XVII.—*The Milites Stationarii considered in relation to the Hundred and Tithing of England.* By H. C. COOTE, Esq., F.S.A.

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The *Milites Stationarii* of the Empire have not succeeded in attracting the attention of archæologists. Kellermann does not mention them, though the force of which he specially treated bore unquestionable affinity to these *milites*, and the scope of his work took in every other form of the soldiery of the Empire.¹ Cardinali,² Grotefend,³ Zell,⁴ and Dr. William Smith,⁵ observe the same silence.

This neglect cannot have arisen through any want of interest of the subject, for that, as I think I shall be able to show, is considerable; the more so, if I be right in the view that to these *milites* we should ascribe the origin of our two territorial institutions, the hundred and tithing, institutions which, until the reign of King William the Fourth, supplied the police of this country.

The *milites stationarii* were no part of the ancient constitution of Rome, but owe their origin to Augustus. That emperor, finding Italy at the close of the civil war a prey to armed robbers, posted stations (*stationes*) in opportune places to restrain this general evil.⁶ In other words, he instituted for Italy a police and police magistrates.

¹ *Vigilum Romanorum Latercula* duo Caelimontana magnam partem militiae Romanae explicantia. Romae. 1835.

² *Memorie Romane*.

³ Grotefend in Pauly's Real-Encyclopädie, under the word "legio."

⁴ *Handbuch der Römischen epigraphik*. Zweite theil, p. 301.

⁵ *Classical Dictionary*. *Statio* (castra) and *statio* (fisci) are the only references.

⁶ "Igitur grassaturas, dispositis per opportuna loca stationibus, inhibuit." (Suet. in D. Aug.)

This police of Augustus was extended and improved by Tiberius, who took measures for assuring peace from outrages, robberies, and riots, by posting stations of soldiers throughout Italy more abundantly than before.¹

Though thus originally instituted for Italy only, we afterwards find this police, under the name of *milites stationarii* in the west, and *irenarchae* in the east, extended to every part of the empire. The laws speak of them in a sense of general application.² Eusebius constantly refers to them in Asia.³ The novelist Xenophon, of Ephesus, introduces one as in Cilicia.⁴ The *Acta sincera Martyrum* record their severities in Gaul, Africa, Greece, Spain, Asia, and elsewhere.⁵ Ammianus Marcellinus gives instances of the action of this force at the two extreme points of the empire; the one on the German and the other on the Persian border.⁶ An inscription still preserved at Saepinum, in southern Italy, shows us how the force worked there;⁷ and in Dacia Mediterranea an epigraph of the briefest kind is evidence of its existence in that late acquisition of the Empire.⁸

These two latter are the only references of epigraphy which time has capriciously preserved upon this subject.⁹

That the *stationarii* were policemen, as I have said, in spite of their honourable name of *milites*,¹⁰ is shown by the attributes which belong to them. In the exercise of their office they apprehend and imprison, (or lock up,) without special

¹ *Imprimis tuendae pacis a grassaturis ac latrociniiis seditionumque licentia curam habuit. Stationes militum per Italiam solito frequentiores disposuit.* (Suet. in Tib.)

² The passages are quoted *post*.

³ In his Ecclesiastical History.

⁴ See the quotation *post* in note.

⁵ *Acta sincera Martyrum*, by Ruinart, edit. Ratisbon, 1859.

⁶ See *post* in note.

⁷ For the inscription on the wall of Saepinum see *post*.

⁸ See Seivert, *Inscriptiones monumentorum Romanorum in Dacia Mediterranea*. Viennae 1773. Insc. 217. This book is not in the British Museum. I quote J. F. Massman's *Libellus Aurarius*, p. 11. The inscription is "*Milites ex Statione.*"

⁹ It is true that a *graffito* has been found at Pompeii with the words "*Creseens stationarius*" (Garrucci, *Graffiti di Pompeii*, p. 95), but this may refer to a fiscal officer.

¹⁰ Other functionaries came under the like name of *milites*, e.g. the *agentes in rebus*. This was the general appellation of all the various grades of officials employed in, and upon the business of, the vast Home Office of the empire. (Zell, *Anleitung zur Kenntniss der Römischen Inschriften*, p. 262.) S. Augustin (*Confess.* lib. ix. c. 8) speaking of his friend Evodius, says, "*Qui, cum agens in rebus militaret, prior nobis ad te conversus est et baptizatus, et relicta militia saeculari adinctus in tua.*" So also, *ib.* lib. viii. c. 6, he says, "*Et relicta militia saeculari servire tibi. Erant autem ex eis quos dicunt agentes in rebus.*"

warrant,¹ all persons who have broken, or may be suspected by them of having broken the laws.

The *stationarius* who had thus apprehended a criminal or a suspect took him before his own officer. This officer we find to be a centurion (or *centenarius*) or his deputy.² For this purpose the centurion was a police magistrate, for when the prisoner was brought before him he investigated the charge, and either committed him for trial or discharged him.³

In the investigation of the charge the prisoner was searched⁴ and in-

¹ Dig. xi. 4, 4: "Stationarii fugitivos deprehensos recte in custodia retinent."

In the *Acta Martyrum*, the *stationarii* apprehend Montanus and his companions and take them to their lock-up. (Ruinart, p. 275.) "Igitur apprehensis nobis et apud regionantes (*i.e.* stationarios, see *post*) in custodia constitutis." Am. Marcellinus (xxviii. 6. 27) tells us how one Palladius having been arrested commits suicide in the lock-up ("in statione primis tenebris observata custodum absentia," &c.)

² The action of the centurion is illustrated by the following narrative preserved in Eusebius. (H. E. from the Apology of S. Justus, lib. iv. c. 17.) A man of bad character, who had been repudiated by his wife, in revenge formally accused her of being a Christian, but afterwards dropped his proceedings and persuaded a centurion of *stationarii* to apprehend S. Ptolemaeus, who had converted her. Ptolemaeus is subsequently interrogated and committed by this centurion. He is tried before the praeses and condemned. See also Ruinart, p. 101.

We find in one instance that a *beneficiarius* commits; "Cassander beneficiarius hoc scripsit," that is, drew up the *notoria*, or commitment. *Acta SS. Agapes, Chioniae, Irenes, &c.* (Ruinart, p. 424.)

The full expression in this case is *beneficiarius centurionis*, or sub-officer acting for the centurion. So in the "*Latercula Vigilum*" of Kellermann we find mentioned *beneficiarius praefecti*, *beneficiarius subpraefecti*, *beneficiarius tribuni*, *beneficiarius centurionis*. The *beneficiarius* was distinct from and superior to the *secutor* or mere orderly. The same *Latercula* mention a *secutor tribuni*, as well as a *beneficiarius tribuni*.

Zell (vol. ii. p. 305) says, "Es sind darunter begriffen (*i.e.* amongst the *milites principales*) für den feld dienst, die *optiones* und *beneficiarii*, stellvertreter und gehilfen, (leutenants und adjutanten) der obern offizierstellen; die ständigen ordonanzen (*beneficiarii, secutores.*)"

³ Dionysius, Bishop of Alexandria, in his letter to Fabianus, (Euseb. H. E. lib. vi. c. 41,) says that Nemesion, an Egyptian, had been charged before the centurion (*ἐκατοντάρχῃ*) with being the companion and associate of thieves. This charge broke down. The centurion, however, committed him for trial as being a Christian.

⁴ As to searching see Ammianus Marcellinus, xxi. 3. 6. Vadomarus, a German chief in collusion with Constantius, attacks the German border, in order to keep Julian employed there. Vadomarus sends a secretary (or confidential person) to Constantius to give information. The *stationarii* intercept this man, as one travelling without an apparent object, search him, and find upon him the chief's letter to Constantius.

terrogated,¹ the rack being used² when ordinary means of persuasion failed.

If the prisoner was committed he was in due time and form sent on to the city within whose territory the centurion (or centenarius) who had so committed him held office. There the prisoner was handed over to the *officium* of the *praeses*, and they consigned him to the prison of the *civitas*, where he remained until his trial.³

At the same time was lodged with the *officium* of the *praeses* a report of the

¹ Dig. xlviii. c. 3. 6. "Sed et caput mandatorum extat, quod Divus Pius, quum provinciae Asiae praeerat, sub edicto proposuit, ut irenarchae, quum apprehenderint latrones, interrogent eos de sociis et receptatoribus," etc.

² "Tunc attentantur numerosis durisque cruciatibus per stationarium militem." (*Passio Jacobi, Mariani, et aliorum plurimorum martyrum in Numidia*, p. 270, Ruinart. What the *stationarii* sought by the question is declared by Ammianus Marcellinus, *Hist. lib. xxii. 16, 23*. "Et nulla tormentorum vis inveniri adhuc potuit, quae obdurato illius tractus latroni invito elicere potuit, ut nomen proprium dicat."

³ *Passim* in the *Acta Martyrum*: In the *Acta SS. Saturnini, Dativi, et aliorum plurimorum in Africa* (p. 415, Ruinart), certain holy men being apprehended by the *stationarii* in a private house are (p. 416) sent on to Carthage, and are there handed over, "ad officium Annulini tunc proconsulis." Those officials put them into the common gaol, and they are afterwards brought up by the *officium* at the trial (ab officio proconsulis offeruntur). So in the *Acta SS. Didymi et Theodoraë Virginis* (p. 428, Ruinart). "In civitate Alexandria Proculus, cum sedisset pro tribunali, dixit, Vocate Theodoram virginem. Ex officio dictum est: adsistit Theodora." In the *Acta SS. Martyrum Fructuosi episcopi, Augurii et Eulogii diaconorum* (Ruinart, p. 265), "Aemilianus praeses dixit: Fructuosum episcopum Augurium et Eulogium intromittite. Ex officio dictum est: Adstant."

There is an essential difference between *carcer* and *custodia*, as I have before mentioned. *Carcer* is the prison to which persons were sent on their being committed.

So in the "*Passio SS. Epipodii et Alexandri*," (Ruinart, p. 121.) "Itaque captos etiam ante discussionem carcer accepit, quia manifesti putabatur criminis nomen esse ipsa appellatio Christiana."

So also in the "*Passio SS. Perpetuae et Felicitatis cum sociis earum*" (ib. p. 138), the Christians were apprehended (*apprehensi sunt*), and after a few days' detention were sent to the *carcer* (*post paucos dies recipimur in carcerem*).

The *carcer* was situated in the *civitas* or chief town of each *territorium*, and was under the charge of the decurions of such *civitas*.

In the "*Acta SS. Martyrum Claudii, Asterii, et aliorum*," (Ruinart, p. 309,) the praeses says:—"Offerantur decrecioni meae Christiani, qui traditi sunt curialibus hujus civitatis ab officio."

Again in Paulus's sentences, edited by Arndt, tit. vi. 2, s. 4, we find the municipal magistrates are charged with the custody of all criminals committed for trial, and are bound to hand them over to the *officium* of the *praeses* for production when the trial is fixed. They consequently must have kept them in a prison of their own. The words are "Magistratus municipales ad officium praesidis provinciae vel proconsulis comprehensos recte transmittunt."

centenarius who had committed the accused. This report was called *notoria*, *notaria*, and *elogium*, and contained the charge.¹ To this were added the interrogation and answers of the alleged criminal, and most probably also the depositions of witnesses.²

The prisoner was tried at the next gaol delivery of the city when the *praeses* arrived there in the course of his circuit.³

¹ S. Augustin. in epis. 159: "Circumcelliones illos, et clericos partis Donati, quos ad iudicium pro factis eorum publicae disciplinae cura deduxerat, &c.." Idem in epis. 159: "Qui non accusantibus nostris, sed illorum notoria, ad quos tuendae publicae pacis vigilantia pertinebat, presentari videantur examini. Cod. Theod. 16, 2, 31: "Si quis in hoc genus sacrilegii proruperit, ut, in Ecclesias Catholicas irruens, sacerdotibus et ministris vel ipso cultui locoque aliquid inportet injuriae, quod geritur, literis ordinum, magistratuum, et curatorum, et notoriis apparitorum (quos stationarios appellant) deferatur in notitiam potestatum, &c." In the Acta of SS. Agape, Chionia et Irene (Ruinart, pp. 244 *et seqq.*) we find a *notoria* recited: "Cum praesideret Dulcetius, Artemensis scriba dixit: cognitionem de his qui praesentes sunt a stationario missam, si jubes, legam. Jubeo, inquit Dulcetius praeses, te legere. Tunc ait scriba, Ordine tibi meo Domino omnia, quae scripta sunt, recitabo; Cassander beneficiarius hoc scripsit. Scito, mi domine, Agathonem, Agapen, Chioniam, Irenem, Casiam, Philippam, et Eutychiam nolle his vesci, quae diis sunt immolata. Eas igitur ad tuam amplitudinem adducendas esse curavi."

² Dig. xlviii. c. 3. 1: "Sed et caput mandatorum extat, quod Divus Pius, quum provinciae Asiae praeerat, sub edicto proposuit, ut irenarchae, quum apprehenderint latrones, interrogent eos de sociis et receptatoribus, et interrogationes literis inclusas atque obsignatas ad cognitionem magistratus mittant." This speaks only of interrogating the criminal and taking his answers. In many or most cases there must have been other evidence, and these depositions would be transmitted along with the rest. The word "cognitio," as applied (in previous note) to the investigation made by the centurion, can only have this more extended meaning. So S. Cypriani, epis. 48: "Et urgentibus fratribus imminabat cognitionis dies, quo apud nos causa ejus ageretur."

³ As to the circuits of the *praeses* see the Theodosian Code, i. tit. 7, and Godefroy's *paratillon* (de officio rectoris provinciae)—"certo anni tempore civitates provinciae obire debebant (*i.e.* the *praesides*) atque in his locis, quibus praesto esse possent omnibus, sedem constituere, provincialiumque querelas excipere." See also *ib.* c. iv. Cassiodorus speaks of it as the old law and custom of the Empire. Var. v. 14, and calls the circuits "discursus iudicum."

In Eusebius, His. Ecc. lib. v. c. 1, S. Pothinus is kept in prison until the coming of the *praeses*.

In Acta SS. Martyrum Claudii, Asterii, et aliorum, Ruinart, p. 309, in note: Omnesque vineti in carcerem trusi sunt, usque ad adventum proconsulis Lydiae. Cum autem proconsul circumiret provinciam, factum est ut perveniret ad Aegaeam, ubi sedens, &c. The Acta SS. Martyrum Tarachi, Probi, et Andronici, illustrate this fully. (*Ib.* 452 *et seqq.*) Numerianus Maximus, the *praeses*, is found sitting at Tarsus, then at Liscia, and afterwards at Anazaria, all cities of his province. The old classic word *conventus* even was retained, "Statuto forensi conventu." Acta proconsularia Martyrum Scillitanorum. (*Ib.* p. 131.)

At the trial the *stationarii* prosecuted.¹ The *notoria* formed the indictment, being read at the opening of the trial.² The evidence was got up by the *stationarii*, and was gone into as fully as if there had been no preliminary inquiry.

The persons liable to the attentions of this police readily suggest themselves. Individuals found wandering in the country who were unknown and could not give a good account of themselves, or who were too well known to allow any such account to be credible,³ robbers, thieves, and their associates,⁴ cattle-stealers⁵

¹ Cod. Just. ix. 4. 1: "In quacunq[ue] causa reo exhibit[us], sive accusator exstat, sive eum publicae sollicitudinis cura produxerit," &c.

As may be easily supposed, people were very glad to push off upon the *stationarii* the disagreeable task of prosecuting. A law of Diocletian and Maximian prohibits this. (Cod. Just. ix. 2. 8.) "Si quis se injuriam ab aliquo passum putaverit, et querelam deferre voluerit, non ad stationarios decurrat, sed praesidialem adeat potestatem, aut libellos offerens, aut querelas suas apud acta deponens."

² See *ante*, in note.

³ Dig. xlviii. c. 3, 6: "Igitur, qui cum elogio mittuntur, ex integro audiendi sunt, etsi per literas, missi fuerint, vel etiam per irenarchas producti." *Ib.* "Et ideo quum quis ἀνάγκησιν fecerit, juberi oportet venire irenarcham, et quod scripserit exsequi, et si diligenter ac fideliter hoc fecerit, collaudandum eum, si parum prudenter, non exquisitis argumentis, simpliciter denotare, irenarcham minus retulisse. Sed si quid maligne interrogasse, aut non dicta retulisse pro dictis eum compererit, ut vindicet in exemplum, ne quid et aliud postea tale facere molitur." So in Cod. Just. lib. xii. tit. 22 (Constantius, A.D. 355): "Curiosi, et stationarii, vel quicumque funguntur hoc munere, crimina iudicibus nuntianda meminerint, et sibi necessitatem probationis incumbere, non citra periculum sui, si insontibus eos calumnias nexuisse constiterit. Cesset ergo prava consuetudo, per quam carceri aliquos immittebant," *i.e.* the bad custom of committing persons without evidence.

⁴ We have two illustrations of this in Ammianus Marcellinus. One has been given before. The other (xxviii. 5, 3) is as follows: Antoninus, a defaulting *rationalis*, having determined to fly into Persia, and sell his knowledge of the Empire to the great king, buys a property over the Persian border, in order that on pretence of visiting it he may pass without being detained and questioned through the midst of the *stationarii*. ("Atque, ut lateret stationarios milites, fundum in Hyaspide, qui locus Tygridis fluentis adluitur, pretio non magno mereatur.")

⁵ Robbers and thieves were the original objects of Augustus's law (see *ante*). Tertullian (in apologetico) says: "Latronibus investigandis per provincias militaris statio sortitur."

An interesting inscription, which still remains upon the walls of Saepinum, illustrates what I have said in the text. This inscription contains a correspondence which passed between the *stationarii* and magistrates (*i.e.* *duumviri*) of Saepinum and Bovianum on the one part, and the *procuratores rei privatae* of the emperor on the other. The latter say that they have received a complaint from certain *conductores* of the emperor's flocks, that the *stationarii* and magistrates of Saepinum and Bovianum, in the passage of the former over the mountains, outrage both horses (*jumenta*) and shepherds, insisting that the latter are runaway slaves, and have stolen the horses, and that upon this pretext they retain the emperor's sheep

and horse-stealers. But, perhaps, runaway slaves¹ and Christians² taxed their energies most.

They also prosecuted publicans, gambling-house keepers, and butchers, whenever these persons exceeded the bounds tolerated by law, and in order the better to have them in hand the *stationarii* entered them in a register.³

(pastores, quos conductores habent, dicentes fugitivos esse, et jumenta abacta habere, et sub hac specie oves quoque dominicas redhibeant). See Zell, vol. i. p. 336. Murray, in his *Handbook for Southern Italy*, gives a very curious version of this inscription. He says: "On the east gate (*i.e.* of Altilia), the old Saepinum, is the inscription given by Gruter and Muratori, and containing an admonition to the magistrates to protect the drovers of the flocks in their annual passage through the town, as great complaints had reached Rome of the conduct of the soldiers and inhabitants."

¹ Dig. xi. 4. 1. s. 2: "Est etiam generalis epistola Divorum Marci et Commodi, quâ declaratur et praesides et magistratus et milites stationarios dominorum adjuvare debere in inquirendis fugitivis, et ut inventos redderent, et ut ii, apud quos delitescant, puniantur, si crimine contingantur." Again in Dig. xi. 4. 4. Paulus says, "Stationarii fugitivos deprehensos recte in custodiâ retinent." So in the sentences of Paulus, edited by Arndt, tit. vi. s. 30.

The charming story of Androcles, narrated by an eye-witness, illustrates this. He was a slave who had fled from his master, a high Roman functionary in Numidia, on account of ill-treatment. He escaped to the desert and lived there for three years with a lion, whose heart he had won by dressing his wounded foot. The slave, tiring at length of this life, left the desert and was taken up by the *stationarii* as soon as he trod provincial ground. They transmitted him back to his master, who had by this time returned to Rome, and the latter, as a punishment, sent him to the amphitheatre to combat beasts, as the law allowed a master to do. In the circus the slave found in a lion which was pitted against him his old Numidian friend, and the latter, instead of devouring, caressed him. (Gellii *Noctes Atticae*, lib. v. c. 14.) The *stationarii* in this narrative are called *milites* simply. That the *milites stationarii* are meant however admits of no doubt.

² Christians were always liable to be punished as such, whether there was a general persecution or not. Octavius (in M. Felix, c. 35,) says, "Denique de vestro numero carcer exaestuat: Christianus ibi nullus, nisi aut reus suae religionis, aut profugus." The nature of persecutions is not always clearly understood. Among instances of the law in its ordinary course dealing with Christians is one told by Eusebius (H. E. lib. v. c. 21,) of Apollonius, who was tried and executed at Rome, in the time of Commodus, for being a Christian, there being no persecution at the time. So in the same manner Lucian's Peregrinus is arrested and tried for being a Christian (De Morte Peregrini, cc. 12. 14) when there is no persecution afloat.

A persecution was a totally different thing. That was a series of prosecutions decreed by the reigning emperor and carried out by the *praesides*, to each of whom came a separate rescript from the imperial chancery.

In the *Acta Proconsularia S. Cypriani*, (Ruinart, p. 261,) the proconsul Paternus says to the bishop, "Sacratissimi imperatores Valerianus et Gallienus literas ad me dare dignati sunt, quibus praeciperunt eos, qui Romanam religionem non colunt, debere Romanas ceremonias recognoscere." By the refusal to do the latter, more frequently called "caerimoniari," Christians convicted themselves, and nothing remained for the *praeses* but to punish.

³ The officers of the *stationarii* included the Christians in this register, ostensibly for the purpose of

In this same register also were recorded the Christians of the district, in order to facilitate the looking of them up when occasion required.

Lastly, we find the *stationarii* employed in the execution of more humble and peaceful duties, viz. distraining for rent or other debts.¹

Having traced the history and duties of the *milites stationarii* so far, I will now pass on to the organization of the force.

The force was appointed in and for the *territorium* of each city of the empire.² Over this force, so stationed, there presided a head official called *princeps pacis*.³

having them in hand, but really that they might levy black mail upon them for letting them peaceably continue their unlawful observances. Tertullian vouches this to us. He says, (*De fuga in persecutione*), "Nescio dolendum an erubescendum sit, cum in matricibus beneficiariorum et curiosorum inter tabernarios et lanios, et fures balnearum, et aleones, et lenones, Christiani quoque, vectigales continentur?" He also tells us that the churches levied a voluntary rate upon themselves to meet this necessity. (*Ib.* "Massaliter totae ecclesiae tributum sibi irrogaverunt."—"Pacisceris cum delatore vel milite.")

In telling us this Tertullian has made a more important contribution to Christian history than at first sight might be thought. For he shows us how, with a few exceptions, when individual prosecutors (*accusatores*) put the law in force against Christians out of spite or bigotry, the latter could lead a tolerably quiet life though in the daily practice of rites condemned by the law, being simply enabled to do so by bribing the officers of the *stationarii* under whose ken they came. Like modern inspectors, these police officers of antiquity were ready to mitigate for personal motives the severity of a harassing law.

The Roman *stationarii* were, I have said, as the police are with us, the general prosecutors, and few persons were inclined, with the prospect of a *talio*, to compete with them in that responsibility.

¹ Cod. Theod. ii. 30. 1, and Godefroy's note.

² Cod. Just. x. 77: "Irenarchae, qui ad provinciarum tutelam quietis ac pacis per singula territoria faciunt stare concordiam, a decurionibus iudicio praesidium provinciarum idonei, nominentur." Honorius et Theodosius, A.D. 409. The same expression, "per singula territoria," occurs also in Cod. Theod. 12, 14, 1—the same law.

The inscription at Saepinum (*ante*) illustrates this also, for the complaints upon the subject of the *stationarii* recorded in that inscription are made directly to the *duumviri*.

For this reason they are called *regionantes* in a passage in the *Acta Martyrum* (p. 275 Ruinart), "Igitur apprehensis nobis, et apud regionantes in custodia constitutis, sententiam praesidis milites nunciare audivimus, quod heri corpus nostrum minaretur urere." *Regio* is used for *territorium* in the *Acta disputationis Sancti Achatii* (*ib.* p. 199)—"Scutum quoddam ac refugium Antiochiae regionis." So in the *Agrimensores passim*.

³ *Acta SS. Tryphonis et Respicii Martyrum*, Ruinart, p. 209: "Missis igitur ex officio apparitorum, rapti sunt a Frontone *pacis principe* Aprimae civitatis, qui exierat ad exquisitionem sanctorum cum persecutoribus. Hoc autem erat indictum a praefectis. Quos inventos tradiderunt militibus, qui ligaverunt eos: et traxerunt in civitatem Meetem, ibique in carcerem missi sunt ab Aquilino praefecto." I am inclined to think that the *princeps pacis* is referred to under the words *praefectus pacis* in Cod. Theod. ii. tit. 30, c. 1. In the same manner Aristides, quoted in Ruinart, p. 92 in note, speaks of a *custos pacis* (φύλακα τῆς εἰρήνης)

In Asiatic Greece he was called the irenarch.¹ We also find centurions or *centenarii*.² Though the direct evidence of the details of the organization of the *stationarii* is restricted to these two words, that is by no means the limit of our knowledge upon this subject.

As the *stationarii* were *milites*, they were by necessity divided into cohorts precisely in the same manner as the legionaries, the praetorians, the urban *militia*, the *voluntarii*, the *peregrini*, and *vigiles*³ (a kindred force) were. The scheme of the army required this, and under this scheme a cohort was divided into *centuriae* (or *centenae*), officered by centurions (or *centenarii*), and into *decuriae* (or *decaniae*), commanded by a sub-officer called a decurion (or *decanus*). And it was a peculiarity of the last-mentioned sub-officer that he was one of the ten whom he commanded.⁴

The *princeps pacis* was appointed either by the *praefectus praetorio* or by the *praeses*, out of a number of names of the notables (*locupletiores*) of the territory submitted to him by the senate of the city, or he was appointed by the senate itself, with the approval of the *praeses* (*judicio praesidis*). See Cod. Theod. xii. 14, 1, Cod. Just. x. 75, and Aristides quoted by Ruinart at p. 92 in note.

¹ The Asiatic Greeks applied the word irenarch to all grades of the *stationarii*; e. g. Xenophon of Ephesus, in his novel, lib. iii. c. 9, says: “Περιλάος τις, ἀνὴρ τῶν πρῶτα δυνάμενων ἄρχειν μὲν ἐχειροτονήθη τῆς εἰρήνης τῆς ἐν Κιλικίᾳ, ἐξελθὼν δὲ ἐπὶ ληστῶν ζήτησιν, ἤγαγε τινὰς συλλαβῶν ληστὴς.” Here we have already a *princeps pacis* of a city and its territory. The. xlviii. 3, 1, 6, Dig. quoted *ante*, uses irenarch, firstly, for the *stationarii* generally; and, secondly, for an officer of the body—a centurion. At p. 85, Ruinart, in the passion of S. Polycarp, the irenarch who apprehends S. Polycarp is a simple *stationarius*. Godefroye (in note Cod. Theod. xii. 14) observed this confusion. He says: “Eisdem vero cum stationariis facio irenarchas, quique sub irenarchis his erant * * * Ergo iidem irenarchae et stationarii, saltem qui stationariis praeerant). Graeco enim verbo in oriente irenarchae, qui alibi stationarii.”

² Centurions (and *centenarii*) of *stationarii* occur continually in the *Acta Martyrum* and in Eusebius. See *ante* in notes.

³ Kellermann regarded the *Vigiles* as organised upon the same plan as the legionaries, and compiled his work on the *Vigiles* to prove this. He says (p. 1.): “Ea vero peropportune est diversorum militiae urbanae generum inter se similitudo, ut optimo tuo jure tibi liceat ad alium genus transferre munera atque instituta, quae in alio existere cognoveris. Ita quaecunque nova apud vigiles inveneris (invenies autem neque pauca neque levia) eadem recte cohortibus et praetorianis urbanis attribueris, si ea modo exceperis quae nisi solum vigilum esse non potuerunt. Tota autem militia urbana non ita dispar erat militiae legionariae ut non magnam partem munerum novorum legionariis quoque cohortibus recte attribueris. Ut paucis dicam his monumentis toti Romanorum rei militari lux affertur, maxime vero militiae urbanae imprimisque militiae vigilum urbanorum.” Borghesi entirely agreed with Kellermann. In his review of the *Vigiles*, reprinted in the collected edition of his works (*Oeuvres complètes*, vol. iii. p. 542), he says: “Ora l'ordinamento dei vigili non era così discorde da quello del resto della militia urbana, ed anche dalla legionaria, che nella massima parte non convenissero insieme.”

⁴ Vegetius, lib. ii. c. 13: “Antiqui cohortes in centurias diviserunt * * * centuriones insuper qui

Thus organized, the force with its head was subordinate to the magistrates of the city, whose territory they were appointed to guard and protect.¹

This, so far, is I think tolerably clear, and it only remains to consider what were the *stations* from which these *milites* derived their name.

In the first place it is perfectly certain that the stations were sub-divisions of the territory of a city, because, each body of *stationarii* being appointed to act for a particular territory,² its stations would necessarily be within that territory.

We know, therefore, what was the area within which the stations were situated.

Our information does not stop here. We have authority, as I shall show, for concluding that some of these stations, the more important ones, were co-extensive with the *pagi* of a territory.

The authority for this assertion is as follows. Late in the empire the duties of the *praepositus pagi* were accumulated upon the *irenarchs*, *i.e.* the officers of the *stationarii*.

What the *pagus* was is definitely known. It was a sub-division of the territory of every city. Within this range the *praepositus pagi* raised recruits, collected taxes, and conducted the repairs of the *viae vicinales*.³

nunc centenarii vocantur * * * singulas jusserunt gubernare centurias * * * Rursus ipsae centuriae in contubernia divisae sunt, ut decem militibus sub uno papilione degentibus unus quasi praeeset decanus, qui caput contubernii nominatur. Contubernium autem manipulus vocabatur."

Modestus (Libellus de vocabulis rei militaris ad Tacitum Augustum) says, "Erant etiam centuriones, qui singulas centurias curabant, qui nunc centenarii nominantur. Erant decani decem militibus praepositi, qui nunc caput contubernii vocantur." So also Isidorus, Orig. lib. iii. c. 3.

The expression in Vegetius, "decem militibus sub uno papilione degentibus unus praeeset decanus," shows clearly that the decanus was himself one of the ten, *i.e.* their *primus* (see *post* in note) and I do not hesitate to hold this view, though Facciolati and Forcellini have expressed a different one. They say, sub voce decanus, "decanus (δεκάρχος) in exercitu dicebatur qui decem praeerat militibus, ita ut ipse esset undecimus."

The reason why the *decanus* is thus reckoned as a *miles*, together with the *milites* whom he commanded, is simply this: he was a *miles* (though at the same time a sub-officer), and therefore, in the numerical divisions of the army where the *milites* were numbered, he was by necessity reckoned up with the other *milites* of his own division, and could not be thrown out of the calculation. Zell (vol. ii. p. 304) observes, "Alle stellen abwärts von dem *centurio* (bei uns leutenance, unteroffiziere, gefreite) zählen zu den soldaten *milites*, nur heissen sie *milites principales*; (mit *principales* werden aber auch zuweilen alle charginen, die offiziere mit inbegriffen, bezeichnet,) die übrigen *milites municipes* (Veget. ii. 7) oder *gregarii*."

¹ See the inscription at Saepinum, *ante*.

² See *ante*.

³ See Neglected Fact in English History, p. 66; Dig. l. 4, 18, 7, "Irenarchae quoque, qui disciplinae

When therefore these duties, purely local, were imposed upon an officer of the *stationarii*, in addition to his own as executed by him in his own district, it is reasonable to suppose that the latter was at least co-extensive with the scene of the new and additional duties, for otherwise it would be simply out of his power to perform them.

That this is a correct supposition is shown by a document preserved in Eusebius's Ecclesiastical History—the dispatch of the *praefectus praetorio Sabinus*,—which contains the emperor Maximin's famous palinode, directing the persecution in the East to be stayed.¹

This document is addressed to the *praesides* of the provinces (*πρὸς τοὺς κατ' ἔθνος ἡγουμένους*) and orders them to write to the *rationales*, the *duumviri* of the cities (*στρατηγούς*), and to the *praepositi pagorum* of every city, *i.e.* of its territory (*πραιπωσιτούς τοῦ πάγου ἐκάστης πόλεως*).

On its receipt (says Eusebius) the various *praesides* communicated the decree to the *rationales*, the *duumviri*, and “*τοῖς κατ' ἀγροὺς ἐπιτεταγμένοις*,” *i.e.* the officers of the *stationarii* whom the instrument itself has previously called *praepositi pagorum*. In this, therefore, we have evidence that some of the police districts were co-extensive with the *pagi*. We know, also, that in Italy, after the barbarian conquests, the police district, which was then called *centena*, was the same as the *pagus*, so far as names are concerned, for the two words *pagus* and *centena* are used interchangeably.²

The *pagus*, however, was, as we all know, a very old division of a *territorium*, long antecedent in date to the institution of the *stationarii*, and, though applied to the police system, as we have just seen, existed independently of it. It cannot, under these circumstances, be the proper or original appellation of a police station.

The names of police stations would, most probably, be taken from the divisions of the force posted at them. That this was really so I think I can prove.

In the *Acta Sincera Martyrum* I find the word *centuriaria* used in a sense which shows that it can only mean *statio centuriaria*. In the *Passion of SS. Jacobus, Marianus*, and others (Ruinart, p. 269) is the following passage:—

Vixdum enim biduum fluxerat, et ecce Marianum et Jacobum carissimos nostros sua palma quaerebat: nec, ut aliis in locis, unus hoc, aut alius, station-

publicae et corrigendis moribus praeficiuntur, sed et qui ad reficiendas vias eligi solent,” &c. The “*praefectus pacis*” mentioned in Cod. Theod. ii. tit. 30, c. 1, is identified by Godefroye with the *praepositus pagi*.

¹ H. E. lib. ix. c. 1.

See *post* in note.

arius miles agebat, sed Centuriaria. Nam violenta manus, et improba multitudo sic ad villam quae nos habebat, quasi ad famosam sedem fidei convolarat.¹

In the construction of this passage “statio” must be understood. “Manus,” the only other word which can be supposed, and is grammatically accordant with “centuriaria,” is out of the question entirely, for, if that had been meant, the writer of the Passion would have simply said “centuria.” If we can take this to be the right interpretation of *centuriaria*, we are in a position to go further, and may expect to find another form of station, answering to the correlatives of a *centuria*, viz. its *decuriae* or *decaniae*.

Such a station, if we follow a rule for which there is sufficient precedent, would be *decanica* (statio being understood) or *decanicum*. In corroboration of this opinion I will say, that there is actually to be found the word *decanicum*, used by good writers in the sense of a lock-up.

Basilius Diaconus (in libello ad Theodosium et Valentinianum) A.D. 425—450, uses the word. He says:² “Κακεῖθεν τυπτομένοι ἀπηγόμεθα ἐν τῷ δεκανικῷ, κακεῖ γυμνοὺς ἡμᾶς, ὡς δημίους καὶ ὑπευθύνους τιμωρίᾳ ἐκολάσαν.”

This is not the only instance. The word is also used by Justinian in precisely the same sense. In the 79 Nov. cap. 3 is an enactment against civil judges who shall try a cause against a monk or a nun. Then follows this provision against the inferior officers of the court: “εἰ δέ γε πράκτορες οἱ τολμήσαντες προσαγαγεῖν ὅλως ὑπόμνησιν, ὑπ’ αὐτῶν τῶν θεοφιλεστάτων ἐπισκόπων κωλύεσθωσαν, καὶ καθειργέσθωσαν ἐν τοῖς καλουμένοις δεκανικοῖς, ποινὰς τὰς προσηκούσας ὑφέξοντες.” In the Latin text: “Sin vero executores sint, qui omnino citare audeant, ab ipsis deo carissimis episcopis prohibeantur, et locis, quae decanica appellantur, includantur, poenas convenientes subituri.”

Calvin, in his *Lexicon Juridicum*, has this observation upon the preceding passage in Justinian:—“Decanica, in Novell. p. 79, loca sunt publica, quae tamen non sunt carceres, licet in ea quandoque rei conjiciantur custodiae causa.”

Calvin is thus clearly of opinion that a *decanicum* was a place of temporary custody—a lock-up.

But if *decanicum* has this meaning, and is derived, as of course it is, from *decanus* and *decania*, what can it be if it be not the station of a *decania* of *stationarii*?

¹ This is the reading of the Cod. S. Maximini Trevirensis and is unquestionably the true one. The only other reading of the MS. is “centurio,” but the sentence which follows renders this impossible. See Ruinart, note 6, p. 269.

² Quoted by Godefroye in his Comment upon Cod. Theod. xvi. 5. 30.

The actual stations themselves were in large villages. Libanius, the sophist,¹ says: “εἰσὶ κώμαι μεγάλαι, πολλῶν ἐκάστη δεσποτῶν, αὗται καταφεύγουσιν ἐπὶ τοὺς ἰδρυμένους στρατιώτας,” i. e., there are great villages belonging to many landowners; these (their inhabitants) fly to the *milites* stationed, viz. in such villages.

This passage can have no reference to *milites* of the army, for they would be stationed not in villages, but in *castra* (barracks) or *castella* and *praetenturae* (forts).

This is all I have been able to collect upon the subject of the *milites stationarii*.

After the fall of the western empire these *milites stationarii* nominally disappear. But, as a police still exists in all the countries where these *milites* formerly performed their functions, it will be reasonable to inquire what affinity this new police bore to the old.

Preliminarily I will observe, that, whether the two forces were the same or diverse, there would be necessarily one ostensible difference between them. While the Roman police was a paid body, the post-Roman police, like the post-Roman army, would be unpaid. For, when the imperial government ceased, all salaried functionaries and officials were effaced from the western world. The paid army of the Empire was replaced by unpaid levies, and the free men in like manner did gratuitously the duties of policemen.

The element of pay in the one force, and its absence in the other, being therefore no part of the essence of either system, the identity or diversity of the two depends on their other details, and can only be determined by a careful comparison of both organizations.

We have seen what the Roman police was. What the post-Roman police was can be made out quite as completely.

In the times following the barbarian conquests in Europe the *territorium* of every city is called the county, and this for police purposes we find divided into *centenae* and *decaniae*.

This division and these names prevail in Italy, in France, in Spain, and even in Wales and Brittany.²

¹ Quoted by Godefroye, Cod. Theod. vol. iv. p. 175, in note.

² For Italy see Luitprand (Muratori, Rerum Italicarum Scriptores, vol. ii. p. 60, lib. v. c. 15), who says, “De servo fugace et advena homine, si in alia judiciaria inventus fuerit, tunc decanus, aut saltarius, qui in loco ordinatus fuerit, comprehendere eum debeat, et ad sculdarium suum perducatur. Et ipse sculdarius

Over each *centena* is a *centenarius*, over each *decania* a *decanus*; all these officers were, on the continent, subject to the *comes*, or civil and military chief of the county.

judici suo consignet, et ipse judex potestatem habeat eum inquirendi, unde ipse est. Et si inventus fuerit quod servus sit, aut fur, mox mandet ad judicem, aut ad dominum ejus unde ipse fugerit." The Sculdasiis is the judex pagi, *i. e.* the centenarius. (See Muratori's Note to *ib.* p. 60.)

For France see Marculfus, *Formulae solennes publicorum privatorumque negotiorum*, c. 11, p. 1220: "Carolus, rex Francorum" addresses a grant of immunity from toll to "ducibus, comitibus, domesticis, vicariis, centenariis, vel omnibus agentibus nostris." So also *ib.* c. 177, p. 1295. Decani are also mentioned by name elsewhere. It is true that a centenarius is found in the *Lex Salica* (c. 46, p. 334 and c. 48), but that does not prove him to be a German invention. The whole of that code is full of Roman imitations—one even that would scarcely be expected, viz. the *tractio testis per aurem*, the only mode known to the world of making a witness in civil causes before Justinian introduced the subpoena in these as in criminal causes.

This common expression, and general rule, of Roman law both occur in the Bavarian, the Alamannic, and the Ripuarian Frankish codes (viz. *aurem torquere in testimonium*.) See Lindenbrogius's Glossary, p. 1360, and Festus, Varro, Isidorus, Fulgentius, Pliny, Horace, with his commentators Acron and Porphyron.

We all recollect Horace's (*lib. i. sat. 9.*) "appono auriculam." I refer to this usage, because nothing can more vividly illustrate the early Teutonic borrowings from the civil law. A bit of purely classical phraseology, a rule of conventional law become naturalized, the one in the rude mouths, the latter in the ruder minds, of barbarians, living beyond the power but sensible to the influences of Rome. Because Roman principles are found in early or late German laws, it by no means follows that these principles are Germanic. The *LL. Anglorum et Verinorum* are full of imitations of this sort.

For Spain see *Lex Wisigothorum*. Lindenbrogius, vol. i. p. 25; lib. ii. c. 26, enumerates amongst the judges the centenarius and decanus. So also lib. ix. c. 1, p. 185.

In Wales the gwlad (shire) is divided into cantrefs (hundreds), the cantrefs being subdivided into cymmwd (tithings). See Glossary to *Ancient Laws and Institutes of Wales*, and the *Antiquae Linguae Britannicae Thesaurus* by the Rev. Thomas Richards, curate of Coychurch, 1753. The lastnamed is not merely a dictionary, but a work of high archæological merit, in which original and then unpublished documents are referred to. *Cantref* preserves *centena*. It is generally considered to be literally a hundred villages, but is in reality just as literally the village of one hundred, *i. e.* men.

See Lobineau's *Histoire de Bretagne*, (Paris, 1707, tom. ii. p. 57,) where *centena* in the sense mentioned in the text occurs several times, *e. g.* "Dono illas res meas, quae sunt in pago Redonico in centena Laliacinsae." (A.D. 854.) Pagus is here used in the sense of *territorium*; see Raynouard's *Histoire du Droit Municipal en France*, tom. i. pp. 33, 34. See the same work of Lobineau, tom. i. p. 71, for centurions as officers under the counts; also *ib.* tom. ii. p. 67, where the centurion Rivaroie attests a deed, and *ib.* where a decanus named Riwocon does the same thing (in each case, A.D. 858). See also the "Cartulaire de l'Abbaye de Redon en Bretagne." *Revue Archéologique*, tom. vii. N. S. p. 399.

In the same times in England our shire, which answers to the *territorium*,¹ is found divided into hundreds,² and these hundreds are again divided into tithings, names which differ in idiom only from the continental *centenae* and *decaniae*.

Of the hundred there was a chief called the hundredman³ or hundredes ealdor,⁴ who was assisted in his duties by a council of twelve.⁵

Of the tithing there was a chief called the tithingman,⁶ who in his turn was assisted by a council of ten, being himself one of those ten.⁷

¹ For the identity of *shire* and *territorium* see *Neglected Fact in English History*, pp. 63, 64, and the authorities quoted in note to p. 64. The Anglo-Saxon word *scyr* is an ellipse of an older form, which better explains itself, viz. *burh scyr*. Ælfric has preserved this form. (*Homilies* by Thorpe, p. 366, and *alibi*.) *E converso*, Æthelstan (Thorpe's edition, vol. i. p. 194) uses *birig* in the sense of shire, "cyð þam gerefan to hwilcere birig." The passage in which these words occur, as being a direction to pay tithes and earthly fruits, cannot apply to a city or borough proper. Precisely in the same sense also it is found in the Anglo-Saxon poem on the passion of S. George, published by the Percy Society. The saint is asked (p. 6) "of hwilcere byrig he wære." He answers this by saying that he is an ealdorman in the territory of Cappadocia,

"Ic habbe ealdordom
On minum gearde
pe is gehaten Capadocia."

So *civitas* in Latin is used for *territorium*. See Cod. Theod. xii. 1, 174 (A.D. 412), "extra metas propriae civitatis." This is amplified by Tribonian into "extra metas territorii propriae civitatis." (*Ibid.*). See also Dig. 50, tit. 15, c. 4.

It is used just in the same sense in Diocletian's edict, appointing a fixed tariff for all articles (Zell, p. 315), "Maximo cum ejusmodi statuto, non civitatibus singulis ac populis adque provinciis, sed universo orbi provisum esse videatur." There is other evidence which demonstrates the identity of the English shire with the *territorium* of a Roman city. The *trifinium* at Lilbourn, co. Northampton, is a point where three shires meet, as it was where three *territoria* met. The subsecival stone at Thames Head, which has never been removed, is still on the border of two counties, as in Roman times it was on the *linea finitima* of two *territoria*. (See *Centuriation of Roman Britain*, vol. xlii. *Archæologia*, p. 155.)

² This territorial division is alluded to as early as the time of King Ine, but under the name of "hynden" (*Laws of Ine*, c. 54); though this word was superseded by "hundred" as regarded the division of the shire, it remained as denoting the *centuria* of a guild or *collegium*. See the introduction to "Ordinances of some secular Guilds of London from 1351 to 1496," published by the London and Middlesex Archæological Society.

³ Eadgar's Laws, c. 2.

⁴ *Ib.* c. 8, suppl.

⁵ *Ib.* c. 5, suppl.

⁶ *Ib.* c. 2. "Teoðingman" is the word of the text.

⁷ The Anglo-Saxon evidences do not give us the number of the tithingman's assistants. But this is of little moment; the collection of Anglo-Saxon laws called *Leges Regis Henrici I.* and the common law, which was only a transmission of Anglo-Saxon institutes, supply this deficiency, and tell us that the tithingman

The duties of the hundredman and tithingman are thus defined and discriminated.

If a theft or a murder were committed, and the offender fled, the accuser applied to the hundredman to take measures for the apprehension of the guilty person.¹

The hundredman gave directions to the tithingmen of his hundred to pursue the criminal.² If the latter was tracked into another hundred the chief of that hundred took up the pursuit in company with those who had commenced it, and so the criminal was run down.³

Besides all this, the authorities of the hundred and tithing exercised a care over the community which bore a very great affinity to modern police-surveillance. All freemen were bound upon pain of forfeiting their civil rights to belong to a hundred and a tithing in order that their chief might render them whenever criminal justice required their production.⁴ Again, all purchases were to be made in the presence of the hundredman and his assistants, or of the tithingman.⁵

Lastly, the hundred being named in Anglo-Saxon times (as it still is in our own) from a vill or a larger village,⁶ it follows that the head-quarters of the hundredman and his assistants were in that vill.

The same thing is also, for the same reason, presumable of the tithing.

was the chief of ten, being himself one of those ten. The former say, "*Presit autem singulis hominum novenis decimus.*" (viii. s. 1.) Cowell (title Headborough) says, "A headborough, the chief of the frankpledge, was also called borsholder, thirdborrow, tithingman, pledge, &c. according to the diversity of speech in several parts. The same officer is now called a constable. He then goes on: "The headborough was the chief of the ten pledges. The other nine were called handboroughs, or *plegiu manuales*, or inferior pledges." I do not understand why a peace officer was called a thirdborough, but it occurs before the Conquest under a Latin translation, *triumvir*. In the Book of Ely, p. 147, Dr. Giles's edition, we find a nobleman who has been robbed going in search of the thief, "*cum centurionibus, et triumviris, et praeconibus.*"

¹ Eadgar's Laws, c. 2.

² *Ib.*

³ *Ib.* c. 5.

⁴ Cnut's Domas, c. 20. The passage in this law, "and gehealde se borh hine and gelæde to ælcæn rihte" has been misunderstood by Mr. Thorpe, who translates it thus, "And let the borh hold and lead him to every plea." This translation makes the law apply to civil suits, not to criminal prosecutions, as it really is meant to do. The true meaning is, "let the borh watch him and render him to justice." That gehealde has the meaning which I have asserted for it may be amply illustrated, *e.g.* (S. Matt. xxvii. 54,) "Witodlice pæs hundredes ealdor, and þa þe mid him wæron healdende þone hælend," *i. e.* the centurion and those that were with him watching the Saviour.

⁵ Eadgar, c. 4, and Supplement, cc. 6, 10.

⁶ See the Anglo-Saxon text published by Sir Henry Ellis referred to *post*. This refers to King Edward the Confessor's time, and gives the Anglo-Saxon names of the hundreds of Northamptonshire.

This was our old English police.

Such as it was, there was none other known in England until the reign of King William IV., when a better organization was introduced, and shortly afterwards, the 5th and 6th Vict. cap. 109 enacted "that for the future no petty constable, headborough, borsholder, tithingman, or peace officer of the like description shall be appointed for any parish, township, or vill, except for the performance of duties unconnected with the preservation of the peace."

Now in this old English police there is nothing whatever, if we take its known history, its organization, or its purposes, that gives any hint why the one district should have been called a hundred and the other a tithing. And yet it is only fair to suspect that if we can get at the rationale of these two names, which must be significant, we shall have no difficulty in arriving at the ultimate origin of the two institutions, which are everywhere called by the same appellations, and everywhere answer the same ends.

Of course there has been a theory upon this subject, and that I will proceed to examine.

It has been confidently asserted that we owe the two institutions to the barbarians who appropriated the provinces when the Western empire fell.

However willing we may be to acquiesce in any solution which explains a really interesting point of archæology, a little reflection tells us that the form of proposition so offered in explanation is too complex to be convincing. To make it *primâ facie* acceptable, the explanation, such as it is, should be divided into two propositions, which must aver either that the institutions in question pre-existed amongst the barbarians, and so were introduced by them on the occasion of their occupation of the Western empire, or that they were self-originated after and in consequence of this occupation.

With two propositions such as these are it is perfectly practicable to deal.

In support of the first, the cardinal proof adduced is that the two institutions are found in those parts of the empire where the barbarian armies settled.

This is true; but the conclusion sought to be drawn from this fact is neutralized by the other fact, which I have already mentioned, viz., that precisely the same institutions prevailed under the same names in other parts of the empire where the barbarians never penetrated, viz. in Brittany and in Wales.

The argument therefore fails; because, if the hundred and tithing were pre-existing institutions of the barbarians, introduced by them into the Empire, they should be peculiar to those provinces only which they occupied, and wherein they had necessarily the power of importing their own usages.

If the pre-existence of the hundred and tithing rests only upon this evidence, we may, in perfect confidence, decide against it.

But this is only one of two arguments ; another remains.

There is a well-known passage in the *Germania* of Tacitus in which he says, that "one hundred men accompanied the native magistrate in his circuits through the country, assisting him in framing his judgments and in carrying them into execution."¹

This, again, is an argument that misses the mark. The hundred which we seek to explain is a district. Before, therefore, Tacitus's one hundred men could have impressed that numeral upon a district, it must be shown that districts (or divisions of the *gau*) existed in old Germany. Tacitus does not speak of them. He only says that circuits were made through the whole inhabited country.

Again, the passage does not in any way refer to a *decania* or tithing, and no explanation is good of the hundred which does not account for the other also. So much for the first proposition.

The second proposition has had supporters amongst distinguished antiquaries in times past. Muratori thought that the *centena* in Italy must have consisted of one hundred families living in one district, and subjected to a headman, who

¹ Tacitus, de Mor. Ger. c. 12. "Eliguntur in eisdem conciliis et principes, qui jura per pagos vicosque reddunt. Centum singulis ex plebe comites, consilium simul et auctoritas, adsunt." This is the only passage in Tacitus that bears in any way upon the question. Sir William Blackstone, however, has fearlessly applied to it a previous passage in the same book, c. 6, where Tacitus says that there was always placed in the front of the battle a vanguard composed of contingents of one hundred men each, "Definitur et numerus : centeni ex singulis pagis sunt ; idque ipsum inter suos vocantur. Et quod primo numerus fuit, jam nomen et honor est." Upon this the great jurist observes (Introd. to Comment. p. 130, Stephens) : "And indeed, something like this institution of hundreds may be traced back so far as the ancient Germans, from whom were derived both the Franks, who became masters of Gaul, and the Saxons, who settled in England. For both the thing and the name, as a territorial assemblage of persons, from which afterwards the territory itself might probably receive its denomination, were well known to that warlike people."

Lappenberg (Geschichte von England. Erster band. Hamburg 1834, sechste Abtheilung von den innern Zuständen der Angelsachsen, p. 584), who may be taken as the exponent of German views, has adopted a theory which rests upon the first of these passages of Tacitus. He says, "The division of the land into hundreds rests upon the ancient army organisation, like the corresponding northern division in *herrads*. Both names were given to a district which selected a hundred men for the protection and counsel of the ealdorman. (Die eintheilung des landes in hundreden beruht, gleich den entsprechenden nordischen in herråde, auf der alten heeresverfassung. Beide namen wurden einem districte ertheilt, welcher hundert mannen zum schutze und rathe des ealdormanen erwählte.)"

governed them; the tithing also being, in his opinion, analogously constituted and ruled.¹

Ducange had the same fancy as regards France.² Our own Kelham took the like view for this country;³ he says, "The division (*i.e.* of the hundred) was not made by extent, but by population."

Blackstone followed in the wake of these two writers. "As to the tithings," he says,⁴ "they were so called from the Saxon, because ten freeholders with their families composed one. * * * * * As ten families of freeholders made up a town or tithing, so ten tithings composed a superior division, called a hundred, as consisting of ten times ten families." The basis of all these assertions is the theory of self-origination, and out of this theory the writers have evolved their facts also, for the latter never existed away from the brain of the theorists themselves, the hundred and tithing, both in Italy and England, being established territorial districts entirely independent of all numerical considerations.

Besides these comparatively modern views there is a much older but not better theory; our remote ancestors imagined that the hundred was so called because it consisted of one hundred hides.⁵

This was ingenious, and would be more plausible if it could be proved that the hundred ever consisted of such a certain measurement of land. This, however, it was as much out of the power of our old native theorists, as it would be of ourselves, to prove.

I know of nothing else that has been advanced on this side.

On the other side, the objections that suggest themselves are numerous and, I think, invincible.

There is no difference whatever in essence or in name between the institutions as they are found in the provinces occupied by the barbarians, and in those regions which were left intact to the provincials themselves.

Taking this fact, and assuming that these institutions were either barbaric or self-originated under barbaric influences, we should have two results, viz., that the semi-polished Visigoth and Ostrogoth, the ruder Frank and Burgundian, and

¹ *Scriptores Rerum Italicarum*, tom. i. p. 519.

² Ducange, sub voce *Centena*. "Centenas a Chlotario primum institutas ad latrones arcendos videtur posse colligi. Dicta vero centena a centum familiis, quibus constabat."

³ *Domesday Book* illustrated.

⁴ *Introduction to Commentaries*, vol. i. pp. 127, 129. Stephens's edition.

⁵ See the original Anglo-Saxon text published by Sir Henry Ellis in his "General Introduction to *Domesday*," p. 59 in note.

the almost savage Jute, Angle, and Saxon¹ invented, separately and simultaneously, the hundred and tithing for their new countries; and that the Armoricans and the Welsh, old provincials, but through their common independence entirely severed from each other, also invented the same institutions at the same time. As such results, however, would, if accepted, entirely repugn all historical experience, I may confidently affirm that this common self-origination amongst such estranged and differing peoples is impossible.

But if there were no separate self-originations of institutions thus co-existing amongst barbarians and provincials, they must have had a common source—a source that, being neither Gothic, Germanic, nor Celtic, was outside of them all. The source, however, of any institution common to all the provinces of the West, and neither barbaric nor self-originated under barbaric influences, mounts by necessity up to Rome and her laws.

Further, the denominations of these two institutions being decimal, some portion of their essence must have been connected with a decimal system. But the only people of antiquity that affected decimals were the Romans. With that people decimals were a passion from the days of the kings to the last moment of the Empire. With two exceptions only all was decimal. The *gentes* of old Rome, the senate, the tribes, the colonial municipalities, the army, and all public and private bodies were decimally divided. Land even in its acreage, and slaves indoors and out of doors, all underwent the same division.²

¹ Perhaps quite savage. Salvianus (lib. iv. De Providentia,) says: “Gens Saxonum fera est, Francorum infidelis, Gepidarum inhumana, et Hunnorum impudica; omnium denique gentium barbarorum vita vitiosa.”

² See Mommsen, *Römische Geschichte*, vol. i. c. 5. Ten houses made a gens, ten gentes (or a hundred houses) a curiae, ten curiae (a hundred gentes, or a thousand houses) formed the community. Further, every house found a man for the army of foot, thence miles, &c. In the senate there were ten decuriae, each of which had a primus. They together formed the decem primi. (Niebuhr's Lectures, by L. Schmidt, p. 143.) The tribes were divided into *centuriae* and the *centuriae* into *decuriae*. (Zell, *Anleitung*, p. 113.) So the municipal senates consisted of centumviri or a hundred decuriones, each the head of ten houses, or a decuria. (See Mommsen, *ante*. Noel des Vergers, *l'Étrurie et les Étrusques*, vol. iii. appendice épigraphique, No. 1. Henzen, *Annali di Roma*, vol. iii. p. 205.) For the army, see *ante*. As well as private persons, who formed *collegia*, all public functionaries were constituted into colleges, and all colleges were divided into *centuriae* and *decuriae*. (See Massman, *Libellus Aurarius*, p. 74, *et seqq.*)

In the *agrimensura*, lands were divided into tens, a hundred, two hundred, a thousand acres. See the *Agrimensores*.

Out-door slaves were worked in decuriae or gangs of ten. (Columella, lib. i. c. 9.) In-door slaves

The exceptions were that men weighed and measured in twelves,¹ and prayed and cursed in threes.²

Upon this evidence can we resist the conclusion that the institutions under consideration were Roman?

If this conclusion be accepted, the question is narrowed to one of identification only. In other words, we have to inquire merely to what Roman institution are we to appropriate the hundred and tithing?

I answer this by saying that they are, in my opinion, to be identified with stations of the *milites stationarii*, and for these reasons. The *milites stationarii* were police, were decimal in their organization, and were posted in stations which received their names, through that same system, from the cohortal divisions of the force, viz. *centuriariae* and *decanica*. Further, these stations were placed within the territory of each city, and the *vici*, more or less large, which formed the quarters, was the centre of each police district.

On the other hand, the Anglo-Saxon hundred and tithing were police districts, taking their names from the vills and villages which formed their centre. They were divisions of the shire which itself was conterminous with and no other than the *territorium* of a Roman city. Further, the names hundred and tithing were necessarily a reminiscence of a numerical system which, and which only, could have given them such a form of designation.

It is true that in the historical Anglo-Saxon period its name was no longer

were divided in the same fashion, and were presided over by decurions. See the *tituli* of the *columbarium* of the slaves of the Empress Livia. (Zell, pp. 129, 130.) Colonists cast lots, for the land about to be distributed, "per decurias" or "per homines denos." (See Hyginus, p. 113, Lachman's *Agrimensores*).

¹ The Assarian system.

² To prevent a carriage from overturning Romans pronounced a prayer three times. (Plinii N. H. xxviii. 4.) Martianus Capella, lib. vii. p. 259, Eyssenhardt's edition, says: "Cujus (*i.e.* of the *trias*) auspicio preces tertio ac libamina repetuntur." In the "Fratres Arvales" we find picturesque illustrations of the practice; *e.g.* "Omnes foris exierunt. Ibi sacerdotes clusi succincti libellis acceptis carmen descendentes tripodaverunt in verba haec: Enos Lases juvate. Enos Lases juvate. Enos Lases juvate." And so on in the same way with other sentences. (Marini, tab. xli.a, p. 160.)

This lasted to the latest days of heathenism. The pagan army of Licinius (Lact. de Mortibus Persecutorum, c. 46) repeated three times the prayer which had been dictated to their leader in a dream (*illi oratione ter dicta, &c.*)

So the frankincense was taken up in three fingers to throw upon the altar. Lact. Div. Instit. lib. v. c. 18.) "Nam cruciari, atque interfeci malle, quam thura, tribus digitis comprehensa, in focum jactare tam ineptum videtur," &c.

applicable to the hundred; ¹ but of the tithing it was even then, as it was for ages later, perfectly true. An additional circumstance also confirms the absolute identity of the tithing with the *decania*. For as the Roman *decanus* presided over ten men, being himself one of these ten, ² so in the Anglo-Saxon and old English tithing there prevailed also this strange conventional peculiarity of reckoning.

In conclusion, I have only to observe that I do not pretend to assert or imply that the present hundreds of this country are now precisely the same local districts in all our counties that existed during the Roman period. On the contrary, in many or most of the counties they *must* have undergone a great change—unquestionably they will have been diminished in extent, for, when twelve unprofessional rustics had to do the duties of one hundred Roman soldiers, the area of their operations would be necessarily reduced in proportion to their smaller numbers and diminished efficiency.

¹ The Anglo-Saxons must have had a reminiscence that the hundred had in former times a better connexion with its name. For, in translating the gospels, they gave to a Roman centurion the same designation as that of their own hundredman; S. Matt. xxvii. 54, “hundredes ealdor;” S. Marc xv. 39, “hundredes man.”

² A similar thing to what I have contended for in this paper, though on a larger scale, occurred in the Eastern empire. In that empire the word *thema* was first applied to the Roman legion. Next the military districts garrisoned by a legion were called *themata*. Ultimately the word was used independently of all military references, merely to indicate geographical administrative divisions, which from this beginning had become a part of the empire. (Finlay’s *History of the Byzantine Empire*, vol. i. p. 14, in note.)