

# **THE HISTORY OF LAND TENURE IN IRELAND**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649604166

The History of Land Tenure in Ireland by William Ernest Montgomery

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Cover @ 2017

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**WILLIAM ERNEST MONTGOMERY**

**THE HISTORY OF  
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IN IRELAND**



THE  
HISTORY OF LAND TENURE  
IN IRELAND.

BEING THE YORKE PRIZE ESSAY OF THE UNIVERSITY  
OF CAMBRIDGE FOR THE YEAR 1888.

BY

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CAMBRIDGE:  
AT THE UNIVERSITY PRESS.  
1889

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Cambridge:

PRINTED BY C. J. CLAY, M.A. AND SONS,  
AT THE UNIVERSITY PRESS.

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## PREFACE.

**T**HE Yorke Prize was founded, under the sanction of the Court of Chancery, from the bequest of Edmund Yorke, M.A., late Fellow of St Catharine's College, Cambridge. It is awarded annually to such graduate of the University, of not more than seven years' standing from his first degree, as shall be the author of the best essay upon some subject relative to "The Law of Property, its Principles and History in various Ages and Countries." The subject announced for the year 1888 was "The History of Land Tenure in Ireland," and the following pages owe their existence to the conditions of the Prize which direct that the successful Essay shall be printed and published.

The immense range of an adequate history of Irish land tenure is manifest, and the present slight sketch can of necessity give but an outline of this involved subject. I may, however, briefly point out a few of the most prominent difficulties met with in tracing the troubled history of Irish land law, and explain the basis upon which the present Essay has been constructed. In the case of the Brehon Law there is undoubtedly a large opening for original work, but the initial difficulty inseparable from an entire dependence on translations, is enhanced by the complex nature of the Laws themselves. I have therefore when dealing with this branch of the subject given full references to the authorities relied on. Passing from the archaic law to English legislation I have throughout assumed that the forces of social disunion, which hindered the

"No rule of law dealing with the contracts of owners and hirers of land is in itself objectively good or bad; the law which is most advantageous in one society would, if suddenly introduced into another, seem unjust, and probably prove mischievous; the good or evil effects of any law depend upon its being applicable or inapplicable to the social condition of the society into which it is introduced."—A. G. RICHY.

"There has in general survived to the Irish farmer, through all vicissitudes, in despite of the seeming or real veto of the law, in apparent defiance of political economy, a living tradition of possessory right, such as belonged, in the more primitive ages of society, to the status of the man who tilled the soil."—*Report of the Besborough Commission.*



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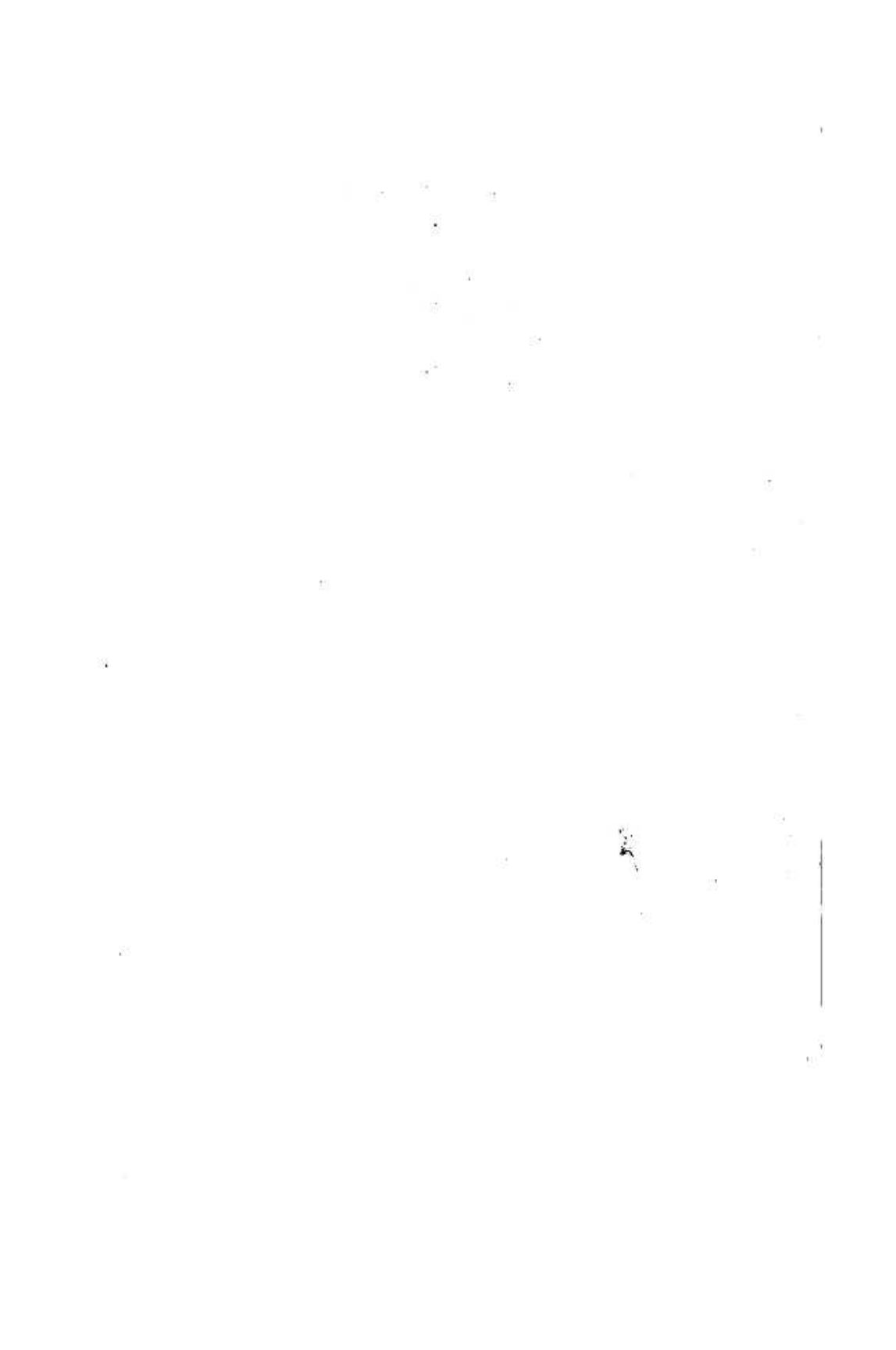
PART I.

IRELAND THE ENEMY.

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## CHAPTER I.

### THE AGRARIAN COMMUNITY OF THE IRISH CELTS.

THE genesis of Irish social and political organization is found, said the late Sir Henry Maine, as in all the Aryan, Semitic, and Uralian races, to lie in the Family group<sup>1</sup>. Amongst the Irish Celts in the earliest times to which modern research has penetrated, a social organization built upon the actual or constructive kinship of members of the community, based on the real or theoretical descent from a common ancestor, can be traced. Such an organization finds its most perfect type in the joint family of modern India, (composed of those persons who would have taken part in the funeral ceremonies of the common ancestor), and corresponds to the Agnatic family of the Romans<sup>2</sup>. To the original conception of an organization of this nature the idea of individual property in the land is totally foreign; the rights of the individual being at most merely a more or less temporary usufruct of the soil by consent of the family group, the reversion remaining in the community. Peculiar interest, moreover, attaches to the development of the Irish agrarian system from the fact that the direct influence of that tremendous legislative engine the Roman Law has been absent<sup>3</sup>, and even its indirect influence has been so slight that it may fairly be treated as unimportant<sup>4</sup>. Practically independent of ex-

<sup>1</sup> *Early History of Institutions*, pp. 65, 66. It is worthy of note that when the first English emigrants settled in New England, they distributed themselves in village communities.

<sup>2</sup> *Primitive Property*, Emile de Laveleye, p. 123. *E. Hist. of Inst.* pp. 106, 107.

<sup>3</sup> Mr Pearson says, "Ireland expiated dearly its independence of the Roman dominion, the secret of its long anarchy being in fact that it was Christianized without being civilized." *Hist. of Eng. during Early and Middle Ages*, Vol. I. p. 516.

<sup>4</sup> Sullivan's Intro. p. 5, *Manners and*