

The Chief and the Land

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Lectures on the early history of institutions

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The Brehon law-tracts strongly suggest that, among the things which we in modern times have most forgotten, is the importance of horned cattle, not merely in the infancy of society, but at a period when it had made some considerable advance towards maturity. It is scarcely possible to turn over a page without finding some allusion to beeves, to bulls, cows, heifers, and calves. Horses appear, sheep, swine, and dogs ; and bees, the producers of the greatest of primitive luxuries, have a place assigned to them as an article of property which has something corresponding to it in old Roman law. But the animals much the most frequently mentioned are kine. There are some few facts both of etymology and of legal classification which point to the former importance of oxen. *Capitale*—kine reckoned by the head-cattle—has given birth to one of the most famous terms of law and to one of the most famous terms of political economy, Chattels and Capital. *Pecunia* was probably the word for money which was employed by the largest part of mankind for the longest time together. But oxen, though they have furnished a modern synonym for personal property, were not, I need scarcely say, classed in the lower order of commodities in all ancient systems of law. The primitive Roman law placed them in the highest class, and joined them with land and slaves as items of the *Res Mancipi*. As in several other instances, the legal dignity of this description of property among the Romans appears to answer to its religious dignity among the Hindoos. Kine, which the most ancient Sanscrit literature shows to have been eaten as food, became at some unknown period sacred, and their flesh forbidden ; and, ultimately two of the chief ‘ Things which required a Mancipation’ at Rome, oxen and landed property, had their counterpart in the sacred bull of Siva and the sacred land of India.

The subject has possibly been obscured by an impression that horned cattle were only of pre-eminent importance to mankind in that pastoral stage of society which has been the theme of so much not altogether profitable speculation. The actual evidence seems to show that their greatest value was obtained when groups of men settled on spaces of land and betook themselves to the cultivation of food-grains. It is very possible that kine were at first exclusively valued for their flesh and milk, but it is clear that in very early times a distinct special importance belonged to them as the instrument or medium of exchange. In the Homeric literature, they are certainly a measure of value ; there seems no reason to doubt the traditional story that the earliest coined money known at Rome was stamped with the figure of an ox ; and at all events the connection between ‘ pecus’ and ‘ pecunia’ is unmistakeable. Part, but by no means all, the prominence given by the Brehon lawyers to horned cattle arises certainly from their usefulness in exchange. Throughout the Brehon tracts fines, dues, rents, and returns are calculated in live-stock, not exclusively in kine, but nearly so. Two standards of value are constantly referred to, ‘ sed’ and ‘ cumhal.’ ‘ Cumhal’ is said to have originally meant a female slave, but ‘ sed’ is plainly used for an amount or quantity of live stock, probably to some small extent variable. The next stage, however, in the history of cattle is that at which their service to mankind is greatest. They are now valued chiefly, in some communities exclusively, for their use in tillage, for their labour and their manure. Their place has been taken very generally in Western Europe by horses as beasts of plough, but the change

was even there both gradual and comparatively modern ; and there are still large portions of the world where the horse is exclusively employed, as it seems everywhere to have been at one time, for war, for pleasure, or the chase. Oxen were thus almost the sole representatives of what a Political Economist would now call Capital applied to land. I think it probable that the economical causes which led to the disuse of oxen as a medium of exchange led also to the change in their legal position which we find to have taken place at Rome and in India. The sanctification of the ox among the Hindoos, rendering his flesh unlawful as food, must certainly have been connected with the desire to preserve him for tillage, and his elevation to a place among the *Res Mancipi* may well have been supposed to have the same tendency, since it made his alienation extremely difficult, and must have greatly embarrassed his employment in exchange. At this point the history of horned cattle becomes unhappily mixed up with that of large portions of mankind. The same causes which we perceive altering the position of the ox and turning him into an animal partially *adscriptus glebæ* undoubtedly produced also a great extension of slavery. The plentifulness of land, even in what are considered old countries, down to comparatively recent times, and the scarcity of capital even in its rudest forms, seem to me to be placed in the clearest light by Mr Thorold Rogers's deeply instructive volumes on Agriculture and Prices during the Middle Ages ; and much in history which has been only partially intelligible is explained by them. The enormous importation of slaves into the central territories of the Roman Commonwealth, and the wholesale degradation of the free cultivating communities of Western Europe into assemblages of villeins, seem to be expedients of the same nature as restrictions on the alienation of the ox and on its consumption for food, and to have been alike suggested by the same imperious necessity of procuring and preserving instruments for the cultivation of land.

The importance of horned cattle to men in a particular state of society must, as it seems to me, be carefully borne in mind if we are to understand one of the most remarkable parts of the ancient Irish law which relates to the practice of ' giving stock.' I stated before that, though I did not draw the same inferences from the fact, I agreed with the writers who think that the land-system of ancient Ireland was theoretically based on the division of the tribal lands among the free tribesmen. But I also said that in my opinion the true difficulty of those days was not to obtain land but to obtain the means of cultivating it. The want of capital, taken in its original sense, was the necessity which pressed on the small holder of land and reduced him occasionally to the sorest straits. On the other hand, the great owners of cattle were the various Chiefs, whose primitive superiority to the other tribesmen in this respect was probably owing to their natural functions as military leaders of the tribe. The Brehon law suggests to me that the Chiefs too were pressed by a difficulty of their own, that of finding sufficient pasturage for their herds. Doubtless their power over the waste-lands of the particular group over which they happened to preside was always growing, but the most fruitful portions of the tribal territory would probably be those which the free tribesmen occupied. The fact that the wealth of the Chiefs in cattle was out of proportion to their power of dealing with the tribal lands, and the fact that the tribesmen were every now and then severely pressed by the necessity of procuring the means of tillage, appear to me to supply the best explanation of the system of giving and receiving stock, to which two sub-tracts of the *Senchus Mor* are devoted, the *Cain-Saerrath* and the *Cain-Aigillne*, the Law of Saer-stock tenure and the Law of Daer-stock tenure.

The interest of these two compendia is very great. In the first place, they go far to show us how it was that the power of the tribal Chief increased, not merely over his servile dependants, but over the free tribesmen among whom he had been at first only *primus inter pares*. In the next, they give us, from the authentic records of the ancient usages of one particular society, a perfectly novel example of a proceeding by which feudal vassalage was created. I need scarcely dwell on the historical importance of the various agencies by which the relation of Lord and Vassal was first established. It was by them that the Western Europe of the Roman despotism was changed into the Western Europe of the feudal sovereignties. Nothing

can be more strikingly unlike in external aspect than the states of society which are discerned on either side of the stormy interval filled with the movement and subsidence of the barbarian invasions. Just before it is reached, we see a large part of mankind arranged, so to speak, on one vast level surface dominated in every part by the overshadowing authority of the Roman Emperor. On this they lie as so many equal units, connected together by no institutions which are not assumed to be the creation of positive Roman law ; and between them and their sovereign there is nothing but a host of functionaries who are his servants. When feudal Europe has been constituted, all this is changed. Everybody has become the subordinate of somebody else higher than himself and yet exalted above him by no great distance. If I may again employ an image used by me before, society has taken the form of a pyramid or cone. The great multitude of cultivators is at its base ; and then it mounts up through ever-narrowing sections till it approaches an apex, not always visible, but always supposed to be discoverable, in the Emperor, or the Pope, or God Almighty. There is strong reason to believe that neither picture contains all the actual detail, and that neither the theory of the Roman lawyers on one side nor the theory of the feudal lawyers on the other accounts for or takes notice of a number of customs and institutions which had a practical existence in their day. Either theory was, however, founded upon the most striking facts of the epoch at which it was framed.

We know something, though not very much, of the formal instrumentalities by which the later set of facts became so extremely dissimilar to the earlier. Mr Stubbs ('Constitutional History,' i. 252) has thus summarised the most modern views on the subject. Feudalism ' had grown up from two great sources, the Benefice and the practice of Commendation. The beneficiary system originated partly in gifts of land made by the kings out of their own estates to their kinsmen and servants, with a special undertaking to be faithful, partly in the surrender by landowners of their estates to churches or powerful men, to be received back again and held by them as tenants for rent or service. By the latter arrangement the weaker man obtained the protection of the stronger, and he who felt himself insecure placed his title under the defence of the Church. By the practice of Commendation, on the other hand, the inferior put himself under the personal care of a lord, but without altering his title or divesting himself of his right to his estate ; he became a vassal and did homage.' Commendation, in particular, went on all over Western Europe with singular universality of operation and singular uniformity of result, and it helped to transform the ancient structure of Teutonic society no less than the institutions of the Roman Provincials. Yet there is considerable mystery about men's motives for reporting to so onerous a proceeding, and the statements of nearly all writers on the subject are general and chiefly conjectural. Perhaps the most precise assertion which we have been hitherto able to hazard as to the reasons of so large a part of the world for voluntarily placing themselves in a condition of personal subordination is, that they must have been connected with the system of civil and criminal responsibility which prevailed in those times. Families—real or artificial—natural or formed by agreement—were responsible for the offences and even for the civil liabilities of their members ; but corporate responsibility must have been replaced, conveniently for all persons concerned, by the responsibility of a single lord, who could prevent injury and pay compensation for it, and whose testimony, in compurgation and other legal proceedings, had a weight often assigned to it exceeding that of several inferior persons combined. More generally, but with at least equal plausibility, we can lay down that the general disorder of the world had much to do with the growth of the new institutions ; and that a little society compactly united under a feudal lord was greatly stronger for defence or attack than any body of kinsmen or co-villagers and than any assemblage of voluntary confederates. It would be absurd, however, to suppose that we have materials for a confident opinion as to men's motives for submitting themselves to a change which was probably recommended to them or forced on them by very various circumstances in different countries and in relatively different stages of society.

I do not wish to generalise unduly from the new information furnished by the Brehon law, but there has long been a suspicion (I cannot call it more) among learned men that Celtic

usages would throw some light on Commendation, and, at any rate, amid the dearth of our materials, any addition to them from an authentic source is of value. Let me again state the impression I have formed of the ancient Irish land-system, in the stage at which it is revealed to us by the Brehon tracts. The land of the tribe, whether cultivated or waste, belongs to the tribe, and this is true, whether the tribe be a joint-family of kinsmen or a larger and more artificial assemblage. Such theoretically is the principle, if the traditional view of the primitive state of things may be called a theory. But much of the territory of the larger tribes had been permanently assigned to families or to smaller sub-divisions of tribesmen, and the land of the smaller sub-divisions tends ever to become divided among their members, subject to certain reserved rights of the collective brotherhood. Every considerable tribe, and almost every smaller body of men contained in it, is under a Chief, whether he be one of the many tribal rulers whom the Irish records call Kings, or whether he be one of those heads of joint-families whom the Anglo-Irish lawyers at a later date called the *Capita Cognationum*. But he is not owner of the tribal land, his own land he may have, consisting of private estate or of official domain, or of both, and over the general tribal land he has a general administrative authority, which is ever growing greater over that portion of it which is unappropriated waste. He is meanwhile the military leader of his tribesmen, and, probably in that capacity, he has acquired great wealth in cattle. It has somehow become of great importance to him to place out portions of his herds among the tribesmen, and they on their part occasionally find themselves through stress of circumstance in pressing need of cattle for employment in tillage. Thus the Chiefs appear in the Brehon law as perpetually ‘giving stock,’ and the tribesmen as receiving it. The remarkable thing is, that out of this practice grew, not only the familiar incidents of ownership, such as the right to rent and the liability to pay it, together with some other incidents less pleasantly familiar to the student of Irish history, but, above and besides these, newly all the well-known incidents of feudal tenure. It is by taking stock that the free Irish tribesman becomes the *Ceile* or *Kyle*, the vassal or man of his Chief, owing him not only rent but service and homage. The exact effects of ‘commendation’ are thus produced, and the interesting circumstance is that they are produced from a simple and intelligible motive. The transaction between Chief and Vassal is very burdensome to the latter, but the necessity which leads to it is pressing, and the force of this necessity would be greater the more primitive the society in which it arose, and the more recent its settlement on its lands. All this is especially instructive, because there is no reason whatever to suppose that Beneficiary grants and Commendation arose suddenly in the world at the disruption of the Roman Empire. They were probably, in some form or other, deeply seated among the rudimentary usages of all Aryan societies.

The new position which the tribesman assumed through accepting stock from a Chief varied according to the quantity of stock he received. If he took much stock he sank to a much lower status than if he had taken little. On this difference in the quantity accepted there turns the difference between the two great classes of Irish tenantry, the *Saer* and *Daer* tenants, between whose status and that of the free and higher base tenants of an English manor there is a resemblance not to be mistaken. The *Saer*-stock tenant, distinguished by the limited amount of stock which he received from the Chief, remained a freeman and retained his tribal rights in their integrity. The normal period of his tenancy was seven years, and at the end of it he became entitled to the cattle which had been in his possession. Meantime he had the advantage of employing them in tillage, and the Chief on his part received the ‘growth and increase and milk,’ the first two words implying the young and the manure. So far there is nothing very remarkable in the arrangement, but it is expressly laid down that besides this it entitled the Chief to receive homage and manual labour; manual labour is explained to mean the service of the vassal in reaping the Chief’s harvest and in assisting to build his castle or fort, and it is stated that, in lieu of manual labour, the vassal might be required to follow his Chief to the wars. Any large addition to the stock deposited with the *Saer*-stock tenant, or an unusual quantity accepted in the first instance by the tribesman, created the relation between

vassal and chief called Daer-stock tenancy. The Daer-stock tenant had unquestionably parted with some portion of his freedom, and his duties are invariably referred to as very onerous. The stock given to him by the Chief consisted of two portions, of which one was proportionate to the rank of the recipient, the other to the rent in kind to which the tenant became liable. The technical standard of the first was the tenant's 'honor-price,' the fine or damage which was payable for injuring him, and which in these ancient systems of law varies with the dignity of the person injured. The relation between the second portion of stock and the rent is elaborately defined in the Brehon law : 'The proportionate stock of a calf of the value of a sack with its accompaniments, and refectations for three persons in the summer, and work for three days, is three "samhaisc" heifers or their value' ('Cain-Aigillne,' p. 25) ; or, in other words, that the Chief may entitle himself to the calf, the refectations, and the labour, he must deposit three heifers with the tenant. 'The proportionate stock of a "dartadh" heifer with its accompaniment, is twelve "seds,"' explained to mean twelve 'samhaisc' heifers, or six cows. And so on in many places. The rent in kind, or food-rent, which was thus proportioned to the stock received, unquestionably developed in time in to a rent payable in respect of the tenant's land; but it is certainly a curious and unexpected fact that the rent of the class which is believed to have embraced a very large part of the ancient Irish tenantry did not, in its earliest form, correspond in any way to the value of the tenant's land, but solely to the value of the Chief's property deposited with the tenant. But the most burdensome obligation imposed on the Daerstock tenant is that which, in the quotation just made by me, is expressed by the word 'refectations.' Beside the rent in kind and the feudal services, the Chief who had given stock was entitled to come, with a company of a certain number, and feast at the Daer stock tenant's house, at particular periods, for a fixed number of days. This 'right of refectation,' and liability to it, are among the most distinctive features of ancient Irish custom, and their origin is probably to be explained by the circumstance that the Irish Chief, though far more privileged than his tenants, was little better housed and almost as poorly furnished out, and could not have managed to consume at home the provisions to which his gifts of stock entitled him. But the practice had a most unhappy history. The Brehon law defines it and limits it narrowly on all sides ; but its inconvenience and its tendency to degenerate into an abuse are manifest, and from it are doubtless descended those oppressions which revolted such English observers of Ireland as Spenser and Davis, the 'coin and livery,' and the 'cosherings' of the Irish Chiefs, which they denounce with such indignant emphasis. Perhaps there was no Irish usage which seemed to Englishmen so amply to justify that which as a whole I believe to have been a great mistake and a great wrong, the entire judicial or legislative abolition of Irish customs. The precautions by which the Brehon lawyers could fence it in were not probably at any time very effectual, but, as I before stated, they did what they could ; and, moreover, as defined by them, the relation out of which Daer-stock tenancy and its peculiar obligations arose was not perpetual. After food-rent and service had been rendered for seven years, if the Chief died, the tenant became entitled to the stock ; while, on the other hand, if the tenant died, his heirs were partly, though not wholly, relieved from their obligation. At the same time it is very probable that Daer-stock tenancy, which must have begun in the necessities of the tenant, was often from the same cause rendered practically permanent.

It has frequently been conjectured that certain incidents of feudal tenure pointed back to some such system as the Brehon tracts describe to us. The Heriot of English Copyhold tenure, the 'best beast' taken by the Lord on the death of a base tenant, has been explained as an acknowledgment of the Lord's ownership of the cattle with which he anciently stocked the land of his villeins, just as the Heriot of the military tenant is believed to have had its origin in a deposit of arms. Adam Smith recognised the great antiquity of the Metayer tenancy, still widely spread over the Continent, of which one variety was in his day found in Scotland under the name of 'steelbow.' I am not at all surprised that, in one of the Prefaces to the official translation of the Brehon laws, a comparison should be instituted between this tenancy and the Saer and Daer-stock tenancy of ancient Irish law. The outward resemblance is con-

siderable, and the history of Metayer tenancy is so obscure that I certainly cannot undertake to say that practices answering to those I have described had not in some countries something to do with its primitive form. But the distinctions between the ancient and the modern tenancies are more important than the analogies. In Metayer tenancy a landlord supplies the land and stock, a tenant the labour only and the skill ; but in Saer and Daer-stock tenancy the land belonged to the tenant. Again, the effect of the ancient Irish relation was to produce, not merely a contractual liability, but a status. The tenant had his social and tribal position distinctly altered by accepting stock. Further, the acceptance of stock was not always voluntary. A tribesman, in one stage of Irish custom at all events, was bound to receive stock from his own ' King,' or, in other words, from the Chief of his tribe in its largest extension ; and everywhere the Brehon laws seem to me to speak of the acceptance of stock as a hard necessity. Lastly, the Tribe to which the intending tenant belonged had in some cases a Veto on his adoption of the new position, which was clearly regarded as a proceeding invasive of tribal rights and calculated to enfeeble them. In order to give the Tribe the opportunity of interposing whenever it had legal power to do so, the acceptance of stock had to be open and public, and the consequences of effecting it surreptitiously are elaborately set forth by the law. It seems to me clear that it was discouraged by the current popular morality. One of those rules, frequent in ancient bodies of law, which are rather moral precepts than juridical provisions, declares that ' no man should leave a rent on his land which he did not find there.'

The system which I have been describing must have contributed powerfully to dissolve the more ancient tribal and family organisation. If the Chief who gave and the Ceile who accepted stock belonged to the same Tribe, the effect of the transaction was to create a relation between them, not indeed altogether unlike that of tribal connection, but still materially different from it in many respects and much more to the advantage of the chieftain. But the superior from whom a man took stock was not always the Chief of his own Sept or Tribe. So far as the Brehon law can be said to show any favour to the new system of vassalage, it encourages it between natural chief and natural tribesman ; and, on the other hand, it puts difficulties in its way when there is an attempt to establish it between a tribesman and a strange Chief. But there seem to be abundant admissions that freemen did occasionally commend themselves in this way to superiors other than their Chiefs. Every nobleman, as I said before, is assumed to be as a rule rich in cattle, and it appears to have been an object with everyone to disperse his herds by the practice of giving stock. The enriched peasant who was on his way to be ennobled, the Bo-Aire, seems to have had Ceiles who accepted stock from him, as well as had the nobles higher in degree. Accordingly, the new groups formed of the Lord and his Vassals—if we may somewhat antedate these last words—were sometimes wholly distinct from the old groups composed of the Chief and his Clan. Nor, again, was the new relation confined to Aires, or noblemen, and Ceiles, or free but non-noble tribesmen. The Bo-Aire certainly, and apparently the higher Chiefs also, accepted stock on occasion from chieftains more exalted than themselves; and in the end to ' give stock' came to mean the same thing as to assert feudal superiority, and to ' accept stock' the same thing, which in the language of other societies was called ' commendation.' It is strong evidence of the soundness of the conclusions reached of late years by historical scholars (and, among others, by Mr Bryce), as to the deep and wide influence exercised by the Roman Empire, even in its later form, that (of course by a fiction) the Brehon law represents the King of Ireland as ' accepting stock' from the Emperor. ' When the King of Erin is without opposition'—that is, as the explanation runs, when he holds the ports of Dublin, Waterford, and Limerick, which were usually in the hands of the Danes—' he receives stock from the King of the Romans' (S. M., ii. 225). The commentary goes on to say that ' sometimes it is by the successor of Patrick that the stock is given to the King of Erin ;' and this remarkable passage seems to show that an Irish writer spoke of the successor of St Patrick, where a writer of the same approximate period in England or on the European Continent would assuredly have spoken of the Pope.

I hope it is unnecessary for me to insist on the interest which attaches to this part of the Brehon law, it has been not uncommon, upon the evidence furnished by the usages of the Scottish Highlanders, sharply to contrast Celtic tribal customs with feudal rules ; and doubtless between these customs and feudalism in its perfected state there are differences of the greatest importance. Yet, if the testimony of the Brehon tracts may be trusted, such differences arose, not from essential distinctions, but, in some measure at all events, from distinctions of degree in comparative social development. The germs of feudalism lay deep in the more ancient social forms, and were ready to assert their vitality even in a country like Ireland, which, after it was once Christianised, can have borrowed next to no institutions from its neighbours, cut off as it was from the Continent by distance, and from England by stubborn national repulsion. It is also worthy of observation that this natural growth of feudalism was not, as some eminent recent writers have supposed, entirely distinct from the process by which the authority of the Chief or Lord over the Tribe or Village was extended, but rather formed part of it. While the unappropriated waste-lands were falling into his domain, the villagers or tribesmen were coming through natural agencies under his personal power.

The Irish practice of ‘ giving stock ’ seems to me also to connect itself with another set of phenomena which have generally been thought to belong to a very different stage of history. We obtain from the law-tracts a picture of an aristocracy of wealth in its most primitive form ; and we see that the possession of this wealth gave the nobles an immense power over the non-noble freemen who had nothing but their land. Caesar seems to me to be clearly referring to the same state of relations in the Celtic sister society, when he speaks of the Gaulish chiefs, the Equites, having one principal source of their influence in the number of their debtors. (B. G., i. 4; B. G., vi. 13.) Now, you will remember how uniformly, when our knowledge of the ancient world commences, we find plebeian classes deeply indebted to aristocratic orders. At the beginning of Athenian history we find the Athenian commonalty the bondslaves through debt of the Eupatrids ; at the beginning of Roman history we find the Roman Commons in money bondage to the Patricians. The fact has been accounted for in many ways, and it has been plausibly suggested that it was the occurrence of repeated bad seasons which placed the small farmers of the Attic and Roman territory at the mercy of wealthy nobles. But the explanation is imperfect unless we keep in mind the chief lesson of these Brehon tracts, and recollect that the relative importance of Land and Capital has been altering throughout history. The general proposition that Land is limited in quantity and is distinguished by this limitation from all other commodities which are practically capable of indefinite multiplication, has always of course been abstractedly true ; but, like many other principles of Political Economy, its value depends on the circumstances to which it is applied. In very ancient times land was a drug, while capital was extremely perishable, added to with the greatest difficulty, and lodged in very few hands. The proportionate importance of the two requisites of cultivation changed very slowly, and it is only quite recently that in some countries it has been well-nigh reversed. The ownership of the instruments of tillage other than the land itself was thus, in early agricultural communities, a power of the first order, and, as it may be believed that a stock of the primitive capital larger than usual was very generally obtained by plunder, we can understand that these stocks were mostly in the hands of noble classes whose occupation was war, and who at all events had a monopoly of the profits of office. The advance of capital at usurious interest, and the helpless degradation of the borrowers, were the natural results of such economical conditions. For the honour of the obscure and forgotten Brehon writers of the Cain-Saerrath and the Cain-Aigillne, let it not be forgotten that their undertaking was essentially the same as that which went far to immortalise one great Athenian legislator. By their precise and detailed statements of the proportion which is to be preserved between the stock which the Chief supplies and the returns which the tenant pays, they plainly intend to introduce certainty and equity into a naturally oppressive system. Solon, dealing with a state of society in which coined money had probably not long taken the place of something like the ‘ seds ’ of the Brehon law, had no expedient open to him but the debasement of the currency

and the cancellation of debts ; but he was attacking the same evil as the Brehon lawyers, and equally interfering with that freedom of contract which wears a very different aspect according to the condition of the society in which it prevails.

The great part played in the Brehon law by Cattle as the oldest form of Capital ought further to leave no doubt of the original objects of the system of 'eric'-fines, or pecuniary composition for violent crime. As I said before, no Irish institution was so strongly denounced by Englishmen as this, or with so great a show of righteous indignation. As members of a wealthy community, long accustomed to a strong government, they were revolted partly by its apparent inadequacy and partly the unjust impunity which it seemed to give to the rich man and to deny to the poor. Although the English system of criminal penalties which they sought to substitute for the Irish system of compositions would nowadays be described by an ordinary writer in pretty much as dark colours as those used by Spenser and Davis for the Irish institution, it is very possible that in the sixteenth century it would have been an advantage to Ireland to have the English procedure and the English punishments. There is much evidence that the usefulness of 'eric'-fines had died out, and that they unjustly profited the rich and powerful. But that only shows that the confusions of Ireland had kept alive beyond its time an institution which in the beginning had been a great step forwards from barbarism. If the modern writers who have spoken harshly of these pecuniary compositions had come upon a set of usages belonging to a society in which tribe was perpetually struggling with tribe, and in which life was held extraordinarily cheap, and had found that, by this customary law, the sept or family to which the perpetrator of a crime belonged forfeited a considerable portion of its lauds, I am not sure that they would not have regarded the institution as showing for the age an extremely strict police. But in the infancy of society a fine on the cultivating communities, of the kind afterwards called pecuniary, was a much severer punishment than the forfeiture of land. They had plenty of land within their domains, but very slight appliances for cultivating it ; and it was out of these last that compositions were paid. The system of course lost its meaning as the communities broke up and as property became unequally divided. In its day, nevertheless, it had been a great achievement, and there are traces of it everywhere, even in Roman law, where, however, it is a mere survival.

Before I quit the subject let me say something on the etymology of the famous word, Feodum, Feud, or Fief. The derivation from Emphyteus is now altogether abandoned, and there is general, though not quite universal, agreement that Feodum is descended from one or other of the numerous family of old Teutonic terms which have their present representative in the modern German Vieh, 'cattle.' There is supposed to have been much the same transmutation of meaning which occurred with the analogous Latin word. Pecunia, allied to pecus, signified first money, and then property generally ; the Roman lawyers, in fact, tell us that it is the most comprehensive term for all a man's property, and in the same way 'feodum' is supposed to have come to mean 'property,' from having originally meant 'cattle.' The investigations we have been pursuing may perhaps, however, suggest that the connection of 'feodum' with cattle is closer and more direct than this theory assumes. Dr Sullivan, I ought to add, assigns a different origin to 'feodum' from any hitherto put forward (Introd. p. ccxxvi). He claims it as a Celtic word, and connects it with *fuidhir*, the name of a class of denizens on tribal territory whose status I am about to discuss.

The territory of every Irish tribe appears to have had settled on it, besides the Saer and Daer Ceiles, certain classes of persons whose condition was much newer to slavery than that of the free tribesman who, by accepting stock from the Chief, had sunk lowest from his original position in the tribal society. They are called by various names, Sencleithes, Bothachs, and Fuidhirs ; and the two last classes are again subdivided, like the Ceiles, into Saer and Daer Bothachs, and Saer and Daer Fuidhirs. There is evidence in the tracts, and especially in the unpublished tract called the 'Corus Fine,' that the servile dependants, like the freemen of the territory, had a family or tribal organisation ; and indeed all fragments of a society like

that of ancient Ireland take more or less the shape of the prevailing model. The position of the classes, obscurely indicated in Domesday and other ancient English records as Cotwii and Bordarii, was probably very similar to that of the Sencleithes and Bothachs ; and in both cases it has been suspected that these servile orders had an origin distinct from that of the dominant race, and belonged to the older or aboriginal inhabitants of the country. Families or sub-tribes formed out of them were probably hewers of wood and drawers of water to the ruling tribe or its subdivisions. Others were certainly in a condition of special servitude to the Chief or dependence on him ; and these last were either engaged in cultivating his immediate domain-land and herding his cattle, or were planted by him in separate settlements on the waste land of the tribe. The rent or service which they paid to him for the use of this land was apparently determinable solely by the pleasure of the Chief.

Much the most important, and much the most interesting of these classes from the historical point of view, was that just described as settled by the Chief on the unappropriated tribal lands. Indeed, it has been suggested that its fortunes are identical with those of the great bulk of the Irish people. It consisted of the Fuidhirs, the strangers or fugitives from other territories, men, in fact, who had broken the original tribal bond which gave them a place in the community, and who had to obtain another as best they might in a new tribe and a new place. The Brehon law shows by abundant evidence that the class must have been a numerous one. The desertion of their lands by families or portions of families is repeatedly spoken of. Under certain circumstances, indeed, the rupture of the tribal bond and the flight of those who break it are eventualities distinctly contemplated by the law. In the Brehon law, as in other ancient juridical systems, the corporate responsibility of tribes, sub-tribes, and families takes the place of that responsibility for crime, and even to some extent of civil obligation, which, under modern institutions, presses upon the individual. But the responsibility might be prevented from attaching by compelling or inducing a member of the group, habitually violent or vowed to revenge, to withdraw from its circle; and the Book of Aicill gives the legal procedure which is to be observed in the expulsion, the tribe paying certain fines to the Chief and the Church and proclaiming the fugitive. Such provisions assume a certain order in the society to which they apply ; yet we know as a fact that for many centuries it was violently disordered. The result was probably to fill the country with ‘ broken men,’ and such men could only find a home and protection by becoming Fuidhir tenants. Everything, in short, which tended to disturb the Ireland of the Brehon laws tended to multiply this particular class.

Now, the Fuidhir tenant was exclusively a dependant of the Chief, and was through him alone connected with the Tribe. The responsibility for crime, which in the natural state of Irish society attached to the Family or Tribe, attached, in the case of the Fuidhir, to the Chief, who in fact became to this class of tenants that which their original tribesmen or kindred had been. Moreover, the land which they cultivated in their place of refuge was not theirs but his. They were the first tenants at will, known to Ireland, and there is no doubt that they were always theoretically rackrentable. The ‘ three rents,’ says the Senchus Mor, are the ‘ rackrent from a person of a strange tribe, a fair rent from one of the tribe, and the stipulated rent which is paid equally by the tribe and the strange tribe.’ The ‘ person from a strange tribe’ is undoubtedly the Fuidhir; and though the Irish expression translated ‘ rackrent’ cannot, of course, in the ancient state of relation between population and land, denote an extreme competition rent, it certainly indicates an extreme rent ; since in one of the glosses it is graphically compared to the milk of a cow which is compelled to give milk every month to the end of the year. At the same time there is no reason to suppose that, in the first instance, the Fuidhir tenants were oppressively treated by the Chiefs. The Chief had a strong interest in encouraging them ; ‘ he brings in Fuidhirs,’ says one of the tracts, ‘ to increase his wealth.’ The interests really injured were those of the Tribe, which may have become stronger for defence or attack by the addition to the population of the territory, but which certainly suffered as a body of joint proprietors by the curtailment of the waste land available for pasture. The

process before described by which the status of the tribesmen declined proportionately to the growth of the Chiefs' powers, must have been indirectly hastened in several ways by the introduction of Fuidhirs. Such indications of the course of change as the Brehon laws furnish are curiously in harmony with a passage from a work recently published, which, amid much other valuable matter, gives a most vivid picture of agricultural life in the backward Indian province of Orissa. Mr Hunter, the writer, is speaking of the relation of landlord and tenant ; but as the ' hereditary peasantry' referred to have, as against their landlord, rights defined by law, they are not without analogy to the tribesmen of an ancient Irish territory. ' The migratory husbandman,' the Fuidhir of modern India, ' not only lost his hereditary position in his own village, but he was an object of dislike and suspicion among the new community into which he thrust himself. For every accession of cultivators tended to better the position of the land-lord, and pro tanto to injure that of the (older) cultivators. So long as the land on an estate continued to be twice as much as the hereditary peasantry could till, the resident husbandmen were of too much importance to be bullied or squeezed into discontent. But once a large body of immigrant cultivators had grown up, this primitive check on the landlords' exactions was removed. The migratory tenants, therefore, not only lost their position in their old villages, but they were harassed in their new settlements. Worse than all, they were to a certain extent confounded with the landless low castes who, destitute of the local connections so keenly prized in rural society as the evidences of respectability, wandered about as hired labourers and temporary cultivators of surplus village lands.' (Hunter, ' Orissa,' i. 57, 58)

You will perhaps have divined the ground of the special attention which has been claimed for these Fuidhir tenants, and will be prepared to hear that their peculiar status has been supposed to have a bearing on those agrarian difficulties which have recurred with almost mysterious frequency in the history of Ireland. It is certainly a striking circumstance that in the far distance of Irish tradition we come upon conflicts between rent-paying and rent-receiving tribes—that, at the first moment when our information respecting Ireland becomes full and trustworthy, our informants dwell with indignant emphasis on the ' racking' of tenants by the Irish Chiefs—and that the relation of Irish landlord and Irish tenant, after being recognised ever since the beginning of the century as a social difficulty of the first magnitude, finally became a political difficulty, which was settled only the other day. I do not say that there is not a thread of connection between these stages of Irish agrarian history, but there are two opposite errors into which we may be betrayed if we assume the thread to have been uniform throughout. In the first place, we may be tempted to antedate the influence of those economical laws which latterly had such powerful operation in Ireland until their energy was well-nigh spent through the consequences of the great famine of 1845-6. An overflowing population and a limited area of cultivable land had much to do, and probably more than anything else to do, with the condition of Ireland during that period ; but neither the one nor the other was a characteristic of the country at the end of the sixteenth century. Next, we may perhaps be inclined, as some writers of great merit seem to me to be, to post-date the social changes which caused so large a portion of the soil of Ireland to be placed under the uncontrolled Law of the Market, or, to adopt the ordinary phraseology, which multiplied ' tenants at will' to an unusual extent. Doubtless, if we had to found an opinion as to these causes exclusively on ancient Irish law, and on modern English real property law, we should perhaps come to the conclusion that an archaic system, barely recognising absolute ownership, had been violently and unnaturally replaced by a system of far more modern stamp based upon absolute property in land. But, by the end of the sixteenth century, our evidence is that the Chiefs had already so much power over their tenants that any addition to it is scarcely conceivable. ' The Lords of land,' says Edmund Spenser, writing not later than 1596, ' do not there use to set out their land to farme, for tearme of years, to their tenants, but only from yeare to yeare, or during pleasure, neither indeed will the Irish tenant or husbandman otherwise take his land than so long as he list himselfe. The reason thereof in the tenant is, for that the landlords there use most shamefully to racke their tenants, laying upon them coin and livery at pleasure, and exacting of them besides his covenants what he pleaseth. So

that the poore husbandman either dare not binde himselfe to him for longer tearme, or thinketh, by his continuall liberty of change, to keepe his landlord the rather in awe from wronging of him. And the reason why the landlord will no longer covenant with him is, for that he dayly looketh after change and alteration, and hovereth in expectation of new worlds.' Sir John Davis, writing rather before 1613, used still stronger language : ' The Lord is an absolute Tyrant and the Tennant a very slave and villain, and in one respect more miserable than Bond Slaves. For commonly the Bond Slave is fed by his Lord, but here the Lord is fed by his Bond Slave.'

There is very little in common between the miserable position of the Irish tenant here described and the footing of even the baser sort of Ceiles, or villeins, who had taken stock from the Chief. If the Brehon law is to be trusted, the Daer Ceile was to be commiserated, rather because he had derogated from his rights as a free tribesman of the same blood with the Chief, than because he had exposed himself to unbridled oppression. Besides paying dues more of the nature of modern rent, he certainly stood under that unfortunate liability of supplying periodical refection for his Chief and his followers. But not only was the Mount of his dues settled by the law, but the very size of the joints and the quality of the ale with which he regaled his Chief were minutely and expressly regulated. And, if one provision of the law is clearer than another, it is that the normal period of the relation of tenancy or vassalage was not one year, but seven years. How, then, are we to explain this discrepancy ? Is the explanation that the Brehon theory never in reality quite corresponded with the facts ? It may be so to some extent, but the careful student of the Brehon tracts will be inclined to think that the general bias of their writers was rather towards exaggeration of the privileges of Chiefs than towards Overstatement of the immunities of tribesmen. Is it, on the other hand, likely that, as some patriotic Irishmen have asserted, Spenser and Davis were under the influence of English prejudice, and grossly misrepresented the facts of Irish life in their day ? Plenty of prejudice of a certain kind is disclosed by their writings, and I doubt not that they were capable of occasionally misunderstanding what they saw. Nothing, however, which they have written suggests that they were likely wilfully to misdescribe facts open to their observation. I can quite conceive that some things in the relations of the Chiefs and tenants escaped them, possibly a good deal of freely-given loyalty on one side, and of kindness and good humoured joviality on the other. But that the Irish Chief had in their day the power or right which they attribute to him cannot seriously be questioned.

The power of the Irish Chiefs and their severity to their tenants in the sixteenth century being admitted, they have been accounted for, as I before stated, by supposing that the Norman nobles who became gradually clothed with Irish chieftainships—the Fitzgeralds, the Burkes, and the Barrys—abused an authority which in native hands would have been subject to natural limitations, and thus set an evil example to all the Chiefs of Ireland. The explanation has not the antecedent improbability which it might seem to have at first sight, but I am not aware that there is positive evidence to sustain it. I owe a far more plausible theory of the cause of change to Dr Sullivan, who, in his Introduction (p. cxxvi), has suggested that it was determined by the steady multiplication of Fuidhir tenants. It must be recollected that this class of persons would not be protected by the primitive or natural institutions springing out of community of blood. The Fuidhir was not a tribesman but an alien. In all societies cemented together by kinship the position of the person who has lost or broken the bond of union is always extraordinarily miserable. He has not only lost his natural place in them, but they have no room for him anywhere else. The wretchedness of the outcast in India, understood as the man who has lost or been expelled from caste, does not arise from his having been degraded from a higher to a lower social standing, but from his having no standing whatever, there being no other order of society open to receive him when he has descended from his own. It was true that the Fuidhir, though he had lost the manifold protection of his family and tribe, was not actually exposed to violent wrong. From that he was protected by the new Chief to whom he had attached himself, but between him and this Chief there was

nothing. The principle would always be that he was at the mercy of the Chief. At the utmost, some usages favourable to him might establish themselves through lapse of time, but they would have none of the obligatory force belonging to the rules which defined the rights of the Chief in respect of his Saer-stock and Daerstock tenants. We can see that several of the duties corresponding to these rights were of a kind to invite abuse ; much more certainly would obligations analogous to them, but wholly imposed by the pleasure of the Chief, become cruelly oppressive. The ‘refections’ of the Brehon law would, by a miserable degradation, become (to borrow the language of Spenser and Davis) coin and livery, cuttings, cosherings, and spendings, in the case of the Fuidhirs. Meanwhile there were causes at work, powerfully and for long periods of time, to increase the numbers of this class. Even those Irishmen who believe that in the distant past there was once a tolerably well-ordered Ireland admit that for many centuries their country was racked with perpetual disturbance. Danish piracies, intestine feuds, Anglo-Norman attempts at conquest never consistently carried out or thoroughly completed, the very existence of the Pale, and above all the policy directed from it of playing off against one another the Chiefs beyond its borders, are allowed by all to have distracted the island with civil war, how ever the responsibility for it is to be apportioned. But the process is one which must have broken up tribes far and wide, and broken tribes imply a multitude of broken men. Even in brief intervals of peace the violent habits produced by constant disorder would bring about the frequent expulsion by families of members for whom they refused to remain responsible, and in the commoner eventuality of war whole fragments would be from time to time torn away from tribes and their atoms scattered in every part of Ireland. it is therefore, a conjecture possessing a very high degree of plausibility, that the tenantry of the Irish Chiefs whose sufferings provoked the indignation of Spenser and Davis consisted largely of Fuidhirs.

The explanation may, however, be carried beyond this point. You will bear in mind the passage quoted by me from Hunter’s ‘Orissa,’ which shows how a tenantry enjoying hereditary rights is injured, even under a Government which sternly compels peace and order, by a large immigration of cultivators dependent on the landlord or Zemindar. They narrow the available waste land by their appropriations ; and, though they do not compete directly for the anciently cultivated land with the tenants enjoying hereditary rights, they greatly raise in the long run the standard of rent, at the same time that they arm the landlord with those powers of exacting it which in ancient Ireland consisted in the strong hand of the Chief himself, and which consist, in modern India, in the money which puts in motion the arm of the law. I have no doubt whatever that a great multiplication of Fuidhir tenants would always seriously alter for the worse the position of the tenants by Saer-stock and Dear-stock tenure.

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