

CHAPTER 4 PRIVATE PROPERTY IN LAND HISTORICALLY CONSIDERED

What more than anything else prevents the realization of the essential injustice of private property in land and stands in the way of a candid consideration of any proposition for abolishing it, is that mental habit which makes anything that has long existed seem natural and necessary.

We are so used to the treatment of land as individual property that the vast majority of people look upon private ownership of land as the very foundation of civilization.

We are so used to the treatment of land as individual property, it is so thoroughly recognized in our laws, manners, and customs, that the vast majority of people never think of questioning it; but look upon it as necessary to the use of land. They are unable to conceive, or at least it does not enter their heads to conceive, of society as existing or as possible without the reduction of land to private possession. The first step to the cultivation or improvement of land seems to them to get for it a particular owner, and a man's land is looked on by them as fully and as equitably his, to sell, to lease, to give, or to bequeath, as his house, his cattle, his goods, or his furniture. The "sacredness of property" has been preached so constantly and effectively, especially by those "conservators of ancient barbarism," as Voltaire styled the lawyers, that most people look upon the private ownership of land as the very foundation of civilization, and if the resumption of land as common property is suggested, think of it at first blush either as a chimerical vagary, which never has and never can be realized, or as a proposition to overturn society from its base

and bring about a reversion to barbarism.

If it were true that land had always been treated as private property, that would not prove the justice or necessity of continuing so to treat it, any more than the universal existence of slavery, which might once have been safely affirmed, would prove the justice or necessity of making property of human flesh and blood.

Not long ago monarchy seemed all but universal, and not only the kings but the majority of their subjects really believed that no country could get along without a king. Yet, to say nothing of America, France now gets along without a king; the Queen of England and Empress of India has about as much to do with governing her realms as the wooden figurehead of a ship has in determining its course, and the other crowned heads of Europe sit, metaphorically speaking, upon barrels of nitroglycerine.

Something over a hundred years ago, Bishop Butler, author of the famous Analogy, declared that "a constitution of civil government without any religious establishment is a chimerical project of which there is no example." As for there being no example, he was right. No government at that time existed, nor would it have been easy to name one that ever had existed, without some sort of an established religion; yet in the United States we have since proved by the practice of a century that it is possible for a civil government to exist without a state church.

But while, were it true, that land had always and everywhere been treated as private property would not prove that it should always be so treated, this is not true. On the contrary, the common right to land has everywhere been primarily recognized, and private ownership has nowhere grown up save as the result of usurpation. The primary and

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persistent perceptions of mankind are that all have an equal right to land, and the opinion that private property in land is necessary to society is but an offspring of ignorance that cannot look beyond its immediate surroundings—an idea of comparatively modern growth, as artificial and as baseless as that of the right divine of kings.

But in fact, wherever human society has formed, the common right of men to the use of the earth has been recognized, and historically, as ethically, private property in land is robbery. It everywhere had its birth in war, conquest, and cunning.

The observations of travelers, the researches of the critical historians who within a recent period have done so much to reconstruct the forgotten records of the people, the investigations of such men as Sir Henry Maine, Emile de Laveleye, Professor Nasse of Bonn, and others, into the growth of institutions, prove that wherever human society has formed, the common right of men to the use of the earth has been recognized, and that nowhere has unrestricted individual ownership been freely adopted. Historically, as ethically, private property in land is robbery. It nowhere springs from contract; it can nowhere be traced to perceptions of justice or expediency; it has everywhere had its birth in war and conquest, and in the selfish use which the cunning have made of superstition and law.

Wherever we can trace the early history of society, land has been considered as common property.

Wherever we can trace the early history of society, whether in Asia, in Europe, in Africa, in America, or in Polynesia, land has been considered, as the necessary relations which human life has to it would lead to its consideration—as common property, in which the rights of all who had admitted rights were equal. That is to say, that all members of the community, all citizens, as we should say, had equal rights to the use and enjoyment of the land of the community. This recognition of the common right to land did not prevent the full recognition of the particular and exclusive right in things which are the result of labor, nor was it abandoned when the development of agriculture had imposed the necessity of recognizing exclusive possession of land in order to secure the exclusive enjoyment of the results

of the labor expended in cultivating it. The division of land between the industrial units, whether families, joint families, or individuals, went only as far as was necessary for that purpose, pasture and forest lands being retained as common, and equality as to agricultural land being secured, either by a periodical redivision, as among the Teutonic races, or by the prohibition of alienation, as in the law of Moses.

This primary adjustment still exists, in more or less intact form, in the village communities of India, Russia, and the Slavonic countries yet, or until recently, subjected to Turkish rule; in the mountain cantons of Switzerland; among the Kabyles in the north of Africa, and the Kaffirs in the south; among the native population of Java, and the aborigines of New Zealand—that is to say, wherever extraneous influences have left intact the form of primitive social organization. That it everywhere existed has been within late years abundantly proved by the researches of many independent students and observers, and which are, to my knowledge, best summarized in the "Systems of Land Tenure in Various Countries," published under authority of the Cobden Club, and in M. Emile de Laveleye's "Primitive Property," to which I would refer the reader who desires to see this truth displayed in detail.

This is still the case wherever extraneous influences have left intact the form of primitive social organization.

"In all primitive societies," says M. de Laveleye, as the result of an investigation which leaves no part of the world unexplored—"in all primitive societies, the soil was the joint property of the tribes and was subject to periodical distribution among all the families, so that all might live by their labor as nature has ordained. The comfort of each was thus proportioned to his energy and intelligence; no one, at any rate, was destitute of the means of subsistence, and inequality increasing from generation to generation was provided against."

If M. de Laveleye be right in this conclusion, and that he

is right there can be no doubt, how, it will be asked, has the reduction of land to private ownership become so general?

So how has the reduction of land to private ownership become so general?

The causes which have operated to supplant this original idea of the equal right to the use of land by the idea of exclusive and unequal rights may, I think, be everywhere vaguely but certainly traced. They are everywhere the same which have led to the denial of equal personal rights and to the establishment of privileged classes.

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These causes may be summarized as the concentration of power in the hands of chieftains and the military class, consequent on a state of warfare, which enabled them to monopolize common lands; the effect of conquest, in reducing the conquered to a state of predial slavery, and dividing their lands among the conquerors, and in disproportionate share to the chiefs; the differentiation and influence of a sacerdotal class, and the differentiation and influence of a class of professional lawyers, whose interests were served by the substitution of exclusive, in place of common, property in land¹—inequality once produced always tending to greater inequality, by the law of attraction.

This may be seen in the histories of Greece and Rome.

It was the struggle between this idea of equal rights to the soil and the tendency to monopolize it in individual possession, that caused the internal conflicts of Greece and Rome; it was the check given to this tendency—in Greece by such institutions as those of Lycurgus and Solon, and in Rome by the Licinian Law and subsequent divisions of land—that gave to each their days of strength and glory; and it was the final triumph of this tendency that destroyed both. Great estates

¹The influence of the lawyers has been very marked in Europe, both on the Continent and in Great Britain, in destroying all vestiges of the ancient tenure, and substituting the idea of the Roman law, exclusive ownership.

ruined Greece, as afterward “great estates ruined Italy,”² and as the soil, in spite of the warnings of great legislators and statesmen, passed finally into the possession of a few, population declined, art sank, the intellect became emasculate, and the race in which humanity had attained its most splendid development became a byword and reproach among men.

The idea of absolute individual property in land, which modern civilization derived from Rome, reached its full development there in historic times. When the future mistress of the world first looms up, each citizen had his little homestead plot, which was inalienable, and the general domain—“the cornland which was of public right”—was subject to common use, doubtless under regulations or customs which secured equality, as in the Teutonic mark and Swiss allmend. It was from this public domain, constantly extended by conquest, that the patrician families succeeded in carving their great estates. These great estates by the power with which the great attracts the less, in spite of temporary checks by legal limitation and recurring divisions, finally crushed out all the small proprietors, adding their little patrimonies to the latifundia of the enormously rich, while they themselves were forced into the slave gangs, became rent-paying coloni, or else were driven into the freshly conquered foreign provinces, where land was given to the veterans of the legions; or to the metropolis, to swell the ranks of the proletariat who had nothing to sell but their votes.

Caesarism, soon passing into an unbridled despotism of the Eastern type, was the inevitable political result, and the empire, even while it embraced the world, became in reality a shell, kept from collapse only by the healthier life of the frontiers, where the land had been divided among military

In early Rome, each citizen had a homestead plot and rights to use of the public domain. From the latter the patrician families carved their great estates, which finally crushed out all the small proprietors.

² *Latifundia perdidere Italiam.* — Pliny.

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settlers or the primitive usages longer survived. But the *latifundia*, which had devoured the strength of Italy, crept steadily outward, carving the surface of Sicily, Africa, Spain, and Gaul into great estates cultivated by slaves or tenants. The hardy virtues born of personal independence died out, an exhaustive agriculture impoverished the soil, and wild beasts supplanted men, until at length, with a strength nurtured in equality, the barbarians broke through; Rome perished; and of a civilization once so proud nothing was left but ruins.

Thus came to pass that marvelous thing, which at the time of Rome's grandeur would have seemed as impossible as it seems now to us that the Comanches or Flatheads should conquer the United States, or the Laplanders should desolate Europe. The fundamental cause is to be sought in the tenure of land. On the one hand, the denial of the common right to land had resulted in decay; on the other, equality gave strength.

Freedom and ownership of an undivided share of the common property, to which the head of every family was entitled, were in the German village essential rights.

"Freedom," says M. de Laveleye (*Primitive Property*, p. 116), "freedom, and, as a consequence, the ownership of an undivided share of the common property, to which the head of every family in the clan was equally entitled, were in the German village essential rights. This system of absolute equality impressed a remarkable character on the individual, which explains how small bands of barbarians made themselves masters of the Roman Empire, in spite of its skillful administration, its perfect centralization and its civil law, which has preserved the name of written reason."

It was, on the other hand, that the heart was eaten out of that great empire. "Rome perished," says Professor Seeley, "from the failure of the crop of men."

In his lectures on the "History of Civilization in Europe," and more elaborately in his lectures on the "History of Civilization in France," M. Guizot has vividly described the

chaos that in Europe succeeded the fall of the Roman Empire—a chaos which, as he says, “carried all things in its bosom,” and from which the structure of modern society was slowly evolved. It is a picture which cannot be compressed into a few lines, but suffice it to say that the result of this infusion of rude but vigorous life into Romanized society was a disorganization of the German, as well as the Roman structures—both a blending and an admixture of the idea of common rights in the soil with the idea of exclusive property, substantially as occurred in those provinces of the Eastern Empire subsequently overrun by the Turks. The feudal system, which was so readily adopted and so widely spread, was the result of such a blending; but underneath, and side by side with the feudal system, a more primitive organization, based on the common rights of the cultivators, took root or revived, and has left its traces all over Europe. This primitive organization, which allots equal shares of cultivated ground and the common use of uncultivated ground, and which existed in ancient Italy as in Saxon England, has maintained itself beneath absolutism and serfdom in Russia, beneath Moslem oppression in Servia, and in India has been swept, but not entirely destroyed, by wave after wave of conquest, and century after century of oppression.

The feudal system, which is not peculiar to Europe, but seems to be the natural result of the conquest of a settled country by a race among whom equality and individuality are yet strong, clearly recognized, in theory at least, that the land belongs to society at large, not to the individual. Rude outcome of an age in which might stood for right as nearly as it ever can (for the idea of right is ineradicable from the human mind, and must in some shape show itself even in the association of pirates and robbers), the feudal system yet admitted

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A fief was essentially a trust. Individual possession of land involved duties by which the enjoyer of its revenues was to render back to the commonwealth an equivalent for benefits received.

in no one the uncontrolled and exclusive right to land. A fief was essentially a trust, and to enjoyment was annexed obligation. The sovereign, theoretically the representative of the collective power and rights of the whole people, was in feudal view the only absolute owner of land. And though land was granted to individual possession, yet in its possession were involved duties, by which the enjoyer of its revenues was supposed to render back to the commonwealth an equivalent for the benefits which from the delegation of the common right he received.

Crown lands supported public expenditures and church land defrayed the cost of public benefits. Military tenures provided for the public defense.

In the feudal scheme the crown lands supported public expenditures which are now included in the civil list; the church lands defrayed the cost of public worship and instruction, of the care of the sick and of the destitute, and maintained a class of men who were supposed to be, and no doubt to a great extent were, devoting their lives to purposes of public good; while the military tenures provided for the public defense. In the obligation under which the military tenant lay to bring into the field such and such a force when need should be, as well as in the aid he had to give when the sovereign's eldest son was knighted, his daughter married, or the sovereign himself made prisoner of war, was a rude and inefficient recognition, but still unquestionably a recognition, of the fact, obvious to the natural perceptions of all men, that land is not individual but common property.

Nor was control of the possessor of land allowed to extend beyond his own life.

Nor yet was the control of the possessor of land allowed to extend beyond his own life. Although the principle of inheritance soon displaced the principle of selection, as where power is concentrated it always must, yet feudal law required that there should always be some representative of a fief, capable of discharging the duties as well as of receiving the benefits which were annexed to a landed estate, and who this should be was not left to individual caprice, but rigorously

determined in advance. Hence wardship and other feudal incidents. The system of primogeniture and its outgrowth, the entail, were in their beginnings not the absurdities they afterward became.

The basis of the feudal system was the absolute ownership of the land, an idea which the barbarians readily acquired in the midst of a conquered population to whom it was familiar; but over this, feudalism threw a superior right, and the process of infeudation consisted of bringing individual dominion into subordination to the superior dominion, which represented the larger community or nation. Its units were the landowners, who by virtue of their ownership were absolute lords on their own domains, and who there performed the office of protection which M. Taine has so graphically described, though perhaps with too strong a coloring, in the opening chapter of his "Ancient Régime." The work of the feudal system was to bind together these units into nations, and to subordinate the powers and rights of the individual lords of land to the powers and rights of collective society, as represented by the suzerain or king.

Infeudation consisted of subordinating individual dominion to the superior dominion of the larger community.

Thus the feudal system, in its rise and development, was a triumph of the idea of the common right to land, changing an absolute tenure into a conditional tenure, and imposing peculiar obligations in return for the privilege of receiving rent. And during the same time, the power of landownership was trenched, as it were, from below, the tenancy at will of the cultivators of the soil very generally hardening into tenancy by custom, and the rent which the lord could exact from the peasant becoming fixed and certain.

Thus the feudal system was initially a triumph of the idea of common right to land, imposing obligations in return for the privilege of receiving rent.

And amid the feudal system there remained, or there grew up, communities of cultivators, more or less subject to feudal dues, who tilled the soil as common property; and although the lords, where and when they had the power, claimed pre-

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ty much all they thought worth claiming, yet the idea of common right was strong enough to attach itself by custom to a considerable part of the land. The commons, in feudal ages, must have embraced a very large proportion of the area of most European countries. For in France (although the appropriations of these lands by the aristocracy, occasionally checked and rescinded by royal edict, had gone on for some centuries prior to the Revolution, and during the Revolution and First Empire large distributions and sales were made), the common or communal lands still amount, according to M. de Laveye, to 4,000,000 hectares, or 9,884,400 acres. The extent of the common land of England during the feudal ages may be inferred from the fact that though inclosures by the landed aristocracy began during the reign of Henry VII, it is stated that no less than 7,660,413 acres of common lands were inclosed under Acts passed between 1710 and 1843, of which 600,000 acres have been inclosed since 1845; and it is estimated that there still remain 2,000,000 acres of common in England, though of course the most worthless parts of the soil.

Other customs enabled people to use land which owners were not using.

In addition to these common lands, there existed in France, until the Revolution, and in parts of Spain, until our own day, a custom having all the force of law, by which cultivated lands, after the harvest had been gathered, became common for purposes of pasturage or travel, until the time had come to use the ground again; and in some places a custom by which any one had the right to go upon the ground which its owner neglected to cultivate, and there to sow and reap a crop in security. And if he chose to use manure for the first crop, he acquired the right to sow and gather a second crop without let or hindrance from the owner.

It is not merely the Swiss allmend, the Ditmarsh mark, the Servian and Russian village communities; not merely the long

ridges which on English ground, now the exclusive property of individuals, still enable the antiquarian to trace out the great fields in ancient time devoted to the triennial rotation of crops, and in which each villager was annually allotted his equal plot; not merely the documentary evidence which careful students have within late years drawn from old records; but the very institutions under which modern civilization has developed, which prove the universality and long persistence of the recognition of the common right to the use of the soil.

There still remain in our legal systems survivals that have lost their meaning, that, like the still existing remains of the ancient commons of England, point to this. The doctrine of eminent domain, existing as well in Mohammedan law, which makes the sovereign theoretically the only absolute owner of land, springs from nothing but the recognition of the sovereign as the representative of the collective rights of the people; primogeniture and entail, which still exist in England, and which existed in some of the American states a hundred years ago, are but distorted forms of what was once an outgrowth of the apprehension of land as common property. The very distinction made in legal terminology between real and personal property is but the survival of a primitive distinction between what was originally looked upon as common property and what from its nature was always considered the peculiar property of the individual. And the greater care and ceremony which are yet required for the transfer of land is but a survival, now meaningless and useless, of the more general and ceremonious consent once required for the transfer of rights which were looked upon, not as belonging to any one member, but to every member of a family or tribe.

The general course of the development of modern civili-

In our legal system are survivals of the historic recognition of land as common property: Eminent domain, primogeniture and entail in England, the greater care and ceremony required for transfer of land.

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zation since the feudal period has been to the subversion of these natural and primary ideas of collective ownership in the soil. Paradoxical as it may appear, the emergence of liberty from feudal bonds has been accompanied by a tendency in the treatment of land to the form of ownership which involves the enslavement of the working classes, and which is now beginning to be strongly felt all over the civilized world, in the pressure of an iron yoke, which cannot be relieved by any extension of mere political power or personal liberty, and which political economists mistake for the pressure of natural laws, and workmen for the oppressions of capital.

This is clear—that in Great Britain today the right of the people as a whole to the soil of their native country is much less fully acknowledged than it was in feudal times. A much smaller proportion of the people own the soil, and their ownership is much more absolute. The commons, once so extensive and so largely contributing to the independence and support of the lower classes, have, all but a small remnant of yet worthless land, been appropriated to individual ownership and inclosed; the great estates of the Church, which were essentially common property devoted to a public purpose, have been diverted from that trust to enrich individuals; the dues of the military tenants have been shaken off, and the cost of maintaining the military establishment and paying the interest upon an immense debt accumulated by wars has been saddled upon the whole people, in taxes upon the necessaries and comforts of life. The crown lands have mostly passed into private possession, and for the support of the royal family and all the petty princelings who marry into it, the British workman must pay in the price of his mug of beer and pipe of tobacco. The English yeoman—the sturdy breed who won Crecy, and Poitiers, and Agincourt—is as

extinct as the mastodon. The Scottish clansman, whose right to the soil of his native hills was then as undisputed as that of his chieftain, has been driven out to make room for the sheep ranges or deer parks of that chieftain's descendant; the tribal right of the Irishman has been turned into a tenancy-at-will. Thirty thousand men have legal power to expel the whole population from five-sixths of the British Islands, and the vast majority of the British people have no right whatever to their native land save to walk the streets or trudge the roads. To them may be fittingly applied the words of a Tribune of the Roman People: "Men of Rome," said Tiberius Gracchus—"men of Rome, you are called the lords of the world, yet have no right to a square foot of its soil! The wild beasts have their dens, but the soldiers of Italy have only water and air!"

The result has, perhaps, been more marked in England than anywhere else, but the tendency is observable everywhere, having gone further in England owing to circumstances which have developed it with greater rapidity.

The reason, I take it, that with the extension of the idea of personal freedom has gone on an extension of the idea of private property in land, is that as in the progress of civilization the grosser forms of supremacy connected with landownership were dropped, or abolished, or became less obvious, attention was diverted from the more insidious, but really more potential forms, and the landowners were easily enabled to put property in land on the same basis as other property.

The growth of national power, either in the form of royalty or parliamentary government, stripped the great lords of individual power and importance, and of their jurisdiction and power over persons, and so repressed striking abuses, as the growth of Roman Imperialism repressed the more

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The great lords lost individual power and importance.

Large feudal estates were broken up, and laborers no longer compelled to remain. With the extension of personal liberty, went an extension of individual proprietorship in land.

The power of the barons was broken not by the revolts of the agricultural laborers, but by the growth of the artisan and trading classes, between whose wages and rent there is not the same obvious relation.

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striking cruelties of slavery. The disintegration of the large feudal estates, which, until the tendency to concentration arising from the modern tendency to production upon a large scale is strongly felt, operated to increase the number of landowners, and the abolition of the restraints by which landowners when population was sparser endeavored to compel laborers to remain on their estates also contributed to draw away attention from the essential injustice involved in private property in land; while the steady progress of legal ideas drawn from the Roman law, which has been the great mine and storehouse of modern jurisprudence, tended to level the natural distinction between property in land and property in other things. Thus, with the extension of personal liberty, went on an extension of individual proprietorship in land.

The political power of the barons was, moreover, not broken by the revolt of the classes who could clearly feel the injustice of landownership. Such revolts took place, again and again; but again and again were they repressed with terrific cruelties. What broke the power of the barons was the growth of the artisan and trading classes, between whose wages and rent there is not the same obvious relation. These classes, too, developed under a system of close guilds and corporations, which, as I have previously explained in treating of trade combinations and monopolies, enabled them somewhat to fence themselves in from the operation of the general law of wages, and which were much more easily maintained than now, when the effect of improved methods of transportation, and the diffusion of rudimentary education and of current news, is steadily making population more mobile. These classes did not see, and do not yet see, that the tenure of land is the fundamental fact which must ultimately determine the conditions of industrial, social, and political life. And so the tendency has been to assimilate the idea of

property in land with that of property in things of human production, and even steps backward have been taken, and been hailed, as steps in advance. The French Constituent Assembly; in 1789, thought it was sweeping away a relic of tyranny when it abolished tithes and imposed the support of the clergy on general taxation. The Abbé Sieyès stood alone when he told them that they were simply remitting to the proprietors a tax which was one of the conditions on which they held their lands, and reimposing it on the labor of the nation. But in vain. The Abbé Sieyès, being a priest, was looked on as defending the interests of his order, when in truth he was defending the rights of man. In those tithes, the French people might have retained a large public revenue which would not have taken one centime from the wages of labor or the earnings of capital.

And so the abolition of the military tenures in England by the Long Parliament, ratified after the accession of Charles II, though simply an appropriation of public revenues by the feudal landholders, who thus got rid of the consideration on which they held the common property of the nation, and saddled it on the people at large, in the taxation of all consumers, has long been characterized, and is still held up in the law books, as a triumph of the spirit of freedom. Yet here is the source of the immense debt and heavy taxation of England. Had the form of these feudal dues been simply changed into one better adapted to the changed times, English wars need never have occasioned the incurring of debt to the amount of a single pound, and the labor and capital of England need not have been taxed a single farthing for the maintenance of a military establishment. All this would have come from rent, which the landholders since that time have appropriated to themselves—from the tax which landownership levies on the earnings of labor and capital. The

And so the abolition of landowners' obligations was characterized as a triumph of the spirit of freedom, yet it is the source of immense debt and heavy taxation.

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England today would not require customs duty, excise, license, or income tax, yet would meet all present expenditures and leave a large surplus.

landholders of England got their land on terms which required them even in the sparse population of Norman days to put in the field, upon call, sixty thousand perfectly equipped horsemen,³ and on the further condition of various fines and incidents which amounted to a considerable part of the rent. It would probably be a low estimate to put the pecuniary value of these various services and dues at one-half the rental value of the land. Had the landholders been kept to this contract and no land been permitted to be inclosed except upon similar terms, the income accruing to the nation from English land would today be greater by many millions than the entire public revenues of the United Kingdom. England today might have enjoyed absolute free trade. There need not have been a customs duty, an excise, license, or income tax, yet all the present expenditures could be met, and a large surplus remain to be devoted to any purpose which would conduce to the comfort or well-being of the whole people.

Turning back, wherever there is light to guide us, we may everywhere see that in their first perceptions, all peoples have recognized the common ownership in land, and that private property in land is an usurpation, a creation of force and fraud.

As Madame de Stael said, "Liberty is ancient." Justice, if we turn to the most ancient records, will always be found to have the title of prescription.

³ Andrew Bisset, in "The Strength of Nations," London, 1859, a suggestive work in which he calls the attention of the English people to this measure by which the landowners avoided the payment of their rent to the nation, disputes the statement of Blackstone that a knight's service was but for 40 days, and says it was during necessity.