

**STUDIES IN THE EARLY
HISTORY OF INSTITUTIONS:
I.-II. THE THEORY OF
VILLAGE COMMUNITITES**

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Studies in the early history of institutions: I.-II. The theory of village communities by Denman W. Ross

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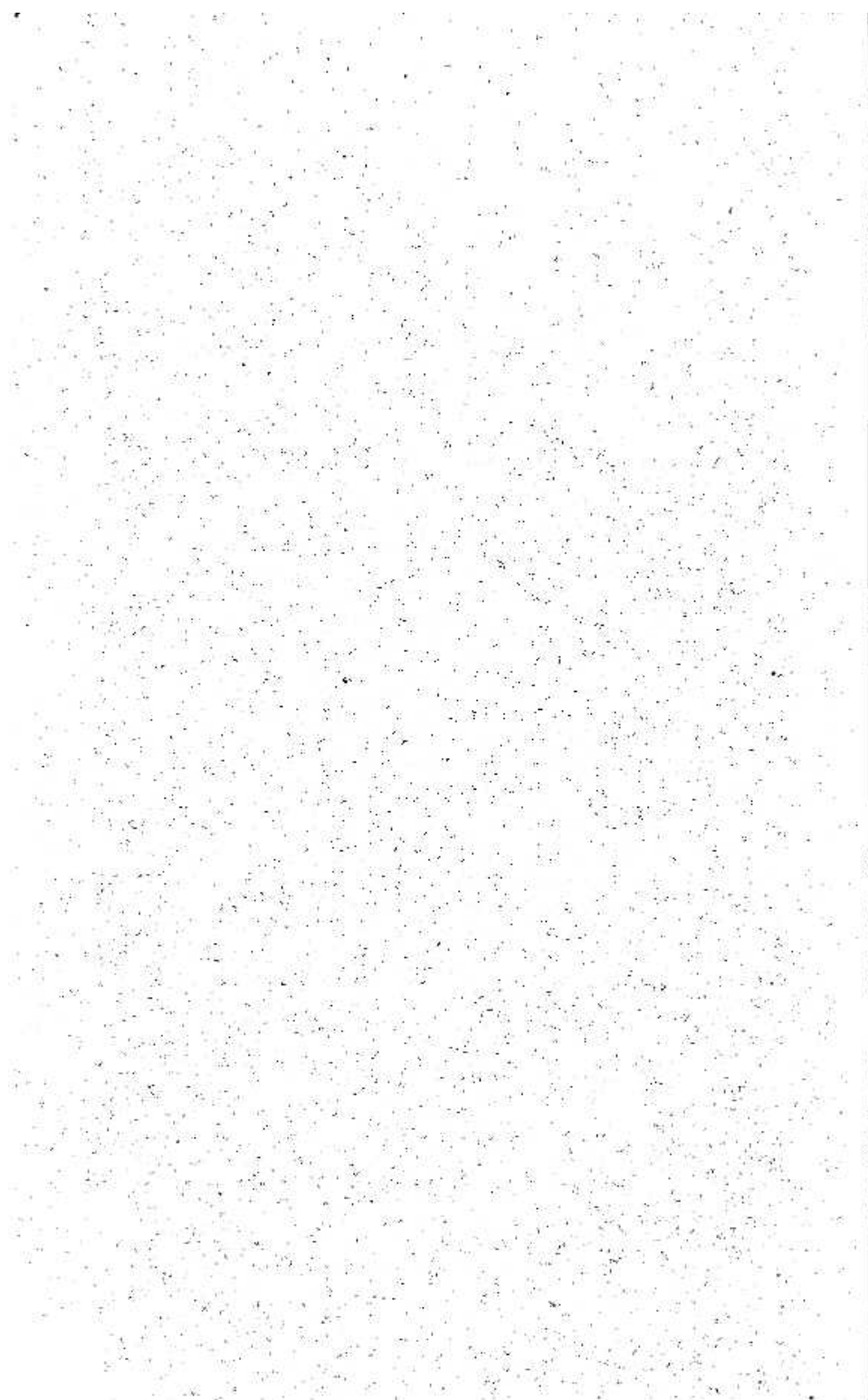


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THE THEORY OF VILLAGE COMMUNITIES.

THE idea prevails that the earliest form of ownership in land was corporate, collective, or joint ownership; that separate ownership arose in consequence of the disentanglement of individual from collective rights; of the rights of the family from those of the tribe; of the rights of the individual from those of the family. The theory of village communities is based upon this idea. It is now universally accepted.

The theory has arisen in somewhat the following manner. Certain passages of Cæsar's *Commentarii De Bello Gallico* and the twenty-sixth chapter of Tacitus' *Germania* were read. The institution of joint tenure in the land communities of the middle ages was studied. It was then assumed that Cæsar and Tacitus describe joint ownership of land; and the problem arose, how was joint ownership changed to joint tenure. This problem, now of many years' standing, has not been solved. Its conditions, however, are accepted without hesitation or doubt. Men were free in the time of Cæsar and Tacitus, and held land in joint ownership. The same men were unfree in the tenth century and held land in joint tenure. How, therefore, was joint ownership changed to joint tenure?

Then there was a discovery in the East, in India, of free village communities like those of the West among the Germans in Tacitus' time. To be sure the land of the Indian villages is not held in joint ownership, but in ancestral shares. In early times, however, it must have been held in joint ownership; for what was an institution among the Germans in Tacitus' time must have been an institution among their kindred in India. So it has been argued;

and who can deny the force of the argument of evolution as applied to the growth of institutions?

Then there was a discovery in the West. There were village communities in Ireland in early times. They are described in early laws and other records. To be sure the land in these communities was held in ancestral shares. In so far as it was held in ownership at all, it was held in absolute and separate ownership. But what was an institution among the Germans in Tacitus' time, what was an institution not long ago among Aryan peoples in India, must have been an institution among the ancient Irish, their kindred. So it has been argued.

Then was discovered at last the very thing itself, the real village community, the community of Tacitus' Germany, of *pre-present* India, of prehistoric Ireland; a village community in which the land is periodically redistributed among the members, — the Russian *mir*. To be sure all the historians agree that the *mir* is an institution dating from the end of the sixteenth century (1592); that it was in its origin a community of tenants, *adscripti glebæ*, not a community of owners. But is not the argument of evolution as applied to the growth of institutions strong enough to contradict and silence the historians of Russia, the students of a few and doubtful facts? When the general truth has been ascertained, particulars of truths may be disregarded. So it has been argued.

Then followed a general and conclusive consideration. The cultivation and use of land in open fields upon co-operative principles is a fact sufficient in itself to show that land was held in joint ownership in early times; for now in the nineteenth century men are not educated up to the point of understanding and forbearance which is a condition of successful co-operation with absolute property. Can we believe for a moment that the archaic intellect was capable of seeing the advantages and understanding the principles of co-operation which have been discovered and laid down by modern economists with so much wisdom and learning? So it has been argued, and the force of the argument has not been denied.

However, there is that primary assumption that Cæsar and Tacitus describe joint ownership of land: and there are those facts; 1, that the land of the Indian villages is held in ancestral shares; 2, that the land of the ancient Irish communities was held in ances-

tral shares; 3, that the origin of the Russian *mir* has been placed by competent historians in the sixteenth century of our era. The force and significance of these facts has not been denied, except by the argument of evolution as applied to the growth of institutions; which argument, in this case, is based upon the above primary assumption that Cæsar and Tacitus describe joint ownership of land.

The following argument is calculated to show: 1, that joint ownership of land was unknown among the Germans in the fifth and following centuries; 2, that it must have been unknown in the time of Cæsar and Tacitus; that it is not described by them; 3, that the law of allodial inheritance, equal division of land among sons, is common to all branches of the Teutonic race; 4, that it must have been the law of that race before it was separated into branches; 5, that the law of equal division of land among sons contradicts the theory of village communities with joint ownership of land. The argument will consist of extracts from and references to the original sources, early laws, formulæ, and documents; interspersed with such brief comment or explanation as seems needed.

The law of allodial inheritance among the Salian Franks.

1. *Lex Salica*. LIX. 5. *De terra vero nulla in muliere hereditas non pertinebit sed ad virilem sexum qui fratres fuerint, tota terra perteneat.*

Division among brothers and co-heirs.

2. *Formula (Rosière, CXXVI)*. *Pactum divisiones inter fratres, id sunt illi et illi, heredes illi et illi quondam, qualiter se de alote eorum dividere vel exequare debereut, quod ita et fecerunt. . . .*

3. *Formula (Rosière, CXXV)*. *In Dei nomen. placuit adque convenit inter illas et illas germanas ut inter se de res eorum dividere debuerunt, quod ita et fecerunt. Accipit illi, hoc est casa cum omni circumcincto illa, seu et mancipia, vel mobile et immobile quem in ipsa casa esse viditur, vel vinias, silvas et prata quantumcumque in ipsa casa aspicere viditur, totum et ad integrum. Et in contra accipit germanas suos illi alio locello illo cum omne rem ad se pertinentis . . . et hec paccio divisionis omni tempore firma permaneat.*

4. *Formula (Rosière, CXXVII)*. *Dum et divisio vel exsequatio*