Villainage in England

PROFESSOR VINOGRADOFF'S volume, entitled 'Villainage in England,'¹ is the work of a Russian scholar whose mastery of English authorities and familiarity with English medieval records, both published and in manuscript, is perhaps unsurpassed. His experience in the history of the land systems of other countries, his Russian surroundings and eastern point of view, place him in the position of an impartial as well as interested student of English economic history, and give to his work something of a judicial character.

Mr. Vinogradoff approaches the subject of villainage in England after a very careful and masterly survey of the work already done by various and successive schools and workers in the field of English economic history, generously acknowledging what has been said on both sides of the question, prepared to examine the ground afresh exhaustively, step by step, hardly conscious to what result the end of his impartial study may lead him, and boldly publishing in this volume the first part only of an inquiry which other volumes are to continue, let us hope without too great an interval. And yet, though the final judgment is not given, because only the medieval part of the evidence has been examined and the Saxon evidence is reserved for future volumes, the bias of his opinion is already sufficiently apparent. The strain of his scrutiny, if I may so speak, is obviously to find and to put into its proper place in the argument every possible fact or suggestion of a fact which points in the direction of a final verdict in favour of the possibility at least of the free origin of the English village community.

Nothing but good can come from the attempt, judicially as he has made it, to bring all the facts and suggestions of facts fully into view. Every real student must be painfully conscious how easy it is to see only one side of a question, and in stating that side to put the result too sharply, omitting to give full force to the qualifications which are needful to guard it from exaggeration. It is the fate, too, of a theory, however carefully stated, to become as well in the hands

¹ Oxford: Clarendon Press. 1892.

of its critics as of its supporters more and more sharply defined. A fresh and judicial review of the facts all along the lines of an important question still *sub judice* is therefore invaluable.

If I may describe in one word the aim of Mr. Vinogradoff's volume it is to loosen the hard lines by which in the Domesday survey the various classes on a manor are defined, by showing that tenants of various kinds and grades of freedom were somewhat roughly forced for the fiscal purposes of the survey under heads too few and too simple to make them accurate as a description of the legal and economic condition of the various classes of tenants.

In the survey the *demesne land* of the manor is in the first place sharply marked off from the *land in villainage*, and the absence from the survey, generally speaking, of *libere tenentes* in the old Saxon districts is one of the most remarkable and conspicuous points which present themselves. Under the terms of the survey there could be no *libere tenentes* on the *land in villainage*, because even free men holding virgates of the land in villainage would be, *qua* these holdings, not *libere tenentes*, but holders in villainage. On the land in villainage itself the smaller or cottier tenants, who had no ploughs, formed a class by themselves of *bordarii* or *cottarii*. The still lower class of *servi*, sometimes reckoned as on the demesne land and sometimes as on the land in villainage, were apparently without land, and in a strict sense rather slaves than tenants.

It thus becomes clear that the survey for fiscal purposes, looking upon the *ploughs* as the important units of taxation, and taxing by *carucates* and *hides*, described the holders of virgates in villainage, who contributed oxen to the ploughs and did plough service on the demesne land, under the common term of *villani*. They were evidently regarded as the chief class of tenants in villainage, whilst the lesser or cottier tenants in villainage were regarded as of but small fiscal account. The main question which Mr. Vinogradoff sets himself to solve, in his careful examination into the legal and other evidence as to villainage after the Conquest, is whether there may not be concealed somewhere under this Domesday phraseology a freer class than that of the ordinary villain.

It does not seem likely that there could have been at the time of the survey concealed *libere tenentes* on the *demesne land* of the manors, such as are found in great numbers afterwards; nor, if this could be proved, would it perhaps help much the question of the free origin of the Saxon village community, because it is pretty clear that the *libere tenentes* on the demesne land were not the chief members of the village community or the chief holders of the virgates in its open fields. Mr. Vinogradoff, I think, does not suggest that the hidden freemen and hidden freedom are to be sought for in this class of irregular tenants on the lord's demesne land. He naturally seeks for the hidden freemen in the class labelled *villani* in the

survey, and for survivals of the hidden freedom within the lines of villainage itself. He starts his inquiry with the conviction that a careful analysis of 'villainage' in its legal and other aspects may possibly disclose either one, or the other, or both.

There is no doubt a strong presumption that the search will not be altogether in vain, arising from the obviously *double* status of the villain—his acknowledged freedom as compared with the *servus* or slave below him, and his servile position as compared with the *libere tenentes* on the demesne land, and in view of his relations to his lord. Sir Frederick Pollock, in his excellent little book on 'English Land Laws,' had already expressed his conviction that the true key to the problem must ultimately be found in the juridical aspects of the manor,² and Mr. Vinogradoff's judicial investigation into the legal aspects of villainage must be welcomed as bringing us nearer at least to a true general understanding of a subject which, as he puts it, forms one of the 'corner stones' of any attempt to understand the social origins of western Europe and the law of development of human society.

In the first essay, which treats chiefly of the legal aspect of villainage as defined in the law books, and as recorded incidentally in manorial records, the general conclusion arrived at is that, after removal of the strata of the law of villainage owing their origin to the feudal system and the action of the state, the survivals of the condition of things before the Conquest 'group themselves naturally in one direction and are manifestations of the free element which went into the constitution of villainage.'

The main argument leading to this result seems to me to be briefly this. As regards villainage on private manors the villain must be supposed to have lost some of his original rights. Even on these manors the Norman lawyers, notwithstanding a very strong bias in that direction, were unable to reduce his position to that of absolute servitude. A villain on a private manor was placed in the power of his lord, not because he was reckoned as a chattel, but because the courts *refused him an action against his lord*. Feudal law thus tended to lessen his moral and customary rights by giving him no means of enforcing them; so that his only hope of their recognition lay in the growth of the power of the state by which in the long run he was enfranchised. It is therefore fairly argued that as the Norman lawyers, doing their worst for the villain and denying him any remedy in their rules of procedure, were successful only in reducing his status to that of *territorial serfdom* rather than personal enslavement, the villainage on the Saxon side of the Conquest must at least have been no more servile than the lawyers made it on private manors after the Conquest.

² P. 218.

A still stronger argument in favour of greater freedom in Saxon times is drawn from the facts connected with *manors of ancient demesne*, and certainly Mr. Vinogradoff, if he had done nothing else, would have earned the gratitude of students by the increased light he has thrown upon the interesting classes of tenants on these manors. At first sight, indeed, his candid admission, as regards some of these tenants, of base services and such base customs as the payment of *merchet*, may seem to tell against his argument; but it is in reality necessary to it. These evidences of servitude are taken 'to afford ample proof of the fact that the status of these tenants has branched off from the same stem as villainage.' If this be so, then the acknowledged greater freedom accidentally preserved to these privileged but still, legally considered, villain tenants, whilst lost, to others, may perhaps be predicated of the whole class of villains before the Conquest. The case turns out to be not quite so simple, but still this may fairly be said, I think, to be the main line of the argument.

A good deal of weight may well be laid on the general contention of the people and their persistent tradition that the times of Edward the Confessor were times of greater freedom than were afterwards enjoyed. The fact that the Conqueror for political purposes felt himself obliged to more or less commit himself to the recognition of the law of Edward the Confessor,³ affords a strong presumption that the tradition had a basis of fact behind it. And there can be little doubt that the tenacity of the people—barons included—in holding on to the laws of Edward the Confessor, whilst fairly taken as a proof of the strength of the tradition of the greater freedom which those laws implied, also helped to prevent Norman lawyers from making a reality of the phraseology of Roman law which was supposed to know no middle status between freedom and slavery.

But Mr. Vinogradoff reminds us that it must not be inferred that the king intended to give greater freedom to his own tenants than to others. Far from it. The greater freedom is very clearly shown to have come to them, as it were by accident, from the position and immunity of their royal landlord, not from any concession on his part to his tenants.

As supreme feudal lord it was beneath the king's dignity to place himself or his tenants under the jurisdiction of the ordinary courts of shire and hundred. And the result was that his tenants were free from the burden of attendance at these courts and excepted from the range of their jurisdiction.

This worked indirectly to prevent their suffering like the tenants

³ *Hoc quoque precipimus, ut omnes habeant et teneant legem Edwardi Regis in omnibus rebus, ad ductis hiis quas constituimus ad utilitatem Anglorum*, Rymer, 1 t. 1-2.

on private manors from the feudal denial of any remedy against their lords. If they had grievances in exaggerated services or otherwise, these grievances were not directly urged against the king but against his bailiffs. The king was in a sense a third party, and to a great extent an interested party, as against encroachments on the part of his bailiffs upon his tenants. So under Norman rules of legal procedure they could apply as against the bailiffs for 'the little writ of right close,' i.e. a royal writ not directed to the sheriff or justices but to the king's bailiffs to do justice in the case. The chapter on ancient demesne gives interesting examples and valuable information bearing upon this mode of procedure, and shows that it survived upon manors of ancient demesne even after they had passed into private hands.

Mr. Vinogradoff shows that this remedy against encroachment, arising out of the accident of their position as the king's own tenants, kept them from losing what villains on private manors may have lost for want of it. Not that the services on royal manors were necessarily *ab initio* more certain and fixed and free from servile incidents than those on other manors, but that more of their ancient freedom was thus preserved to them. Even in Magna Charta in the clause providing that counties and hundreds, tithings and wapentakes, were to remain *ad antiquas firmas*, the saving words were added *exceptis dominicis maneriis nostris*. And though the king bound himself not to claim, or to concede to others power to claim, scutage or aids (beyond the recognised three feudal aids) without consent of his council, this was not intended to refer to the tenants on his own manors. Hence the historical result that when from time to time subsidies were granted they took the double form of 10ths and 15ths—i.e. $\frac{1}{10}$ th of the chattels of his own tenants, $\frac{1}{15}$ th only of those of the tenants of other lords. Even the clause relative to the 'saving of the wainage of villains' in amercements, in respect of their *delicta*, was not according to Mr. Vinogradoff specially applicable to the villains on royal manors.

This of course to some extent tells both ways. If the tenants on royal manors were not privileged because the king gave special privileges to his own tenants, but by the accident of their position as royal tenants, then it might be argued that their predecessors under Saxon rule may from the same accidental position have been protected from encroachments to which tenants of private landlords were subject. Royal demesne tenants may thus have had a start before others on the road of freedom even in Saxon times.

This, however, is a very small point compared with what I think turns out to be the crucial one, and one not altogether easy to answer, viz.: whether the inference is to be drawn from the greater freedom of the tenants on demesne manors as a whole in favour of the greater freedom of the villain class as a whole before

the Conquest; or whether we are to argue from the greater freedom of the specially privileged class on these manors, called 'privileged villains' or 'villain socmen,' to the existence of a separate class of free socmen before the Conquest merged in the Domesday survey in the class of *villani*.

Mr. Vinogradoff argues for both these inferences at once, but in this I confess that I can follow him only part of the way.

With his usual thoroughness and candour he makes it quite clear that there were on manors of ancient demesne both free and villain tenants. There were, indeed, several classes, *libere tenentes*, privileged villains or villain socmen, and pure villains too. He candidly admits this, and shows that the courts admitted it by making it a matter of evidence, even on a manor proved to be of ancient demesne, whether the ancient services were base and uncertain or not. The case is, therefore, not quite so simple as it looks at first sight. When it is examined closely the notion of later writers that all tenants of ancient demesne were privileged cannot be maintained.

If the right to resort to the 'little writ' had been the common privilege of all tenants on ancient demesne manors, they all might have been protected, and the question would be an awkward one how it came to pass that the greater freedom seems so much to be confined to the special class of villain socmen. But still whatever greater freedom might be found on the royal manor in its several classes of tenants might have led to an inference as to the greater freedom of these several classes before the Conquest. Bracton, however, and the writer of 'Fleta' ⁴ seem to confine the use of the 'little writ' to the specially privileged class of *villain socmen*, and though Mr. Vinogradoff in one place seems for a moment to imply the contrary, ⁵ I do not gather that he would on the whole extend its use any further than Bracton and 'Fleta' do.

Now if this be so, and only the special class of privileged villains or villain socmen could resort to the 'little writ,' how can we argue from the greater freedom of this privileged class to the greater freedom of the whole class of *villani* before the Conquest? Can it be shown that the special class of privileged socmen were fairly representative of the villain class in general before the Conquest? Mr. Vinogradoff seems to think that it was so, but the authorities hardly seem to me to justify such a contention.

Bracton after all is the most prominent witness, and his authority has certainly not been lessened by Mr. Vinogradoff's brilliant identification of the valuable manuscripts in the British Museum (since

⁴ In his chapter 1, 8, *De Sokemannis*, Fleta, after describing them as having the benefit of the 'little writ,' adds at the end, *Item in eisdem maneriis sunt liberi tenentes et fouda militaria et serjantias et puri nati sicuti alibi in regno.*

⁵ Pp. 111-12.

published by Professor Maitland⁶) as probably 'Bracton's Note-book.' The notes therein contained of nearly 2,000 cases decided by the courts afford a substantial basis for his great work '*De Legibus et Consuetudinibus Angliæ*.' The passage in which Bracton most carefully describes all the classes of tenants on a royal manor is the famous one on f. 7. He begins by saying '*In dominico domini regis* (he evidently means on a royal demesne manor) there are several kinds of men' and then he describes them in separate classes.

There are *servi* or *nativi*, before the Conquest, at the Conquest, and after, and these hold *villenagia*, and by villain and uncertain services, and they even to this day do villain and uncertain customs and whatever is required (so long as it is within reason).

These, notwithstanding the use of the word *servi*, seem clearly to be ordinary *villani* on the land in villainage, like those on other manors. He then proceeds to describe the privileged class thus:—

There were also at the Conquest *liberi homines* who held their holdings *libere*, by free service or by free customs, and when they had been ejected by the strong hand, having afterwards returned, they received their old tenements to be held in *villanagio* by doing thenceforth servile services but *certain and named*; who indeed are called *glebæ adscripticii* and yet free, because whilst doing servile services they do them not by reason of their persons but by reason of their holdings, and so they have not the *assiza novæ disseisinæ* because their holding is in villainage although privileged, nor yet the *assiza mortis antecessoris*, but only the *parvum breve de recto* according to the custom of the manor, and so they are called *glebæ adscripticii* because they enjoy such privilege in that they cannot be removed from the land, so long as they are able to make the due payments to whomsoever may succeed to the demesne of our lord the king, nor can they be compelled to continue to hold such holding unless they wish it.

These are the *privileged villains* or *villain socmen*, upon which the argument rests: but before examining into their case let us clear the ground by following Bracton one step further so as to separate them from the other classes to which they do not belong. The two classes already described—the villains proper and the privileged villains—were both of them on the land in villainage, but the remaining classes are on the demesne land.

There is also another kind of men in *maneriis domini regis*, and they hold *de dominico*, and by the same villain customs and services as the above mentioned, but *not in villainage*, nor are they *servi*, nor were they at the Conquest as the first class were, but (they hold) by a certain convention which they made with their lords, and so that some of them have charters and some not. And these if they shall be ejected from their

* I take this opportunity of acknowledging how much we are indebted to Professor Maitland not only for this valuable publication, but also for his *Select Pleas in Manorial and other Seigniorial Courts*, and the introduction to the latter.

holdings may recover seizin (according to some) *per assizam novae disseisinæ*, and when they have this assize of novel disseisin their heirs have the *assiza mortis antecessoris*.

This class is clearly that of *libere tenentes* on the demesne land, and so are the next, viz. :—

Those who, as elsewhere, hold *libere* and *in libero socagio*, and by *military service*, by *new feoffment*, and *since the Conquest*.

So far, then, as Bracton's authority goes, it seems clear that the royal manors contained not only the *libere tenentes* on the demesne land who could go to the common law courts, but also the ordinary class of *villani* on the land in villainage, who, because they held villain holdings, could not go to the common law courts, who could not leave the land if they chose, who could not use the *parvum breve de recto*, and so were ordinary unprivileged villains like those on ordinary manors.

Side by side with these ordinary villains, and like them on the land in villainage, came the special class of *privileged villains* or *villain socmen* with a special history, whose predecessors before the Conquest had according to Bracton been *libere tenentes* presumably on the demesne land, but since the Conquest had taken holdings *in villainage*. These, because of their historically free origin from before the Conquest, enjoyed the distinctive privileges of fixed and certain services, the use of the 'little writ' to protect themselves against encroachments, and, most important of all, the right to leave the land whenever they chose.

Bracton seems to me to hold to this view consistently. In another passage (fol. 209) he thus describes the same privileged tenants :—

There is another kind of villainage which is held *de domino rege* since the Conquest of England, which is called *villain soccage*, and which is *villainage*, but nevertheless *privileged*, in that the tenants *de dominicis domini regis* have the privilege not to be removed from the land so long as they will and can do the services, and this kind of villain socmen are specially called *glebae adscripticii*. They do villain services though certain and fixed. Nor can they be compelled against their will to hold tenements of this kind, and therefore they are called *liberi*. They cannot give their holdings nor by grant transfer them to others any more than pure villains. Whence if the holdings have to be transferred they restore them to the lord or bailiff, and these deliver them to others to be held in villainage.

Then, after mentioning that in royal manors there are other tenants, *libere tenentes* by military service and in free soccage, he adds :—

There are, moreover, *adventitii* who hold in the same way as villain socmen *by convention*, but such have no *privilege* as other villain socmen saving only [according to the terms of] their convention.

In short, to make a man a privileged villain or villain socman, with a right to use the 'little writ,' he must prove according to Bracton not only that he is a tenant on an ancient demesne manor, but also that he is one of the class who *before the Conquest were libere tenentes and afterwards took holdings in villainage.*

The 'Dialogus de Scaccario' is in close agreement with Bracton. It represents the Conqueror as allowing free tenants who had not actually fought against him to resettle on their lord's estates if they could obtain land from their lords, *pactione legitima*. These must surely have been originally *libere tenentes* and not *villani*, or they would hardly have been treated thus.

The cases cited by Mr. Vinogradoff seem to me on the whole to confirm the view taken by the text-books, and to show both that the privileged class of *villain socmen* were not the only villain tenants on manors of ancient demesne, and also that they were hardly so overwhelmingly predominant amongst the villain tenants as to become fairly typical of the villain class as a whole in earlier times.

The case of *Stoneleigh* is quoted, but the extracts given do not seem to me, with all deference to Mr. Vinogradoff, to prove his position when closely examined. The record he admits to be a very late one, dating after the Black Death, and the case is by no means a clear one. The description of tenants⁷ begins by stating that at the time of the donation from the crown in the reign of Henry II there were on the manor seventy-three *villani*, and four *bordarii* with two priests, holding altogether thirty carucates of land, as recorded in the Domesday survey; that there were also in the time of Henry II four *nativi* or *servi*, three out of four of the successors of whom had died without heirs in the Black Death; that there were also (in the time of Henry II) four *libere tenentes* holding five virgates *of the king in capite per servicium sokemanrie* and two *libere tenentes* holding two messuages, and half a virgate in *parva sokemanria*. There were also twenty-four cottiers. Mr. Vinogradoff does not make it at all clear that the so-called *socmanni* who attended the courts in later times, and whose services were free, were not the successors of the socmen who were *libere tenentes* rather than of the seventy-three *villani* mentioned in the register. Indeed, the result of the curious dispute in 50 Henry III in which some of them were involved is recorded to have been the recovery by the king of his 'seizin' on the ground that these tenants were *liberi et tenere debent tenementa sua de domino rege in capite*.⁸ This means surely that they were not *villain socmen* at all, and is fully in harmony with another passage quoted (p. 116) in which it is said that upon this manor there were both tenants who held their tenements *in sokemanria de feudo et hereditate*, and others who held their tenements *ad voluntatem*

⁷ P. 429.

⁸ P. 428.

abbatis. The records, however, are obscure, and in private hands, and they may contain evidence which has satisfied Mr. Vinogradoff but which is not contained in the extracts he has given.

Another case quoted is that of the tenants of *Tavistock*.⁹ The complainants claimed as socmen on a manor of ancient demesne the privilege of such tenants. It having been ascertained that in the Domesday entry there were mentioned no *socmanni* but only *villani* and *servi*—a fact probably not much to the point—and as it had also been found, by inquisition, that some of the complainants were *adventicii* whose holdings had been granted to them since the Conquest ‘at the will of the lord,’ it was held that the complainants had not proved any ‘certainty of status’ and must continue to hold *per servilia servicia*. It seems that they had failed to show that they belonged individually to the privileged class, and so were held to be *ordinary villains*.

The case of *King's Ripton* is still more important. It seems at first sight to show that in this case at least the *socmanni* formed the mass of tenants on the land in villainage. The manor belonged to the abbot of Ramsey. In the Ramsey cartulary is an inquisition, dated 1807, which states that the manor of King's Ripton contains five hides, two of which are *in dominico*, and three in the hands of *sokemanni* who hold twenty and a half virgates.¹⁰ There were about a score of these *sokemanni* and only three other tenants who held crofts, and not virgates. The socmen here evidently held the mass of the land in villainage. At an earlier date, *i.e.* in 1275, thirteen of these tenants afterwards called *socmanni* in the inquisition, complained that their services were originally certain, *viz.* five shillings per virgate, but that they had in the time of Henry I, and since, been grievously increased; and indeed the abbot's statement of their actual services makes them very much like those of ordinary villains, including *merchet*, *leyrwite*, and *weekwork* as well as *boonwork* on certain days. It was not disputed that the manor was of ancient demesne, and a jury was granted. Upon inquisition it was found that the services had been, with a trifling exception, as the abbot stated, from the time of Henry I, who had granted the manor to the abbot of Ramsey. And the decision was ‘that the said men and those who shall issue from the said men, do the said services and customs to the said abbot and his successors abbots of Ramsey *henceforth for ever*, and that the said men be in mercy.’¹¹

What does this decision mean if not that these men, though loosely called *socmanni* because they were tenants on a manor of ancient demesne, had as in the last case failed to prove that they

⁹ P. 119.

¹⁰ *Ramsey Cartulary*, i. 898.

¹¹ See the full statement of this remarkable case in Mr. Maitland's introductory note on the *Manor of King's Ripton*, *Selden Soc.* ii. 99–105.

were *privileged villains*. It was decided that their services were not fixed and certain like those of privileged villains, and that neither they nor their issue could leave the land when they pleased. What is the meaning of this if not that they were ordinary villains? And so again this case, in which the mass of the land in villainage on a demesne manor was held in virgates by so-called *socmanni*, fails to prove that it was held by the privileged class, and proves instead that the virgates of land in villainage were held by ordinary villains.

If I am right in the view I have taken of Bracton's evidence and of these interesting cases cited by Mr. Vinogradoff in his chapter on ancient demesne, I cannot altogether follow his inference from the evidence to the greater freedom of the whole class of villains before the Conquest. He seems to me to misread the evidence in one important point. In his summing up (at p. 136) he admits again that *villain socmen* are to be carefully distinguished from ordinary *villains*, but he adds 'the privileged group is the normal one. Villain socmen are the men of ancient demesne; *villains* are the exception; they appear only on the lord's demesne, and seem very few, so far as we can make a calculation of numbers.'

Neither Bracton nor the cases seem to me to prove this. May not Mr. Vinogradoff have been misled by the Stoneleigh case? The four *servi* in that case may perhaps like the Domesday *servi* have been on the demesne; but, if they were, they were not *villani*. Clearly in the case of King's Ripton the *socmanni* who turned out to be unprivileged villains were not on the demesne but on the land in villainage. So, too, Bracton's first class of ordinary villains were not on the demesne land but held *villenagia* on the land in villainage. This brings us again to the special peculiarity of the privileged class that they had been *libere tenentes* before the Conquest, presumably on the demesne land of the manors, and had remained free in status after the Conquest though holding thenceforth villain tenements on the land in villainage. To make the inference hold as to the greater freedom of the whole class of villains before the Conquest they ought, as it seems to me, not only to be the main class of villain tenants on these manors, but also to have been *villani* before as well as after the Conquest. The privileged class of the villain socmen seem not to have been *villani* before the Conquest, and the proof is it seems to me hardly conclusive that they formed to the extent which Mr. Vinogradoff supposes the main mass of tenants on the royal demesne manor after it.

The case of Kent is one from which inferences in favour of the greater freedom of villains before the Conquest may be drawn, apart from the question of ancient demesne. But, however suggestive in itself, it cannot obviously be regarded, any more than the case of the Danish manors with their numerous *socmanni*, typical of Saxon

England as a whole, and certainly not of the villain class as a whole. Along with parts of Essex, the Kentish records differ in phraseology from those of the rest of England. Their *sullungs* of two hundred and forty acres occur also in the manors of Essex belonging to St. Paul's, and the custom of gavelkind and succession of the youngest child mark it off as exceptional. Mr. Vinogradoff is, however, quite within his right in urging that these exceptional cases must be allowed to force upon us the admission that the term *villanus* in the Domesday survey was wide enough to cover them, and therefore wide enough presumably to cover other variations from the ordinary type of villainage. We must allow *e.g.* that on *any* manor and in *any* district, exceptional or not, freemen here and there holding as they may have done virgates of the land in villainage, and so doing villain services without ceasing in law to be freemen, may have been classed under the term *villani* in the survey as well as the privileged socmen.

I freely accept this part of his case whilst doubting whether he has succeeded in proving that the privileged socmen on manors of royal demesne stood in a position sufficiently representative of villainage in general to make their case the foundation of a valid inference as to the whole class of villains before the Conquest.

I have no wish to minimise the importance of any survivals in law or in fact pointing to the once greater freedom of the whole villain class or to the once free elements absorbed in it. A great deal of interesting matter and a great many points too numerous to mention are brought together in this volume pointing in this direction. There are matters connected with the position of villains in the manorial courts, in the usages of these courts themselves, in the forms by which transfers of holdings and successions to them were effected, which are well worth careful study, and which testify to the double element in villainage—the legal denial of any real property of a villain in his holding, coupled in the form of transfer with what seems a practical admission of it. Bracton himself reminds us that even the *privileged villain* on royal demesne manors, when he makes a transfer, surrenders his holding to the lord to be regranted to the transferee, the fiction of the new grant satisfying the legal denial, whilst the symbolic handing of the rod seems to admit after all some property in the villain of which it is the symbol. These things and many others must be at least warnings to us not to read into our notion of medieval serfdom sentimental considerations drawn from modern civilisation and our modern conception of slavery on the one hand and of freehold property on the other. It is, for instance, well worth always recollecting that the very element which goes so far to make up our modern idea of serfdom, the attachment to the soil, has two sides. The fact that the villain socmen were *adscripticii glebae* was counted by Bracton as one of

their *privileges*, involving as it did security of tenure. In their case the right was one-sided, they could leave the land as they chose, which the unprivileged villain could not do. That free men were constantly found taking villain holdings, with all their services and obligations, showed that so long as they retained personal freedom they were willing to satisfy their land hunger at the price.

Still after all, when the question is put whether serfdom after the Conquest was better or worse, less or more onerous, imposing less or more restraint upon personal freedom than in old Saxon days, it is I think a question of evidence rather than inference. And I may be allowed to cite at least one case in point¹² from 'Bracton's Note-book,' not mentioned by Mr. Vinogradoff, the evidence of which is, I think, stronger than a good deal of inference on the point of comparison between the practical freedom of the Saxon ceorl on a Saxon manor and his successor after the Conquest on the same manor.

It is not the case strictly of a manor of ancient demesne, but of a manor which during the reigns of Egbert, Ethelwulf, and Alfred had been a royal manor, and which had been granted by King Edward in A.D. 900 to the monastery of St. Swithin's at Winchester. Hysseburn (Hurstburne) was one of three manors, the tenants of which, in the year 1237, complained against the prior that since it had ceased to be a royal manor other customs and services had been exacted than they had been accustomed to pay in the days when it was a royal manor. It was answered on the part of the prior that no services beyond those customary had been exacted, that it was not a manor of ancient demesne because it had been granted to St. Swithin's 200 years before the Conquest, and that at the time of this grant the tenants were liable and accustomed to do '*whatever was required of them.*'¹³ It was also stated that a record had been made of the tenancies and the services in about 1188, that since that date, during forty years, the land had been put to farm at one time in the hands of *firmarii*, at other times in the hands of the villains themselves, and that the *firmarii* had commuted some of the services into money payments and diminished the services far below those described in the record. The judgment was that 'inasmuch as the said men acknowledged that they were *villani*, and had nothing to say against it, they must do the accustomed services, and that the king would not interfere as the case was not one of ancient demesne.'

I allude to this case because it refers to one of the two precious instances of manors the record of the services of which under Saxon kings has been preserved. The averment of the prior in this case was that the services while under royal Saxon ownership had been

¹² No. 1237.

¹³ *Et tunc facere debuerunt et consueverunt quicquid eis precipereetur.*

unrestricted, 'whatever was required,' which was the technical phrase used to denote the uncertain services of pure villainage.¹⁴

In this case, if we may trust the record, we are able to trace back the services to their original Saxon conditions 400 years earlier. The description in the original charter of King Edward A.D. 900 of the services of the ceorls upon the royal manor of Hysseburn when it was handed over to the monastery confirm fully the statement of the prior, for after defining the *gafol-yrth* and other special *gafol-work* and payments it describes the *week-work* as follows: 'And every week do what work they are bid¹⁵ except three weeks—one at mid-winter, the second at Easter, and the third at Gangdays.'

What becomes in this case of the greater freedom in Saxon times? It seems to be clear that these 'ceorls' would have been classed by Bracton as 'pure villains.' But, setting aside legal definitions, were the ceorls on this royal manor of King Alfred and his ancestors less serfs or more free than under the prior who had put their services on record, and then allowed the land to remain sometimes in the hands of *firmarii*, and sometimes of the villains themselves during a period of forty years?

This case seems to me to lead up to another point of great economic importance which Mr. Vinogradoff has not overlooked,¹⁶ and which constituted I think a substantial set-off at least, even in the case of the ordinary villain, to his legal degradation. The advantages arising from a settled government, the power and unity of the state, and the extension of commerce and prosperity under cover of the law and order thus established very soon after the Conquest, gave back to the villain tenants economically far more than the lawyers took away in legal definition and status. We should surely misread medieval history if, seeing only the legal side of the later villainage, we lost sight of this.

Economic laws, belonging not to the old feudal, but to the new commercial order of things, were historically the source of a practical freedom which existed though it was ignored by the lawyers. This practical freedom grew till in the long run, in spite of legal defi-

¹⁴ P. 298.

¹⁵ Mr. Vinogradoff points out that such expressions sometimes apply to the kind rather than the amount of the work that may be required. But that in this connexion the expression is distinctive of *pure villainage*, and is used to contrast their uncertain services with fixed and certain services, such as those of the privileged villains, cf. (1) Bracton's description of the first class of ordinary *servi* as villains who *villanos faciunt consuetudines et incertas 'et quicquid eis preceptum fuerit'* . . . (2) The prior of St. Swithin's *tunc facere debuerunt et consueverunt 'quicquid eis preciperetur,'* and (3) the words of King Edward's charter, *And also wucan wircom set hi man hdtte.* . . . Compare also Bracton, p. 208, b, where he gives as the distinction between *pure villainage* and privileged villainage that the pure villain *faciet de villenagio 'quicquid ei preceptum fuerit,' nec scire debeat soro quid facere debeat in crastino, et semper tenebitur ad incerta.* . . . See also the excellent *résumé* of Bracton's view of villainage in the App. note C. of Sir Frederick Pollock's *The Land Laws*.

¹⁶ See chapters vi. and vii.

nitions and even directly deterrent laws, it at last reduced villainage to a thing of antiquarian rather than actual interest, and perhaps the very worst legal definitions belong to the time when serfdom was least real and most a thing of the past. Like the Statutes of Labourers passed after the Black Death they were ineffectual attempts to regain in law what in fact had been already lost to the landlords.

Even between the Domesday survey and the hundred rolls, *i.e.* in the first two centuries after the Conquest, the growth of population, of the woollen manufactures, of the number of *libere tenentes* on demesne land (many of them the overflow of the villains), of the commutation of services into money payments, of the migration, which laws could not stop, of villains from the country to the towns; all these economic changes, some of which began early (witness the cases in the Boldon Book and that already alluded to of Hurstbourne of the villains farming the demesne land and their own services for a fixed payment), had freed the tenants in great measure as a matter of fact from the manorial control which the lawyers were trying to tighten. And when the Black Death came and further freed the villains by increasing the value of labour, the attempt of the landlords by statute and through the courts to enforce again the actual services (now more valuable than the payments into which they had become commuted) ended as we know in the rebellion of Wat Tyler; the result being that the law of the law-books and even the special enactments by statute became a dead letter and the serfdom of the lawyers as we have said a thing thereafter of antiquarian interest.

Having, from an economic point of view, made this reservation, which I think Mr. Vinogradoff will not quarrel with, I will end this very imperfect notice of the first of these masterly essays with the expression of the belief that whilst his method has precluded him from anticipating the results of his own examination of the Saxon evidence which is to be given in a future volume, the simple facts which the Saxon records themselves disclose will when he comes to them afford the most natural explanation of the intricate problems which puzzled Norman lawyers in connexion with the status of villainage.

No great gulf seems to have existed between the Saxon and Norman manorial system. The Domesday survey in the same sentence describes the condition of manors before and after the Conquest. In each manor there is the same division into land in demesne and land in villainage, the inland and the geneat land. The three classes of tenants on the land in villainage are the same after as before the Conquest, the *villanus* or gebur, the *bordarius* or cottier, and the *servus* or theow. The services of the gebur, as given in Saxon documents, are substantially the same to all

intents and purposes as those of the later *villanus*, both his payments (or *gafol*) and his services and week-work on his lord's demesne. The *gebur*s are holders of yardlands of scattered acres on the *geneat* land, just as the *villani* are holders of *virgates* on the land in villainage after the Conquest. All these simple external facts are the same. The phraseology only is changed, and that very little. The *gebur*, moreover, in status is not a slave; he has the theow below him, just as the *villanus* is not a slave and has the *servus* below him. The theow in Aelfric's dialogue envies the *gebur* because, he says, 'I am not free.' But the *gebur* himself is not a full freeman because he has services to perform on the lord's demesne and cannot leave the land if he chooses. In this point also the *gebur* and the *villanus* are alike. Finally the *villanus* after the Conquest has no legal remedy (except on the royal manors) against his lord, and we have the proof of the ecclesiastical supplement to King Edgar's laws that 'if the *geneat* neglected to pay his lord's *gafol* he must expect that his lord in his anger will spare neither his goods nor his life.'

There appears to be therefore a remarkably close and clear continuity in the character of the serfdom of the *gebur* or *villanus*, and the simple facts of his position seem to be on the whole almost exactly those which Mr. Vinogradoff has shown to have existed after the Conquest in spite of the confusions in legal definitions.

The typical case of a newly made Saxon *gebur*'s history from beginning to end is that given by the 'Rectitudines.' The lord places him on his land, provides him with his yardland and pair of oxen and other outfit; he thereupon becomes his *gebur*, owing the customary services of the manor in return for his yardland, and on his death everything theoretically goes back to his lord, because it came from him, though as a matter of fact his son born on the land, as we know, mostly succeeds to his holding. These simple facts, translated by the Norman lawyers with an evident bias against freedom into legal language, explain better perhaps than anything else the confusions in the legal status of the villain as well as the territorial character of his serfdom.

But Mr. Vinogradoff has shown that the Norman legal evidence points to survivals of a class of socmen, or privileged villains, above the ordinary villain. What are we to make of these? Again the actual facts of the Saxon period afford, as it seems to me, the simplest solution of the problem. The laws of Ine make a clear distinction between the man who already has a homestead and then hires a yardland at a certain *gafol* under agreement from his lord and the man who receives his outfit and his homestead and becomes a *gebur* of his lord. The first is a mere *gafolgelder*, a free tenant it may be, though holding a yardland of *geneat* land or land in villainage. The lord cannot force this *gafolgelder* to do servile

weekwork and make himself into a gebur or villain as if he had found him his homestead and outfit. He remains a gafolgelder and may come and go as he pleases, according to the terms of his agreement with his lord.

How many of these gafolgelders by contract were to be found on Saxon manors, whether on the lord's demesne or holding virgates in the open fields, *libere tenentes* or free holders of villain holdings, as I have elsewhere stated we cannot tell, but if we may take the experience of the interval between the Domesday survey and the hundred rolls as any guide to the natural multiplication of *libere tenentes* on the lord's demesne, the class may have become numerous on many, and perhaps mostly on royal manors, without giving ground, I think, for any inference in favour of the original freedom of the Saxon village community.

For Mr. Vinogradoff's final verdict on the origin of villainage we must wait in patience and confidence till he has mastered for us the Saxon evidence. In the meantime, as a provisional hypothesis, may not the general disappearance from the Domesday survey of any class above *villani* on most manors be sufficiently explained, as Bracton and the 'Dialogus' both explain it, as the natural effect of conquest? Would it not be natural that after conquest the Saxon gafolgelders should as a general rule be swept in the survey into the class of *villani*, from which they differed perhaps not much except in status; whilst in districts like the Danish districts, where they were too numerous and too important to be thus treated, the recognition of the extra class of socmen may have been forced as it were into the Domesday record? I am not sure that Mr. Vinogradoff's inferences from the legal evidence will lead him much further than this.

The second essay sustains the interest of the inquiry. It treats of the manor, the village community and the open field system of holdings and methods of husbandry. There is throughout the same careful and exhaustive treatment and the judicial attitude is well maintained. One valuable point is considered after another, and each chapter has its own historical value altogether apart from the ulterior object. But still the strain is to find survivals or suggestions of original Saxon freedom in the facts of the post-Domesday period, without any light being allowed prematurely to come in from the Saxon side, so that again the full force of the points made cannot be understood till we know what conclusion may be come to after consideration of the Saxon evidence itself.

The open field system takes a prominent place in this part of the inquiry. Mr. Vinogradoff's description of it bristles with points of interest. They belong to two classes carefully discriminated. Some of them belong to the side of manorial control, others to the

side of the original independence of the open field system from the manor.

Evidence is sought for and found in the post-Domesday facts to prove that the open field system, with its scattered ownership, cannot have been created by the manorial system. The fact that it existed geographically beyond the manorial range in Wales under the tribal system, and presumably in both Germany and Britain before the Roman conquest, taken together with its prevalence still in Russia and India, make this perfectly clear.

Its *tribal* origin in Germany and Wales does not, of course, come within the restricted range of the evidence. But I may be allowed to suggest here, as I have done elsewhere, that the practice described both in the *Germania* of Tacitus and in the Welsh laws of the annual ploughing up of a portion of the waste or common pasture, letting it return to pasture when the crop has been removed, must surely, after all, be the true explanation of its most important communal feature everywhere, viz. the common right of pasture over the whole arable area when not under crop. I have elsewhere tried to show that the wide prevalence in the 'usages locaux' throughout France of the *vaine pâture* is the best proof we could have of the original prevalence there of the open field system. As regards its *communal*, or, as I should prefer to say, *tribal* origin, I think there has been, and can be, no dispute.

Regarding the manor thus as superimposed upon a pre-existing open field system, there is another point on which misapprehension, rather than difference of opinion, has sometimes needlessly arisen; viz. the practical independence in certain cases of the manor and the open field system. Although the areas of the manor and of the village with its open field system often are identical, they do not always correspond. Mr. Vinogradoff points to cases where disputes arise, and conventions are made between the lord on one side and the tenants as a body on the other side; the tenants—the *villata*—seeming to act as a corporate unity. Allusion has been made to cases like those recorded in the Boldon Book, where the body of tenants are found farming their own services under agreement with the lord of the manor. Examples of this seeming independence of action may thus arise even when the area of the manor and of the village community are one. But they also occur when the areas are not identical.

Obviously the difference in the areas may occur in two ways. Sometimes one manor embraced several separate systems of open fields. Sometimes a single system of open fields was worked by tenants of several distinct manors. In France the abbeyes habitually became endowed not so much with manors or whole villas as with one or more *mansi* or holdings in each of a great number of villas scattered over a wide tract of country.

The manor of Aston and Cote so often quoted, and recently so ably described by Mr. Gomme, as containing survivals from a once free and self-acting community, is naturally chosen by Mr. Vinogradoff as a typical example of what might take place when the tenants of several manors joined in the same open field husbandry, and held virgates of scattered strips intermixed in the same open fields. In such a case the necessary and anciently open-air meeting of the tenants to make the routine arrangements of the husbandry of their common open fields, must of necessity be separate and distinct from any one manorial court. It must needs embrace the tenants of all the manors. In Aston and Cote the manors had anciently been one. But the parent manor had become divided, and possibly therefore since the division a representative arrangement had grown up, each manor contributing tenants to a council of 'sixteen,' whilst the attempt of one manorial lord in the seventeenth century to intermeddle unduly, was, of course, declared illegal and rightfully resisted. Nor can we doubt that in such a case any archaic incidents which cling to the open-air assembly and its methods must be attributed to the open field system rather than to the manorial side of the arrangement.

The Hitchin manor is instanced as an example of the other case, *i.e.* of an originally single manor covering more than one system of open fields. The Hitchin tenants and those of an actually adjoining hamlet met in one court for the business of the open fields and common lands of both, but this court apparently took no part in the open field arrangements of the outlying hamlets.

Mr. Vinogradoff may well take these and many other points in which open field husbandry shows independence from manorial control, and elements of free and independent action on the part of the tenants as strong proof that the manorial element is superimposed on the communal, and not the foundation of it. The open field system may well even under manorial control have retained survivals of freedom inherited from its communal or tribal origin.

Even in the manor itself may sometimes be found survivals of early tribal conditions. Mr. Vinogradoff points amongst other things to the *firma unius noctis* as a survival of an older arrangement than the manorial one of demesne land, worked by the tenants' services. 'One cannot help thinking,' he writes,¹⁷ 'that such a practice must have come from the very earliest times when a Saxon or a Celtic chieftain got his income from the territory under his sway by moving from one place to another with his retinue, and feeding on the people for a certain period.' He points also to the fact that the demesne land is often found intermixed with the strips of the peasant's virgates as another indication of an intermediate stage between the payment of tribute

¹⁷ P. 306.

in kind by a practically self-dependent community, and the double husbandry of a manor with its demesne and tenant land.

On one point I think Mr. Vinogradoff's view suffers from what seems almost like an unconscious prejudice against the Welsh tribal evidence. He mentions it only to discard it, whilst his own Russian experience seems to me for once to mislead him. In explaining the reason of the scattered acres composing a yardland,¹⁸ the necessity for an easy method of obtaining fairness and equality is no doubt rightly stated as the basis of the system all over the world.¹⁹ But within the lines of the open field system there are different modes of attaining this object. Mr. Vinogradoff seems to think that the Russian method is nearer to the English than the Welsh tribal method of *co-aration*. The Russian method is, however, I think, one quite alien from the English. In the Russian redivisions the land is divided first into large areas, and then each of these areas is divided, not as in England into equal acres or half acres, or even into Russian *desiatinas*, but into irregular blocks, varying in size with the number of adult males in the households. Each family thus gets in each large division a single plot of a size proportioned to its numbers. The plots are unequal, so as to produce the required equality of burden or of right as between the households. This is not the English method. The English method divided the furlongs into equal acre or half-acre strips which represented a day-work of ploughing, and nominally the holder of each virgate with his pair of oxen took as his holding thirty or sixty of these strips; and there are many survivals of cases in which he took them in a regular rotation with his neighbours, as on the Winslow manor. The Welsh evidence parallel in date is, I think, much nearer what we find on English open fields than the arrangement on the Russian fields. The tribesmen and also the *tæogs* in Wales yoked their oxen to a common plough. The strip was a day-work, and they took the strips in rotation according to the place of their oxen in the team. And this result of *co-aration* seems to fit in with the fact that the lord's demesne land was often scattered amongst the virgates of the tenants, and also with the Saxon method of ploughing three acres of each virgate as *gafolyrth* for the lord, and of setting apart 'every tenth acre as it was traversed by the plough' for the tithe. Mr. Vinogradoff rejects the theory of Saxon *co-aration*, because after the Conquest he finds the tenants ploughing with their own small teams instead of with the normal plough of eight oxen. But it is surely too much to expect primitive methods to be carried out with exactness of similarity in all points for centuries after the Conquest. I think that the Welsh tribal evidence may well be taken as a typical example of *co-aration* for England also, especially as the big plough team of

" P. 224.

" P. 254.

eight oxen is the normal team common to both Welsh and Saxon systems, and the Saxon holder of a yardland and later Norman holder of a virgate were alike connected with the single pair of oxen as the larger unit of the hide or carucate was with the full team of eight oxen. Points like these, belonging partly to the at present excluded evidence, can hardly fail to influence Mr. Vinogradoff's judgment when he comes to deal directly with the question whether the open field system on the top of which the manor came was of Saxon or of British origin.

A more important point still is one connected with the holdings. Mr. Vinogradoff, with I think undoubted justice, lays to the credit of the manorial side of the arrangement the fixed and indivisible character of the virgates, and the apparently single succession to them in manorial records; and his suggestion is a valuable one, that this apparent unity involved, as time went on and the system was breaking up, an actual plurality of occupation. The virgates must, from the nature of the case, have been to some extent family holdings. They might well become even house-communities or clusters of households, though in the lord's eye one, and though the eldest, or where junior right prevailed the youngest, son in succession was responsible and recorded in the surveys as the single holder. He shows that in the Kentish district, and in Essex where the *sulling* or *solanda* takes the place of the hide and where gavelkind prevailed, the unity of the hides and virgates was preserved only for purposes of taxation and the services; whilst in reality the holdings clustered under the nominal unit were many and irregular.²⁰ Nothing but permanent manorial control could surely have kept up for centuries even the semblance of unity; and in Kent, owing probably to the prevalence of the custom of gavelkind, the system was evidently breaking up earlier than in other districts.

In concluding this imperfect notice of the work of a personal friend and able fellow-worker, I hope I shall not be misunderstood. I have followed the main line of argument rather than details. As a true picture of villainage in its legal and technical aspects for the first two centuries after the Conquest, this volume, it seems to me, must ever hold a high place. Nothing so thorough on the subject has hitherto been published, and the reader must feel that it has materially advanced our knowledge. The points I have ventured to criticise, so far as the facts are concerned, affect a very small part indeed of the substantial mass of facts collected in this volume. The value of the work as a description of villainage is not affected by my criticism, and will, I have no doubt, be still better understood when the results of the earlier evidence are added in another volume. It is Mr. Vinogradoff's inferences as to origin, rather than

²⁰ Very interesting examples of the same thing occur in the ninth-century records of the abbey of *St. Germain de Prés*, edited by M. Guérard.

his facts, that with very great deference I have been unable altogether to accept.

Whilst welcoming the evidence in favour of the view that Saxon serfdom was not so complete as the Norman lawyers would have made it if they could, or so all-embracing as the classification of the Domesday survey would at first sight imply, I have not been able to follow Mr. Vinogradoff altogether as to the ultimate direction in which he does not conceal his view that the inferences point. These inferences are after all, in one sense, the object of his work, and therefore I have felt bound to deal with them as plainly as I could. I have been anxious neither to exaggerate nor to conceal the extent of the agreement or divergence of view. So far as I can judge of it, it amounts to this. Mr. Vinogradoff has succeeded, I think, in showing much more clearly than has been shown before in the post-Domesday evidence survivals of freedom in two separate directions, (1) of the freedom of the class of Saxon *gafolgelders* or *libere tenentes*, swept, except in the Danish districts, into the Domesday class of *villani*, (2) of the independence of the open field system from the manorial system imposed upon it. Both these free elements seem to me to be entirely consistent with the Saxon evidence, but I have expressed my conviction that the first of them will not be found to date back to the original Saxon settlements, whilst the second appears to me to belong to the open field system which dates back long before them.

Whether Mr. Vinogradoff will ultimately differ from this view, I cannot tell. From his present point of view he perhaps naturally takes both these classes of survivals of an earlier freedom as pointing in one direction and 'as presenting a most powerful check to the theory of a servile origin of the English village community, and as throwing the burden of proof on those who contend for such an origin as against the theory of a free village feudalised in process of time.'

The burden of proof, so long as the evidence is restricted to the post-Domesday side, may well seem to Mr. Vinogradoff to rest where he has placed it. I shall willingly keep my eyes open to the further development of his views, and expect to find many points in which he will modify my own; but I shall not be surprised if, when he comes to treat of the Saxon evidence and to let in the side lights of Welsh and Continental evidence, he does not more or less acknowledge that the British village community was already a good deal 'feudalised' (if the word may be used in this sense and for so early a date) before the Saxon conquest, and perhaps under Beigic influence before the Roman conquest. He may even yet find sounder explanations of legal and other survivals of ancient freedom than in the theory of originally free Saxon settlements of the type of the supposed German mark.

F. SEEBOHM.