



On the Tribal System and Land-Tenure in Ireland, under the Brehon Laws

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but clearly artificial, and are irregularly placed, although very close together.

It is evident that both the east and the west stone are of the nature of inscriptions. Can any light be thrown upon them? No pottery, no flint, no charcoal, no burnt bone; but there were evident signs of an unburnt body having been placed there, from the very dark and unctuous clay on the pavement. The men who first peeped into the cist complained of a close bad smell. Some of the stones of the pavement are coated with a dark greasy substance.

DISCUSSION.

Col. LANE FOX suggested that the axe-shaped markings (fig. 12) were probably moulds in which copper or bronze celts had been cast. The figures are not merely incised outlines, but the entire area within the outline has been worked away, so as to form a shallow depression corresponding in shape and size to a common flat form of celt. If this were the case, the stone must have originally lain in a horizontal position when the moulds were used.

The speaker was not disposed to regard the markings on the other engraved stone (fig. 11) as an Ogham inscription, because the horizontal strokes were confined to one side of the fleasg, while the Ogham letters extend some to the right and some to the left of the vertical base-line.

ORDINARY MEETING, April 12th, 1870.

PROFESSOR HUXLEY, LL.D., F.R.S., *President, in the Chair.*

New Members.—Dr. BONAVIA; Dr. CARL SEMPER, of Würzburg, Honorary Foreign Member; and Lieut. S. P. OLIVER, R.A., Corresponding Member.

The following paper was read by the Honorary Secretary:—

XXVIII. *On the TRIBAL SYSTEM and LAND-TENURE in IRELAND, under the BREHON LAWS.* By HODDER M. WESTROPP, Esq.

As the land-system in Ireland is engaging much public attention at the present moment, a short notice of the tribal system of land-tenure in Ireland in the early and primitive times may not prove unacceptable.

The social condition of the early Irish people was patriarchal and pastoral. The Brehon laws, which enable us to realize the society in its prehistoric state, and the frequent number of the *raths*, or homesteads, enclosed by a ditch and rampart for the protection of flocks and herds in the wide pasture-grounds, amply testify to this.

Prior to the Anglo-Saxon invasion, Ireland was solely governed by the Brehon law, so-called from being expounded by judges named in the Irish language, *Breitheamhuin* or *Brehons*. *Feinachas*, however, and *Breitha-neimeadh*, words signifying respectively ancient laws and sacred ordinations, are terms commonly applied to the collection of the ancient laws of the Irish by the native writers. There is abundant evidence to prove that some of the collections of the *Breitha-neimeadh* are of equal antiquity with the oldest manuscripts of Irish history, whether civil or ecclesiastical,—an antiquity which carries us safely back to the earlier ages of the Christian era. The language in which they were written has become obsolete; and two successive commentaries remain, written themselves in two successive antiquated dialects. They evince, it is true, a very primitive state of society, but still they are, for the greater part, the work of Brehons, conformable to Brehon law, and afford indisputable evidence that the native Irish not only possessed a fixed and written code by which to regulate the judgments of their Brehons, but also that these functionaries duly committed their judgments, such as they were, to writing. Archbishop Usher speaks of the Brehon laws as being in his day contained “in large volumes, still extant in their own [the Irish] language.” A collection, which now fills two large quarto volumes, is deposited in the library of the Royal Irish Academy. They are now in course of publication by the Government.

The following is a brief notice of the social system and land-tenure of the old Irish under the Brehon laws, such as their available fragments, compared with the general history of the country, would point out to the reader of the various accessible authorities on the subject.

It is well known that Irish society was formed upon the tribal system. The tribal system is the first shape into which human society is moulded. It arises from the condition and necessities of the earliest immigrants or wanderers. Most nations may be traced back to this primitive form, and it still subsists over a large portion of the world. The tribe-system is the development of the family. The first wanderer from the original seat of the people strays forth into foreign lands at the head of his family: the father is at once the priest, the judge, and the king. He rules his children, as the ablest and the wisest; round the original family gather their slaves and dependants. All the members of the original family and their followers form a single unit. No individual has an existence except as a member of this body; their flocks and herds form a common property. They possess no clear idea of individual ownership. The tribe exists upon the assumption of common descent.

Suppose a tribe of this nature to abandon its wandering life, and conquer for itself a district in some foreign country; the principles upon which the land would be occupied flow from the ideas on which the tribe is constituted. The tribe is an undivided whole. The land would be conquered by all for the benefit of all, and would belong to all in common. For the convenience of cultivation, separate lots might be appropriated to individuals, but none would gain an absolute ownership in his allotted portion. His occupancy would be subject to resumption by the tribe; and the arable land might be from time to time divided, as would suit the convenience of all. The pasture-lands would remain open for the cattle of the tribe, subject to such rules as from time to time might be thought necessary.

Most of this system we find developed in Irish tribal history. The districts occupied by an Irish tribe generally amounted to about the area of a modern barony, and belonged, as a rule, to the tribe. This common land seems to have been divided into common pasture-land, common tillage-land, private demesne-land, and demesne-land of the tribe; each man of the tribe had a right to pasture as many cattle as he possessed on the common grazing-land; and in proportion to the number of cattle thus pastured by each, was the share of the common tillage-land assigned to him upon the annual partition. The private demesne-lands were the distinct property of individuals, who were entitled to acquire and transmit by certain qualifications not very clearly explained. The demesne-lands of the tribe were set apart for the maintenance of the chief elect or tanist, the bard, the doctor, and Brehon; the four offices of the chief, bard, doctor, and Brehon were descendable in distinct families, but not necessarily from father to son, rather the contrary. Upon his demesne-lands the chief established his tenants, many of them not members of the tribe; he thus provided for his military followers, whom he also had a right of quartering from time to time on the members of the tribe itself.

With regard to the nature of the property enjoyed in these several estates, the tribe at large possessed what is called the allodial or original indefeasible property in all the lands, *and could not be ejected out of them in consequence of any arrears of tribute*, inasmuch as the superior lord claimed only a proportion of the increase of stock upon the pastures, and was bound to take the same away at certain seasons; this rent was precisely a lay-tithe, being one-tenth of the increase. As to the common tillage-lands, every member of the tribe possessed a life-interest in them, proportioned to his stock in cattle. In the private demesne-lands individuals had a permanent inheritable interest. In his separate portion of the demesne-lands of the tribe, the

chief had a life-interest, of which the reversion lay with the tanist, *i. e.* the *second man*, or chief-elect; and in like manner the tanist, bard, &c. possessed life-interests in their several portions.

The distinctions of the tribe, corresponding to the above territorial divisions, were, so far as can be gathered from the confused authorities on this head, the *In-finnè*, holders in common, and the *Dathaig-finnè*, those individuals alluded to above who were entitled to separate inheritable possessions. The *In-finnè*, or commonalty of this pastoral corporation, appear to have been of one rank; but the *Dathaig-finnè* were divided into several classes, of which the three most intelligible were, the *Deirbh-finnè*, or class, as the commentators explain it, nearest to succession, who had the right to inherit the whole patrimony of their kin without deduction; the *Gall-finnè*, who inherited three-fourths of their patrimonial estates; and *Sar-finnè*, whose right of inheritance extended to only one-fourth of the property left by their relations. These privileged classes were, in every tribe, limited in number; but it does not exactly appear what was the qualification for admission, or the rule of exclusion, or whether the *Deirbh-finnè*, for instance, became disqualified on the election of a tanist less nearly related to them than to others; although it is evident that a man might rise from the condition of a tenant of common tillage to that of a freeholder, or, *vice versâ*, descend from the higher class to the lower. As to the chief himself, he was usually elected before the death of his predecessor, and the rule seems to have been invariably that the eldest of the candidates, if not incapacitated by age or infirmity, should have the preference, the brother being commonly chosen instead of the son, and the son rather than the nephew. His revenue arose, as has been said, from the tenths of the increase of cattle, and from the revenues of his demesne-lands. In addition, he had certain claims of entertainment for himself and household, at stated times, in the houses of his tenants, in the same manner as his superiors, at certain seasons, quartered themselves or their soldiers upon him. These claims were sometimes compromised by both for an equivalent in tribute.

So far of the *Finnè*, or original members of the kindred, who constituted the great majority of the tribe. But in every tribe there was another class, less numerous and generally less honourable, but in many respects peculiarly interesting and important, particularly as regards the origin of the *feudal law*. The subject of feudal tenures has occupied the attention of the most distinguished English lawyers and historians. The origin of the system has been in all cases referred more or less to the necessities of military conquest, and its genius has been inva-

riably considered as quite distinct from that of any pastoral constitution. The remains of the Brehon law, however, would go far to show that the feudal and pastoral systems, if not to some extent identical, have been in their origin closely and necessarily connected. The system laid down above is so far calculated for the government of a society composed of tribes, each tribe possessing the allodium of its own district, and the mass of its members holding in common. But coexistent with the first practical development of such a system, if not actually contemplated in its very rudiments, arises the necessity of providing for those members of the community who, either by chance, or choice, or compulsion, have been separated from their particular kindreds, and have thus no proper *Finnè* with whom to claim a share. Such individuals could not expect to participate in the rights of blood enjoyed by those tribes among which they might be dispersed, neither could they be received by the commonalty of those tribes as tenants on their fluctuating possessions. To provide for them, it was necessary that a certain portion of the land should be set apart for the reception of strangers. To prevent the confusion of many landlords, the profits of these tenements were allotted to the chief, who could thus afford to exact a higher tribute from the *Finnè* of his tribe. To induce the better sort of strangers to settle among them, the chief was empowered to grant some of these tenements in perpetuity; but the greater portion was usually let at will. As for those who had only their labour to offer in lieu of the chief's protection, they were received on his private demesne-lands and became his serfs. Admission to the upper class depended on the stranger's ability to pay the entrance-fee on one or more of the disposable tenements. These tenements consisted of a homestead, with a certain extent of ground annexed: the homestead was denominated a *Rath*: to constitute a legitimate rath, five things were requisite, viz., a dwelling-house, an ox-stall, a hogsty, a sheep-pen, and a calf-house; these buildings were generally surrounded by a ditch and rampart, and formed, if necessary, a place of defence as well as residence. There is one very prevalent error with regard to raths in Ireland, viz. that they were Danish erections, and designed solely for military occupation. The term "Danish rath" is altogether a misnomer. The original titles of raths, according to the classification of the Brehon law, were drawn solely from the circumstance of their erection and occupation by the natives themselves,—as, for example, among many others, the *Finnè-rath*, a homestead occupied by the original kindred; a *Mer-rath*, one rented by stranger tenants for the first time; a *Sar-rath*, one occupied by stranger serfs on the chief's demesne-lands. The entrance-fine of such a

tenement was denominated *fal*, and, for the legitimate rath, amounted to fifty head of cattle. As distinguished from the Finnè, or original clansmen, the stranger-tenant was called *Fuidhir*, and his tenure *Fuidh*. These terms are pronounced respectively *Feuer* and *Feu*.

Thus, then, it would appear, that the country was occupied by kindreds called *Finnè*, holding for the most part in common, and by *Feuers*, who were either tenants by rent and service, or vassals of the chief. The tributes of chief to superior chief, up to the supreme king of the whole island, were regulated by established precedents. The collection of these rules for the kingdom of Munster is entitled 'The Book of Rights,' and is still extant.

It has been seen above that in proportion to the number of cattle possessed by each member of the tribe was his share of the common tillage-lands. Thus cattle were not only the standard of value, but the qualification for, and a necessary concomitant of property. The land was thus, by a sort of legal fiction, an appurtenance of the stock; so that to say of a person under this system, that he possessed a hundred cows, implied not only that his herds amounted to so many head of cattle, but that in addition, and as a necessary appurtenance of his estate in them, he also possessed the *grazing* of a hundred cows, and the share proportioned to a hundred cows in the common tillage-lands of his tribe. Every addition to the number of a man's cattle was therefore a virtual accession of land and produce, and *vice versâ*; and thus a mulct of cattle fell as heavily on the granary, as on the larder or dairy of the fined individual; for these proportionate partitions of the land took place at stated periods, and each man's harvest fluctuated with his herds, as they bore a greater or less ratio to the aggregate of all the cattle of the rest. The division of the ground into portions so uncertain, precluded the use of permanent fences on those arable commons, which were probably separated from the pasture by only one exterior circumvallation, while each man knew the portion that was to fall to his reaping-hook within. The adjustment of these portions must have been a matter of some difficulty. It would appear that the plan usually formed was this:—The land was divided into equal shares, in the proportion, each to the whole, of the herd of the least proprietor to the whole *creaght*, or common stock of all their cattle. These shares were drawn by lot, in order to give to all an equal chance of getting the worse or better land. He thus, it is supposed, whose herds were thrice as numerous as those of the least proprietor, drew three such aliquot parts; he possessing ten times as many, ten such, and so on, the shares being taken here and there, as they turned up,

and every man cropping his own portion as he thought fit. The system is still remembered in some parts of the country, and a mode of expressing the extent of land among the Munster peasantry is still to say "so much as *follows* so many cows;" hence in all likelihood, the term *Bally-boe*, i. e. "cow-land," a term which has perplexed many writers, in consequence of the varying extent represented by it at different times and in different districts.

Such, so far as can be collected from the present ill-arranged and defective materials, would appear to have been the old tribal system and land-tenure which prevailed in Ireland prior to the invasion of the Anglo-Normans in the twelfth century. The Brehon law, however, prevailed in every part of Ireland not immediately subject to the English power until the reign of James I., when the ancient Irish laws were abolished.

DISCUSSION.

Col. A. LANE FOX said that there was one part of the paper which appeared to him to be very valuable, and that was the explanation which the author had given of the *Raths*. If the information on this subject contained in the paper was derived from the Brehon law, it appeared to him to be conclusive, as it entirely tallied with the evidence afforded by the *Raths* themselves. That they were not constructed exclusively for defensive purposes was shown by their positions, being sometimes commanded within short arrow-shot from the outside; that they were the dwelling-places of an agricultural and pastoral people was shown by the querns for grinding corn, and by the animal remains that have been found in them, by their being almost invariably in the vicinity of a good spring, and by their being situated generally in the most fertile parts of the country. The Ordnance Survey Map showed as many as 10,000 of these *Raths* in Munster alone, and although many of them had been since destroyed, a considerable number yet remain. It was very desirable that an accurate record should be kept of the relics found in these earthworks. Col. Fox exhibited maps reduced from those of the Ordnance Survey, showing the position of every *Rath* in Munster, and pointed out their distribution over the more fertile parts of the country.

Mr. GEORGE CAMPBELL said it occurred to him that the description of the old Irish land-laws was not taken wholly from the Brehon code, but was supplemented from other sources. So far as he knew, all old written codes of the Aryan nations were singularly deficient in land-laws, and the Brehon code was no exception. In fact, he might hazard a doubt whether that code was all genuine, and whether much of it was not a corruption of the Roman law introduced by the early Christian priests.

He doubted whether Ireland was correctly described as exclusively a pastoral country. The descriptions of Spenser and Davis showed

that before the introduction of the English system, there was much agriculture; so much so that, in some parts of the country, the land was already excessively subdivided to the degree that "every acre hath its freeholder."

The speaker's Indian experience of similar customs further led him to doubt whether the repartition of the land was so constant as had been supposed, and especially, he believed, that the repartition was not "*per capita*" but "*per stirpes*;" that is, it was not a fresh repartition to all the males of the clan equally, but only a readjustment according to ancestral shares, for the purpose of redressing inequalities and inexactitudes which had crept in. For the purpose of expressing such shares, some unit must be taken; in agricultural communities it is generally a plough-land; where pasture prevails, it is a cow's-grass.

There was, he thought, a good deal of contradiction and confusion in various accounts as regards the relative position of chief of tribes and Tanists; but he had found in one passage in Davis a clear and circumstantial statement which seemed to him the most reasonable, viz. that while there was one chief of a whole tribe or clan, the Tanists were subchiefs of the subdivisions of the clan. The descriptions in the paper brought very vividly to his mind the extreme similarity of Aryan institutions in Europe and Asia. He believed that nothing was more hereditary, or had better marked ethnological affinities, than social and political institutions, and much that was said in a paper on the Irish customs would apply word for word to a Jat or Rajpoot village in India. The system under which the lands were distributed was very much the same: there was the same assignment of lands for official duties, the same partition among the men of the tribes, and the same system under which the surplus lands were cultivated by strangers. Even the name applied to these latter was the same, as the Irish called them *Fuidirs* or *fugitives*, while in India they were called "Foot cultivators," implying that they were not freed and settled inhabitants, but people who came and went at pleasure.

The PRESIDENT asked Mr. Campbell on what authority he regarded the village-system as an Aryan institution. It appears in India in the midst of a population in which there is a strong Dravidian element; for, basing his observations on physical characters, he regarded all who possessed true Hindoo features (whatever may be the language they now speak) as having a large infusion of so-called "Dravidian" blood. He believed that the Aryans, when they invaded India, were a nomadic people without a village-system, that they found an agricultural people already possessed of the soil, and that the conquerors adopted the institutions of the conquered.

Mr. CAMPBELL, in reply, said that he attributed the institutions known as village institutions to the Aryans, because wherever we find Aryans settled, whether in the east or the west, there we find these institutions. It was clear that they did not belong to the Indian aborigines, because nothing in that country was more marked than the distinction in this respect between Aryans and aborigines. Wherever Aryan features, Aryan languages, and an Aryan civiliza-

tion showed that the Aryan element prevailed over the aboriginal element in the people, there these people exhibited attachment to the soil, and established themselves in fixed settlements governed by village institutions: whereas all the tribes whose features, language, and manner showed that the aboriginal element remained tolerably pure, were incapable of attachment to the soil; there was no fixing them to it; they were incorrigible wanderers from one part of the jungle to another, and they had nothing like village institutions. He believed that mankind might be divided into people who fixed themselves in the soil and those who did not. You have the contrast between Kabyles and Arabs in Algeria, between Affghans and Turcomans in Central Asia, between Aryan Hindoos and aborigines in India; the Kabyles, Affghans, and Hindoos fixing themselves in the soil and adhering to it with the utmost tenacity, while African Arabs, Turcomans, and Indian aborigines are incorrigible wanderers. The distinction in India between Aryan and aboriginal features is such that, if you see two naked men walking on the roadside, you can say at once that is an Aryan Hindoo, that is an aboriginal, just as you can tell a short-horn bullock from a black Highland bullock. So distinguishing, you may further affirm that the Aryan-featured man is a land-lover, and has a home where he is governed by village institutions.

Mr. J. F. M^cLENNAN observed that the paper contained not a little that was new to him. The accuracy of some of the statements, however, he ventured to doubt; against others he desired to protest. It was said that the social condition of the early Irish was patriarchal. He could not reconcile that with the early Irish relationships and laws of succession as we know them, or with the fact that the chiefs were elective. It was said, again, that early Irish society was founded on the tribal system, and it was stated, as a general proposition, that the tribe was the development of the family. In this he could not concur. He held that in social development the tribe came first. The tribe existed before the family, and was resolved, by the operation of causes that could be assigned, first into gentes or septs, which, again, owing to causes that could be assigned, were resolved very gradually into family groups. He thought there was much evidence, though this was not the place to discuss it, that this had been the order of evolution in Ireland. We had now two volumes issued of the ancient Irish laws, as we possessed them in 'The Senchus Mor' modified by Roman law and Christian influences. What the ancient Irish laws really were before this modification took place would probably never now be known; but it was obvious that parts of the code were more primitive than others, and he appealed to the law of fosterage developed in the second volume as being very primitive, and as showing that the early Irish family system was in a transitional state—not yet solidified into any thing like the modern family. Fosterage, as a system, implied alterage as a system; both systems prevailed in Ireland, and they could imagine what families were in which there were no children belonging to the heads. As to the account that had been given of land-laws he could say nothing of

it confidently, as that part of the code which regulated it had not as yet been issued. He doubted, however, the explanation that had been given of the meaning of cow-lands, and the alleged right of parties to a share of tillage-land proportioned to the stock they possessed. He was, on the whole, disposed to think, with Mr. Campbell, that the Irish tribe resembled the Indian village community; but he could not agree with Mr. Campbell in regarding the village system as peculiarly Aryan. It was found among purely Tatar races, *e. g.* among the hill-tribes round Munnipore, whom none would suspect of being Aryan, and in Russia, in districts, as, he believed, purely Tatar. He was not aware of any custom or institution that could be claimed to be distinctively Aryan. Caste certainly was not, though Mr. Campbell said it was. Mr. Campbell, in his paper on the Ethnology of India, read before this Society, had used the words *caste* and *race* as synonyms. If that was correct, caste could *not* be distinctively Aryan, seeing there were various races of Turanians and Semites. Caste and race were not, however, synonyms; and the literature of India disclosed to us the growth of caste distinctions among a people of one race within the period of the growth of the literature. There were caste distinctions in Peru, where the Incas were a caste; and no one claimed the Peruvians as Aryan. For himself, he believed that the linguistic classification of men in families as Aryans, Semites, and Turanians had no proper foundation; it had served its day and fell to be abandoned.

Mr. HYDE CLARKE remarked that the subject required the application of the comparative knowledge of similar institutions. Many such illustrations would be obtained from this island during the Anglo-Saxon time. The *rath*, as an enclosure, corresponded with the *ton* or *town*. Like institutions will often be found under like circumstances. There did not appear to be as yet a sufficient explanation of the position of the older aboriginal or serf population in Ireland.

The following paper was then read by the Assistant-Secretary:—

XXIX. *On the DANISH ELEMENT in the Population of CLEVELAND, YORKSHIRE.* By the Rev. J. C. ATKINSON.

THE occurrence in a dialect of English of a very large number of words, of which *garsel*, *flan*, *segg*, *scare on*, *cuvin*, *cuvin-scar*, *grim*, *kirk-grim*, *kelps*, *kenspack* are types—words which have not only no place but no representative in the English dictionary, but yet which, allowing for nothing beyond a little phonetic alteration, inevitable under the circumstances, still maintain their hereditary place in the Scandinavian dictionaries and word-books—the occurrence of a host of such words is a fact which calls for the attention, not merely of the philologist, but