



The enlarged family, in Greek and Latin phrase the *gens*, tracing by natural descent or by artificial adoption to a common forefather, real or imaginary, divine or human, is the lowest political unit. As in ancient Greece and Italy, it constantly bears the name of such supposed forefather. The *Æscingas*, the *Scyldingas*, a crowd of other such names, marked in Teutonic, just as in Greek, by the patronymic ending, are sometimes recorded in history or legend, sometimes simply left to be inferred from the local nomenclature of England and other Teutonic lands. The territory, originally the common territory, of such an enlarged or artificial family, formed the lowest territorial division, the *mark* or *township*. The cultivated land of each *gens* was fenced in by a boundary line of untilled land, forming the *mark* in the strictest sense. The township then and its inhabitants formed the lowest political unit, an unit having its own assembly and its own political organization. Such a political unit still forms the *gemeinde*, the *commune*, of other lands. This unit has been exposed in England to influences which have altered its character more thoroughly than it has been altered anywhere else. An ecclesiastical influence has changed the original *mark* into the half civil, half ecclesiastical *parish*. An influence of another kind changed the primitive community, holding its common land by its own right, into a body of tenants holding their land of a lord. The township which had passed through such a change became a *manor*.

It must always be remembered that, in the primitive polity, each larger group is formed by bringing together several of the smaller. Several *gentes* brought together formed in the Roman system the *curia*, answering to the Attic *φάρπια* and the Spartan *ὀβή*. The Teutonic counterpart of this group is the *hundred*. The name must in its beginning have meant a real hundred of some kind; but such names soon lose their proper force, and are used in a purely conventional sense. The hundreds of England are familiar as geographical divisions; but their traditional organization, administrative, judicial, and military, is fast passing out of memory. When the English first landed in Britain, and for ages after, that organization was fresh and vigorous. But it is quite possible that, even before the voyage of Hengest, the mere name of hundred had become purely conventional, and had ceased to imply an actual hundred of any kind.

As a group of *gentes* formed a *curia*, so a group of *curie* form a *tribe*. In the Teutonic nomenclature, the territory of the tribe is the *gá*, *gau*, *peod*, or *scir*, in modern English *shire*, the *pagus* or *scira* of Latin writers. *Gá* or *gau*, a name familiar in Germany, but whose existence can only just be proved in England, is doubtless the elder name. *Shire*, from *shear*, does not mean a group of lesser units, but in strictness a division, something *shorn* off from a greater whole. Both names are historically true. Of the existing shires of England some are really primitive *gás*, settlements of tribes, while others are in strictness *shires*, artificial divisions formed at a later time in imitation of the primitive *gá*. The West-Saxon shires are primitive *gás*, and two at least, those of the *Sumorsætas* and the *Dorsætas*, still keep the ancient tribal names. But the old tribal divisions of Mercia were wiped out in the Danish conquest of the ninth century. In the process of English reconquest the land was mapped out afresh into *shires*, strictly so called, shires grouped conveniently round a central town, and bearing the name of that town instead of the name of the ancient tribe. The shire, it is needless to say, is still a living thing throughout England, and from England it has spread itself, commonly under the French name *county*, through all lands ruled, settled, or influenced by England.

The *gá* was the lowest group which could exist as a really distinct political power. The *mark* and the *hundred*, like

the *gens* and the *curia*, do not, at least in the finished system, whether Teutonic or Greek and Italian, aspire to the character of an independent state. The *gá*, like the tribe, might do so. The *gá* might be wholly independent; it might be dependent on some stronger neighbour; it might be incorporated into a kingdom, and sink into one of its geographical divisions. But in any case it kept its full and separate organization, its assembly with judicial, administrative, and legislative power, its chief bearing the title of *Ealdorman* or *Alderman* in peace, of *Heretoga*, *Herzog*—the *στρατηγός* of the Athenian tribe—in time of war. The alderman stood, like the territory of which he was the chief, in various relations. He might be an independent or a vassal prince; he might, by the incorporation of his *gá* with a kingdom, have sunk into a mere magistrate, appointed by the king and assembly of the whole kingdom. But the organization of the *gá* or *shire* remained in either case. So the *Rammes* and *Titienses* were independent tribes, occupying their several hills. They joined together, to become the tribes whose union formed the earliest Rome.

A system of *gás* or shires is thus the oldest fully developed form of the Teutonic polity. The process of grouping independent *gás* into a yet greater division was gradual, and went on much faster in some parts than others. The union of *gás* formed a *rice* or kingdom; the chief of the group thus formed was a *cyning* or *king*. What, it may be asked, was the difference between king and ealdorman? The question is a hard one; but one point of difference seems plain. The ealdorman was a ruler in peace and a captain in war. The king was more. Among the English at least, the kingly houses all claimed descent from the blood of the gods. Every king was a son of Woden. A vague religious reverence thus gathered round the king, in which the ealdorman had no share. He was also the head of the highest political aggregate which the ideas of those days had reached. He was, as his name implies, the head of the *kin*, the nation. The rule of the ealdorman was tribal, and merely earthly; the rule of the king was national, and in some sort divine.

Kingship then, the leadership of a nation, was, in the ideas of those days, an office and not a property. As an office, it demanded qualifications. It demanded in truth the highest qualifications, the qualifications needed in one who was to be the leader of his people in peace and in war. Such an office could not be trusted to the chances of any law of strict hereditary descent. Or rather, the notion of any law of strict hereditary descent was a thing which had not yet presented itself to men's minds. Kingship then was elective; the leader of the people became such only by the choice of the people; but the right of choice was not wholly unlimited; the king, so custom and tradition taught, must come of the stock of Woden. But within that stock one member of it was as sacred, as kingly, as another. The son of a deceased king would doubtless be his most obvious successor, if there was nothing specially to suggest another choice; but he had no further claim beyond any other man of his house. Traditional rule dictated that the choice should be made from the royal house; reason dictated that it should fall on the worthiest of the royal house. The union of these two feelings led to that mixture of election and hereditary succession which we find among the ancient English, as among most other nations at the same stage. The king is chosen; but he is chosen, under all ordinary circumstances, from the one kingly line. He is not chosen as the heir or the representative or the next of kin of the former king. He is chosen as that one of the kingly house whom the people think fit to choose. He is chosen from the house; therefore kindred in the female line goes for nothing. The son of a king's daughter does not belong to the kingly house; he is therefore not eligible for

the kingly office. But the most distant kinsman in the male line is as much one of the kingly stock as the king himself, and the choice of the nation may fall upon him. There is no point in our early constitution which is more important to insist on than this. Nothing has led to more and greater misconceptions than carrying back the legal theories of later days into earlier times, than fancying that every prince was an usurper whose succession to the crown did not take place according to rules which he and those who chose him had never heard of, and would not have understood.

The institution of kingship came in gradually among the Teutonic nations, and its growth was much slower in some parts than in others. In the time of Tacitus, kingship was clearly far from universal. By the time of the Wandering of the Nations, when scattered tribes had begun to gather together in greater masses, it was clearly the rule. Among the Saxons its growth was specially slow. Among the Old-Saxons who stayed behind in Germany it never came in at all. So both the Saxon and the Jutish leaders came to Britain, not as kings, but as ealdormen or *Heretogan*. They were of the stock of Woden, and were therefore qualified for kingship; but they did not take the kingly title till they had made a firm settlement in the country. The institution of kingship seems to have grown up in different ways in different parts of England. From all that we can see of the Anglian kingdoms, they were formed by the union of several states into one greater kingdom. In such a case the ealdormen or kings of the incorporated states might go on under the superiority of the common king; but the king sank into the *under-king*, kingly in descent, kingly in office among his own people, but owning the external authority of the common king. In Wessex the course of things was otherwise. There too we find several kings at once; but all are, not only of the stock of Woden, but of the house of Cerdic. There was moreover always one head king over the whole West-Saxon nation. Something of the same kind seems to have been the rule in Kent. We see, though dimly, signs of a separate, and doubtless subordinate, kingdom of the West-Kentishmen.

Among the English conquerors of Britain we see from the beginning the same elements of political life which we see among the other Teutonic nations, and which were doubtless parts of the original Aryan inheritance. The inhabitants of the land fall into two great classes, the free and the unfree, classes each of which is again capable of subdivision. Every freeman is a citizen and a soldier; he is, or may be, a landowner; he has his place in the army, his voice in the assembly. But all freemen are not equal in rank and honour. There is a broad distinction, a distinction so old that its beginning cannot be traced, between the man who is simply free and the man who is not only free but noble. This distinction is expressed in different Teutonic dialects by the rhyming names *eorl* and *ceorl*, *jarl* and *karl*, in modern English form, *earl* and *churl*. These two last words have in modern use changed their meaning. In their oldest sense they answer to the modern phrase *gentle* and *simple*. It is impossible to say in what the privileges of the *eorl* consisted, nor is there anything to show that they were oppressive. But the distinction was broadly drawn, and the birth of the *eorl* clearly entitled him to special respect and honour, if to nothing more. And such special respect and honour would, in the common course of things, give the *eorlas* a preference for all offices and distinctions, whether honorary or substantial, which either king or people had to bestow. The unfree class again were clearly not on a level in all times and places. The actual slave, the *thrall*, the *peow*, is found everywhere. The class is formed and recruited in two ways. The captive taken in war accepts slavery as a lighter doom than

death; the freeman who is guilty of certain crimes is degraded to the state of slavery by sentence of law. In either case the servile condition of the parent is inherited by his children, and the slave class goes on increasing. The existence of other classes between the absolute slave, the mere chattel of his master, and the full freeman, with his place in the army and his voice in the assembly, is possible and frequent, but not universal. It was a natural position either for the enfranchised slave, for the foreign settler, or for the conquered enemy who was admitted to more favourable terms than usual. Out of such cases there might easily arise a class, personally free, but not possessed of the full political rights of freedom. There might indeed be many stages of imperfect freedom or mitigated bondage between the personal slave and the free churl. To some of these intermediate ranks the slave might rise or the freeman might sink. But such a class, though often found, is not a necessary element in Teutonic society. But the *eorl*, the *churl*, and the *thrall*, are found everywhere. They are taken for granted; and legend represented the three classes as called into being by separate acts of the creative power of the gods. All these, as essential elements of Teutonic society, are found among our forefathers from the beginning.

But in all Teutonic societies another principle was at work, which began very early to change the nature of primitive Teutonic society. That society was a community, a community which, like all other communities, admitted distinctions of rank, wealth, and office, but where each man, earl or churl, held his place strictly as a member of the community, bound by its laws, and owing to it his duties in war and in peace. The Teutonic community differs from the Greek or Italian city in so far as it is not fenced in with walls, but has its inhabited places spread over the whole of its territory. But its leading political conception is essentially the same. The king or ealdorman is clothed with the authority of a leader. The earls have their privileges, in whatever those privileges may consist. In the assembly the king and the earls may consult and propose, while the simple freemen merely say yea or nay. But each discharges his duty in his higher or lower place strictly as a member of the community. His duty, his allegiance, is due to the whole society, not to any particular member of it. This primitive system was from a very early time broken in upon by the practice of personal commendation to a lord. Such commendation was in its beginning strictly military. In the primitive community the army is simply the nation under arms. Each man discharges his duties in war, like his duties in peace, in obedience to the law of the society of which he is part. But at a very early time—for the picture stands out distinctly in Tacitus—successful and popular leaders began to gather round them a band of special followers, devoted by a personal tie to themselves. Where the chief led they followed. The tie was mutual. For the chief to forsake his followers, for the followers to forsake their chief, was alike shameful. A personal tie thus arose between man and man, alongside of the political tie which bound each member of the community to the community itself. The king, ealdorman, or other chief, became something more than the magistrate and captain of the community. He became the personal lord of some particular men among its members. They became his *men*, bound to do him personal service. He became their *laford*, *lord*,—in the primitive meaning of the word, *loaf-giver*,—who was to reward the service which they rendered to him. The new principle spread, and gradually made its way into every relation of Teutonic society. The personal following of the king, his *gesidas* or companions, his *pegnas* or servants, grew into a nobility of office. Thus arose the nobility of the *thegns*, which gradually supplanted the older nobility of birth, the nobility of the *eorls*. The growth of the

*eorls*  
and  
*churls*.

Commenda-  
tion.

royal power, and the growth of the importance of the thegns, naturally went hand in hand. A power like that of kingship, when once established, is sure to grow. It is specially sure to grow in a period of conquest. The king and his personal followers are likely to be foremost in warfare; and each increase of territory increases the power and dignity of the king, and therewith raises the condition of his followers. We see the institution of thegns in full force at an early stage of the Teutonic settlement in Britain. We may feel sure that the Teutonic settlement in Britain greatly served to strengthen it. And we cannot doubt that the change from the nobility of office to the nobility of birth greatly affected the position of the churl or simple freeman. By breaking down a barrier which was purely a barrier of birth, it made it easier for individual churls to rise to a higher rank. But by gradually confining office and power and influence to the king's personal following, it tended to degrade the position of the churls as a class.

This relation of a man to his lord might be on any scale. It might be contracted between men of any rank, between a weaker and a more powerful king, between a poorer and a richer churl, or between men of any of the intermediate ranks. In its higher degrees the relation was political; in its lower degrees it was purely social. It spread alike upwards and downwards, till it became the rule and not the exception. It came to be looked on as the business of every man to seek a lord, and at last the lordless man had legal disadvantages. Still the relation between a man and his lord, the voluntary commendation of a man to his lord, was in itself a relation purely personal, and had nothing to do with the holding of land. But the two things might easily be brought into connexion with one another. And as the practice of commendation grew, analogous changes gradually affected the tenure of land. In both cases the personal relation grew at the expense of the public relation. The community lost, and the individual gained.

Tenure  
of land.

The land of a Teutonic community is primarily the property of the community itself. It is *folkland*, *ager publicus*, the land of the people. But here, as everywhere else, private property in land gradually arose; that is, the community granted out parts of the common possession to its individual members. The pictures of Cæsar and Tacitus show that, in the time between them, the institution of private property in land had already made some advances. When it has once begun, it is sure to advance. It would specially advance with every conquest; each man would claim to have his personal share of the soil which he had helped to win. Thus, alongside of the *folkland*, the land of the community, grew up the private estate, the *edel*, *odal*, or *allod*. This is land which is a man's very own, the gift of the community, held according to the laws of the community. It is not the gift of this or that man, owing any service to this or that man. As the king's power grew, as he came to be looked on more and more as the representative of the community, the land of the community came step by step to be looked on as his land. In the six hundred years between the English conquest of Britain and the Norman conquest of England, the *folkland*, the *ager publicus*, passed into *terra regis*, the land of the king. As the community could at all times grant away its own land, the doctrine gradually grew that the king, the head of the community, could grant it away also. In the first stage he granted it only with the assent of the community; in a later stage he came to dispense with that assent. Land thus *booked*, granted by a written document, to whomever the king would, but of course mainly to his personal followers, became *bookland*. The lord was the giver of bread to his man, and the land of the community was the noblest form of bread that he could give him. And, as

Folk-  
land and  
book-  
land.

things went on, he might sometimes grant him more than the land itself. The primitive community, great or small, from the township to the nation, had the rights of a community; it had judicial and administrative powers. From those powers it might be deemed a privilege for the royal grantee to be exempted. He might be clothed with exceptional judicial powers within his own lands; the next stage would be for those powers to spread themselves over the lands of his neighbours. The privileged landowner within a community might grow to be the lord of the community. The township might grow into the lordship; its free assembly might grow into the court of the lord; the land itself, so much of it as escaped the lord's clutches, might be declared to be held under the lord. In the fictions of lawyers things are commonly turned about. The exception is declared to be the rule, and the rule to be the exception. If the community contrives to save any fragments of its ancient rights from the grasp of the lord, those fragments are at last judicially declared to be held only by the lord's grant. If no grant can be found in real history, legal ingenuity will be ready to assume one.

All land was by immemorial custom burthened with three duties. To the repair of bridges and the repair of fortresses all land was bound to contribute. And the duty of every member of the community to serve in arms when called on for the defence of the community was so far a charge upon the land that a certain amount of land had to supply a certain number of men. But this is not military service in the later sense; the land is not held of a lord by a military tenure; the personal duty of serving in the *fyrd*, the militia of the community, is not a duty paid by the man to his lord, but by the member of the community to the community itself. The primitive militia of the community and the personal following of the lords form two distinct elements, which often appear as distinct in the records of early warfare. The strictly military tenure, the holding of land from a lord on condition of doing him military service, does not concern us as yet.

The English settlers in Britain thus brought with them all the elements of Teutonic society as they stood in their day. The distinction of *earl*, *churl*, and *theow* went on in Teutonic Britain as they had gone on in Germany from time immemorial. Marks, hundreds, *gás*, arose on the conquered soil of Britain, as they had already arisen on the ancestral soil of Germany. But the circumstances of the conquest could not fail to hasten the process by which the smaller communities were gradually gathered into the larger. That the *gentes* settled by marks is plain from nomenclature; and, much as in Greece the same Doric tribes helped over and over again to found distinct Doric settlements, so settlements of the same *gens* formed in distant parts of England bore the same name. The *gens* of the *Wellingas*, for instance, appears at Wellington in Somerset, at Wellington in Shropshire, and at Wellingtonborough in Northamptonshire. But the mark never could have had the same importance in England which it had in Germany. Such a settlement could never maintain itself alone in a country which was being conquered bit by bit. Every settlement must from the beginning have relied on the help of its neighbours, alike for further conquests and for the defence of what it had already won. Everything must have tended to closer union among the communities which grouped together to form the hundred, the *gá*, and the kingdom. The *gá* must, from the first, have been the lowest group capable of real separate being. And in Wessex at least, each *gá*, as it was formed, was placed under the rule of an under-king of the royal house. In central England the *gás*, each doubtless under its separate king or ealdorman, often remained really distinct, till they were swallowed up by the growing power of Mercia. All these groups, greater and smaller, mark or town-

Origin  
maiores

The  
*trinoda*  
necessi-  
tas.

Influence  
of the  
insular  
conquest.