *Belfast Evening Telegraph* announced a meeting of Sir Edward Carson with the Kaiser in Germany. On November 4, 1913, a letter signed H. G., appeared in the *Irish Churchman*: "We have the offer of aid from a powerful continental monarch, who, if Home Rule is forced upon the Protestants of Ireland, is prepared to send an army sufficient to release England of any further trouble in Ireland by attaching it to his dominions. . . . The Protestants of Ireland will welcome this continental deliverer." Both Sir Edward Carson and the British Government must have known who H. G. was, and what truth was in this statement in their Church paper.

Then in April 1914, Major Crawford, who had called for a strong and stable government, ran a cargo of Mauser rifles from Germany, the vanguard of the promised army, into Belfast to provoke a civil war, for which he was publicly thanked by Sir Edward Carson.

Sir Edward Carson had justly estimated the Ministry against which he was pitted: "those fellows at Westminster." They took no notice of his treason. But they prosecuted to the utmost any incitement to disloyal words or actions in the rest of Ireland. The discrimination was carried on throughout both before the war and after it had begun. The police and the soldiers were in July 1914 confined to barracks in Belfast where the armed forces of the Ulster malcontents were drilling. But at the same time unarmed Irish

Digitized by Google

women and girls, some of whose men were serving in the British army, were shot down by Scottish troops in the streets of Dublin because they had jeered at the soldiers.

In 1917–1918 the arms of the Ulster malcontents are not seized, their drilling and arming not interfered with; the arms of the equally treasonable Sinn Feiners are not seized; such seizure on either part might mean the need for application of force from outside; but the arms of the Nationalist Volunteers, the loyalists who helped the Ministry in their campaign of destruction, are pounced on, on the ground that the Government had not the power to prevent them from passing to the Sinn Feiners. It is the game of the bear and the bandog.

It is often attempted to excuse the disloyalty of the Ulster so-called Unionists on the ground that as this small minority, whose ancestors had been settled on the lands of the Irish, had been enabled by the power of Great Britain savagely to persecute the Roman Catholic Irish for centuries, they might expect retaliation. The chief Conservative leaders, Mr Bonar Law, Mr Walter Long, and Sir Edward Carson have strongly dissented from any such belief.

The religious difference has long since ceased to be anything more than a subsidiary issue kept up by the Ulster politicians and the priests. Mrs J. R. Green, writing in the *Atlantic Monthly*, December 1917, of the shootings and hangings in Dublin in 1916, says of the rebels, "The lessons of Sir Edward Carson's campaign during the last half-dozen years had sunk into their minds; the intrigues with British Conservatives; the meeting at the Curragh; the appeal to force, followed by the surrender of the administration and the government; and the final distribution of the spoils of State to Sir Edward and his followers." But, she adds, "the revival of Protestant bigotry fell on a new Ireland, which no longer looked on this as the main issue."

For myself, I have a number of Irish correspondents in Ireland and England; with few exceptions they are Protestant; with very few exceptions they are sympathetic with the ideals while deploring the actions of the Sinn Feiners. Religious difference is now outside the question, except so far as some hooligan chalks on the walls, "To hell with the Pope."

One of my correspondents to whom I had written on a question purely antiquarian and philological, answered me in a letter which I believe accurately expresses the mind of the Irishman. His letter came as a surprise, as I had no recollection of having written anything to provoke it, and I do not know the nature of his religious faith. "I am not a Sinn Feiner or a pro-German," he wrote, "and I want the Prussian eagle to be caged for good and all, but I confess that like so many outside England, I find it easier to give my full sympathies to France than to England. All this harping on the

Digitized by Google

scrap of paper seems merely one more instance of what outsiders have long regarded as British hypocrisy—the psychologists might give it another name. As if the England of the Treaty of Limerick and the Home Rule Bill had anything to learn from Germany! . . . It is easy to sympathise with idealists. The Sinn Feiners foresaw, as even Redmond should have foreseen, that the Government intended to repudiate the Act that they put on the Statute Book. They took action accordingly. I remember," he continued, "A. saying to some of his colleagues a couple of years ago, 'We'll have no secret treaties. They are always betrayed to the Government. We'll carry our arms in public, as Carson's men do, and *they can't touch us because they won't touch Carson.*' I shrugged my shoulders at this piece of academic logic from a historian, contradicted as it was by all the facts of Irish history. Since then Carson has been going on from strength to strength."

In that last sentence lies the sting of the whole question. The Irishman who has a knowledge of past history has no trust in the word of the Anglo-Scot, and he is justified. The cargo of Mausers had been described by the Minister as an unparalleled outrage, and it was so. But now Mr Redmond has served his turn, the war has rendered his support unnecessary, and the outrage was far surpassed by the appointment of Sir Edward Carson, first, as Attorney General, then as head of the Admiralty, then one of the inner War Council. As he was advanced in honour, Mr F. E. Smith, the Englishman, his adjutant in Ulster for the arming of covenanted rebels, was made Attorney General.

At last the desire of the Ulster Rump was attained. The Irish, seeing no hope, were provoked into rebellion. The Nationalist party turned over almost in a body to Sinn Fein, Sir Roger Casement brought over the second instalment of the promised German army, and Sir F. E. Smith prosecuting him, he was justly hung. Says Mr John Dillon, the present leader of the Irish moderate Nationalist party, "Mr Redmond had faced misunderstanding and calumny in his endeavour to conciliate the Irish and British people, and had English Ministers been honourable men and stood by him and imitated his statesmanship, Ireland to-day, instead of being an embarrassment to England, would have been a source of strength and support. But English Ministers were false to their honour and to their pledges, and they betrayed Mr Redmond, while he was faithful and loyal, and they were now reaping a bitter harvest of their misdeeds."

I have given the Irish view of very staid and severely well-balanced Irishmen. Now let me give my own as the view of a Protestant Englishman.

One evil of the Ulster faction at Westminster is that it keeps up in Ireland the most evil political influence of the Papacy, which

Digitized by Google

could die at once if an Irish Parliament sat in Dublin. The Pope holds the same position to the Irish people as the King of Norway held to the Western Scot in the thirteenth century, a beneficent power kindly asking for its dues, a perpetual contrast to the tyranny of the nearer ruler. But that is a small matter compared to the main reason for a peaceful settlement.

Untravelled Englishmen are unaware of the deep contempt with which, except for a few "Anglo-Saxons" mostly of German birth in Rhode Island or New York, the Englishman's pledged word is regarded the world over for his treatment of the Irish nation. I speak as an Englishman; I am not concerned for Ireland; the lesser nations are always oppressed by the greater; I have a diminished respect for the Irish politician who for the good of Ireland helped the English dissenter to wreck and ruin the ancient Welsh Church. But does not every man with an elementary power of thought see that when we go to the Council Table of Europe to protest for Belgium, Serbia, Poland, Montenegro, and Armenia, the value of our influence will be wholly destroyed by the fact that we are still holding down by main force the Irish, who for five centuries past we have ruined and persecuted. We may persuade ourselves in England and Scotland that the repression of Irish ideals and of Irish national life is right and just, and that we are justified in regarding the Home Rule Bill as a "scrap of paper." But do not forget that there is no man of sense outside the British Isles who has anything but contempt for those who so deceive themselves.

Ireland, to her sorrow, stood outside the early Crusades; to her sorrow and to ours she stands outside this Crusade against the Turk and the German, races far lower in morals than the Saracens against whom the nations fought in the eleventh and twelfth centuries. But at least let us go to the Conference with clean hands, otherwise we betray, not only Ireland, but all the smaller nationalities who are dependent for their freedom on the influence of our national ideals.

March 1918.

Digitized by Google

INDEX

Agriculture.—In Tacitus' *Germania*, 32, 33, 35, 36; beginnings of, founded on Roman methods, 38–9, 241; cultivation in a common field, 40, 41; the change to, slow but revolutionary, 168–9; accounts of, 231–5; conflicts with stockbreeding, 239 *et seq.*; suitability for, depends on rainfall, 242–7; the West unsuited for, 244–6; follows increase of population, 449; more capital required for, 453; enclosures necessary for, 453; England suited for corn-growing, 16, 60, 264.

Alienation.—Of property among the Slavs, 122–4; early powers of, very limited, 133, 255; subject to right of redemption by family, 134, 138, 140; in Orkneys, 134–5, 147; in England, 140; in Wales, 144, 145; in Ireland, 145; causes for which allowed, 150; power of, depends on dealings with land, 150–2; early modes of conveyance, 142; publicity of, 104, 160, 167; improvements a reason for, 150, 151; restrictions on, in communal society, 153; in feudal society, 157–9; result in our day, 158.

Breach of Faith.—Of the English to the Irish, 434–7, 439–41.

Bruce family, 324–6, 335, 339, 341; King Robert, 342; Edward invades Ireland, 343.

Capital.—(*See* Cattle)—The turning over of, 450; more required for agriculture, 453.

Cattle.—The currency and capital in early days, 31, 79, 88; the primary tie of communal society, 36, 37, 82; pasturing on arable land, 41, 42; the danger from murrain among, 179, 180; as money, 188; as food, 189; as work stock, 189; on the waste, 189; rules as to ranging on the waste, 190; for sea life replaced as wealth by ships, 97.

The Loan of.—As symbol of superiority, 83; an extreme example, 83; originally the distribution by the chief on the common land, 85; details of the loan of, 86–8.

Chattels.—Ancient rules as to, 142, 163, 164; in Finland to-day, 166; difficulties of heir as to, 162.

Chief.—Tacitus' account of, 27; Ogaire, 82, 88, 494; personal ties, how kept up, 44; his powers limited, 51, 52; how increased, 45–8, 56, 94, 95, 226, 228; kinship of, to people, 72; qualifications for, 77, 79, 80; society centres in, 79; accepts risks for the family, 80; lord of the manor succeeds to, 81; his receipts and dues, 113, 119; entertaining, a universal practice, 113; quarters his attendants on unfree, 114–7; difficulties occasioned by change of values, 116.

Digitized by Google

Church.—Roman, an influence for change, 53; its effects on England, 60; grants of land to, 57; writing and the will came with, 160; and the chattels, 162; no national, possible in communal society, 399.

The Tribal.—In Ireland a community within a community, 400; independent of Rome, 399–403; the Statutes of Kilkenny as affecting, 403; the friars and reformed clergy, 404; the quarrel with Rome, 413.

Commerce.—How Flanders profited by, 15, 360–1; the growth of England through, 16; decay of Norse, 16; effect on England's, of control of Channel, 19; influence of, on change of social system, 284–5, 287, 360, 449, 455; the Hanseatic League for, 361; kingly alliances for, 362; port dues as revenues, 406; Ireland debarred from, 405, 456–60; with outside markets, 449; freedom of, from tolls and usury laws, 454; requires currency, 454; increased by Crusades, 455; extension of, a revolutionary change, 455.

Contract.—A large space occupied by, in communal custom, 103; verbal and public, 102, 103, 104, 160, 164; effect of, on seizure of waste, 160; the equity of, in Irish law, 103, 104; capacity for, restricted, 103; the benefit of, to be offered first to kinsmen, 105; by commercial guilds, 105.

Coyne and Livery.—What it was, 114; closely regulated by unwritten custom, 115; Sir John Davis on, 118; found in all early communities, 118, 119; petition by Archbishop of Cashel to prevent, 357.

Currency.—Payments made in kind in early days, 113; change in the value of, 274; early use of, in Western Scotland, 292; influence of, on mediæval politics, 345; commerce requires, 449, 454.

Dogs.—Trespass by, in Irish law, 102; danger of madness among, 179; their value for hunting, 195; the lawing of, 195; payments in, 196; as presents, 196.

Easements, 125, 126, 135–7, 261, 262, 495–7.

Enclosure v. staff herding, 232, 236; waste of timber for, 247; a chief cause of change in England, 251, 264; encouraged by feudal tenures, 264; of the waste by the lord, 265; the cause of early, 268–9; tearing down of, 272; an economic change, 272; in sixteenth century, 275; example from Scotland, 278; has divorced labourer from the soil, 266, 279, 280; necessary for agriculture, 453; of commons from the waste to-day, 479.

England.—Effect of change of commercial route on, 16; suited for corn-growing, 16, 60, 264; the causes of change in, 53, 56 (*see* Enclosure); connection with Flanders, 361–2; with France, 346–7, 498–9; wars with France, 375–6.

Eric, The.—Payment for torts in *Germania*, 30, 31, 34, 35; Earl of Kildare receives in 1554, 31; alternative to, 35; in Ireland in twelfth century, 313, 318; Elizabethan writers on, 34.

Europe.—Condition of, in time of Henry II., 14; change in society of, in fourteenth century, 337; effect of discovery of New World on, 421.

Digitized by Google

Famine.—Illustration of effect of, 47, 48; danger of, 179; in Ireland, 351, 390 *et seq.*

Farming.—In Western Scotland, 231; difficulties of communal, 232; two kinds of, 239, 241–2; monastic, 235, 265, 451; yardlands, 240, 242.

Fencing.—Required much timber, 198, 247; in Wales and Ireland, 248, 249; absence of, on waste, 206.

Flanders.—Connection with England, 361–2; woollen manufactures of, 360, 361; incidents of war in, 375.

Folkmoot or General Assembly, of Tacitus, 27; in Ireland, Isle of Man, Orkneys, 28; falls into disuse, 55; various particulars of, 492–3.

Fosterage, 107–11; not peculiar to Ireland, 108; illustrations of, 107–9; rules relating to, 109, 110; used by English settlers, 111; dislike of, by feudal authorities, 111; and feudal custom, 125.

Freeman.—Small freeholder of land tends to become unfree, 47; dealings with waste affect, 250, 151; opposes enclosures, 273; gradually deprived of use of the waste, 250–7, 267, 273–6, 279, 293–5, 463, 472.

Gavelkind, 130; example of division under, 147–9; where found, 153; in Ireland, 32, 154; in Kent, 153, 154; in North Wales, 155; effect on submission of Irish chiefs to Henry VIII., 155; used in Ireland to force a change of religion, 155; Sir John Davis on, 156; an evil effect of, 156; variations of, 156, 157.

Group family.—The sept clan or tribe—the unit of society in Tacitus' account, 33, 34; in Britain, 51; continued in the West, 70, 71; territorial divisions probably frequently identical with, 75; inheritance by, dies out on change to feudal custom, 125; dislike of the religious for, 161; might ignore agreement made by chief, 415; word finé in Brehon laws for, 165, 461; begins to break up in Western Scotland in fourteenth century, 335; destroyed entirely after the '45, 463.

Hostages.—The giving of, 317, 318, 321, 322.

Hunting.—On waste, 180–7, 195–7; close time for, 185–6; the wild swine, 185; in purlieu, 183; hawks, their value for, 196; hawk stealing, 197; dogs, their value for, 195.

Ideal.—Of a nation, 2; sums up the moral tendencies, 3; illustrations of, 5, 6; moral advance corresponds to, 7; controlled by religious beliefs, 8; essential for a society, 12; the British, 6, 490, 491.

Individual Ownership.—In both societies contrasted, 72; gradually breaks in, 149; drives out communal ownership, 478; of improved land a law of nature, 481, 488.

Inheritance.—By group family, dies out under feudal custom, 125; rules of, as to chattels, 142, 163; the geilfiné, 151; the Church fights against intestacy, 163. See Chapters XIII., XIV.

Ireland.—And the society described by Tacitus, 395; in 1154, 16; John de Grey, 21; allotment of land in (*see* Gavelkind), 32, 36; cultivation of land in, 33; events in, and invasions of, in twelfth century, 308–14, 317–20; sends help to England in 1172, 321; the Norsemen in, 318, 319, 320; attacked from Hebrides in 1205,

Digitized by Google

327; troops from, used in Wales, 329; and Western Scotland contrasted, 348–50, 441–3; the communal society of, 350; why neglected by England, 353; encouraging disunion in, 355, 356; Edward Bruce in, 351; English incline to social customs of, 352–6, 374; continental feudal system in, 321; Leinster partitioned among feudal nobles, 322; only chieftain class governed by feudal custom, 353; position of viceroy of, 355; expeditions to, by English kings, 349; decrease of English authority in, 356, 385; the policy of the bear and the bandog, 356, 503; condition in fourteenth century, 373, 387; regalities increase in, 373–4; Statutes of Kilkenny, 381–4; immigration from England, 385; causes of rapid decay, 388–9; famines in, 390; reasons for failure in, 392–5; the "Running Sore" in, 393, 405, 441; Tories in, how they arose, 433; the rebellion of 1641, 435; marriage of Irish girls, 438; selling Irish girls as slaves, 438–9; penal laws against Roman Catholics, 440, 441; destruction of the commerce of, 456–60; of to-day, 403, 432, 503–8.

Isle of Man.—Somerled's sons in, 326; the kings of, in the Hebrides and Ireland, 327; John raids, in 1210, 327; given as a fief to the Pope, 328; sold by Norway, 334.

King.—Formerly of kin to the ruled, elective, 26, 27; marry for kinship, 27, 43; in feudal society, 55; increase of power of, 56, 57; governing by, a trade, 22; their need of money, 67, 69.

Federal Authority of.—Weak in communal society, 12, 13, 73; at the present day, 9; the value of, 74; the overlord of Ireland the Ardri, 73; of Scotland only interferes occasionally, 323.

Of England.—An Ardri only in Ireland, 352; his government in Gascony, 498–9. *Henry II.*—The effect of his marriage with Eleanor, 14, 15, 19; his dealings with Britain, 18–20; with Anjou and Normandy, 18; with Ireland, 313; his expedition to Wales, 315, 316; to Ireland, 317, 320; his relations with William the Lion, 308, 324; with Malcolm IV., 300, 306. *John.*—And the Islands, 20, 21; and William the Lion, 21; and Ireland, Wales, and Scotland, 21; his death the end of a period of transition, 21. *Henry III.*—His difficulties in Gascony, 344, 349. *Edward I.*—His dealings with feudal and communal custom, 337, 338; in Wales, 338; in Scotland, 338–41; his enforcement of the king's supremacy, 346, 347; and feudal custom in Ireland, 354, 357; his government of Gascony, 346–7. *Edward III.*—His war of succession in France, 362–79; his wars with Scotland, 364–76; and the war in Brittany, 369–80.

Of Scotland.—*Malcolm Canmore*—the marriages of, 304. *Malcolm IV.* and Somerled, 305, 306; and Henry II., 300, 306. *William the Lion* and Henry II., 308, 324; and John, 21; extends authority north and west, 324. *Alexander II. and III.*, 328, 329, 331. *David II.*, 376. *From Robert Bruce to James VI. and I.*, 415–20.

Of Ireland.—Terence O'Conor, 309; Murtagh O'Loughlin, 311; Roderick O'Conor, 313.

Digitized by Google

Kinship.—All united by, in communal society, 33; adoption breaks in upon, 34; kings and chiefs make alliances for, 43; no tie of, in feudal custom, 360; position of Jews in society of, 23, 24, 454; disappears with commerce, 454; of mother and child, 500.

Land.—Changes connected with the common usufruct of, 12, 13, 42; all responsible for upkeep of, 99, 100; tribesman as co-owner of common, 92; no personal succession to common, 146; transactions verbal, effect of, on waste in later days, 160; different kinds of, 143; arable, allotment of, 32; account of cultivation of, given by Tacitus, of Irish in seventeenth century, of Western Highlands in nineteenth, 33; modes of ploughing, 233; cultivated by community in common field, 39, 40; equitable division of, 39; methods of cropping, variety of, 42; causes leading to individual ownership of, 49; loans of stock incident to possession of, 87; holding and transfer of, 121–66; feudal antagonism to communal holding, 138; observations on dealing with waste, 477–91.

Laws, Border.—Between England and Scotland, 182. *Of Galloway*—illustrate decay of communal custom, 497–8. *Of waste or forest*—regulations made by king or chief for community, 182–4, 205–13, 217–24; illustrations of, 184; gradually decay, 220–2.

Leases.—An influence to break up communal society, 450, 451; monastic, call for improvements, 451.

Marriage.—In Tacitus' account, 31; sale of, of infant heir, 126, 130; between English and Irish, 352, 356, 407; under tribal custom, 408; of Irish girls with English soldiers, 438.

Meadows.—Small proportion of, in early times, 40, 236; definition of, 237; damage done to, by swine, 237.

Milling.—Communal and manorial, 125, 261; various examples of, 495–7.

Norse Colonies.—In Wexford, 318; in Waterford, 319; in Dublin, 319, 320; in Orkneys and Shetlands, how settled, 132–3; lands in, how divided, 133–4; why they avoided feudalism, 283, 285, 296; sold by Norway, 286; in Western Scotland, 301–3.

Parks.—The enclosure of, from public, a grievance, 217–8; few in Ireland, 218; of Stuart kings, 220; abnormal number of to-day, 479–80.

Pastoral Society.—Described by Tacitus, 24–37; most applicable to the west and north of Britain, 27; remained late in Western Scotland, 282; pastoral wandering or creaghting in Ireland, 483.

Pasture.—To be used in just proportions, 87; overstocking of, 93, 258, 465; common right of, on waste, 257; how regulated by statute, 269, 270; small holder deprived of (*see* Freeman); statistics of, in Ulster, 234; value of, 480; stinted, for work oxen and cows, 189, 236; in east and west, 246.

Pedigree.—Necessary where land held by unwritten custom, 146–7; of David I., 300; of Somerled, 305; for wars of succession, 363; of the Burkes of Ulster, 374–5.

Peter de Neville.—Charges against, 41, 202, 203, 221.

Digitized by Google

Plantation.—Of colonists a commercial adventure, 412; of lands occupied by men without a chief, 420; of island of Lewis, 425–8; of Ulster, 428–33; of Connaught proposed, 434–5; the Cromwellian, of Ireland, 435–45.

Population.—Removal of, in Egypt, in Ireland, 48, 433; increase of, assists individual ownership, 49; movements of, 240–1; reduction of, in Highland farms urged, 290–1; the divisions of, in Ireland in seventeenth century, 354; effect of increase on social change, 447, 449; statistics of, 461; question of, in Western Highlands, 461–76.

Rainfall.—The importance of, for pasture, 242 *et seq.*; statistics of, 245; plays a great part in history of Scotland, 298.

Rent.—And customary dues, 72; competition, 452; in Brehon laws, 452; contrasted with tribal dues, 453; Highland evictions centre round, 466.

Scotland.—Story of, an absorption by feudal, of communal society, 300; influenced by physical geography, 298; a land of mixed races, 307; kings of, turn to the south, 302; and Norway, 323, 329, 331, 332; the Edwardian wars in, 339 *et seq.*; little interest of north and west in, 340; influence of France on, 342; retrogrades after Bannockburn, 347; wars between England and, 364–5, 369, 372. *Galloway*, 306, 324, 342, 349, 497–8. *Moray*, 304, 307, 328. *The Orkneys*, 304, 327. *Ross*, Earl of, created, 328. *Sutherland*, Earl of, created, 328; evictions in, 470–6. *The Western Highlands*—a pastoral country only, 244, 421, 461; the character of, 462; Highlanders break up into clans, 335; they draw apart from the Lowlanders, 336; a description of them, 336; the Wallace movement, 340–1; the west remains independent, 415; dealings of, with Scottish kings, 348, 414–20; danger of over-population in, 463; the temptation to the chief, 464; the conflict between the society and the individual, 464–76. *The Hebrides*—Somerled's sons in, 326; Norway and, 329; Hakon's expedition to, 332–4; the fight at Largs, 333; sold to the Scots king, 334; settlements of, by the Statutes of Icolmkill, 428. (*See* Plantation.)

Sheep.—On the range, their helplessness, 193; no wild species of, 193; value of their manure, 194; women in Ireland take possession by, 194; the agisting of, 194; men driven off land in England go into woollen manufacture, 276; Irish in seventeenth century turn to sheep and wool, their woollen industries destroyed, 458–9.

Slavery.—Comes from war and famine, 37; in Roman law, 92; status of slaves in the islands, 96; does not fit in with sea life, 97.

Social System.—Causes of change in, 53; effect of, on the kingship, 55, 59; on the general assembly, 59; influences affecting, considered, 446; by increase of population, 449; by leases, 450; by competition rent, 452; operate against the small holder, 451; other causes of, 453; commerce as cause of, 454, 455; all dependent on population, 455.

Society—Political.—The requisites for, 1; the ideals of, 2, 8; survival of, 9; changes in, largely connected with uses of land, 12; variations of, 98.

Digitized by Google

Society—Communal.—Its imminence at all times, 10; varieties of, 52; opposed to State socialism, 12; the only true democracy, 13, 51; centres round chieftain class, 78; based on kinship, 51, 79; assumes common ownership of soil, 70; old people maintained by the community, 100; fosterage in, 107–11; rights and duties correspond in, 105; all responsible for upkeep of common usufruct, 99, 100; simplicity of, 106; as described by Tacitus, 26–37; in Ireland and the West, 70–1; in Serbia, 122–4; in Russia, 122–3; in Montenegro, 124; of Hindu joint families, 123; example of user of land in, 147; disturbing influences on, 42, 45, 46, 47; in sixteenth century, 396–7; effect on, of discovery of New World, 421; contrast of, and feudal society, 21, 22, 53, 70, 71, 167, 411, 421; transition from, to feudal custom, 47, 125; effects of, noticed, 126, 127; *in Western Scotland*, its conflict with feudal, 323 *et seq.*; destruction of, 461–76; *in Ireland*, separation from feudal usage, 111–2; English always incline to, 352, 356, 382, 385, 407; early English kings make no attempt to destroy, 352; later kings cannot drive out, 357, 385, 390; ignored in settlements with the Irish, 389; the decay of, a summary, 477; disadvantages of, 478; advantages of, 479; contrasted with State socialism, 480; its decay illustrated by the laws of Galloway, 497–8.

Society—Feudal.—Its influence to-day, and characteristics of, 53; the basis of our land system, 61, 62; English and Continental, 60, 61; how they differed, 343–6; dangers of, from a coalition of nobles, 349; rests on individual ownership of soil, 71; customs of inheritance under, 141; used for seizure of community lands, 147; dead as military system in sixteenth century, 396; remains as legal system after decay of military, 281; extended largely by Stuarts in Scotland, 417–8; how change came to England, 239–81; to Western Scotland, 281–308; Innes on, 293–4; in Western Scotland and Ireland a continental system, 343, 353; Edward I. seeks to enforce in Ireland, 354; proposed compromise by Sir John Perrott, 434; tends to approach communal society, 478.

Statistics.—Of rainfall, 245; of corn and cattle, 244–5; of population, 461.

Stockbreeding.—The two methods of, 169; the interest of, and of the cultivator conflict, 218; deciding the balance of advantage for, 219.

Strangers.—Jealousy of, 227; the different classes of, 228; outside the community and dependent on the chief, 229.

Swine.—On the waste, 191; pannage for, 192; damage by, 192, 193; wild, 185.

Tacitus.—Society of, 27–38; description applied to Britain, 42; the hundred in, 76; the shifting of arable, 32, 292; coshering, the food rents, 29, 494.

Tenure.—Of land—examples of English, 127–30; of north of England, 128–9; of Norse, 131–5; *Gavelkind*, 147–9, 153–7; *copyhold and customary*, 250–3; James VI. and I. tries to destroy, 254; in South Ireland, 256; Ulster tenant right, 255; the conflict over, 256; *odal*, what it was, 131–7; right to sea shore, 286, 296, 476–7; gradual decay of, 287; in Hebrides, 291; no feudal, in Orkneys, until sixteenth century, 283, 285–6, 476.

Digitized by Google

Territorial Divisions.—What they represent, 74–6.
Timber.—Great importance of, 38, 39, 198; right of cutting, 125; for fencing, 198, 219; for charcoal, 42, 200, 201; for shelter and food, 200; for fuel and repairs, 201; injury to, by goats, 194; destruction of, for clearing land, 219; at dissolution of monasteries, 200; provisions for the preservation of, 199; disputes over, 201; the waste as a preserve for, 198–202; planting on waste land, 487.
Township Farms.—Of Western Highlands, 181, 239; destroyed by seizure of waste, 293; descriptions of, 289–91; thrown into large farms, 290; arable shifted in, as in Tacitus' account, 292; definition of, 495.
Treaty.—of Falaise, 324; of Newcastle, 329; of Bretigny, 379; of Limerick, 440.
Trespass.—Rules concerning, 102; of stock on unfenced land, 249.
Tribesman.—Receives stock from chief on admission to tribe, 85; his rights and liabilities, 85; services of, identical with those mentioned by Tacitus and Cæsar, 85; an exception, 86; accepting stock from external chief, 87.

Unfree.—A general term, 23; what it covers, 24, 45; as members of chief's bodyguard, 29; farmer, 33; the result of war and famine, 44, 47, 48, 49; cultivate the waste for individual, 45; and legal custom, 46; and communal rights, 88, 90; contract with, 93; loan of cattle to, 91; increase lord's power, 93, 94; may become free, 94; some customary duties of, 95.
Uses.—What they were, 158; the struggle over, 158–9.

Wales.—John and, 21; follows England in social change, 314; English kings and, 315; Henry II. and, 316; falls under feudal influence, 17; t he Welsh at Crecy, 323; events in, to 1295, 330, 331.
War.—*Military service* for, order of, described by Tacitus, 29; contrast of, in social systems, 57, 58, 59; how enforced, 59, 68, 69; liability for, when attached to use of land, 59; how far effective, 60, 61; refusal to serve beyond the seas, 69; *mercenaries* for, employment of, 62–7, 311, 313, 318–9; scutage to provide, 63, 67; let loose to plunder at truce, 378; the national militia, 68; slavery comes from, 37; effect of, on communal society, 42, 46, 53; illustrations of, 43; shows need for central authority, 54; effect on general assembly, 56; feudal, how waged in France, 365, 367–8; in Scotland, 364–5, 369, 372; in Flanders, 361–2; of succession in, Chaps. XXIX., XXX.; of Elizabeth in Ireland, 390; of the three Joans, 364, 368–72, 377, 380–1.
Waste or Forest.—*The commons*—All beyond the cultivated ground a common hunting ground and pasture, 40; importance of, 41; reclaimed by the unfree, 44; meaning of term, 44; the reserve for the community of food, timber, and minerals, 71; the absurdities written about, 71; common use of, even by unfree, 92, 121, 135–7; authority over, must vest in someone, 123, 257, 259; gradually falls into individual possession, 121; what it included, 170–1; how alienated, 143; rights over, pass with cultivated land, 153; use of, in Serbia and Russia, 122–4; how it varied in extent, 172; as having its origin in sport, 172 *et seq.*; the necessity for inquiring

Digitized by Google

into its history, 177. *As a range for wild creatures*, 177–86; all could hunt on, in the communal society, 181; regulations for use of, 182–3, 205–14; hunting on, 180–7, 195–7; in purlieus, 183; the use of dogs and hawks on, 195–7; the value of hawks, 196; stealing hawks, 197. *As a range for cattle*, 187–91; not for work oxen or milch cows, 189; stockbreeding on, methods of, 169, 170. *As a range for swine*, 191–3. *As a range for sheep and goats*, 193–5; the straying of animals on, 206, 215; questions raised by, 270. *As a preserve for timber*, 198–202; intercommoning as it affected timber, 202. *As a reserve for minerals*, 202–3. *Bees, the small products of*, 203–5. *As a reserve for cultivation*, 224; intercommoning on, as it affects the arrangement of farms, 242; the increased value of, 209, 252; encroachments on, 209, 214; ceases to be of value for wild animals, 214; in the Western Highlands, 216; dealings of the English king with, 216; as pertinent to grants of arable, 225–6; profits of, improvements on, go to an individual, 219; improvements in Western Highlands, 470; when divided from arable, 239. *The small freeman*—how dealing with, affects, 250; drives off, 267, 273–6, 279, 293–5, 463, 472, 473; in England now, 251; his rights over, 257–61; enclosure of, by lord in England (*see* Enclosure); seizure of, destroys township farms in Scotland, 293–6; the pivot on which conflict turns, 286; treatment of, in plantations, 443; vesting of, in local community, 481, 485–8; game preserving on, 489.

PRINTED IN GREAT BRITAIN BY NEILL AND CO., LTD., EDINBURGH

Digitized by Google