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A HISTORY OF Land Tenure in England

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OF

Land Tenure in England

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SECOND AND REVISED EDITION.

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PREFACE TO THE FIRST EDITION

THE following chapters formed the first part of a thesis which I submitted for the Doctorate of Philosophy in 1910. I have left them unpublished till they are slightly out of date in certain parts. But even now when sending them to the press, I feel that an apology is needed not for keeping them back so long, but for deciding at last to see them in print.

I cannot fully justify my action in this matter. But I shall state what led me to write on the agrarian system of a distant land, when there was an extensive field for similar labours at home. It appeared to me that exclusive importance was being attached by our scholars to the history of our own institutions. The study of these is, no doubt, very valuable, for our past lives in us and claims its share in moulding our destiny. Still it must be admitted that we have left our old moorings, and that new forces, social, economic and political, are at work among us today. For wise guidance, therefore, we have to turn to the history of those countries in which they had full play. It was at any rate with a conviction like this that I carefully studied the land systems among other economic institutions of England, France, Germany and Russia; and the thesis, which I have referred to, was the outcome of my labours in this direction.

The subject has received exhaustive treatment at the hands of a number of European scholars.

And I feel also that my review lacks the freshness and directness of first-hand knowledge. But it was written from the standpoint of an Indian and with an eye on the present needs and aspirations of India. Hence it is not over-burdened with details, though it may appear over-burdened with observations on the merits and demerits of different types of property in land.

I have been able to make some additions and alterations in the course of the last two months. I wish I could do more to improve the quality of the work before exposing it to the criticism of the reading public, which may not be quite as indulgent as my examiners were. But my present duties will not permit me to do that. I must regret, however, that it has to go out without many of the notes which originally accompanied it and which have since been lost.

I have drawn largely on literature in the narrower sense for illustrating my points. But for obvious reasons, I have given only translations of passages from Old English and Norman French works.

My best thanks are due to the publishers for materially assisting me in the correction of proof-sheets, though I notice that the orthodox spelling has not been uniformly adopted in the case of two or three words.

MYMENSINGH,
September 16, 1921. JAJNESWAR GHOSH

PREFACE TO THE SECOND EDITION

In the present edition a new chapter has been added which deals with the manner in which recent events have affected the agricultural outlook and conditions in England. A certain amount of additional information has also been furnished in the appendices. And a few sentences have been rewritten in the first and second chapters to avoid vagueness and to remove inaccuracies.

In presenting the book once more to the notice of the reading public, I have to express my gratitude to Sir Paul Vinogradoff and Mr. Reginald Lennard for a number of valuable suggestions and references. I am also obliged to Dr. Gilbert Slater for thinking that a book like mine cannot be unprofitable study for my countrymen. I hold with him and with the critic in the *Pioneer* and against the learned reviewer in the *Calcutta Review* that "there are many points of contact between the past conditions of British land tenure and the agrarian problems of present day India." To ignore them would be to court the danger of contracted views, for they are likely to bring out what we have to expect from our present institutions and what we must try to avoid. Besides, it should not be forgotten that landlordism, as we have it in Bengal, was introduced in imitation of the English system.

For assistance in revising the proof, I am indebted to my colleague, Prof. S. K. Chakravartty.

MYMENSINGH, J. GHOSH.
November, 1923.

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The Village Community and the Open Field System

Certain facts which have been brought to light by recent research cannot be made to square with the view that the interest and authority of the masters created and maintained the open-field system with its equality of holdings. Of these, the most interesting are to be found in the social and economic history of the Saxon or Ditmarschen portion of Jutland from the tenth to the fifteenth century. There is no proof here of foreign influence or of the domination of owners of extensive estates over a dependent population within this period or before it. The land was held by clans which were composed of brotherhoods or groups of related families. There was the same intermixture of strips within the arable area. But what was more significant was that the hufe or hof, the holding of a family, was never partitioned, but passed to the eldest or the youngest son, while his brothers elected either to remain as members of his family or to leave the shelter of their paternal roof after receiving some sort of compensation for their relinquished claims. This compensation, however, was more of the nature of an outfit required for setting them up in life than of a just price of the title of co-heirs to ancestral property. Similar treatment was accorded to super-numerary heirs in certain districts of Norway and Denmark, where normal holdings bore no necessary relation to the size of the families that

owned them, but appear to have been determined with reference to the conditions of effective exploitation of the land. In all these cases, however, we are on entirely free soil that spurned foreign interference and did not permit the enslavement of the cultivators by an aristocratic class. And yet the integrity of the holdings was maintained by prohibiting alienation into strange hands and ruling out the equal and independent rights of co-heirs. The over-ruling authority must, therefore, be sought in the communal conception that underlay tribal customs and showed itself even more clearly in the periodical distribution of the meadow and the undivided possession of the waste.

This communism, however, was radically different in character from the political and economic principle of equality which has received that name in modern times. The primary object of the Teutonic arrangement was not that the individual should have the means and opportunity of earning a decent livelihood, but that the well-being of the clan should be assured. To it belonged the land, and the rules relating to its disposal and management had distinct reference to collective interests and not to those of individual appropriators. The nature of agricultural industry prescribed that the cultivator should have a particular personal interest in the soil which was under his care. But as the communal group had a right to them, he was forbidden to enclose his plots, though it was obviously difficult to prevent trespass on them so long as they remained open. The first concern, therefore, of this prohibitive regulation (and the same may be said of many others) was not to assure to individuals or families the

fruits of their honest labour but to protect the clan or community of kinsmen from injury or injustice.

Pure tribal communities were not much in evidence in England as conquest and settlement brought together men of different tribes. But the traditional rules of husbandry and land-holding remained unaltered, and new elements were fitted into the old framework by standardizing the holdings of ordinary freemen. Indeed, no other mode of forming shares could be thought of so long as there was no change in the method of cultivation and of supplementing it by pastoral industry. And so when the manorial system appeared, it adopted the communal arrangements as necessary for the effective exploitation of the estate. But Meitzen goes too far when he says that the principles which dictated the mediæval rural arrangements were identical with those that have found expression in modern joint-stock companies. The tribal communities of the Teutons and the village communities which took their places were certainly not artificial associations for mere material gain. And it is much more correct to represent them as 'natural corporations,' rooted in tradition and bound and protected by customs that governed their political and social relations as well as their industrial activities.

Sir Paul Vinogradoff anticipates an objection to this view of the original character of the village communities and meets it. The holdings, it may be said, were not cut to a uniform pattern in Saxon villages; there were virgates, bovates and cotlands and even subdivisions and multiples of these, which were sometimes ignored by the landlords of a later age, because an imaginary scheme of

equal holdings ' offered a ready basis for computing rents and assessing labour services.' But the inequalities, flagrant as they were, simply indicated that the communities had swerved from the path of their original development. We have seen that forces were at work even from the outset which tended to warp them from their original shape and that these forces became irresistible after the settlement of the Saxons in the island. They could not, however, completely override the communal principle which dictated the original arrangements. For when the aberrations from the typical holding are closely examined, they are seen to fall into certain classes marked off from one another by abrupt transitions. They were, as Mr. Meredith observes, ¾, ½ or ¼ virgates, or 1¼, 1½, 1¾ virgates, or ½ hides, ¾ hides and so on. So the question naturally arises why there were no intermediate deviations from the norm. And the only answer that can be offered is that the variants were the outcome of opposing forces, one of which led to departures from the type, while the other set limits to those departures in the interests of the community.

The theory of a proprietary origin of the open-field system may, of course, be made to fit in with the incidents of conquest, if we suppose that the original Saxon States in the island were really small bands of warriors in possession not only of extensive stretches of land but also of large numbers of the defeated Britons, who were the slaves of the victors by the ancient rules of war. But it has to face the rebellious fact that co-operative farming on intermixed and unenclosed plots existed in the most exclusively Teutonic parts of Europe. Besides, due

weight must be given to the close similarity in other details between the land settlement of the Saxons in their new domicile and the land settlement in their father-land. The Hundert and the Gowe of Germany reappeared as the Hundred and the Shire in England, and both of them, it is said, were originally settlements of a popular or communal character, while estates like those of the king's thanes had a distinctly military origin. If the villages of the Saxon conquerors were only proprietary domains, there could be no reason for the introduction of these earlier units with their semi-independent life, which comprised and even controlled them in certain respects.

APPENDIX B

THE CEORLS AND VILLEINS

The degradation of the Ceorls is a subject of perennial interest, as it illustrates how economic inferiority and the surrender of administrative functions led to the enslavement of a class which was originally quite as free and had as good a title to the soil as any other section of the community. It was not foreign domination but militarism and the centralization of power and the growing costliness of a form of government, which strengthened its position by creating a class of influential men who had an obvious interest in supporting it that converted the ordinary allodiasts into hewers of wood and drawers of water for others. The disenfranchisement was gradual and slow and by no means uniform all over the country. We are, therefore, far from the truth whether we represent the process as cataclysmic and as brought about by the Norman conquest or assume with Seebohm that English society started with prædial servitude as the outstanding feature of its economic organization. Both these views are met by a reference to certain facts which have been brought to light by recent research. There are, however, a few others which seem to point to a different conclusion. In the West-Saxon laws, for instance, no distinction is made between the ceorls and the lœts. The distinction exists, however, in the earlier laws of Kent. So it is permissible to assume that its disappearance in the later codes was due in part

at least to some improvement in the economic and social status of the dependent workmen, which probably synchronized with a decline in the importance of the ceorls. Then, again, there is the fact that in the treaties with the Danes, the twihyndemen or ceorls are 'equated with the Danish leysings or freedmen.' But these were entered into by the great men who had profited by the decay in the ceorl's estate and so could not be expected to vindicate it in their negotiations with formidable foes.

The real character of this downward movement and the circumstances that contributed to it are revealed by certain facts to which attention is drawn by Mr. Lipson in his *Economic History of England*. There were, as he observes, numerous villages at the time of the survey of William I, which owned no service or tribute to any one; and some of these existed in districts like Cambridgeshire which had not been seriously disturbed by the inroads of the Danes. So it cannot be claimed that all of them were settlements of Danish freelances. And those which were not must be looked upon as relics of a period when the village community was not a community in villeinage, exceptional political and economic conditions having protected them from that degrading influence to which the rest of the country was subject. Mr. Lipson refers also to the presence even in the thirteenth century of a considerable number of free tenants, all of whom could not have been of Danish or Norman extraction. Were they then holders of new feoffments or only prædial serfs who had improved their status by commuting labour dues for money payments? He offers unhesitatingly a negative answer to such a question, as the services ren-

dered by these tenants were merely a formal acknowledgment of some measure of economic subordination to the landlord and their money payment was too small to be an adequate equivalent for an original liability to week-work.

Thus the fetters which bound the ill-starred descendants of the ceorls were not forged at one stroke, nor were they equally effective in every case. In this connection, the diversity of the manorial organization, which is noticed by Mr. Lipson, is of special significance. At the time of the Survey, there were besides manors occupied by semi-servile tenants who were bound to render labour services on the home-farm, others in which the lord's house was the seat of judicial and political authority, the due exercise of which was paid for by agricultural work by those who were subject to his jurisdiction. Another type was the tributary organization in which the manorial hall formed a convenient place for the collection of dues. And lastly we come across manors, which were 'merely small farms supporting a single household and cultivated in person by the freemen to whom they belonged.' This variety of structure is, as Mr. Lipson justly remarks, a rebellious fact that cannot square with the theory that the open-field system with its indivisible bundles of strips was introduced by the landlords for the effective cultivation of their estates. It is also conclusive evidence of the operation of a number of adverse circumstances whose influence, however, was not equally sinister till the Norman conquerors completed the degradation of the ceorls by assimilating the different classes of manors to the dominant type of a large estate worked by means of semi-servile labour.

These circumstances were mainly economic, though political conditions must have intensified their malignant influence. And Mr. Lipson appears to be on strong ground when he observes that 'the burden of taxation imposed by the Church and State was a powerful factor in the movement that transformed England into a land of manorial communities and servile tillers of the soil.' The Danegeld and the Tithe took away nearly half of what the husbandman earned by his labour, and this was certainly more than what he could conveniently pay even in years of plenty. So he fell as a rule without hope of deliverance into the clutches of his rich neighbour from whom he borrowed the means of payment. For the only consideration that he could offer was a perpetual liability to work for his creditor, land being absolutely valueless without the labour that was required to work it. Then, again, manors like those of the twelfth century were created by rich landowners in outlying districts by settling landless people on the condition that they would work for their masters in return for their holdings. The terms were hard, indeed; but their full significance was probably not appreciated owing to the appearance of other classes whose status was intermediate between freedom and slavery. Lastly the Church, which was in a later epoch the strong champion of the weak and the unfortunate, contributed in this to their ruin by claiming and obtaining exemption from all outside interference on its estates. It thus set an example which was eagerly imitated by others with the result that their tenants were deprived of the protection of the King's laws. For the men who ceased

to plead their causes in the national courts and learned to look for justice to their landlords lost their legal status and fell practically into a rightless condition. Thus as Mr. Lipson observes, "the distinction between those admitted to the King's court, and these excluded from it, became subsequently the decisive test that separated the free from the unfree."

But probably the most conclusive evidence of the fact that villeinage was the outcome of a process of deterioration is afforded by its exceptional character in the Ancient Demesne of the Crown. This Ancient Demesne consisted, as Sir Paul Vinogradoff observes, of the manors which had belonged to the King at the time of the Norman conquest. The peasants who lived on them retained their personal freedom and an indefeasible title to their holdings. And even in the worst days of the Norman rule, no attempt was made to modify the terms of their tenure by increasing or altering the nature of the services that they were expected to render. But they were not, like the free tenants, protected in the enjoyment of their rights by the law of the land. They owed their security to special writs which enforced the custom of the manors in which they lived. Thus seignorial authority was limited by a recognition of their ancient status, which was only too readily ignored where it collided with the interests of private proprietors. For as Sir Paul Vinogradoff points out, it would be wrong to regard the privileged villeins on the Ancient Demesne as a class of free tenants, since the certainty of their condition was not assured to them by the common law courts. At the same time, their number was too large to justify the assumption that they were new settlers who were

protected by their previous history from prædial bondage. Their superior status was, therefore, a case of arrested decline due to the circumstance that the King did not deprive them of the rights which they had once shared with their less fortunate brethren in other parts of the country.

APPENDIX C

FEUDALISM AND THE MANORIAL ECONOMY.

English society was from the very outset divided into a number of classes, all of which but the lowest had their special weregeld or money price. But the highest section differentiated early into the Æthelings or Kinsmen of the prince and the eorls or warriors, while the ordinary freemen came to be designated as ceorls owing to their almost exclusive devotion to agriculture. Quite early also in English history do we come across the significant appellation of hlaford or lord which was given to the eorls or gesithcundmen. The Saxon laws make it clear that they were masters not only of serfs, but also of the lower freemen who as gafolgeldas worked for them besides paying tribute to the King. But if the extensive estates of the warriors and the churches were worked mostly by the lesser freemen who paid their rents in kind or in services or in both, it must be said that the manorial economy, which formed a prominent feature of feudal organization, existed in England before the advent of the Norman.

There was a further approximation of English society to the feudal type wherever the hundred-moots ceased to be under the direct supervision of the aldermen or their deputies. For the administrative and judicial functions which they had exercised came to be vested in the churches or in other great proprietors, thus bringing about the fusion of landownership with gubernatorial powers,

which was a distinctive feature of feudalism. Where such a surrender of authority took place in favour of the clergy, the kings were prompted, of course, by their anxiety to purchase safety for their souls. But elsewhere the determining factor was the weakness of the central government, which compelled it to have recourse to the great landlords for a proper discharge of its judicial and executive duties. And this, according to Sir Paul Vinogradoff, was the real motive that led to the elaboration of the feudal organization. He compares the state of things that obtained in the later Empire with what must have been the situation in the newly acquired territories of the Franks, and observes that the barbarians stood in greater need of the co-operation of the landlords than did the rulers of Rome. Hence 'after the great efforts of conquest and invasion, Western European society relapsed into aristocratically constituted local circles', which owned some sort of allegiance to the central government, but were practically independent in all internal matters.

If this were feudalism, then surely something like it had existed on English soil before the Conquest. The Saxon Witenagemot and the Norman Curia Regis were much alike, and there was very little difference in character and functions between the courts of the English ecclesiastics and halfords and those of the feudal barons. The latter, however, performed their duties as incidents of a private contract with the person from whom they held their fiefs. Thus the obligations of a citizen or of an important official were transformed under the new arrangement into a species of land-rent, and all proprietary right in land was concentrated in the hands of the sovereign.

Feudalism of this type never grew up of itself in the island, but was introduced by the foreigner. The system, in its completed form, had in fact, two aspects, one of which ensured the exploitation of the material resources of the land, while the other supplied the machinery for the discharge of fiscal and administrative functions on behalf of the monarch. The first of these appeared in England without much interference from outside; but the principle underlying the second was not distinctly recognized till the Normans set foot on English soil.

It has been said that Anglo-Norman feudalism attained 'a logical completeness and a uniformity of practice' which were not to be found elsewhere. The reason for this unique development lay in the circumstance that political feudalism had been almost perfected in Normandy before it was imported into England. The Conqueror is sometimes represented as having modified the feudal system with a view to establish his authority on a firm basis. But the principles which he adopted, however repugnant they might have been to the prevalent type, involved no departure from the practice of the duchy. There, too, the supreme judicial authority belonged to the ruler; private warfare, baronial coinage and independent engagements with foreign powers were strictly forbidden, and an oath of allegiance was exacted from all freemen. Thus the concentration of the functions of sovereignty in his own hands was quite in keeping with the best traditions of his native land, though it contrasted with the centrifugal tendency of feudalism elsewhere.

Now the question which is of interest to us is, how this feudal system of a rather unique type affected the

tillers of the soil. And in dealing with it, we have to take into account and to reconcile, if possible, two conflicting views on the nature of the organization, each of which contains important elements of truth. According to one of them, feudalism was confusion roughly systematized, in which exceptions ruled under a mere semblance of order and uniformity. Such government as there was was primitive and undifferentiated, 'the essential operative element' being the holder of the fief, who by virtue of the private contract with his lord was able to manage things in his own way. Hence as head of the court of his vassals which acted as judiciary, legislature and executive council, he exercised a complete control over revenue and administration, and in exercising it respected or ignored local customs just as self-interest or a sense of justice was his guiding principle. It has been held on the other hand that feudalism gave to England a lex terræ, 'not a law for the English and a law for the Normans, but a law of the land.' In about a century of the conquest, the law of the King's court became, as Jenks observes, the law of the realm after swallowing up the local and tribal customs which had been recognized by the English. Thus the foundation was laid of the King's peace and the King's justice which offered equal protection to the high and the low, to the conquered as well as to the dominant race.

All this was rendered possible because the disruptive forces inherent in feudalism were kept under control by the decision of the Conqueror to retain the full powers of a sovereign in his hands. His successors jealously guarded their prerogative against encroachments and appointed a highly organized and trained body of officials to make

regular visitations of the counties and to discharge important judicial, administrative and fiscal functions on their behalf. Thus the best feudal customs had an opportunity of crystallizing into definite and permanent rules under their watchful eye especially as these were embodied in judicial decisions of which an accurate record was kept from year to year. The writs and rolls of the King's court came thenceforth to be regarded as the repository of the common law of the land, the benefit of which might be claimed by all freemen living therein. It took about a couple of centuries to complete the work, but completed it could be only because the Kings had never surrendered the right to dispense justice and lay down the law for the realm.

They could not, however, deny private jurisdiction to their vassals especially with regard to the servile and semi-servile population that existed on their estates. Hence, besides the general disappearance of free villages, there was an assimilation of the different kinds of manors to the dominant type. "The new lords of the administrative or jurisdictional manors consolidated their hold over the population under their control, and by imposing labour services completed the final stages towards manorialism." At the same time some attempt was made to impose certain restraints on their authority. Bracton says that the royal courts did interfere occasionally to prevent or punish wanton injury like the destruction of the villein's plough-team. Gradually, however, this position was given up, and the lawyers justified the surrender of the king's right to supervise and control by applying to the villeins the the principles of the Roman law on slavery. But it was

really the necessary consequence of the business contract between the Crown and its vassals, and it had some measure of support in the traditions of the boc-lands granted to the Church by Saxon monarchs. In any case, however, the refusal of the royal courts to entertain the complaints of a class that formed thirty eight per cent of the total population would seem to warrant the charge that feudalism was 'confusion only roughly organized.'

The degradation of the villeins was completed when their relation to their lords came to be regarded as personal and not merely praedial. Thenceforth every one born of villein parents acquired the hereditary taint and became liable to render any service that might be demanded of him by his master, while proprietary rights of all kinds were in theory at least withheld from him by the application of the legal rule '*quicqid servo acquiritur domino acquiritur.*' His civil disabilities, however, did not exonerate him from the payment of taxes or from the obligation to serve in the militia. Nor did they prevent him from claiming the protection of the king's court in criminal matters or from being regarded as a free agent in his relations with persons other than his lord. And whatever the theory might have been, the circumstance that his payment in labour and in kind was fixed as a rule by custom would seem to show that there was a tacit recognition of his right to what he earned by his labour. He possessed no remedy, it is true, if his labour due was arbitrarily enhanced or he was tallaged out of his savings; but even then his status was 'one of unprotectedness rather than of rightlessness.'

What his position was when undue advantage was not taken of the inability of the central Government to guard his rights is very clearly illustrated by Mr. Lipson with the help of an extract from the Court Rolls of the manor of Brightwaltham at the end of the thirteenth century. "To this court," thus runs the report, "came the whole commonalty of the villeins of Brightwaltham, and of its mere and spontaneous will surrendered to the lord all the right and claim that the said villeins have heretofore claimed by reason of common in the lord's wood called Hemele. . . . . and in return for this surrender the lord of his special grace has remised to them the common that he had in the field called East-field . . . to the intent that the lord shall have no beasts pasturing in the said common." Two things are, as Mr. Lipson observes, clear from this record of exchange, viz., that the villeins of a manor were treated as forming a communitas and that ancient custom which was generally respected permitted them to hold property and to enter into agreements with their lord.

We have seen how economic and political conditions, not the least important of which was the scarcity of labour caused by the Black Death, enabled the villeins to shake off the yoke of their masters. It has been sometimes held that prædial servitude was a thing of the past when the pestilence broke out and that the ill-advised attempt of the landlords to bring it back was responsible for the formidable Peasants' Rebellion of 1381. There is probably not much reason for doubting that the landlords tried in certain parts of the country to meet the new situation caused by the dearth of workingmen by restoring the

old order. But elsewhere the manorial economy was still undisturbed, and the villeins of these districts joined in the revolt with a view to share, if possible, in the good fortune of free labour. They failed in their object; personal servitude remained and labour dues were not commuted as they desired for a fixed rent of 4d. an acre. But the progress which they had sought to accelerate by a political crisis continued owing to the operation of economic forces which had been at work before it. And so though villeinage as a status was not altogether obsolete even in the sixteenth century, yet it practically lost its original character in the fifteenth. In its later form it meant only a liability to be taxed at the will of the lord and not that obligation to render labour services on his estate which had made it the keystone of the manorial economy.

Valuable support was lent to this movement by the crown lawyers of the fifteenth century. They took cognizance of the customary relations of the peasants to their lords, when they were recorded in copies granted by the manorial courts. Thus "in the formula of copy-hold, viz. tenement held at the will of the lord and by the custom of the manor, the first part lost its significance and the second prevailed, in downright contrast with former times, when on the contrary, the second part had no legal validity and the first expressed the view of the courts." There was no doubt, a good deal of vacillation at the outset, and the first cases of interference were treated as manifestations of equity. But what was exceptional once gradually became the rule, and thus disappeared that denial of protection against the master of the estate, which had constituted the legal basis of villeinage.

APPENDIX D

ENCLOSURE

It appears from the Inquisition of 1517-19 and the rentals of the period that land was held in the early years of the sixteenth century by three classes of men, viz., freeholders, copyholders and lease-holders. The freeholders who formed nearly twenty per cent. of the occupiers of land, were some of them men of considerable property, while others were mere cottagers. But in spite of the difference in their economic condition, all of them gained by the fall in the value of money, which cut down the fixed rent paid by them to a nominal charge. The lease-holders were less numerous on the whole, but they were well represented in certain parts of the Midlands and of the West, while in some districts of the South they were twice as many as the freeholders. The most important class, however, in the rural districts was that of customary tenants, among whom must be included not only those who held by copy of court roll but others who without a documentary title to their holdings, could still appeal to the custom of the manor in support of their claims. Together they formed about two-thirds of the total land-holding population, and their preponderance was even more marked in the extreme north and in some other backward districts. Their holdings, however, were no longer cut to a uniform pattern except in the non-industrial portions of the country in which virgates and

semi-virgates or allotments varying only slightly in size from them were still in evidence. Elsewhere some of them were large farmers with a hundred or even two hundred acres under the plough, while others tilled only small curtilages of five or ten acres and were not infrequently tenants of the more fortunate and substantial members of the class. Tillage, moreover, was no more their only occupation, as the more enterprising and resourceful among them had profited by the new situation created by the development of the textile industry and had devoted themselves to sheep farming on a considerable scale.

Some explanation is required of this confusing diversity of economic condition and methods which meets us in the sixteenth century and appears to be so very unlike the stereotyped organization of the feudal age. It has been said that free trade in land and so inequality of possessions were not forbidden under the older economy, because the thing of consequence to the lord was the virgate and not the person who held it. "It was the virgate which paid rents which mowed the lord's meadow and reaped the lord's fields; and so long as his meadow was mowed and his harvest gathered, the question how many individuals held the virgate was a quite subsidiary one for him." But the view which is here expressed represented only within narrow limits the interests and sentiments of the masters up to the middle of the fourteenth century. For the various services that were demanded of the tenants could not be performed unless all of them were properly equipped with the means of subsistence. Economic equality was, therefore, insisted

on, though instances were not rare even in the fourteenth century of the transfer of holdings by sale or by lease or of their partition among heirs. But the situation changed after the Black Death and mainly in consequence of it. The nature of that disintegrating influence has been already described and need not be dwelt upon once more. It is enough for our purpose to observe here that the weaking of the old bonds led to a considerable shifting of property in land. "The customary tenants," says Mr. Tawney, "were buying and leasing land from each other before the Plague; and before the Plague some lords were leasing out their demesnes." But he takes care to add that "after the Plague the death of many holders and the poverty of many survivors caused land to come into the market on a vastly greater scale and at a cheaper rate with the result that the aggregation of holdings proceeded with vastly increased rapidity."

Whatever inducements there still remained for the maintenance of the old order and the old economy disappeared when the Tudors prohibited livery and maintenance and took over administrative functions from the local magnates. Landownership was thus shorn of territorial sovereignty, and the command of money came to be more valuable than the command of men. The change accentuated the tendency to substitute compact holdings for scattered strips encumbered by communal restraints and to replace small men by substantial farmers who could offer a higher rent and a better security for its punctual payment. It also gave an impetus to the practice of leasing the demesne lands, which were either

transferred *en bloc* to large farmers or divided into a number of small tenancies to be taken up by those who could afford to increase their holdings. Thus ample opportunities were given to the more active and pushing spirits of the age of improving their position, and they often strengthened it still further by abandoning agriculture for the more lucrative industry of wool growing. This change in industrial methods and in the area and character of the holdings was not much in evidence in the north and the west; but these outlying districts were not seriously affected by the enclosure movement of the period. Elsewhere there were striking divergences in the size of the possessions of the tenants, so that the village community was no longer composed of men among whom an equality of economic condition was maintained by custom and the authority of the lord.

Pointed reference is made by Mr. Tawney to this appearance of the large copyholder by the side of his smaller neighbours and sometimes even at their expense. It is a fact which must be kept steadily in view in studying the enclosuure movement which certainly did not affect all classes of tenants in the same way. For among them were many whose slender resources and inconsiderable allotments stood in the way of a departure from subsistence farming and so prevented them from profiting by the sustained rise in price-levels. Hence when the landlords tried to indemnify themselves for the depreciation of the currency by demanding an increase of rent, they could not always hold their own against their more successful neighbours, who had only to surrender the unearned increment resulting from a fall in the value of

money in order to meet the augmented demand. Moreover, their difficulties were often accentuated by the uncertainty of their status and the extension of pasture. Some of them were merely cottagers who held a few strips in the open field and depended chiefly on wages for their subsistence. Others were squatters on the waste with no legal title to their tenements, or tenants-at-will on what had been once the lord's demesne and from which they could be evicted without violation of contract. The copyholders, again, were not all of them in the same predicament, for while some of them had a heritable right to their holdings, others were merely tenants for their lives or for a definite number of years. And even of those who possessed an estate of inheritance, the majority were liable to uncertain fines at succession, which, however, had never been prohibitive under mediæval conditions of production and distribution. It was not strange, therefore, that they could not appreciate the forces that swept them out of their accustomed ways and brought about an unequal struggle with men who were more alert and resourceful than themselves, men who could not only tide over an economic crisis but even turn it to the best possible account where it paved the way for a genuine improvement in methods of production. Enclosure and the conversion of arable to pasture as well as the concentration of holdings which followed in their wake affected all classes of landholders in Tudor England; but the effect was dissimilar in th the various cases, for while they were undertaken at the instance of the large farmer, they led to the depression and even expatriation of important classes of the community.

But before pronouncing judgment on the movement, it is desirable to advert to certain facts which are sometimes lost sight of in the dusty atmosphere of controversy. It has been pointed out that even before the landlords decided on a definite plan of consolidating holdings and extending their dimensions, their tenants had occasionally exercised the liberty of building up compact farms by a mutual exchange of intermixed strips in the open field and of 'nibbling away the waste' to meet the needs of a growing population. Thus enclosure was not quite a new thing in Tudor England, nor was it always sporadic in character, as it was discovered by the Commission of 1517 that portions of the common pasture had been appropriated and ploughed up in certain places in accordance with a concerted plan of the villagers to add to their holdings of arable land. The practice, moreover, had spread with the increase of numbers, so that as Mr. Tawney observes, the peasants were more busy than ever in hedging and ditching their own little holdings and in carving out slices for themselves from the waste just when they agitated most bitterly against the highhandedness of the landlords. These would seem, therefore, to have been apt pupils of their own tenants or at any rate not quite innovators. And if they were thorough and unsparing in the application of their lesson, there was some excuse for it in the revolutionary rise in prices, which had injuriously affected their income while it had immensely benefited some of the farmers. Where then was the justification for regarding them as public malefactors who deserved to be prayed against instead of being prayed for? What again, could be the reason for

condemning as a nuisance a movement, which in many instances was the sign, if not the necessary condition, of a genuine improvement in the technique of production?

In answering these questions, it is necessary to bear in mind that the term 'enclosure' has been applied to four distinct processes which did not necessarily involve one another. They were, according to Mr. Lipson, 'the consolidation of scattered strips into compact properties, the conversion of arable into pasture, the concentration of holdings and the occupation of the waste.' Of these, the first was a much needed reform in a period of augmenting demand for food-stuffs, and whatever its disadvantages might have been, they were amply counterbalanced by the increased efficiency of labour on the independent farms. The second, on the other hand, adversely affected the supply of food and the demand for labour at a time when labour had not many avenues of employment, though it brought wealth to important classes of the community and laid the foundation of England's industrial greatness. And much the same could be said of the third where it took place with a view to facilitate sheep farming, while the fourth benefited agriculture as often as it did the rival industry and so did not necessarily entail the displacement of labour while it could not have materially stinted the supply of fuel and of food for domestic animals in the earlier period of which I am speaking.

It follows, therefore, that the consolidation of intermixed strips and the appropriation of fragments of the waste could not have injured the community or any section of it. And for these alone could the responsibility lie in any measure with the peasants. The landlords,

on the other hand, enclosed in the interests of sheep farming because sheep paid better than men; and in their hands the movement attained a thoroughness that disorganised existing arrangements and ruined large numbers of men who could not easily adapt themselves to the altered circumstances. The process of readjustment would have been less painful and unpopular, had the transition been less rapid and more in keeping with the needs and resources of the peasants. But the new conditions were imposed with a high hand from without by the action of the proprietors or their agents who consolidated small holdings into large properties. The economic crisis, which was thus brought about, was heightened by legal issues which gave a distinctly sinister turn to the entire movement. The tenants-at-will on the demesnes were often unceremoniously swept away because they had no legal title to their holdings, though the experience of the preceding centuries had taught them to look forward to undisturbed possession of their plots. Copyholders and lease-holders for definite periods were rack-rented at the expiration of the indentures and where they could not meet the new demand were evicted without compensation, while even those who succeeded to estates of inheritance were sometimes confronted with claims to impossible admission fees, because the amount of the heriot which they could be asked to pay had not been determined by the custom of their manors.

These drastic expedients of the landlords for improving their income must have caused considerable suffering to small men who wanted only to plough the land like their ancestors and were, in fact, unfit by their training

and resources for a sudden and revolutionary change in methods of production. They involved also a notable departure from ancient custom which had assured to all classes of copy-holders a sort of prescriptive right to their holdings, though the law had failed to take cognizance of it. The result was the general substitution of lease-holders for copy-holders in the affected areas. It was, indeed, in a sense the natural outcome of the new commercial relation between masters and peasants which had cut at the root of ancient obligations and loyalties by dissociating landownership from territorial sovereignty and freeing the dependent population from the liability to render effective service on the demesne. And the commercial spirit was exhibited not only by the landlords but also by the more enterprising and alert among the farmers and even by labour where it had an obvious advantage in bargaining. Thus those who had extensive estates saw clearly enough that they had much to gain by adapting themselves to the altered conditions and much to lose by adhering to old and out-of-date principles. Their decision was in the circumstances readily taken, and it gave a rude shock to rural society, as it contained large numbers of men who had made their arrangements on the supposition that the old order would continue and were not yet ripe for the new. Their lot would have been less hard if the landlords had been more considerate. But seldom in the history of mankind have entire classes of men gone beyond the letter of the law to benefit others, or to extend to them that protecting care which under a centralized Government is expected from the ruling authority. The Crown could have alleviated

distress by legalizing the prescriptive title of the copyholders to their lands. But instead of adopting such a course, which must have given offence to its supporters, it enacted laws against the putting down of ploughs, the destruction of houses and the reduction of employment in rural districts, and supplemented these by pious wishes and exhortations. There were, however, no rational grounds for assuming that people who had been invested with full proprietary rights over the land would administer it in the spirit of trustees.

Opinions differ about the economic importance of the enclosure movement of the sixteenth century. Prof. Gay is inclined to think that it was the necessary consequence of the upward movement of price-levels and culture-levels and an almost indispensable condition of further advance. Hence those who suffered during its progress owed their misfortune to irresistible forces, which they could not always comprehend and much less combat. Mr. Tawney holds, on the other hand, that the concentration of holdings was not a necessary condition of improvement, and that the agony of transition might have been mitigated if economic forces had been left to themselves to weed out the weak and the resourceless. And he cites the examples of Kent and Essex to show how enclosure by common consent and without injustice to any party could take place where it was the obvious interest of the cultivators to enclose. But in those sea-board tracts, commercial forces were earlier and more obtrusively in operation and the peasantry were more enterprising and intelligent than in the inland districts. And it is risky to conjecture how long these might have

remained in a state of organised torpor if the new order had not been imposed on them from outside, while there can be no reason for doubting that the element of time was of supreme importance in the struggle for industrial ascendancy. England had the start in the race because she obtained at the right time a plentiful supply of labour and of raw materials, both of which might have been scarce if mediæval conditions of agriculture had continued to rule over the country. The question, however, remains whether industrial greatness is worth the price that it costs, if it entails the depression of important classes of men that have done nothing to earn their misfortunes. But it cannot be discussed here since it involves the consideration of the relative merits of different economic ideals and so merits a much fuller treatment than a mere side-issue.

At the same time, it must be conceded to Mr. Tawney that the economic transition would have been less abrupt and revolutionary in character inspite of the change in price-levels and culture levels, if custom and tradition had not been brushed aside whenever they appeared formless and out of keeping with the precision and simplicity which were affected by the judges of the King. The old manorial courts had respected them and they had received the powerful support of successive Chancellors. But they failed to acquire substance under the new administration with the result that small holders of land were juggled out of their property and cast adrift by legal tricvs. The change was thus precipitated by new legal issues without which it would not have been catastrophic. England's industrial success might then have been less striking or

rapid, but it would not have caused the impoverishment of large numbers of men, who had nothing but the unwritten law of the land to cling to. Whether it was good on the whole or in the long run for England to ignore this unwritten law may very well be disputed. But there remains the historical truth that the Government of the day disapproved of the methods of the landlords but was unable to check them because they had the law on their side. And it reveals the weakness of the principle of laisser faire which is based on the comfortable, though mistaken, assumption that economic forces operate *in vacuo* when as a matter of fact they operate in a framework of rights and liabilities created by laws and human institutions and capable in certain circumstances of giving them a thoroughly mischievous turn.

An attempt has been made to belittle the amount of suffering caused by the enclosure movement by pointing out that only about half a million acres or less than three per cent. of the entire area were enclosed between the middle of the fifteenth century and the close of the sixteenth. But there is not much reason for assuming that the returns which point to this conclusion were based on an exhaustive survey of the affected areas and an impartial examination of all classes of witnesses. Besides, it is a mistake to gauge the gravity of the situation by comparing the extent of the enclosed land with the total acreage of the country. In the sixteenth century vast areas of forest and waste land encircled the area under the plough, and it is only with reference to the effect of the movement on the latter that the volume of the trouble and disturbance should be estimated. The character also

of the movement and the environment in which it showed itself must be taken into account. It had for its object the enclosure of corn lands for pasture, and it affected chiefly the Midland districts which formed the granary of the country. These, moreover, were the very places where the number of small holders was exceptionally large, while there were very few manufacturing industries which might absorb a surplus population. So those who were forced off the land found themselves in a world which needed their services no longer and had to migrate from it amid real difficulties.

It must be clear from what has been said that the enclosures of the sixteenth century hit the smaller tenants hard, while holders of medium-sized properties throve at their expense. The number and importance of these respectable farmers and free-holders increased subsequently owing to the alienation in small parcels of much of the land that had originally belonged to the monasteries and to the confiscations and compositions that followed the Civil War. And political power gravitated into their hands owing to the decline of the landed aristocracy and the restraints imposed on the power of the sovereign. The two influential land-owing classes were thus brought closer to one another, and their common interest came to be represented as the interest of the nation, especially as after the Revolution of 1688, they were masters not only of the central executive and legislature but also of local administration and justice. Thus the attitude of the Government towards the enclosure movement of the eighteenth century was very different from what it had been in the sixteenth, for while in the earlier period, it

had tried however ineffectually to stand between the rich and the poor and to maintain or establish an equitable distribution of wealth, in the later it was only too eager to sanction enclosure as one of the most effective means of increasing the national wealth and power. So the voice of discontent, loud though it was, was drowned by the iterated and authoritative assertion of experts and of men in power that freedom from communal restraints of all sorts was the one thing needed for ensuring the prosperity of British agriculture.

But there were differences which lay deeper than the change of front on the part of the rulers. The enclosures of the earlier period appear sporadic and insignificant when compared with those of the last two centuries, which affected about twenty per cent. of the total area of England. But in this wider area of disturbance, the waste was largely broken up for purposes of agriculture, which proved highly profitable owing to a rapid increase in population. Thus while in Tudor England enclosures led to a diminution of the arable area, they led to its extension in the days of the first three Georges. And this extension moderated the upward movement of the price of foodstuffs which might have soared higher than it did during the industrial revolution and the war with revolutionary France. It paved the way also for the adoption of scientific culture, which could be undertaken only by men who had some command of capital and so could not be content with the small holdings of peasants. They reaped golden harvests during the years of rising prices and were thus amply rewarded for their enterprise. But equal enterprise and foresight were shown by the landlords in

making at no inconsiderable expense the necessary arrangements for the adoption of improved methods and sometimes in showing the way. And they had their fair share of the gain in the form of enhanced rents. Here then we come across another difference between the two enclosure movements. While the landlords of the sixteenth century did very little beyond enclosing open fields and making over compact holdings to wool-growers, those of the eighteenth improved as well as enclosed and the increase in their rents was thus to a certain extent legitimate profit on their outlay.

The later movement began in a period of declining prices, which led the landlords to improve their income by enclosing the waste. But it gathered strength with the growth of industries and the development of London. And it attained its climax during the war with Napoleon, while it declined when English agriculture fell on evil days owing to the withdrawal of protection and the competition of the wheat lands of America and Russia. By 1876, says Mr. Johnson, the movement was practically at an end, though communal rules remained in force in certain counties. The change in public opinion which was in some measure responsible for the abatement was due partly to the belief that small holders might have held their own against foreign competition where capitalists failed. It was also influenced by the experience that the growing industrialization of the country and the disappearance of open spaces were injuriously affecting the physique and morale of the people. Thus between 1876 and 1889, 'there were only 73 applications for enclosure, and of these two-thirds were rejected.' And in 1893 it

was enacted that no proprietor was to approve the waste and no waste was to be enclosed without the sanction of the Board of Agriculture. Since than there has been some improvement in the number as well as in the condition of the small holders.

The yeomen, it has been said, were hit hard by the enclosure of the waste. But there remains the fact that their number increased instead of declining in the last quarter of the eighteenth century which witnessed the culmination of the movement. It must, however, be admitted that where the waste was enclosed, they could not easily obtain their firing and a suitable place for grazing their cattle while they cultivated their holdings. But the greatest sufferers were the agricultural labourers, who seldom received adequate compensation for the loss of their rights legal or prescriptive over the waste and in the open fields. They suffered also in their character of consumers when with the extension of capitalist farming, the business of retailing articles of food was taken over by middlemen who bought their stock in the rising markets of the towns and brought it back to the country districts for sale. The retailer's profits and an unnecessary cost of transport both ways were thus added for them to the price of the commodities which their labour had produced. At the same time all auxiliary resources were taken from them by the enclosure of wastes and the disappearance of domestic industries. The situation, therefore, must have appeared eminently unsatisfactory to them. Nathaniel Kent calculated that the rise in wages in the latter half of the eighteenth century was only twenty five per cent. as against a rise of sixty per

cent. in the price of provisions. "Thus the labourer who lived on wages alone at its close earned wages of a lower purchasing power than the wages which he had formerly supplemented by his produce."

The enclosures, therefore, even of the later period were not the unalloyed blessing that they were represented to be. Indeed, both small owners and labourers suffered more or less in consequence of them, as they could not fail to do, so long as private bills were largely employed to get rid of communal restraints. Up to 1774 'the original petition for enclosure was often the act of a big landowner whose sole signature was enough to set an enclosing process in train,' and in the majority of cases he must have placed his own interest before that of his poorer neighbours wherever they seemed to conflict. When, again, the law interfered in their favour by stipulating that the holders of four-fifths of the land must agree to the proposed arrangement, the protection proved illusory, as the owners of the remaining one-fifth sometimes outnumbered them. Besides, as Mr. Johnson observes, the copyholders and lease-holders were often prevented from going against the wishes of the landlord even when they felt that he was prepared to sacrifice them for his own gain. Still all of them received a share of the enclosed waste, and where the strips in the open field were redistributed and they could meet the expense of enclosure, they profited by the compactness of their new holdings. Quite different, however, was the treatment accorded to cottagers who had no recognized rights on the waste where they lived, for, as Prof. Gonner points out, ultra-legal claims were seldom allowed. And

their fate was shared by the old village officials, 'who lost their employment and with it the plots of land they had held in payment of their services.' Besides, even when greater consideration came to be shown to them, the bit of waste that was reserved for their joint use or partitioned among them proved generally so small as to be practically valueless except where they decided to part with it for money.

But were these evils counter-balanced in any measure by the superior productivity of an individualistic treatment of the enclosed areas? Some writers are of opinion that it caused loss of employment and depopulation in rural districts and ultimately prevented English agriculture from holding its own against foreign competition by the encouragement which it gave to farming on a large scale. The question has been already discussed, and it is enough for my purpose to quote here the testimony of two thoughtful writers on the subject. According to Prof. Gonner, there is no evidence that the enclosures of the eighteenth century caused depopulation or checked the rate of increase over extensive tracts, though it is easy to point to particular townships which suffered on account of them. Indeed, it would have been strange in his opinion if they had produced such results, as they must have created additional work after the fencing in of the fields and the introduction of the Norfolk rotation. And he is convinced that they added to the productiveness of labour by permitting the use of every bit of land for the purpose for which it was best fitted and by putting an end to that constant bickering and litigation which had

proved detrimental to agriculture since the abolition of the manorial economy.

Those who entertain a high opinion of the staying power of peasant proprietors ignore the fact that they have flourished in circumstances, which are more or less exceptional in Western Europe at the present day. In Belgium and France, for instance, they are chiefly found where market-gardening is profitable or where side industries enable them to supplement their earnings from agriculture. They are, on the other hand, much less numerous in those districts which are mainly devoted to the cultivation of cereals. And such is, according to Mr. Johnson the experience of England also, since even to-day the small farmers thrive in the neighbourhood of large towns or where subsidiary industries enable them or their dependants to eke out a livelihood.

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