STUDIES IN THE EARLY HISTORY OF INSTITUTIONS. III THE THEORY OF VILLAGE COMMUNITIES

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DENMAN W. ROSS, PH. D.

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THE THEORY OF VILLAGE COMMUNITIES.

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THE THEORY OF VILLAGE COMMUNITIES.

I SHALL undertake, in the following essay, a critical examination of the Theory of Village Communities, as presented and recommended by its most eminent advocates, — G. L. von Maurer, Friedrich Thudichum, Prof. Nasse, M. de Laveleye, and Sir Henry Maine.

The works of Von Maurer and Thudichum are now antiquated, superseded in a great measure, and little read, even by students; but in view of the fact that these writers have contributed fundamental premises for the arguments of their successors in the field of Economic History I shall have to bring them into notice once more; and I think I cannot urge a plea for independent study and independent writing more effectively than by showing how the researches of Prof. Nasse, M. de Laveleye, and Sir Henry Maine have been affected by the unscientific arguments and the erroneous conclusions of their predecessors.

Von Maurer says at the beginning (p. 6 *et seq.*) of his "Einleitung zur Geschichte der Mark-, Hof-, Dorf-, und Stadt-Verfassung" (München, 1854), that in pre-historic and early times the Germans had their land in collective ownership. "Ungetheilter Gemeinschaft" is his phrase, and by it he means, as he afterwards explains (Einleitung, p. 144), "wirkliche Gemeinschaft des von den Genossen bewohnten Grund und Boden"; and he says of this "real communism" that it has persisted in parts of Germany, and, to a certain extent, also in other countries of Western Europe, from the earliest time to the present day. He gives us cases in illustration and support of this statement; and pretends to show by means of them how, within comparatively recent times, the

land of certain villages, in Germany and elsewhere, has been the common property of the villagers, precisely at it was in the time of Cæsar, — "zur Zeit Julius Cäsars." This is Von Maurer's theory in brief. It is the theory of his followers. Prof. Nasse, for example, says (Contemporary Review, 1871–72, p. 740 *et seq.*): "When the Germanic tribes first advanced from the life of wandering shepherds to dwelling in more settled habitations, they divided the land upon which they settled amongst the communities of which they were composed. . . . . Of the portions of land allotted to the separate communities, a part in each was divided off in which to build dwellings. . . . . The dwelling-places of a community were generally near together, and all surrounded by a village hedge. These enclosed dwelling-places were the only strictly private property of the Germanic land-owner, over which he had unlimited control. He had only the use of the rest of the land in common with other householders in the district. This was especially the case with the woodland and pasture; these were everywhere the undivided property of the whole community. . . . . The extent to which arable land was common is more doubtful. . . . . But the original state of things probably was that arable land was not held permanently as private property, but was from time to time re-distributed amongst the community, for temporary occupation, by lot." Our author then goes on to say, that "up to the most recent times there have been here and there districts in Germany in which an annual re-partition of all arable land took place. . . . . From time to time [p. 742] the land reverted to the state of common property, which indeed it only ceased to be during the time of actual cultivation."

According to Von Maurer, Prof. Nasse, and their followers, the earliest form of possession of land among the Germans was collective ownership involving re-distributions *per capita*. But where is the evidence to support this theory? The earliest account which we have of the Germans is that of Cæsar, and he says of them (B. G., IV. 1) that they did not remain in one place more than a year. Consequently they did not have any separate and private property in the land which they occupied for so short a time (B. G., IV. 1 and VI. 22). But as the Germans told Cæsar, and he tells us (B. G., VI. 22, near the end), if the people had ceased their wanderings, and settled down into quiet life, pri-

vate property in land would probably have arisen, *possessiones*, and even great estates, *latos fines*. How these predictions came to pass ought to be well known to all students of the early and mediæval records. When we meet with the Franks, in the fifth century and afterwards, we find them a settled people. The land has been divided, and we have *possessiones* everywhere, and *latos fines* too. And what is true of the Franks is equally true of all other branches of the German people, as they emerge into the historical period; the Burgundians, Goths, Lombards, the Alamanni, the Bavarians, the Saxons, and the rest. I have collected the evidence to establish this general fact beyond controversy in the first of these series of studies.

Perhaps Von Maurer and his followers base their theory upon the account which Tacitus gives us of the Germans in his "Germania." But Tacitus tells us (Cap. 26) that the distributions of land were made, not *per capita*, but *secundum dignationem;* which would be according to individual rights. And when we inquire further upon what ground these individual rights could rest, we learn that they were rights of inheritance; for Tacitus tells us (Cap. 20) that there was a law of inheritance according to which wealth passed from father to sons, or, if there were no sons, to nearest kinsmen. The ownership of the land would be, accordingly, *per stirpes*, and not *per capita*. Nor is there anything in the words of Tacitus (Cap. 26), *arva per annos mutant, et superest ager*, inconsistent with this conclusion; for I find in a document by Sanct Gallen (Wartmann, No. 214) the alienation of property in *analies terris* (land occupied for cultivation in successive years, the *arva per annos culta* of Tacitus); and this property is described as having belonged to the donor's parents, *genitor* and *genetrix*. He had it from them by inheritance. So it is plain that although the Germans of Tacitus were constantly cultivating new fields, *arva*, they might for all that have distinct rights of inheritance and property therein. It does not therefore follow from the testimony of Tacitus that the Germans owned their land *per capita*, as is maintained by Von Maurer and his followers.

It will be urged, however, that we may infer from the *arva per annos mutant et superest ager*, that the *ager* minus the *arva* was the common property of the *Markgenossen*, and owned by them

per capita. Yes; but may we not as well infer that it was owned by them in ancestral shares, *per stirpes* or *jure hereditario?* Compare the following, from a document of the Codex Laureshamensis (MCCXXXVI.): *Ego in Dei nomine Suifferus dono ad sanctum Dei martyrem Nazarium etc. in pago Wormat. in loco qui dicitur Baldolfisfelde, de illa silva communi, quantum jure hereditario ad me pertinere videtur.* Many other passages in the early records could be adduced to show that the undivided land of the *Markgenossen*, the *ager*, was regarded by them as their undivided inheritance, the *confinium conheredum* (compare Study I., No. 36 *et seq.*); but my object here is simply to show that it does not follow from the *arva per annos mutant et superest ager* that the *ager* was owned by the *Markgenossen, per capita*. I wish to convince the reader that it does not follow from the testimony of Tacitus, any more than it follows from the testimony of Cæsar, that the Germans owned their land *per capita*, as is maintained by Von Maurer and his followers.

It must be evident that, even though my opponents will not allow that the words *secundum dignationem* have any reference to rights of inheritance, they must allow that this is a possible interpretation of them, especially as Tacitus mentions the existence of a law of inheritance governing the distribution and enjoyment of wealth. Even though my opponents will not allow that the *ager* and the *arva per annos culta* were owned and enjoyed *per stirpes*, they must grant that Tacitus says nothing to the contrary; and, of course, if it is possible that the Germans of Tacitus owned their land *per stirpes*, it cannot be maintained that they owned it *per capita*, unless this fact is established by the concurrent testimony of the later sources.

It may be urged that I reason too closely to the letter in interpreting the testimony of Cæsar and Tacitus, that I do not consider the general political, social, and economic conditions of the time. This may be so. I must admit that it is possible, even probable, that in the time of Tacitus and Cæsar wealth consisted principally, if not entirely, in slaves and stock (see Germania, chapters 25 and 26); that the distribution and enjoyment of land was, so to speak, supplementary thereto. I can readily believe that the arable land was allotted to each clansman *pro numero cultorum suorum*, — that is, he had as much as he and his dependents

and slaves could cultivate; that the pasture land was enjoyed in proportion to rights of property in grazing stock; *pro numero animalium*, as we might say. Undoubtedly there was plenty of land for everybody at that time, while the amount of capital in slaves and stock was comparatively limited. It may therefore be reasonably urged, that there was no occasion for precise and definite divisions of land; that every man had as much as he needed for himself and his people. I grant that this view is perfectly reasonable and tenable. Nevertheless, I maintain that the ownership of land was, *de jure* if not *de facto*, *per stirpes*; and in support of this thesis I have not only the *possessiones* and *latos fines* of Cæsar (see above, p. 5), but the law of inheritance and the words *secundum dignationem* in Tacitus; besides the concurrent testimony of the later sources to show that the law of inheritance governed above all things the distribution and enjoyment of land. Compare Lex Salica, de Alodis (LIX. 5); Rosière's Formulæ, CXXVI., CXXV., CXXVII., CCXII., CCXIII., CCIII.; Lex Salica, de Furtis Diversis (XXVII. 6, 8, 10, 18); Edictum Chlotarii II., Cap. 21 (*sylvas privatorum*); Capitulary of A. 813, Cap. 40 (*hereditatem in silva*); Lex Ripuaria, de Alodibus (LVI. 4); also in the same law the passage, de Traditionibus (LX. 1); Documents of St. Bertin (Guérard), Lower Rhine (Lacomblet), Middle Rhine (Beyer and Hontheim), Weissenburg (Zeuss), Lauresham (Codex Laureshamensis), Fulda (Dronke), Lex Alamannorum LXXXVIII. (*ut fratres hereditatem non dissipent antequam dividant eam*); Documents of Sanct Gallen (Wartmann); Lex Baiuvariorum XIV. 8, XI. 3, XII. 6, XV. 2, XVI. 1, XXI., XI. 5, XVI., XVII. (text of Walter's Corpus Juris Germanici); Documents of Freising (Meichelbeck), of Salzburg (Keinz); Lex Angliorum, Werinorum, Thuringorum, VI., de Alodibus (very important); Lex Saxonum XVI. de Terra Aliena Invasa, XV. de Traditionibus, VII. de Haeredibus; Documents for Thuringia and Saxonia, in the Fulda collection (Dronke's Traditiones); Edictum Rotharis, CLIII. (text of Walter's Corpus Juris Germanici), and Formulæ appended to the same law. This list of references might be indefinitely extended, but it is not my purpose here, as in Study I., to establish my own case, so much as to destroy that of my opponents. I hope that the reader is at this point convinced that the reasoning of Von Maurer and his followers is, in