

# Marshall's Early Historical Notes

*ed. by Simon Cook*

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## Introduction

Marshall's early essay on the history of civilisation was published in volume IX of the *Marshall Studies Bulletin* (2005). This historical essay was reconstructed from material found in four separate folders in the Marshall Archive. But three of these four folders, in addition to containing parts of this early historical essay, contain also a large number of early notes on a variety of historical subjects. Similar such notes, however, may be found in several other folders in the Marshall Archive. All of these early historical notes have been assembled together, transcribed, and are now published below.

The notes have been compiled from the following archive folders contained in the Marshall Archive in the Marshall Library in Cambridge: M 4/10, M 4/11, M 4/12, M 4/13, M 4/14, M 4/16, M 4/17, M 4/19, M 4/23, and M 4/24.

The background to Marshall's composition of these notes, as well as a discussion of dating, can be found in the editorial introduction to Marshall's essay on the history of civilisation in volume IX of the *Marshall Studies Bulletin*.

Together with the long historical essay, these short historical notes comprise the greater part of Marshall's surviving early historical writings. They do not, however, exhaust this material. For Marshall evidently dedicated a certain amount of time in the early 1870s to tracing the history of economic ideas. It is hoped that the surviving evidence of this endeavour will be published in a future edition of the *Marshall Studies Bulletin*.

Also to be found in the Marshall Archive is a fairly large collection of statistical notes. This material, much of which is clearly early (i.e. composed in first half of the 1870s) has to date received very little attention from Marshall scholars. It nevertheless seems clear that the early statistical material constitutes the continuation of Marshall's early historical studies into more recent periods. This point is illustrated by the notes on the history of English agriculture which have been placed in the appendix below.

The organisation of Marshall's early historical notes presents a challenge to the modern editor. The notes are on the whole discrete (although a few clearly build upon earlier notes), and cover a wide and fairly varied expanse of ground. It needs to be emphasised, then, that the organisation adopted below is in a basic sense arbitrary; certainly it bears no necessary relation to the ways in which Marshall himself might have chosen to organise this material. Hence, the reader of the notes transcribed below must always keep in mind that while the notes themselves were composed by Marshall, the way in which they have been grouped (and separated) below is the product of a modern editorial decision.

Each of the sections below contains a brief editorial introduction in which, wherever possible, Marshall's sources are identified. As in the introduction to the essay on the history of civilisation, the following bibliographical conventions have been adopted: books owned by Marshall and currently held in the Marshall Library are marked by [ML], books owned by Marshall and currently held in the Cambridge University Library are marked [UL] (note that not all of Marshall's personal library has been preserved), while books that are held in St John's College Library are marked [SJCL].

The transcriptions of Marshall's writings utilise the following conventions:

*Italics* - manuscript word or phrase is underlined

<triangular brackets> - word or phrase is crossed out; only such crossings out as are still legible have been recorded

\*asterisks\* - word or phrase written above the line

underlining - letter or word is illegible

## Text

### Part I: Orient & Ancient

1. Buckle on Population [4ff]
2. Max Müller's *Chips* [19ff]
3. Bridges on China and Confucius [7ff]
4. Israelite Currency [1f]
5. Grote on Solon's Reforms [1f]
6. Lecky on Epicureanism [1f]

#### 1. Buckle on Population

##### Introduction

Four folios of notes taken from H. T. Buckle, *History of Civilisation in England* (3 vols., London 1867) [ML].

The script is throughout the same rapid but deliberate hand.

These notes are referred to in a folio (numbered by Marshall 17½) inserted in Marshall's long essay on the history of civilisation (M 3/1, f. 21): "The causes which in Indian as well as in the other early civilisations caused a superabundant population to press upon the means of subsistence, & to make the laboring classes poor & weak are given in Buckle pp 70 &c & quoted under *Population* (Buckle)".

## Text

M 4/10, f. 40

1 (Buckle) *Population*

Early civilisations in warm climates where nature not overpowering (as in Brazil) but in which little heat giving food was required, while nature supplied with a lavish hand that which was required: he enumerates Egypt India Mexico Peru.

Population grew rapidly. A huge rent was possible & therefore necessary. Flaccid habits of character were formed in the lower classes, while the upper derived all the advantages that could be obtained from a lavish civilisation.

On the average the rent paid in Ireland in Scotland is the fourth in France one third of the total produce

M 4/10, f. 41

2 (Buckle) *Population*

But in India it is one half. Moreover the rate of interest in India is extravagantly high. Hence wages must be low.

(Buckle does not work out this argument in full). He gives instances of suppression of Indian e.g. if he sat on same seat as a Brahmin he was to be put to death, if he listened to the sacred books \*burning\* oil was to be poured in his ears: if he committed them to memory he was to be killed. He might not accumulate wealth, while even though his master should give him his freedom he would in reality still be a slave “for” says the Institutes of Menu of a state which is natural to him by whom can he be divested?”

M 4/10, f. 42

3 (Buckle) *Population*

In Egypt in the same way “If any artisan meddled with political affairs or engaged in any other employment than the one to which he had been bought up a severe punishment was instantly inflicted upon him.”

Lavish waste of <force> work in <the> Egypt Peru & Mexico.

p 114 he quotes from Prescotts history of Peru “Under this extraordinary polity a people advanced in many of the social refinements, well skilled in manufactures & agriculture were unacquainted with money... They could follow no craft, could engage in no labor, no craft<sup>1</sup> but such as was specially provided by law. They could not change their

M 4/10, f. 43

4 (Buckle) *Population*

residence or dress without license from the government. They could not even exercise the freedom which is conceded to be the most abject in other countries – that of selecting their own wives.”

Castes were established in India, Egypt Mexico Peru & (Buckle believes) Persia

//

He attributes that anthropomorphism & intellectual energy which characterised the Greek religion as contrasted with the religion of the Hindoos to the greater tractability of nature with them.

[Hegel has something more to say about this]

## 2. Max Müller's *Chips from a German Workshop*

### Introduction

Nineteen folios of notes taken from F. M. Müller, *Chips from a German Workshop* (London: Longmans, Green, 1867)<sup>2</sup> [SJCL].

Marshall here, as in other early notes, also makes uses of a German Lexicon: H. Meyer, *Neues Conversations-*

*Lexikon. Ein Wörterbuch des allgemeinen Wissens 15 Bände und Kartenband sowie Register* (17 volumes, Hildburghausen. Bibliograph. Institut., 1861).

Alongside two introductory folios, the notes fall under three subject headings: (a) 6 folios headed ‘*Vedas*’, (b) 9 folios headed ‘*Buddhism*’ (of which the last folio is not numbered by Marshall), (c) 2 folios headed ‘*Parsis*’. Note that the page numbers given by Marshall on f.30, f.31, and f.32 have been crossed through and/or overwritten, and the resultant numbering is particularly hard to decipher. The content of the folios, however, leaves no room for doubt as to their intended order.

The script is throughout the same rapid but deliberate hand.

**Text**

M 4/10, f. 44

Max Müller

*History  
of Religion*

“To my mind the great epochs of the world are marked not by the foundation or the destruction of empires, by the migration of races or by French revolutions. All this is outward history made up of events that seem gigantic & overpowering to those only who cannot see beyond & beneath. The real history of man is the history of religion: the wonderful ways by which the families of the human race advanced towards a truer knowledge and a deeper love of God. This is the foundation that underlies all profane history. It is the light, the soul & the life of history & without it all history would be profane.”

Chips I 21

He insists that Religion must be studied genealogically.

M 4/10, f. 39

*India & China*

BC

1500 – 1200	Rig Vedas
900 – 800	Code of Menu
549 – 480	Confucius
483	Max Müllers date for death of Buddha <sup>3</sup>
226	ásoka dies : Buddhism at height of influence in India
100 – 0	Buddhism declining in India

**(a) Max Müller on the Vedas**

M 4/10, f. 24

1

(Max Müller)

*Vedas*

Chips Vol I

10 Rig Vedas – hymns of praise

9 The other Vedas are hymns for various ecclesiastical functions. details given.

11. Manuscripts rapidly destroyed: eroded by damp Indian climate: but very strong indirect proof that the Vedas were comprised between 1200 & 1100 BC

18-19 The writers of the Vedas had no theory of verbal inspiration: they pray to be “possessed of God”: yet the

action of writing is their own. But the orthodox theologians hold a theory far more severe than the parallel theories in Europe maintaining that the Veda existed in the mind of the Deity before the beginning of time.

20. 21. The importance of *History of Religion* [q.v.]

21. Maurice Hardwick & Hegel good: but they treat religions as languages used to be treated: they classify them according to age, or place, or a stage of advancement. They ought to be classified genealogically.

M 4/10, f. 25

2 Max Müller                      *Vedas*

Chips

p 23. 31.2 % of population of world Buddhists.

1. 1. Brahmanists

27 – 29. The various gods are not thought of as limiting each other: but each of them while being addressed is regarded as absolute. [This account is hazy but probably the fact to be recounted is no less hazy] He goes on “The consciousness that all the deities are but different names for one & the same Godhead breaks forth indeed here & there in the Veda. But it is far from being general.”

He gives instances of hymns severally expressing

29 – 30 yearning after truth

31 – 33 adoration of various natural elements individualized as Gods

33 – 34 worship of fire in all its forms

34 – 36 worship of storm gods

36 – 37 worship of dawn

37. “The Veda contains a great deal of what is childish & foolish. Though very little of what is bad & objectionable. Some of its poets ascribe to the gods sentiments & passions unworthy of the deity such as anger, revenge,

M 4/10, f. 26

3 Max Müller                      *Vedas*

delight in material sacrifices. They likewise represent human nature on a low level of selfishness & worldliness.

Many hymns are utterly unmeaning & insipid, & we must search patiently before we meet here & there with sentiments that come from the depth of the soul & with prayers in which we could join ourselves.”

38. “The religion of the Veda knows of no Idol”

“The gods of the Veda are conceived as immortal: passages in which the birth of certain gods is mentioned have a physical meaning: they refer to the birth of the day, the rising of the sun, the return of the year..”

39 – 41 prayers for money & forgiveness of sin

41. “The consciousness of sin is a prominent feature in the religion of the Veda: so is likewise the belief that the gods are able to take away from man the heavy burden of his sins.

44 – 46 a belief in immortality indicated.

M 4/10, f. 27

4 Max Müller                      *Veda*

Chips 69

“In the hymns of the Veda we see man left to himself to solve the riddle of this world. We see him crawling along like a creature of the earth with all the desires & weakness of his animal nature. Food wealth & power a large family & a long life are the theme of his daily prayers. But he begins to lift up his eyes ... He gives names to all the

powers of nature, & after he has called the fire Agni, the sunlight Indra, the storms Maruts & the dawn Maruts<sup>4</sup>, they all seem to grow naturally into beings like himself, nay, greater than himself. He invokes them he praises then he worships them. But still with all these gods around him beneath him & above him the early poet seems ill at rest within himself. There too, in his own breast, he has discovered a power that wants a name, a power nearer to him than all the gods of nature a power that is never mute when he prays, never absent when he fears & trembles. It seems to inspire his prayers & yet to listen to them: it seems to live in him & yet to support him

M 4/10, f. 28

5 Max Müller

*Veda*

& all around him. The only name he can find for this mysterious power is Bráhmān [he says in a note that Brahman does not occur in this use in the Rigveda] for Brahman means originally force, will, wish & the propulsive power of creation. But this impersonal bráhmān too as soon as it is named grows into something strange & divine. It ends by being one of many gods one of the great triad worshipped to the present day. And still the thought within him has no real name; that power which is nothing but itself, which supports the gods, the heavens, & every living being floats before his mind conceived but not expressed. At last he calls it Atman for Âtman originally breath or spirit comes to mean Self & Self alone – Self whether divine or human, Self whether creating or suffering, Self whether one or all, but always Self independent & free ... Atman remained always far from myths & worship. The idea of the Atman a self like a pure crystal was

M 4/10, f. 29

6 Max Müller

*Veda*

p 71

too transparent for poetry; & therefore was handed over to philosophy which afterwards polished & turned & watched it as the medium through which all is seen & in which all is reflected & known.

But philosophy is the later than the Veda.

... In the Veda then we can study a theogony of which that of Hesiod is but the last chapter.”

pp 73 &c The various portions of the Veda written at periods extending over at least several centuries.

57 – 60

In judging the habit of forcibly closing the lives of widows relatives &c we must recollect that while to some natives as the Persians & Jews death is an object of horror, to others “Death is a passage from one life to another.

No misgiving has ever entered their minds as to the possible extinction of existence. And at the first call of the priest – nay sometimes from a mere selfish yearning after a better life – they are ready to put an end to their existence upon earth. Feelings of this kind can hardly be called convictions arrived at by the individual. They are national peculiarities & they exercise an irreversible sway over all who belong to the same nation.”

### **(b) Max Müller on Buddhism**

M 4/10, f. 31

1. Max Müller

*Buddhism*

Chips.

p 217. The dates given for Buddha vary from about 2420 <to> - 450 BC. But it appears [p. 205] that some time in the fifth or sixth century B.C. is the most probable date. M. fixes on 477 B.C. as best guess at the date of his death \*he gives apparently good reasons for rejecting ordinary date 543\*. For M is convinced that [pp 218 – 220] he did live: that this much at least of the ordinary story of his life (which he gives at length) is true – he was not a Brahman, but of the second or royal caste. Meditative he turned to Brahman philosophy for aid: he found a selfish organisation that would let people approach God only through it: he declared war on it, assumed the privileges of a Brahman, travelled about mixing freely with all classes. The social side of his gospel was more important than the \*philosophical\*, the ethical than the metaphysical. Buddhism was due to Brahmanism. He gives a full account therefore of it.

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M 4/10, f. 30

pp 243 – 95

**Brahmanism**

Brahmanical philosophy & ceremonial grew gradually from a common basis in the Vedas. The one was as broad as the other was narrow. "There was no event which might have moved the heart to a spontaneous outpouring which was not regulated by priestly formulas. Every prayer was proscribed, every sacrifice determined. Every god had his share..... the danger of offending their pride was represented in such vivid colours that no one would venture to approach their presence without... a well paid staff of masters of divine ceremonies.

It was impossible to avoid sin without the help of the Brahmans. They alone knew the food that might properly be eaten... the dress that might properly be worn. They alone could tell what god should be invoked, what sacrifice be offered, & the slightest mistake of pronunciation, the slightest neglect about clarified butter, or of the length of the ladle in which it was to be offered might heap destruction on the head of the unassisted worshipper."

"Yet on the other side the same people were allowed to indulge in the most unrestrained freedom of thought, & in the schools of

M 4/10, f. 32

<their philosophy the very names of their gods was never mentioned. Their existence was neither denied nor asserted.... to offer sacrifices to them with the hope of rewards so far from being meritorious, was considered as dangerous to that emancipation to which a clear perception of philosophical truth was to lead the patient student."

[This is not clear: considered by whom? By the Brahmans as a body, or by the philosophical few? He gives three systems of philosophy current but his account is not clear]><sup>5</sup>

220 Well Buddha "declared the sacrifices by which the Brahmans made their living not only useless but sinful, instead of severe penance or excommunications inflicted by the Brahmans sometimes for the most trifling offences, he required only public confession of sins & a promise to sin no more."

247 "To the people at large Buddhism was a moral & religious not a philosophical reform. Yet even its morality had a metaphysical tinge.... Virtue is to be practiced but happiness is to be shunned, the only reward for virtue is that it subdues the passions & thus prepares the human mind for that knowledge which is to end in complete

M 4/10, f. 33

annihilation". [He is here taking happiness in a narrow sense, the sense in which it is used in popular attacks upon Epicureanism]

"These are the commandments which Buddha imposes upon his disciples.

1. 1. Not to kill
2. 2. Not to steal
3. 3. Not to commit adultery
4. 4. Not to lie
5. 5. Not to get intoxicated
6. 6. To abstain from unseasonable meals
7. 7. To abstain from public spectacles.
8. 8. To abstain from euphoria in dresses
9. 9. Not to have a large bed
10. 10. Not to receive silver or gold."<sup>6</sup>

221. Here the first five of the above are called "the five great commandments. Besides these "every shade of vice hypocrisy, anger, pride, suspicion, greediness, gossiping, cruelty to animals is guarded against by special precepts. Among the virtues recommended we find not only reverence of parents, care for children, submission to authority, gratitude, moderation in time of prosperity,

M 4/10, f. 34

5 Max Müller's Chips I

*Buddhism*

submission in time of trial, equanimity in all times, but virtues unknown in any heathen system of morality, such as the duty of forgiving insults & not rewarding evil with evil. All virtues we are told spring from.... charity & love”

248 The Buddhist pilgrims had to sleep sitting on a mat in the open forest, to live by begging, to have one meal in the morning, none in the afternoon. Alms were given to them liberally, & the Brahman shrines suffered.

249 “Fortunately the millions who embraced the doctrines of Buddha & were saved by it from the depths of barbarism brutality & selfishness were unable to fathom his metaphysical doctrines. With them this Nirvâna to which they aspired, became only a relative deliverance from the miseries of the human life; nay it took the bright colours of a paradise to be regained by the pious worshiper of Buddha. ....

Buddha's Four verities .. The first asserts the existence of pain; the second asserts that the cause of pain lies in sin;

M 4/10, f. 35

6 Max Müller's Chips

*Buddhism*

the third asserts that pain may cease by Nirvâna; the fourth shews the way that leads to Nirvâna. This <faith> \*way\* consists in <four> 8 things.

right faith (orthodoxy)

.... judgment (logic)

... language (veracity)

.... purpose (honesty)

.... practice (religious life)

.... obedience (lawful life)

..... memory

.... meditation.”

p 250

But M is convinced that nirvâna meant for Buddha something more awful than is here implied. The highest aim is to escape pain. Life is nothing but misery. We must shun existence: this cannot be done by death, because of metempsychosis. What is then the cause of existence? Attachment arising from desire; this supposes perceptions – this the senses – these distinction. “Now this <conception> \*distinction\* itself is the result of conception or ideas, but these ideas

M 4/10, f. 36

7 Max Müller's Chips

*Buddhism*

so far from being as in the Greek philosophy the true cause & everlasting form of the Absolute, are here represented as mere illusions, the effects of ignorance. Ignorance therefore is really the primary cause of all that <exists> seems to exist. To know that ignorance as the root of all evil is the same as to destroy it. .... Let us watch the last moments of Buddha as described by his disciples. He enters into the first stage of meditation when he feels freedom from sin, acquires a knowledge of the nature of all things & has no desire except that of Nirvâna. But he still feels pleasure, he even uses his discriminating & reasoning powers ... In the second stage... nothing remains but a desire after Nirvâna and a general feeling of satisfaction arising from his intellectual perfection. That satisfaction also is extinguished in the third stage. Indifference succeeds, but there is still self-consciousness & a certain amount of physical pleasure.

M 4/10, f. 37

8 Max Müller's Chips

*Buddhism*

These last remnants are destroyed in the fourth stage; memory fades away, all pleasure & pain are gone & the doors of Nirvana are now open <to> \*before\* him. ... After the four stages of meditation are passed” [these are described in the same way in Nepal & Ceylon – and are therefore part of the original Buddhism] “the Buddha [& every being is to become a Buddha] enters into the infinity of space, then into the infinity of intelligence & thence he passes into the region of nothing. But even here there is no rest – there is still some thing left in which he

rejoices. This also must be destroyed, and it is destroyed in the fourth & last region, where there is not even the idea of a nothing left & where there is complete rest, undisturbed by what is nothing or by what is not nothing”.

p. 255

223. “Though the date of Buddha is still liable to small chronological oscillations, his place in the intellectual annals of India is henceforth definitively marked. Buddhism became the State religion of India at the time of Asoka & Asoka was the grandson of Kandragupta the contemporary of Seleucus Nicator”.

M 4/10, f. 38

<(Separation from the world)> *Buddhism*

In the Catena of Buddhist scriptures pp 252 – 257 are given <four> 5 external means for obtaining Nirvana taken from a modern monastery They are well worth reading: so is the preceding account of the meaning of Nirvana

It is represented as the absence of production & annihilation.

It has affinities with the conceptions which represent Substance as the divine, & forms of substance as the temporary & mortal. Thus it is allied to Spinozas position: & in a less direct way to the belief of Plato that the immortals lived amid unchangeable ideals.

The five means imply i moral precepts ii & iii rigidly ascetic precepts v intellectual precepts, which iv enjoins

(1) to desist from all share in ruling or governing a people so as not to incur any responsibility connected with the mode of discharging the trust

(2) to desist from all worldly friendships & all social or family connexions (3,4) not to follow any trade or art or profession.

There follows n with pp 17-21 of consecutive MS

### (c) Max Müller on the Parsis

M 4/10, f. 22

Max Müller *Parsis*

Divided now into two schools – conservative retaining the manners & customs of barbarism & superstition (including some very dirty ones) - & the liberal who as regards their outward behaviour approximate closely to Europeans.

Of course they do not worship fire: but they have for it an unreasoning reverence similar to that which some Christians have for the cross [or for the bible i.e. the <physical> material book]

They preach their religion but very slightly to their children: what little instruction they do give seems to be mainly intended as a preservation against Christianity. But they merely say Ormuzd is God, Zoroaster his prophet. They give no reasons for believing that Zoroaster was his prophet. They protest against certain people (the Christian missionaries presumably) who with the purpose of obtaining power go about saying “we will intercede for you with God”.

They insist only on purity of thought word and deed: they say therefore that their religion is for all the world. Max Müller argues that they are likely to become Christians. Their total number is but 105,500. A memory of a great past endears them to

M 4/10, f. 23

2 Max Müller *Parsis*

their religion. They detest above all things Brahmanism. Yet in the Zend-Avesta there are, M. thinks, clear traces of the influence of the Vedas. The modern Parsis if not the Zend Avesta: do not trouble themselves to explain difficulties.

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M. discusses at length a learned attempt to prove that the Vedas the Zend Avesta & <the> Genesis have a common source. As regards Genesis at least he thinks the argument is utterly insufficient: but he does not think it improbable that Zoroaster & Abraham met & discussed religious topics.

//

He gives no hint of the date of Zoroaster.

Meyer Convers Lex : says a “long time before Cyrus”

/  
Meyer also mentions that truth is specially insisted on in the precepts of the Zend Avesta.  
/

### 3. Bridges on China and Confucious

#### Introduction

Seven folios of notes taken from J. H. Bridges' essay 'England and China', in R. Congreve, (ed.), *International Policy, Essays on the Foreign Relations of England* (London: Chapman and Hall, 1866), pp. 327-448.

The seven folios comprise two numbered folios headed *Confucious*, and five numbered folios headed *China*.

The script is throughout the same rapid but deliberate hand.

#### Text

M 4/10, f. 15

Bridges *Confucious*

551 – 480

The son of a small prince. Had great administrative powers & sometimes helped this or that potentate out of difficulties by advise <of> or, in one case, acting as his prime minister. He spent a great part of his term in travelling & in teaching formally as well as by a quasi-Socratic dialogue.

“The doctrine that he preached contained no watchword of battle. No germ of faction strife.” He emphatically repeated that he taught only ancient truths long rejected & forgotten: He did not write any book: he only compiled ancient traditions. But we get a clear idea of his moral system from the works of his immediate disciples. He believed in the goodness of the human heart: He conceives a principle in it which coincided with the will of heaven & if we only sought for it we should find it there. It might be quenched but it could be found by the philosopher and rekindled. One of his

M 4/10, f. 16

2 Bridges *Confucious*

disciples says “The doctrine of our master is simply this: to have an upright heart and to love your neighbour as yourself”

Again a disciple asked “Is there a word in the language which of itself is enough as a guide for our life? The wise man answered: there is the word *chou* of which the meaning is this “What we would should not be done to us, let us not do to others.”

M 4/10, f. 17

Bridges *China*

We have a continuous narrative of political social & material progress in China for 4000 years, with the exception of two periods of anarchy

In the 8<sup>th</sup> Century B.C. China was limited to the area of the two existing provinces of chau si & chin si

551 – 480 *Confucius*

In third century feudal system of practically independent chieftains gave place to empire under Thsin chi, who built the great wall

Anarchy between third & sixth century AD

Many changes of Dynasty.

Tartars have three times seized the throne: but as a consequence Chinese civilization has penetrated into Tartary: not Tartar barbarism into China.

In the thirteenth century a Mongol dynasty. Peking built. Confucianism encouraged; though the Khans

were Buddhists.

1650 – 1796 Mantchou (Tartar) Dynasty: enlightened & devoted to interests of civilisation.

M 4/10, f. 18

2 Bridges *China*

China has steadily progressed: but why so much more slowly than the West?

∴ i. She developed always all sides of human nature simultaneously & therefore none rapidly & thoroughly. In Greece intellectual life was predominant. <Science> \*truth\* was pursued there for its own sake: but in the East science & metaphysics were pursued only so far as they had a bearing upon practical life. In Rome the intellect was concentrated on legislation & government. In Greece and Rome the emotional side of human nature was neglected: “the due proportion of its functions was disturbed. The inevitable result was social instability - anarchy & corruption.

Then in the medieval period the intellect was subordinated to the highest emotions. But feeling “was rendered not merely preponderant but tyrannical”. Hence a reaction: the last “five centuries ... have been a time of anarchy & in the strictest sense of the term of irreligion.” ... “The only permanent mode in which harmony can be restored is one which shall restore the intellect to the service of the heart & yet shall leave that service free” ... “China offers us the unaltered type of primitive health. The West exhibits the disease & suffering which marks the evolution to a higher type not yet realised.”

M 4/10, f. 19

3 Bridges *China*

∴ ii The Western world has broken up its scientific problems: worked at abstract questions. China has treated them always in the Concrete. Mere records of the past changes of the weather will not lead us to foretell future states of weather. Records of astronomical facts will not lead except in the most imperfect & uncertain way to prediction of eclipses. Records of the past history of man will not enable us to prophesy his future. .... In China speculation is altogether of the concrete kind. We find vast collections of eclipses earthquakes & other astronomical & terrestrial facts, of natural & of political history .... But it amounts simply to an accumulation of facts. Of the abstract science of geometry mechanics of true chemistry, the Chinese have no conception. They are intellectually far less prepared for it than the Hindoos. And the ground work of this peculiar mental state has been already described. It has been shewn that the Chinese religion is an elaborate development of Fetishism, that is, of the worship of concrete objects. The

M 4/10, f. 20

4 Bridges *China*

Chinese have never really passed into the Polytheistic stage, which is the first great effort of the human mind towards the formation of abstract conceptions. For polytheism is the conception of a separate power directing each class of phenomena. The student of Greek Roman & Hindoo mythology finds a special deity for almost every abstract term. But the very language of China is deficient to an extraordinary degree in abstract terms, & such abstraction as are absolutely necessary for the business of life are expressed for the most part by bold metaphors.” “Their highest intellectual efforts have been bestowed on ethics” “Chinese ethics only share the defects of empiricism and incoherence with the ethical systems of Western Europe.

M 4/10, f. 21

*China*

Its religion concrete i.e. positivistic & fatalistic. The higher classes i.e. the ones who alone could understand Buddhist metaphysics, were Confucians

## 4. Israelite Currency

### Introduction

One folio, in a rapid but deliberate hand, referring to Leviticus and Deuteronomy.

**Text**

M 4/12, f.83

< Jews > \* Israelites \*  
& currency of

They were prohibited (Levit xxv 35-36 Deuteron xxiii, 20) from taking interest from Israelites: but they might from the stranger.

Nehemiah at the building of the second temple <abolished> made the people hold a general meeting & abolish all debts that <had were> of interest – not debts of capital - & also return all the usury they had received.

## 5. Grote on Solon's Reforms

### Introduction

One folio, in a rapid but deliberate hand, taken from G. Grote, *History of Greece* (London: John Murray, 1851-56) [SJCL]. The number 1 at the top left hand of the folio suggests further folios, but no such further folios have yet been identified.

**Text**

M 4/11, f.75

Grote

Solons  
Economic Legislation

1.

Prohibited exports of raw produce except oil.

//

Encouraged citizens to learn a trade & to teach one to their sons

//

Introduced power of testamentary bequest

//

Forbad the sale of sisters or daughters by brothers or fathers

//

Forbad extravagant expenses – particularly incurred by women - at funerals

//

instituted graduated income tax.

//

His Seisachtheia cancelled debts made on security of land or person & forbad such in future: deprived creditor of power to imprison enslave or extract work from his debtors: &c : in order to benefit the debtor who was not very poor he debased the standard.

//

The dislike to <usury> \*interest\* retained by the philosophers after it had left the common people.

//

The rate of interest was very high : two % per month in on perfect security.

## 6. Lecky on Epicureanism

### Introduction

One folio, taken from W. E. H. Lecky, *History of European Morals from Augustus to Charlemagne* (2 vols., London 1869) [ML]. The hand is compressed, deliberate and moderately fair.

**Text**

M 4/10, f. 14

(Lecky)

Epicureanism

Epicureanism – principle of disintegration – shrewd placid unsentimental latitudinarianism of Epicurus - the

distinctions the Epicureans had drawn between more or less refined pleasures ... were unintelligible to the Romans who knew how to sacrifice enjoyment, but who when pursuing it gravitated naturally to the coarser forms, – logically compatible with a very high degree of virtue, - but its practical tendency was to vice. The famous paradox ‘that the sage could be happy even in the bull of Phalaris’ comes from the writings not of Zeno but of Epicurus. Though the Stoics adopted and greatly admired it.

Lecky Hist : Eur: Mor : I. 185 &c

## Part II: Comparative History & Medievalism

1. Character, Characteristics, and Cities [8ff]
2. Maine (and others) [21ff]
3. Medievalism [5ff]
4. Lecky on Usury [4ff]

### 1. Character, Characteristics, and Cities

#### Introduction

Eight folios; written in a rapid but deliberate hand. I have been unable to identify the source (nor decipher the name of the author) used in folio 77. The other four sources are as follows:

1. J. K. Bluntschli, *Geschichte des allgemeinen Statsrechts und der Politik: seit dem sechzehnten Jahrhundert bis zur Gegenwart* (2 volumes, München: J. G. Cotta, 1864) <sup>2</sup>
2. H. C. Carey, *Principles of Social Science* (3 vols., Philadelphia, 1868 and 1869) [ML]
3. E. A. Freeman, *Comparative Politics. Six Lectures read before the Royal Institution in January and February, 1873. With The Unity of History. The Rede Lecture read before the University of Cambridge, May 29, 1872* (London: Macmillan and Co, 1873) [SJCL]
4. G. Grote, *History of Greece* (London: John Murray, 1851-56) [SJCL]

#### Text

M 4/11, f.82

Grote .

Greek  
Character

Hist Ch LX. In accounting for defeat of Athenian fleet by Syracusan “both in the Athenian & Syracusan characters the pressure of necessity was less potent as a stimulant to action than hopeful confidence & elation with the idea of a flood tide yet mounting.

In the character of some other races, the Jews for instance, the comparative force of the motives appears to be reversed.”

//

Ch LXII In accounting for the submission of the Athenians to the power of the 400: he points out that all popular speakers were assassinated, thus the assembly heard only one side & was carried away & *then* the constitutional instincts of the Athenians held them in sway. “In no part of the world has this sentiment of constitutional duty, & submission to the vote of the legal majority been more keenly & universally felt than it was among the citizens of democratical Athens.”

M 4/11, f.81

Freeman

Greek  
Cities

They grew out of villages.

But in one respect they were eminently conservative. They knew nothing of gradual incorporation. “The city, the state, the commonwealth was an assemblage of γέννη of gentes of natural or artificial families. Citizenship was thus a matter of hereditary descent; mere residence even to the ninth or tenth generation could never confer the civic

franchise. Once or twice in the history of a city when the original citizens had shrunk up into a narrow oligarchy a large admission of the unfranchised classes to the rights of citizenship might change the commonwealth from an oligarchy into a democracy... But there was no way by which the necessary extinction of citizen families could be, as matter of ordinary course, supplied by new blood.” Hence never any Greek nation.

Comp Politics pp. 90-91

M 4/11, f.80

Freeman

*Roman*  
character

The noblest and the vilest deeds of the true Roman went hand in hand. To Rome, to the State, to the whole of which he was but an unit he was ready at any moment to sacrifice himself and all that he had; & ... to Rome he would sacrifice the laws of eternal piotia,<sup>8</sup> the rights of other nations & commonwealths, the very faith and treaties & what we should deem to be the truth & honor of Rome herself.

Comparative Politics p. 80

M 4/11, f.77

Jhue

Vol II

*Roman*  
*Character*

Public spirit with which they made sacrifices to relieve pecuniary distress of the state & sumptuary law which they endured ch VIII pp 290-1

Dishonesty of Roman contractors. <They> Some of them offered to supply army & to wait for payment till the end of the war provided the State would insure them against shipwrecks, They then sent out worthless vessels laden with rubbish scuttled them & obtained full compensation for valuable ships ch VIII pp 319-20

M 4/11 f.2

*Roman*  
character

Bluntschli Alg St: I 47,  
ib 57 – 8

Gregory VII himself the son of a carpenter said “Rome has become great under the Pagans & under the Christians “*quo non tam generis aut patriae nobilitatem quam animi et corporis virtutes perpenadendas <adj> adjudicaverit*”<sup>9</sup> Q<sup>d</sup> in Bluntschli Alg: St I 111

The Roman Aristocracy not a privileged order as regards private right: only politically.  
After a time the aristocracy of birth was superseded by an aristocracy of high office.

Ib I 114 – 117

M 4/14, f.18

Freeman

*Teutonic*  
Characteristics

“The whole history of our land & race will be read backwards if we fail always to bear in mind that the lower unit is not a division of the greater; but that the greater is an aggregate of the smaller. The hundred is made up of villages, marks, *gemeinden*, what we choose to call the lowest unit; the *shire*; the gau, the pagus, is made up of hundreds; & in the same sort the pagus is not a division of the kingdom, but the kingdom is an aggregate of <the> pagi.”

Comp Politics p119

M 4/14, f.17

Freeman

*Teutonic*  
Cities

Much to be learnt from history of Teutonic cities.

/

They differed from Greek cities in this: that the Greek were in fact & theory sovereign .. “But in Germany the free cities & their dominions were always mere oases in a land of princely rule; & even in Italy the city commonwealths never wholly covered the whole surface of the land & never wholly threw off the formal superiority of the King of Italy & Emperor of the Romans.”

Comp. Politics p 132  
u.p.

M 4/14, f. 16

*English*  
Characteristics  
in relation to their Norman origin

“In no part of Europe was the <possession> \*division\* of land so complete, or its possession so secure as in Normandy at & before the date by <sup>10</sup> the Norman Conquest of England; & in none consequently was the power of local attraction so fully exhibited” Carey Soc Sc 49  
He gives no authority but proceeds directly to quote Laing in support of the observations of the early civilisation of the Normans.

## 2. Maine (and others)

### Introduction

Twenty-one folios, which I have placed under six subcategories: 1 lone folio on the ‘Greek Intellect’, 3 folios on issues relating to property, primogeniture and protection, 6 folios on allodial tenures, 7 on Feudalism, 3 on law, and 1 lone folio from Marx’s *Kapital*.

The bulk of the notes are taken from Maine’s *Ancient Law*, although Maine’s *Village-communities* is also used, as well as a number of other sources. The full bibliography for this section is as follows:

1. J. Austin, *Lectures on jurisprudence: or the philosophy of positive thought* (3<sup>rd</sup> edition, London: John Murray, 1869) [SJCL]
2. H. Hallam, *View of the state of Europe during the middle ages*, (10<sup>th</sup> edition, London: John Murray, 1853) [SJCL]
3. H. S. Maine, *Ancient Law: its connection with the early history of society, and its relation to modern ideas* (3<sup>rd</sup> edition, London, 1866) [ML]
4. H. S. Maine, *Village-communities in the East and West* (London: John Murray, 1871) [SJCL]
5. K. Marx, *Das Kapital. Kritik der politischen Oekonomie* (Book I, Hamburg, Verlag von Otto Meissner, 1867) [UL]
6. J. S. Mill, *Dissertations and Discussions, reprinted chiefly from the Edinburgh and Westminster Reviews* (Vol. III, London, 1867) [ML]
7. R. Morier, ‘Agrarian Legislation of Prussia during the Present Century’, in *Systems of Land Tenure in Various Countries, A series of essays published under the sanction of the Cobden Club*, (London, 1870), pp. 279-327 [ML]
8. A. Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, with notes by J. R. McCulloch, 5<sup>th</sup> edition (London: Ward, Lock, 1871) [UL]

The script is rapid and deliberate, except in those folios headed *Property*, *Feudalism* and *Law*, where the hand is compressed.

On the folio numbered 97 in the long essay on the history of civilisation (M 4/12, f.26) Marshall, following a discussion of Morier’s account of the transition to Feudalism, notes: “Parallel passages in Maine – see *Feudalism*”, and gives page references to Maine’s *Ancient Law* and *Village Communities* that, in the main, accord with those given below.

## Text

M 4/11, f.78

(Maine) *Greek*  
Intellect v: Roman

The Greek intellect with all its mobility & elasticity, was quite unable to restrain itself within the strait waistcoat of a legal formula, & if we may judge them by the popular courts at Athens, of whose working we possess accurate knowledge, the Greek tribunals exhibited the strongest tendency to confound law & fact .....

A community which never hesitated to relax rules of written law whenever they stood in the way of an ideally perfect decision on the facts of particular cases, would only, if it bequeathed any body of judicial principles to posterity, bequeath one consisting of the ideas of right & wrong which happened to be prevalent at the time.

Anc: Law ch IV pp. 75-6

## Property, Primogeniture & Protection

M 4/14, f.3

Early History of *Property*  
(Maine)

The ordinary account occupancy converted into property things which were originally *res nullius*. But this assumes existence of idea of property. Moreover there is a difficulty as to what occupancy was. The "true basis seems to be not an instinctive bias towards the institution of property; but a presumption arising out of the long continuance of that institution that *everything ought to have an owner*."

A.L. p 257

Moreover roman law deals with individual, archaic with families. "Our studies in the law of persons seemed to show us the Family expanding into the Agnatic group of kinsmen, then the Agnatic group dissolving into separate households; lastly, the household supplanted by the individual; & it is now suggested that each step in the change corresponds to an analogous alteration in the nature of Ownership."

Ib 270

"The history of Roman property Law is the history of the assimilation of *Res Mancipi* to *Res Nec Mancipi*. (*Res Mancipi* were land on Italian soil, slaves, beasts of burden p 277)<sup>11</sup> The history of Property on the European Continent is the history of the subversion of the feudalised law of land by the Romanised law of moveables; & though the history of ownership in England is not nearly completed, it is visibly the law of personalty which threatens to absorb & annihilate the law of realty."

Ib 273

See also 283<sup>12</sup>

M 4/11, f.76

*Protection*

The distinction between the <things> *\*Res\* Mancipi* & <things> *\*Res\* Nec Mancipi* is the type of a class of distinctions to which civilisation is much indebted distinctions which run through the whole mass of commodities placing a few of them in a class by themselves & relegating the others to a lower category. The inferior kinds of property are first from disdain & disregard released from the perplexed ceremonies in which primitive law delights, & then afterwards in another state of intellectual progress the simple methods of transfer & recovery which have come into use serve as a model which condemns by its convenience & implicitly cumbrous solemnities inherited from ancient days.

Maine Ancient Law, p. 279

See *Utilitarianism* (in relation to law)<sup>13</sup>

M 4/13, f.6

*Primogeniture*

Its origin in the feudal tenures only partially due to convenience of sovereign; more to insecurity accompanying fall of Carlovingian empire

Main Anc. L. 235

A striking passage of the effect of the law of descent upon the character of nations in De Tocqueville Dem in Am<sup>14</sup>  
I ch III

### Allodial Tenures

M 4/13, f.7

(Maine)

Allodial  
Tenures

A.L. pp 228 ....

Among the Hindoos the instant a son is born he acquires a vested right in his fathers property, which cannot be sold without recognition of his joint ownership. On the sons' attaining a full age, he can sometimes compel a partition of the estate even against the consent of his parent. .. On such partition taking place the father has no advantage over his children except that he has two shares instead of one. The ancient law of the German tribes was exceedingly similar. The *allod* or domain of the family was the joint property of the father & sons.

M 4/13, f.8

(Maine)

Allodial  
Tenures

It does not however appear to have been habitually divided even at the death of the parent. .... All this points very clearly to the absolutely equal division of assets among the male children at death as the practice most usual with society at the period when family dependency is in the first stages of disintegration. Here then emerges the historical difficulty of Primogeniture. .... Primogeniture is known to have had its origin in the *benefices* or beneficiary gifts of the invading chieftains. These benefices which were

M 4/13, f.9

(Maine)

Allodial  
Tenures

which were<sup>15</sup> occasionally conferred by the earlier immigrant kings but were distributed on a great scale by Charlemagne were grants of Roman provincial land to be holden by the beneficiary on condition of military service. The *allodial* proprietors do not seem to have followed their sovereign on distant or difficult enterprises, and all the grander expeditions of the Frankish chiefs & of Charlemagne were accomplished with forces composed of soldiers either personally dependent on the royal house or compelled to leave it by the tenure of their land

M 4/13, f.11

(Maine)

Allodial  
Tenures

The benefices were not however at first in any sense hereditary. .... The allods were wholly absorbed by the fiefs. The great allodial proprietors transformed themselves into feudal lords by conditional alienations of portions of their lands to dependents, the smaller sought an escape from the oppression of that terrible time by surrendering their property to some powerful<sup>16</sup> & receiving it back at his hands on condition of service in his wars.

M 4/13, f.12

A Smith \_

Allods

"It is a mistake to suppose that those territorial jurisdictions took their origin from the feudal law. Not only the highest jurisdictions both civil & criminal, but the power of levying troops, of coining money, & even that of making by-laws for the government of their own people were all rights possessed allodially by the great proprietors of land several centuries before even the name of the feudal law was known in Europe. .... The introduction of the feudal law so far from extending may be regarded as an attempt to moderate the authority of

the great feudal<sup>17</sup> lords.”

W of N III ch iv, u.p.<sup>18</sup>

M 4/13, f.10

*Allod*

Morier in his paper in Cobd: Club: Essays on Land says it comes from all & ô t & means complete property [conf Kleinod<sup>19</sup>]

But Guizot & others as quoted by Hallam (Middle Ages *Stud* 65) says it comes from *loos*. One account is that *sous* was term generally applied to the lands assigned by Romans to soldiers after the conquest & allod only a translation of *sous*.

### **Feudalism**

M 4/13, f.15

Maine

*Feudalism*

F. law a compound of archaic barbarian usage with Roman law; no other explanation of it is tenable or even intelligible.

.... True archaic communities are held together not by express rules, but by sentiment, or, we should perhaps say, by instinct; & new comers into the brotherhood are brought within the range of this instinct by falsely pretending to share in the blood relationship from which it naturally springs. But the earliest feudal communities were neither bound together by mere sentiment nor recruited by a fiction. .... The relation of the lord to the vassals had originally been settled by express engagement, & a person

M 4/13, f.16

(Maine)

*Feudalism*

2

wishing to engraft himself upon the brotherhood by *commendation* or *infeudation* came to a distinct understanding as to the conditions on which he was to be admitted.

... Feudal societies were much more durable & much more various than true archaic communities; more durable because express rules are less destructible than instinctive habits [particularly when aided by instinctive habits. A. M.] & more various because the contracts on which they were founded were adjusted to the minutest circumstances & wishes of the persons who surrendered or granted away their lands.

Anc Law: Ch IX, p 366

M 4/13, f.17

*Feudalism*

The real origin of Feudalism to be found in *agri vectigales*, the right to which becomes ultimately known by the name of Emphyteusis. Special instances were the *agri limitrophi* along the Rhine & the Danube: when military service was substituted for the <fixed> quit-rent. The quasi-domestic relations concerning guardianship dowry &c were probably borrowed fr patron & client.

Maine A.L. pp 300-4

//

“F. effectually controlled by express customs the exorbitant theoretical pretensions of most European sovereigns.” Its decay brought out these into prominence.

lb 345

//

“F. a compound of archaic barbaric usage with Roman law. The earliest forms of the feudal period differ in little from the ordinary associations in which the men of primitive civilisations are everywhere seen united. A Fief was an organically complete brotherhood of associates whose proprietary & personal rights were inextricably blended together” .... But ... True archaic communities are held together not by express rules, but by sentiment, or, we

should perhaps say, by instinct. ... The tie which united the earliest feudal communities was contract. .... Hence

M 4/13, f.18

*Feudalism*

2

they were much more durable & much more various.” Thus it is an error to attribute variety of modern Europe to “exuberant & erratic genius of the Germanic tribes”<sup>20</sup>

Ib 364-6

Maine VC 143 &c

How the manor rose out of the mark

i gradual predominance of one individual partly in consequence of war  
ii influence of Roman law giving precision to relations which under purely Teutonic social conditions may have been in a high degree vague & indefinite” p 147

Feudalism not an unmixed evil. regularity of <tenure> service in “that free Socage tenure for which the English villagers most probably exchanged their allodial ownership”. “The great novelties which the transition from one form of property to another produced were the new authority over the waste which the lord acquired (and which was connected with the transfer to him of the half judicial half legislative powers of the collective community) and the emancipations of the lord within his own domains from the fetters of obligatory agricultural custom” This a great point with reference to villaining wastes

Ib 162

M 4/13, f.19

*Feudalism*

3

“An intricate net of usage bound down the allodial owner as it now binds down the Indian peasant to a fixed routine of cultivation”.

Maine VC. 164

“When western Europe was undergoing feudalisation it was full of enthralled classes.” the change from the despotism of peasants to that of the feudal lord an advantage to these

Ib 166

“It is substantially true that where the manorial groups substituted for the old village groups survive there are no rackrents. What is sometimes called the feudal feeling has much in common with the old feeling of brotherhood which forbade hard bargains, though like much else it has passed from the collective community to the modern representative of its autocratic chieftain.”

Ib 199

Derivation of feodum from fihu old German for Vieh: beneficial possession right of pasture &c as tenant, the all-od [ô = treasure conf Kleinod] being wholly his [but see *Allod*]

This is but one of many interesting points in Morier’s paper on Germany in Cobden Club Essays on Land<sup>21</sup>

M 4/13, f.13

*Feudalism in France*

Influence & character of French Lawyers

Main Anc Law 80-6

//

“One effect of that mixture of refined roman law with primitive barbaric usage which is known to us by the deceptive name of feudalism was to revive many features of archaic jurisprudence which had died out of the roman world.

Ib 135

M 4/13, f.14

*Feudalism in England*

The Roman Cession form differed from English collusive recovery in that it “substituted a mode of transfer necessarily unimpeachable for one which too often miscarried” while the latter aimed to “remove complications already introduced into the title.”

Main A.L. 289

## Law

M 4/13, f.3

1.

*Law*  
Characteristics of English

Unknown to any but experts. Since being “traditional customary” it has long passed the point at w<sup>h</sup> it peculiarly adapted (as is the old Indian) for being generally known, & is complicated in consequences of multiform social activity. Remedy to be sought in scientific jurisprudence laying down general propositions.

Maine V. C. 60  
q.v.

(This is necessary as a means to self government) a.m.

Complication of English Testamentary law suggestion to control the power of will making in order to obviate difficulties which arise.

Should government publish information on the subject?

Ib 170-1

“If you would know the English law you must know all the details w<sup>h</sup> make up the mass. For it has none of those large coherent principles which are a sure *index* to details; & since details are infinite it is manifest that no man, let his industry be what it may, can compass the whole system. Consequently the knowledge of an English lawyer is nothing but a beggarly account of scraps & fragments”

Austin Quoted by Mill Dissert III 218

M 4/13, f.4

1.

*Law*  
Characteristics of English

“The needless distinction between real & personal property, which is nearly the largest of the distinctions that the law of England contains is one prolific source of the unrivalled intricacy of the system, & of its matchless confusion & obscurity”

On this ground it will compare very unfavourably with Roman law where this distinction is absent.

Austin lect I 59-60

M 4/13, f.5

*Law*  
Influence of on national growth

accounts for distinction between Greek & Roman churches

Maine A.L. 356

//

pursuit of it the favourite occupation of a young nation

Ib. 361

//

Reformation weakened Aristotelianism & strengthened legalism – the religious system of Calvin & of the Arminians markedly legal

Ib 364

## Marx

M 4/14, f.19

*Japan*

mit seiner rein feudalen Organisation des Grundeigentums und seiner entwickelten Kleinbauernwirtschaft liefert ein viel treueres Bild des europäischen Mittelalters als unsre sämtlichen ... Geschichtsbücher.<sup>22</sup>

Carl Marx I 702

### 3. Medievalism and Monasticism

#### Introduction

Eight folios: 6 headed 'Medievalism', 1 from Maine on 'Middle Ages', and 1 from Scherr on 'Monasticism'. The hand is rapid but deliberate in all folios. The bibliography for this section is as follows:

1. J. H. Bridges, *France under Richelieu and Colbert*, (Edinburgh: Edmonston & Douglas, 1866)
2. W. E. H. Lecky, *History of European Morals from Augustus to Charlemagne* (2 vols., London 1869) [ML]
3. H. S. Maine, *Ancient Law: its connection with the early history of society, and its relation to modern ideas* (3<sup>rd</sup> edition, London, 1866) [ML]
4. J. Scherr, *Deutsche Kultur - und sittengeschichte* (Leipzig, 1866) [ML]
5. W. Roscher, *Grundlagen der Nationalökonomie* (Stuttgart, 1854)

On the folio numbered 92 of Marshall's long essay on the history of civilisation is a discussion of Bridges' view that the Medieval Catholic Church made tolerable the condition of the labouring classes under Feudalism. This discussion is followed by the note: "See *Medievalism* for this and a theory by Lecky that monasteries are no more the sources of light than bright clouds are. Similarly Buckle on Spain. A defence of Monasticism Scherr p. 69" (see M 4/12, f.14). No notes from Buckle on Spain have been identified.

#### Text

M 4/13, f.51

1 (Lecky) *Medievalism*

We are not infrequently reminded that almost all the men of genius during several centuries were great theologians & we are asked to conceive the more than Egyptians darkness which would have prevailed, had the catholic theology which produced them not existed. This judgment resembles that of the prisoner in a familiar passage of Cicero who having spent his entire life in a dark dungeon & knowing the light of day only from a single ray which passed through a fissure in the wall, inferred that if the wall were removed, as the fissure would no longer exist, all light would be excluded. Medieval Catholicism discouraged & repressed secular studies in every way, while it conferred a monopoly of wealth & honour

M 4/13, f.52

b2 (Lecky) *Medievalism*

& power upon the distinguished theologian. Very naturally therefore it attracted into the path of theology the genius that would have existed without it, but would have been displayed in other forms.

Eur Mor II 222

Further on he quotes fr Sismondi Lors de l'établissement du christianisme la religion avait essentiellement consisté dans l'enseignement moral; elle avoit exercé les coeurs & les âmes par la recherche de ce qui étoit vraimeant beau vraiment honnête. Au cinquieme siecle on l'avoit attachée surtout a l'orthodoxie, au septieme on l'avoit réduit à la bienfaisance envers les couvens. <sup>23</sup>

M 4/13, f.53

(Lecky) *Medievalism*

The evils which sprang from the later period of Catholic ascendancy were not a <evil> \*accident\* or a perversion but a normal & necessary consequence of the previous despotism. The principles which were imposed on the medieval world & which were the conditions of so much of its distinctive excellences were of such a nature that they claimed to be final & could not possibly be discarded without a struggle & a convulsion. ...

There are some poisons which before they kill men allay pain & diffuse a soothing sensation through the frame. We may recognize the hour of enjoyment they procure, but we must not separate it from the price at which it was purchased.

Eur Morals II 224

Hence he objects to "isolating the former period & making it the theme of unqualified eulogy"

M 4/13, f.54

Bridges

*Medievalism*

It was by the power of the Catholic Church antagonising & balancing the rude force of feudalism that the condition of the labouring class was made tolerable. For the first time in the history of the world the moral law was separated from the civil law, the law of conscience & duty from the law of <magisterial> judicial ordinance & magisterial compulsion, the law persuading the will from the law compelling the action. The Church wholly separate from & superior to the State binding the feudal States of Europe into a vast commonwealth a spiritual democracy, when intellectual & moral force took precedence of birth office

M 4/13, f.55

2

Bridges

*Medievalism*

wealth & regal power: such was the ideal partially realised between the tenth & thirteenth century. Partially realised I say, for at no time was the separation between church & State so perfect as the theory of Catholicism indicated. Fully to have attained its high ends the power of the church should have been not less than it was but greater.

France under Richelieu & Colbert p 11  
Conf Cromwell (Bridges)<sup>24</sup>

M 4/13, f.67

*Medievalism*

[Pigrum et iners videtur sudore acquirere quod possis sanguine parare, ist der Grundsatz jedes fruheren Mittelalters.](#)<sup>25</sup>

Roscher Pol Nat Ec § 41

M 4/13, f.64

(Maine)

*Middle Ages*

There was [in the middle ages] a great enthusiasm for generalisation & a curious admiration for all general propositions, & consequently in the field of law, an involuntary reverence for every general formula which seemed to embrace & sum up a number of the insulated rules which were practised as usages in the various localities.

Anc: Law Ch IV p 81

M 4/13, f.62

*Monasticism*

[Durch die ganze Geschichte der christlichen Welt geht ein tiefer Zwiespalt zwischen der Idee des Christenthums und der offiziellen Kirche hindurch. Die Möncherei machte in ihrer Art den Versuch diesen Gegensatz aufzuheben.](#)<sup>26</sup>

Scherr S&K, p 69 unipol

Die Franziskaner beherrschten als etipe und populare Seelsorger die Gemüther des Volkes, dem sie in Freude und Leid nahestanden; die Dominikaner bevornundeten die Wissenschaft, und ihre Institute wachten über die Reinerhaltung des Katholischen Dogmas, und haben als Inquisitoren und Ketzerfolger ihrem order verrufen gemacht.<sup>27</sup>

Ib p 38

## 4. Lecky on Usury

### Introduction

4 folios, taken from W. E. H. Lecky, *History of the Rise and Influence of the Spirit of Rationalism in Europe*

(2 volumes, London, Longman, Green, Longman, Roberts & Green, 1865). The hand is compressed, deliberate and moderately fair.

### **Text**

M 4/11, f.79

*Usury*  
History of

Some data in Buckle's chapter on the influence of physical laws

//

Also in Grote's Greece vol III pp. 110 &c  
Small Edn

M 4/11, f.83

1 Lecky *Usury*

Rat II pp 253&c

The strong feeling against it in early centuries was due partly to high rate of interest caused by insecurity, due partly to rebellions and other less violent agitations for <providing> relieving debtors from their claims & by prodigiously severe laws against debtors.

The church condemned it as unnatural: they followed Aristotle: money is barren. It was condemned absolutely; without reference to the rate: 3% was as bad as 40%: & to take usury from the rich was as bad as to take it from the poor.

But there were evasions practical if unorganized which were tolerated. "A man might deprive himself for ever of a certain sum and receive instead an annual revenue: for in this case he was not receiving the price of a loan, as a loan implies the ultimate restitution of that which had been lent."

Again (see p 258) a partial tolerance was awarded to a man who asked another to replace the loss which he could shew directly followed to himself from withdrawing from his own business a certain sum in order to lend it to this other.

M 4/11, f.84

2 Lecky *Usury*

In the twelfth century the Greek church admitted the lawfulness of usury but it was not admitted in the Latin till the Reformation. But kings who wanted to borrow for their armies did not come to enforce penal laws more than they could help. Moreover lending on usury was the great crime: not borrowing: & the Jews were the chief lenders. But towards end of 11<sup>th</sup> century usury became common among Xtains in spite of the Councils. The opposition thus raised was one of the causes that made men question the infallibility of the Church. The Church <said that it> doubted about the Jews. Their wealth being founded on usury it was of course right to take it from them when convenient: but it was not certain that they *need* be interfered with: they were damned any-how: a few mortal sins more or less made no difference \*276 note\*. Lecky thinks that the rate of interest varied between 25 & 40 percent "In 1430 the Florentines in order to reduce the current rate admitted the Jews into their city whence they had been previously excluded on the condition of their lending money as low as 20 per cent."

p. 247 note

M 4/11, f.85

3 Lecky *Usury*

p 269. Catherine of Russia tried to lower interest from 6 to 5%. In consequence it rose to 7%. Louis XV "raised it from 5 to ten when intending to reduce it to four."

//

Lecky does not sufficiently distinguish the positions which maintain that money is barren & that it is contrary to the interest of the state to guarantee to a creditor a high rate of interest. The former was overthrown long ago. It is not right to speak of it as overthrown by Bentham whose chief work was to lay stress on the argument that new undertakings are in general specially beneficial to society even when not <to> so to individuals: & that if high interest is checked people will have an additional motive for running along in the old grooves. [A. Smith objects to 8 or 10%: this is a mistake clearly: but it remains open whether 30 or 40% should be capable of being claimed at law]

# Part III: Medieval and Tudor England

1. Background Notes
  1. a. 1350 (7ff)
  - b. 1450-1550 (4ff)
1. The Enclosures
  - a. Nasse on the Enclosures [6ff]
  - b. Thomas Moore [1f]
2. Labor [24ff]
3. Brentano on the Gilds [29ff]

## 1. Background Notes

### (a) c. 1350: England around the time of the Black Death

#### Introduction

Seven folios from four sources:

1. E. S. Creasy, *History of England: from the earliest to the present time*, (five volumes; Marshall uses the first two volumes only: volume 1: *The history of England to the end of the reign of Edward I*; volume 2: *The history during the early and middle ages*), (London: James Walton, 1869, 1870) [SJCL]
2. T. R. Malthus, *The Principles of Political Economy considered with a view to their practical application* (London, 1820) [UL]
3. T. Rogers, *A History of Agriculture and Prices in England from the year after the Oxford Parliament (1253) to the Commencement of the Continental War (1793) compiled entirely from original and contemporaneous records* (5 vols., Oxford, 1866) [ML]
4. F. Seebohm, 'The Black Death and its place in History, Parts I and II', *Fortnightly Review*, 2, 1865: 149-160; 4, 1866: 268-279

The folio headed *Black Death* and the folio which refers to Malthus' *Principles* are in a rapid if deliberate hand. All the other folios are covered by a compressed fair hand.

On the page numbered 145 in Marshall's long essay on the history of civilisation (M 4/12, f.82) is a reference "See *Staple Towns*". This is possibly a reference to M 4/13, f.75 below (this folio is simply headed *Staple*).

#### Text

M 4/14, f.41

*Black Death*

Seebohm says population of Eastern Counties due to partial migration of ye two great trades of Flanders - salt fish & cloth. These were the chief requisites of Catholic feudalism. The sea encroached on Holland he says : & the prohibitions put, as a war measure, on export of English wool were effective to disquiet the Flemings at home. Many of them came over here.

/

Seebohms conclusion as to the size of population of England is got from inferences from a number of scattered facts. He makes great use of Poll tax returns Rogers disputes his results: arguing that the food raised would not have been sufficient for so great a population. Seebohm answers. Rogers does not: argument unworthy of being worked out. They are not clear as they stand.<sup>28</sup>

M 4/13, f.75  
1329.

*Staple*

Creasy says that in 1329 the rulers of the kingdom, which means of course Mortimer, considered that the restrictions about staples were injurious and free trade was allowed after the tenor of the great Charta. Twenty five years later came the statute fixing the Staple towns in England.

M 4/14, f.24

1349. 50

Malthus P.E. p 271 states that just before the plague the wages of laborers were probably about 1 ½ d or 2 d. Wheat had been 5.4 d a quarter i.e. 2d a peck : but in the few years preceding the plague it rose to 11.9 d a quarter or 4 ¼ a peck.

M 4/14, f.25

1350. about

*Regrators*

“The rules against “regrators” with which the civic legislation of those times abounds, are, I think, rightly considered to have been mainly designed to repress and weaken the class of little retail tradesmen (who generally rise out of the most industrious and frugal rank of journeymen), and to keep all the profits of trade in the hands of the craftsmen of the guilds, who were all to some extent capitalists, even by virtue of their share in the guild property.” (Creasy vol 2. p. 240)

M 4/14, f.26

1350

*Metayers*

“Most of the lands of Merton College were let. The wages of labor, despite the restrictions put on them by the statute of 1350, rose so considerably that it was no longer profitable to hold and cultivate by bailiff. Corn, it is true, was dear, for between the years 1349 and 1376 the average price of wheat was only three times below 5s 6d, whereas in the next twenty five years it was sixteen times below that amount. But even<sup>29</sup> the high prices of wheat were insufficient to compensate the enhanced cost of labor, and the college let its lands on lease, at the best possible terms.

These leases were peculiar. The stock was let with the land, either in whole or in part, the rents being in money or corn. The tenant on the expiry of his lease was bound to return the same amount of seed corn and of live and dead stock as he received, or their estimated value. The leasing of cattle and sheep on these terms was very common before the plague. One of the most familiar resources of the lord is the firma vaccarum. Cows were let at 5s a year.

For instance, in a lease of the college lands at Farley, granted in 1360, the tenant took two horses and seven affri, valued at ten shillings each; a bull reckoned at 10s; ten cows, each at 11s; four oxen each at 18/5, twenty four quarters of wheat at 6/8, six and half of sprig at 4s; three quarters and one bushel of frumentum vescosum at 4s; three quarters three and half bushels of barley at 4/8; two of peas and two of vetches, at three shillings and fourpence; and forty nine and half of oats at two shillings.

This kind of tenure, closely analogous to the métairie of South-Western Europe, prevailed for a short time in England. It is abandoned about 50 years after its commencement, not indeed simultaneously, but generally, after such an interval from its having been adopted on any estate.”

(Rogers Hist. Ag. Vol. 1. pp. 24-5)

M 4/14, f.27

1351

*Taxes*

Froissart writing at this date says: “The King of England must consult his subjects, and obtain their consent, before he concludes a treaty of peace or of war with a foreign power.” Again, Not that the King can levy a tax on his people; no – the people neither could or would suffer it. He has certain ordained and agreed assessments on the staple of wool; and it is out of this that the King is supplied, over and above his own rents and revenues: and, when he makes war, they double that assessment for him. England is the best guarded country in the world.” (Creasy vol 2. page 219)

Creasy goes on “The wool exported from this country paid a duty to the Crown, the rate of which was greatly increased, especially after the outbreak of the second war with France. Duties were levied also on tin, and on hide that were exported.” (p. 220)

“The primary method of granting the Crown a supply by way of talliage, was by authorising the sovereign to levy the value of a defined proportion of each subject’s moveable property, which proportion was sometimes as low as

a thirtieth, sometimes as high as a seventh part.” (page 220-1). Afterwards, commissioners were chosen to assess the property of each town (1335) and the inhabitants assessed themselves. “The sections were to include the value of crops, cattle, merchandize, goods, furniture, money, jewels, wearing apparel, and personalty of every kind, with very few reservations.” (Creasy vol 2. p 221) Poll tax later.

M 4/14, f.28  
1363

*Engrossers*

An act of parliament orders “that merchants shall deal or use, but in one kind or sort of merchandize only.” The preamble says “those merchants called grossiers had by covin and by orders made among themselves in their fraternities or guilds, engrossed all sorts of wares whereby they suddenly raised their prices and they laid up other merchandize till they became dear etc – Wherefore every merchant hereafter shall choose which kind of wares or merchandize he shall deal in, and shall deal in no other etc.”

It likewise directs the master artificers and handicraftsmen to use but one trade or mystery, which they should choose and adhere to, under penalty. Yet women artificers ..... were still indulged in their former latitude. The first part of the law was totally repealed in the following year, but, that relating to handicraftsmen remained till Elizabeth. V.

In the same year a number of curious sumptuary laws were made which also are quoted by Anderson <sup>30</sup> vol 1. pp. 348-9

## **(b) 1450-1550: Tudor England**

### **Introduction**

Four discrete folios, all composed in a compressed, deliberate and moderately fair hand. Two of the folios do not name sources, and although the other two do contain references, I have been unable to trace the sources.

### **Text**

M 4/14, f.37  
1484

Foreign merchants had bought sorted wool and left the refuse. This is stated in the preamble of a slate as the reason for their being no price manufacturers in England and men are forbidden to sell to strangers, cleaned wool. (Pick St bk 5, Chap IV)

M 4/14, f.42

*Usury*

1487.

The King, Henry VIII desires Parliament “to repress the bastard and barren employment of monies to usury and unlawful exchanges that they may be as their natural use is turned upon commerce and lawful and loyal trading”

1546.

“An act against usury practically repealed previous laws against usury but forbad a higher interest than 10 per cent per annum.

M 4/14, f.44  
1517.

A sermon preached by D<sup>r</sup> Bell a canon of the Spital <pra> was the main cause of a riot against foreigners “He showed” says the chronicler how this land was given to Englishmen; and as birds defend their nest so ought Englishmen to cherish and maintain themselves, and to hurt and aggrieve aliens for respect of their commonwealth.” It was called down by irritation at the wealth of foreign merchants and artificers resident in England. It might have led to a general massacre, had not Wolsey taken prompt measures.

M 4/13, f.66

*Gold*

About 1520 gold falls  $\frac{1}{3}$  in value : Spain said to bring over 80,000,000, of gold livres annually. Portugal, 60,000,000. Gold in circulation in 15<sup>th</sup> century amounted to 400,000,000, of guildors. In 16<sup>th</sup> to 1600,00,000 in 17<sup>th</sup> to 320,000,000 in 18<sup>th</sup> to 4750,000,000.

O.C.J 58.  $\alpha$ .

## 2. The Enclosures

### (a) Nasse on the Enclosures

#### Introduction

Six folios from E. Nasse, *On the Agricultural Community of the Middle Ages and Inclosures of the Sixteenth Century in England*, translated from the German by Colonel H. A. Ouvry (late 9<sup>th</sup> Lancers), (London: Macmillan & Co, 1871) [ML]

The hand is rapid but deliberate throughout.

These notes from Nasse 1871 appear to have been used in the notes on *Labor* transcribed below (e.g. the discussion of the transition to a money economy).

#### Text

M 4/13, f.56

*Nasse*

p. 8

According to Marshall in counties in which at his time <the> cultivation in common still existed, it was mainly the small properties among which it was found: large properties in general enclosed

p 10. Marshall thinks that nearly all England was originally uninclosed.

p 11. Poor land often \*un\*enclosed when rich land enclosed: of course arable land often private property while meadows were public

p 12. Regulations about drawing lots &c

p 14. “Kemble has sought to prove that the constitution of \*the\* Anglo Saxon Commonwealth was founded upon mark associations” – but he has not done it

pp 15-16 The homestead – the “tun” was enclosed when nothing else was.

pp 10-30

Anglo-Saxon tenures

pp 36 – villeins their position & gradual emancipation

M 4/13, f. 57

2

*Nasse*

p 65. In England landlords had a temptation to get rid of tenants, <the incre> an increased number of whom would diminish the <waste> enjoyment of waste land which the <land> owner of the manor had. If I understand him rightly, the lord of the manor had right over the whole of the waste land except in so far as the <of> other dwellers in it had right to cut wood &c: while in many parts of Germany “the pasture & wood was the common property of all the commoners, & all households had their share in the right use of it” & accordingly “the share of the tenants in the common land was a motive for the lords of the manor not to get rid of them”. This is not clear to me. But I suppose all members of the community to have rights & it is in the interest of the lord of the manor to increase the number of tenants of the demesne land.

M 4/13, f. 58

3.

p 67 The growth of money-economy in England.

This developed more easily there than elsewhere in consequence of (i) physical circumstances (ii) strength of state authority <(iii)> notably of police arrangements: (iii) freedom of inland trade from duties kings staple &c.

p 68. Adæratations in England in 13<sup>th</sup> century<sup>31</sup>

p 69. But these were in general “ad voluntatem domini” Rogers not improbably conjectures that the insurrection of 1381 was due to attempt of lords to enforce the old <labor> services which in consequence of the plague had become much more valuable than their adæratio

pp 70-1 Suppressed position of villani in 14<sup>th</sup> century: details.

pp 72-2 copyholders

p 73 After plague tenure with inventories: these improperly called meteyer tenures by Rogers.

M 4/13, f. 59

Nasse

4

p 73 High wages after plague rendered farming unprofitable - increased number of <peasant proprietors> \*small\* freeholders, who paid a fixed quit rent (Quietus redditus the tenant quit from all other service.

Blackstone). The turning point was somewhere in the fifteenth century. After this the number of small holdings diminished. As soon as labor dues were abolished it became easier for the lord to collect his due from a small than from a large number of tenants.

p 75 \*q.v.\* Details of two laws in 1488 against enclosures others in 1513 & 1533.

78 Somerset as protector \*issued a commission. John Hales, a member of it,\* while approving enclosures condemns the increase of sheep farmers. This commission failed lamentably through aristocratic influences.

80 Insurrection in 1549 for removal of enclosures.

M 4/13, f. 60

Nasse

5

80. qv Brief concepits<sup>32</sup>

83 Tusser in favour of enclosures

85-6 The field grass husbandry can be made as inexpensive as is desired by lengthening the pasture time, though it is admirably adapted for transition.

86. For the field grass system a moist climate is required to enable the grass to grow quickly. The permanent division which the Anglo Saxons introduced Nasse thinks would not have been likely to grow up spontaneously in England. The principal portions of Germany in <it> \*which the field grass system\* has prevailed on waste lands.

87. \*q.v.\* Another condition is of course a good market for <li> animal produce as compared with that for corn. at the end of the <sixteenth ce> Middle Ages & still more in the sixteenth century the consumption of foreign & London – produced commodities was on the increase. This gave rise to an increased demand for the commodities which we exported. Moreover a change in prices partly <nomi> real owing to discovery of America partly nominal owing to tamperings with the coin shewed themselves

M 4/13, f. 61

Nasse

first with regard to such commodities.

90-4. Such strong permanent inducements to enclose & consolidate could have no successful opposition offered to them by imperfect laws or half formed customs. Copyholders in particular suffered. It was difficult to prove the <exis> customs on which their titles rested & easy to forfeit the titles by the omission of some duty. There were complaints that the new possessors of the lands of monasteries were careless of the titles granted by the monasteries to the copy holders on their estates.

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## (b) Sir Thomas More

### Introduction

One folio from H. Taylor, 'Sir Thomas Moore on the Politics of Today', *Fortnightly Review*, 8, 1870, 125-137

The hand is compressed and fair.

### Text

M 4/14, f.43

1576

(Sir Thomas More.)

*Enclosures.*

“There is a great number of noblemen that are themselves as idle as drones, that subsist on other men’s labor – on the labor of their tenants, whom, to raise their revenues, they pare to the quick. This, indeed, is the only instance of their frugality, for, in all other things, they are prodigal, even to the beggaring of themselves. ... To the increase of pasture, by which your sheep, which are naturally mild and easily kept in order, may be said now to devour men, and unpeople not only villages, but towns; for, wherever it is found that the sheep of any soil yield a softer and richer wool than ordinary, there the nobility and gentry, and even these holy men, the abbots, not content with the old rents which their farms yielded, nor thinking it enough that they, living at their ease, do no good to the public, resolve to do it hurt instead of good. They stop the course of agriculture, destroying houses and towns, reserving only the churches, and enclose grounds that they may lodge their sheep in them. ... When an insatiable wretch, who is a plague to his country, resolves to enclose many thousands of acres of land, the owners, as well as tenants are turned out of their possessions, by tricks, or by main force, or, being wearied out, with ill-usage, they are forced to sell them”.

(Helen Taylor in *Fortnightly*. Aug 1870)

## 3. Labor

### Introduction

Twenty-four folios: 1 headed 'lecture', 2 headed 'villeins', 4 headed '1066-1349', 5 headed '1348-81', 6 leaves which cover the period 1381 to 1562', 6 headed either '1500-1601' or '1550-1601'; taken from eight sources:

1. L. Brentano, *On the History and Development of Gilds, and the Origin of Trade-Unions*, London: Trübner & Co, 1870 [SJCL]
2. E. S. Creasy, *History of England: from the earliest to the present time*, (five volumes; Marshall uses the first two volumes only: volume 1: *The history of England to the end of the reign of Edward I*; volume 2: *The history during the early and middle ages*), (London: James Walton, 1869, 1870) [SJCL]
3. F. M. Eden, *The State of the Poor* (volume one, London, 1797) [UL]
4. C. Knight, *A History of England* (8 volumes, London : Bradbury, Evans, 1862-7)
5. E. Nasse, *On the Agricultural Community of the Middle Ages and Inclosures of the Sixteenth Century in England*, translated from the German by Colonel H. A. Ouvry (late 9<sup>th</sup> Lancers), (London: Macmillan & Co, 1871) [ML]
6. E. Nasse, 'Village Communities', *The Contemporary Review*, 1872, 19, 739-751
7. T. Rogers, *A History of Agriculture and Prices in England from the year after the Oxford*

*Parliament (1253) to the Commencement of the Continental War (1793) compiled entirely from original and contemporaneous records (5 vols., Oxford, 1866) [ML]*

8. F. Seebohm, 'The Black Death and its place in History, Parts I and II', *Fortnightly Review*, 2, 1865, 149-160, 268-279

The first folio (f.63) would appear to have been written as an introductory lecture, and the hand is compressed, deliberate and moderately fair; in all subsequent folios the hand is compressed and fair.

### **Text**

M 4/13, f.63

*Labor Hist of  
Lecture*

Growth of English commercialism. Various causes some given before: adæration early. tendency when it had once set in promoted pasture & thence commercial farming.

//

Though arable land was private property "in villages in which every farmer had not the necessary team for a plough - generally eight oxen or horses - the teams of several were united & the ploughing was done in common."

Nasse in Cont: Rev: May 72 p 743

//

Indian husbandry less cooperation because pastures less common: still, he quotes from Maine, rules about cultivation minute.

Ib 743

//

Greater tendency of Germanic than of Slavonic to individual property. Russian habit of redistribution.

Ib 742

//

Nasse (Ib 746) quotes from Campbell about villages that "lumped the individual assessments & divided the total in their own way among the members of the community."<sup>33</sup>

M 4/13, f.68

*Villeins*

Villeins regardant attached to the land.

"But the lord of the estate might, if he pleased sever any villein from the land, and sell him as a *villein in gros* by a separate deed. The lord could exact whatever service he pleased from his villeins. He might beat, imprison, or otherwise chastise them at his pleasure, so that he did not deprive them of life or limb. A villein could acquire no property for himself. All his earnings belonged to his lord. This miserable condition of servitude descended from father to child; and if a villein belonging to one lord married a *neif* (as a female villein was termed) belonging to another lord, the children of such a marriage were equally divided between the two masters." But "not only might the lord at any time enfranchise his villein, who thereupon immediately acquired a freeman's full rights, but the law was vigilant and astute to infer and to preserve emancipation, from any act of the lord towards the villein, which appeared to recognise him as free. If, also, a villein could escape to a chartered town, and remain in it for a year and a day without claim from his lord, he was thereby released from villeinage. And in all disputes whether a man was villein or not the law always presumed that he was free, until the contrary was distinctly proved."

(Creasy History Vol 1. p. 324)

M 4/13, f.69

*Villeins*

Their position & gradual emancipation. Nasse pp 36 - Improvement in position of in fourteenth century Ib 70-1

See also Knight History of Eng II 13

Eden calls attention to the fourth clause of Magna Charter. The guardian of a minor is not to waste his men and goods. He considers this a proof that there were then villeins who were regarded as chattels. "Long after the year 1225, they were considered as a saleable commodity, of which I shall only mention a few instances, from many that may be found among our ancient historians. In 1283, a slave and his family were sold, by the Abbot of Dunstable, for 13s 4d; in 1333, a lord granted to a chantry several messuages, together with the bodies of eight natives (villeins regardant) dwelling there, with all their chattels and offspring; and 1339, we meet with an instance of a gift of a nief (or female slave), with all her family, and all that she possessed, or might subsequently acquire: as the conveyance does not mention land, she was probably a villain in gross." (I. page 35).

M 4/14, f.20

1066-1349

1

<The Conquest to the Plagues>

*Labor*

Eden thinks the state of the great body of the people immediately after the Conquest to have been very bad. He talks much about villeins, making a great distinction villeins gros and villeins regardant. (p. 29.) He quotes Adam Smith's observation, that the severity with which they were treated caused them to take into the towns any little wealth that they had accumulated and that this kept the country poor.

//

Nasse, after giving a long account of the Anglo-Saxon tenures, insisting that nothing but the homestead the tun was enclosed, giving account of Saxon communities and of the various tenures by which portions of land over which the king had control, the "cyningnes folcland" could be converted into "bocland" says that after the conquest peoples' land almost entirely disappeared, it was converted either into bocland or into the private land of the King.

He considers that the villeins regardant are the only villeins proper, they alone are called villeini in Domesday Book, the others are called servi.

He gives (p.40) a detailed account of their services. Their state was bad the services demanded from them were heavy but although these were not fixed by law they were generally rendered perfectly definite by custom. In spite of their oppressions they made such progress that in isolated cases they formed the

M 4/14, f.21

1066-1349

2

whole of the manor land. (p.46.)

//

< In Edward II reign> Nasse has found no trustworthy accounts of the twofield system, though Rogers declares that the threefield system was not common. "The land was generally ploughed twice.. half the arable estate, as a rule, laying fallow.. occasionally the sheep of a neighbouring farm were hired to lay on the ground and so fertilize it." (History of Agr, I. p.15)

//

The lord of the manor was proprietor of the whole of the land, the tenants had only a right of use to the lands that they held separately and to those over which they had rights in common. (p. 58) After giving an account of the various forms of the right of pasture, he points out how the interest of the landlord might well be to diminish the number of his tenants. But in the latter centuries of the Middle Ages a very important change entered into this, upon the whole, well constituted agrarian system, which thus far we have endeavoured to describe.

A money economy (geldwirthschaft), as opposed to the medieval barter in kind, became established in England at a much earlier period, and far more extensively, than in the great inland countries of the European continent. The principal reason of this was the same<sup>34</sup>

M 4/14, f.22

1066-1349

3

which as far back as classical antiquity had caused a proportionately active traffic, and gave such an impulse to a

*Labor*

money economy, viz. the superior communication by sea and its inlets, which ran deep into the land, and in the many slowly-flowing rivers, which were on \*that\* account more easily navigable. No inaccessible mountains, no extensive tracts of land, separated the different parts of England from one another, or from the emporiums of external trade on the sea coast. Added to this, the power of the State was greater since the Norman Conquest than in continental countries, and the more efficient general police system for preserving the public peace afforded a security for trading which at that time was only exceptional on the continent; and finally, the freedom of the inland trade was not disturbed by duties, kings' staple, and other impediments of a similar nature, as in Germany and elsewhere. Hence, it is easy to conceive that early in the Middle Ages the natural economical unity of the manor and community – of villages had already begun to be dissolved.

In the first place a change was worked in the personal service of the vassals,

M 4/14, f.23  
1066-1349

*Labor*

4.

as we have seen, the original cultivation of the manor lands depended, by converting it into a fixed money rent. In the thirteenth century we already find adærations on the properties of the monastery of Worcester and S. Paul's Church partially carried out." (pp. 67-8) "Manifestly these valuations for services (adæratio) could only hold good by the mutual consent of those who paid and those who claimed the services, and the addition "ad voluntatem domini", shows that the lord of the soil retained expressly the right to return to the personal services.

However, as it generally happens under such circumstances, the new deviation from the old idea of law became fixed and established, and a one-sided return to the old condition – which besides as a rule with the progressing money economy was still more against the interest of both parties – was found to be unfair and indeed unjust.

Rogers, it is true, conjectures that the scarcity of labor which arose in consequence of the great plague, and the high rate of daily wages, led the lords of the manor to attempt to compel the old services, and that on account of this the insurrection in the year 1381 rose. It does not appear that these conjectures rest on any valid foundation, but they are not wholly improbable."

(page 69)

M 4/14, f. 29  
1348-81

*Labor*

I. <5>

Seebohm in the "fortnightly" for Sep 1<sup>st</sup> 1865 gives the facts on which he bases his conclusion that the population of England before the Plague was about 5,000,000, that was as much as it was 300 years afterwards, but that just after the plague it was not more than 2 ½ millions.

He accounts for the rapid growth of the population up to that time, mainly by immigration, steady, but silent, of Germans, Scandinavians and Flemings. This in particular accounts for the populousness of the Eastern Counties; "the traveller in the North East of Norfolk, where the wool manufactures first took root, cannot fail to see the marks of a much larger population than exists there now."

Here are some of his facts; in each case he assumes a man to have lived, unless it can be proved that he died; - Of the 141 priests in the West Riding, 96 died; in the East out of 95, 60 died; in Nottingham out of 126, 65 died. In Norwich 57,374 died "besides religious and beggars. In 1377 according to the poll tax census there were 6000 inhabitants.

50,000 bodies were buried in the cemetery of the Charter House which was not consecrated until the others were full. Probably 100,000 died in London. According to the poll tax census in 1377 there were 37,000 inhabitants.

M 4/14, f.30  
1348-81

*Labor*

2.

Seebohm in "fortnightly" for Sep 15. 1865, examines the effects of the plague.

The contemporary chronicler Knyghton says "The lords and proprietors of land were obliged to relinquish their claims for rent less their tenants should quit the land on account of the scarcity and dearness of labor. Some gave up half the rent, some more, some less, for one, two, or three years" He argues that the fall in the price of land

estimated in terms of silver, which set in at this time, was permanent. (See *Statistics*).<sup>35</sup> He finds a proof that the rise in the wages of labor was permanent in the long series of acts of restraint it.

Brentano says (p 78) “As the clergy took advantage of the small number of those who could say masses and prayers in conformity with the intentions of the faithful in order to increase their fees, and as merchants and tradesmen took advantage of the small supply of wares to raise their prices, in like manner the workmen endeavoured to use, for a general rise in wages, the distress into which the propertied class had been plunged through the universal dearth of labor.” Ordinances were directed, not against the laborers

M 4/14, f. 31  
1348-81

Labor

3  
alone, but against all those who in a “spirit of usury would enrich themselves from the general misery.” He considers it unfair to regard <them> the “statutes of laborers” as a policy contrived for the oppression of the laborer. “The regulations of wages were but the expression of the general policy of the Middle Ages, which considered that the first duty of the State was to protect the weak against the strong, which not only knew of rights, but also of duties of the individual towards society, and condemned as usury every attempt to take unseemly advantage of the temporary distress of one’s neighbour. From this policy sprang indeed all medieval price-regulations of wares, and especially of provisions, as well as the severe punishments and the frequent and well meant though mistaken, prohibitions of the engrossing of goods to re-sell them at higher prices in times of dearth.” (p. 78). The more important facts in regard to the statutes regulating wages are given in the ordinary histories (see Creasy vol 2 pp 274-280). But Eden gives the following days wages as fixed by the ordinances of 1349. Mowers were to be paid 5<sup>d</sup> the acre or 5<sup>d</sup> a day, weeders and haymakers paid 1<sup>d</sup>.

M 4/14, f.32  
1348-81

Labor

4

a master carpenter, by the day	..	3d	}	
a master mason . do	.....	4	}	
other carpenters . do	.....	2	}	From
other masons . do	.....	3	}	Easter
their servants . do	.....	1 ½	}	To
Tilers . do	.....	3	}	Michelmas
their knaves . do	.....	1 ½	}	without
Other coverers of fern or straw. Do	....	3	}	Diet
their knaves . do	.....	1 ½	}	
Plasters and other workers			}	
of mud walls . do	.....	3	}	
their knaves . do	.....	1 ½	}	

In 1388, says Eden “the wages of laborers in husbandry were regulated according to the following proportions<sup>36</sup> :

	s d	
a bailiff was allowed for his annual salary	13..4	} and clothing once a year
a master hind	10..0	} Without
a carter	10.0	} Clothing
a shepherd	10..0	} or any
an oxherd or cowherd	6..8	} Other
a swineheard, a female laborer or deye	6..0	} prerequisite
a plough driver	7..0	}

Seebohm mentions that in 1377, if not previously, the villeins like the \*free\* <three> laborers were in a real strike, a complaint was made to parliament that “villeins and

M 4/14, f.33  
1348-81

*Labor*

5

tenants in villeinage had combined together to defraud their lords of their rights, that the stewards of lords were unable to enforce the usual and accustomed service, that in consequence the corn remained on the ground uncut, that to support their rebellious practices they had subscribed large sums of money for mutual defence.”

Rogers History of Agr: 1. ch 15, gives a very large number of statistics of wages of laborers between 1259 and 1400. He classifies these in different ways. It may be deduced from his last table that the average silver wages for threshers of all kinds, for the interval 1357 to 1400 was greater than that for the interval 1260 to 1350, in the ratio 1.55 to 1: <that> for reapers this ratio is 1.7 to 1: for artizans 1.8 to 1.

M 4/14, f.34  
1381

*Labor*

A poll tax was levied in 1379. “In principle this was an income tax, touching every person from the Duke, who was assessed at £6..13s 4d, to the laborer, who was called upon to pay 4d for himself and wife. ... The poll-tax of the next year was essentially different. It was a tax of “three groats of every person of the kingdom, male or female, of the age of fifteen, of what state and condition so-ever, except beggars; the sufficient people in every town to contribute to the assistance of the “less able”, so as none paid above sixty groats including himself and wife.” Eden says “In the insurrection of Wat Tyler, in the year 1381 (which notwithstanding the atrocities it produced, seems to have materially contributed to the extinction of servitude,) the language of the rebels, who were chiefly villeins, bespeaks men not unacquainted with the essential requisites of rational liberty. The <sup>37</sup> required from the king, the abolition of slavery, freedom of commerce in market towns, without tolls or imposts, and a fixed rent on lands, instead of services due by villeinage.” Everything demanded was granted, but revoked a fortnight after the quelling of the rebellion. Froude regards Wycliffe as responsible. But he appears only to have said that the clergy were trustees of national property could have no right to it, if they did not perform their duties properly.

M 4/14, f.35  
1388

*Labor*

A number of ordinances. No one who has worked at agriculture till the age of 12 is to become an artisan. In harvest, artisans are to help in the fields.

A glimpse of a poor law. “Beggars impotent to serve are to abide in the cities or towns where they dwell; but if the people of these citizens or towns ‘may not suffice to feed them’ they may go to other towns within the hundred, rape, or wapentake, also the place where they were born.

No servant or laborer is to travel without license from a justice of the peace. Wages of laborers were regulated. - <A bailiff> “In the following year, 1389, in consequence of an application of the Commons, that the statutes of laborers should be enforced, it was enacted that ‘forasmuch as a man cannot put the price of corn, and other vituals, in certain, the justices should, at Easter and Michelmas, according to the price of provisions, make proclamation, how much every mason, carpenter or other workman, and laborers, should receive by the day, as well in harvest, as at other times of the year, with or without meat and drink.’ (The above from Knight and Eden.)

M 4/14, f.36  
1400 to 1500

*Labor*

In 1444, justices were again told to regulate wages, but besides an upper limit was assigned to the wages of agricultural laborers. Eden lays undue stress on the fact that this limit is \*much\* higher than the rates ordained in 1388.

The whole century is full of ordinances about apparel.

1450, an income tax on a graduated scale, those holding in frank tenement from 20s to £20, paying 6s in £; from

£20 to £200, 12d; and all upwards 2s.

1463. First law against importation of corn; allowed only when more than 6s 8d per quarter.

1488. Two laws against enclosures, given at length by Nasse pp 75 etc.

1495. Wages regulated again; details in Eden, act repealed in the next year.

M 4/14, f.38

1500-<50> 1601

*Labor*

1

1513 and 1533, laws about enclosures, see Nasse page 76.

1531. The whip added to the stocks which had been the punishment of vagabonds ever since 1384.

1536. <Whipping> \*Branding\* added. Ordered at the same time that public officers shall maintain the poor, by means partly of compulsory contributions from the inhabitants, partly by alms which the clergy were to seek to obtain. A poor parish was to be helped out by its rich neighbours.

1547. "The statute of Vagabonds." Any person loitering for 3 days, or leaving work when engaged shall be branded in the breast with the letter V, shall be the slave of his prosecutor for two years, who shall give him bread and water <(> cause him to work by beating, chaining or otherwise." If he runs away he is to be branded on the forehead with S and becomes his slave for life. The severity at this time appears to have been fearful. In 1572, there were more than 60,000 prisoners for debt. Henry VIII is said to have put to death 72,000 thieves.

1540. The formidable insurrection in the Eastern counties in this "year had principally for its object the removal of enclosures". Nasse. p. 80. But a needless aggravation

M 4/24, f.7

1500-1601<sup>38</sup>

*Labor*

2.

of the evils of the peasantry had been occasioned by the debasing of the coin. On 1543, 1/6 alloy was introduced; in 1545 the coin was half alloy; in 1546 2/3. Moreover, the size of the penny was diminished. After a time they had tried to modify the evil by "calling down" the coin.

### *The Growth of the Poor Laws.*

"The tentative process by which the principle of a public contribution for the relief of the poor was first approached, is distinctly set forth in the Statute of 1551-2. A book was to be kept for each parish; in which should be entered the names of the householders and of the impotent poor. In Whitsun week two or more persons <were> \*are\*<sup>39</sup> to be appointed as collectors of alms; and on the Sunday following, when the people are at church, 'the said collectors shall gently ask and demand of every man and woman, what they of their charity will give weekly towards the relief of the poor.' The sums so collected weekly were to be distributed by the same collectors 'after such sort that the more impotent may have the more help,

M 4/24, f.8

1550 - 1601

*Labor.*

\*3\* <3><sup>40</sup>

and such as can get part of their living have the less; and by the discretion of the collector to be put in such labor as they be able to do.' If any person being able refused to contribute, he was to be gently exhorted by the parson and churchwardens; and if their exhortations failed, he was to be sent for by the bishop, to be induced and persuaded to so charitable a deed. A Statute of 1555, and another of 1557, continue to provide for the impotent poor by weekly collections; the principle being held 'good and beneficial for the common wealth of this realm.'

The same principle is maintained by the Statute of 1562-3; but there is to be now something more stringent than the exhortation of parsons, churchwardens, and bishops. 'If any person of his froward or wilful mind shall obstinately refuse to give weekly to the relief of the poor according to his ability' the bishop had power to bind him to appear at the next sessions, when the justices, if he continued obstinate, might determine what sum he should pay, and commit him to prison if he persisted in his refusal.

M 4/24, f.9

## 4.

This first assertion of the principle of a compulsory assessment of property for the relief of the destitute is the foundation of poor Laws, which has endured through all the changes of three centuries. In a few years the general application of the principle was to be gradually effected by a far more perfect machinery. In 1572-3 was passed 'An Act for the punishment of vagabonds, and for relief of the poor and impotent.' It repeals all previous enactments by one sweeping law, in which the old principle of severity against, 'rogues, vagabonds, and sturdy beggars', receives little mitigation, but which also emphatically declares that poor, aged, and impotent persons should be provided for. The justices of the peace in their several divisions are to use diligent enquiry as to all such impotent poor; to make a register of the names of those who were born within such division, or have been living there by alms within three preceding years; to assign them convenient places for their habitations, if the parish does not provide for them; to assess the inhabitations of such division to a weekly charge; and to appoint

M 4/24, f.10

1550 - 1601

*Labor*

## 5

overseers of the poor, who shall have the power of setting to work all such diseased or impotent persons who are not wholly past labor. In this Act the system of parochial administration was not fully developed; the justices were to make the assessment.

By an Act of 1575-6 a stock of wool and hemp was to be provided for setting the poor at work; and 'houses of correction' were to be established. The law remained in this state of transition till 1597-8, when it took the form in which it subsisted with various slight modifications, till within the last quarter of a century. The Statute of the 39<sup>th</sup> Elizabeth provides for the appointment of overseers of the poor in every parish who were to make a rate with the consent of the justices. This Act 'approximates very closely to that passed four years afterwards (the 43<sup>rd</sup> of Elizabeth) which still continues in force, and is the foundation and ground work of our English Poor Law.'

But the Act of the 39<sup>th</sup> Elizabeth, which makes so wise and merciful provision for the helpless portion of the community was accompanied by 'An Act for the punishment of rogues,

M 4/24, f.11

1550 - 1601

*Labor*

## 6.

vagabonds, and sturdy beggars.' This Act repealed all previous Statutes. It prescribed the whipping, the stocks, and the passing from parish to parish, as of old; but it empowered the justices assembled at quarter sessions to erect houses of correction within the respective counties or cities, and to provide funds for the maintenance of the same. The houses of correction were for the employment of vagrants, till they could be placed in some service; or, if infirm of body, in some alms-house."

(Knights' History 3. 267-9).

M 4/14, f.39

1555

*Labor*

The 2<sup>nd</sup> and 3<sup>rd</sup> Philip and Mary after stating that "the rich clothiers do oppress the weavers, some by setting up and keeping in their houses divers looms, and maintaining them by journeymen and other persons unskilful; some by engrossing of looms into their hands and letting them out at such unreasonable rents as the poor artifices are not able to maintain themselves by, and much less their wives and families; some again by giving much less wages for the workmanship of cloth than in times past, whereby they are forced utterly to forsake their occupations &c it is enacted that no clothier living out of a city, burgh, or market town, shall keep more than two looms, nor more than two apprentices" &c (Brentano on Gilds p. 99)

M 4/13, f.72

“According to the 5<sup>th</sup> Elizabeth. c. 4. no one could lawfully exercise, either as master or journeyman any art, mystery, or manual occupation, except he had been brought up therein several years \*at least\* as an apprentice. Every householder dwelling in a city, town corporate or market town, might take apprentices for seven years at least. But only those youths might be taken as apprentices whose parents possessed a certain fortune; and none could be bound, but those who were under twenty one years of age. Whoever had three apprentices must keep one journeyman; and for every other apprentice above three, one \*other\* journeyman. As to journeymen, it was enacted that, in most trades, no person should retain a servant under one whole year, and no servant was to depart or be put away but upon a quarters warning. The hours of work were fixed by the act to about twelve hours in summer, and from the day dawn till night in winter. Wages were to be assessed yearly by the justices of the peace or town magistrates, at every general

M 4/14, f.40

1562

*The Statute of Apprentices**Labor*

Sessions first to be holden after Easter. The same authorities were to settle all disputes between masters and apprentices, and protect the latter. The 1<sup>st</sup> Jac I. c 6 expressly extends this power of the justices and town magistrates to fix wages, to the wages of all laborers and workmen whatever.”

\*Brentano p 103\*

#### 4. Brentano on Gilds

##### Introduction

The first folio, which is an introduction to lectures on the gilds, is written in a compressed, deliberate and moderately fair hand. The main body of the notes are in a compressed fair hand. The ‘retrospect’, which comprises the last five folios, are written in a compressed, deliberate and moderately fair hand, and the two supplements 5.1 (f.28) and 16.1 (f.40) are in a rapid but deliberate hand. Such divergences of script suggest that the main body of notes on Brentano’s book were, at a somewhat later date, shaped into a form suitable for the lecture room by means of the addition of an introduction, conclusion and some supplementary discussion.

Brentano, L., *On the History and Development of Gilds, and the Origin of Trade-Unions*, London: Trübner & Co, 1870 [SJCL]

Anon, ‘Growth of a trades-union’, *North British Review*, 1870, 53 (O.S.)/ 14 (N.S.): 30-59

##### Text

M 4/13, f.74

*Gilds*

Introduction to lectures on

Conf also retrospect pp 21 – 5

History of P.E. divided into two great books.

- i. the growth of the spirit of commercialism. <ii> in opposition to “natural” arrangements of custom
- ii. the continually-reasserting-itself tendency to care for the well being of those in whose company we act : this always purest in adversity – purest though not always most moderate or ‘civilized’ in its methods: but after a time degenerating into a<n> nervous anxiety for preservation of vested interests.

M 4/13, f.23

*Their origin**Gilds .*

1

The <only> oldest reliable accounts come from England and consist of three gild statutes those of Abbotsbury,

Exeter and Cambridge, early in the 11<sup>th</sup> century, but they seem to have had their origin in the feasts of our Scandinavian forefathers which were called gilds, they were family gatherings at births, marriages, and deaths.

Minute regulations are made by King Alfred as to the share of the compensation for murder which should be paid in various cases by the offenders gegildan. "The organisation of the gilds was thus in the eighth, ninth and tenth centuries, not only completed, and probably already widely extended amongst the Anglo-Saxons, but even recognised, and their ordinances imitated, or at least sanctioned, in legislation; and the gilds enjoyed already such authority in England, that their agreements bound even non-members; and town constitutions were already developing themselves from them. At the same time we see them forbidden, and persecuted everywhere on the Continent by ecclesiastical as well as by secular authorities." (Brentano pp 11. 12)

"The family appears as the first gild or at least as an archetype of the gilds... as soon however as wants arise which the family can no longer satisfy... closer artificial alliances immediately

M 4/13, f.24  
*Their origin*

*Gilds*

2

spring forth to provide for them, in so far as the State does not do it. Infinitely varied as are the wants which called them forth so are naturally the objects of these alliances. Yet the basis on which they all rest is the same .. The cement which holds their members together is the feeling of solidarity, the esteem for each other as men, the honor and virtue of the associates and the faith in them ... The support which the community affords a member is adjusted according to his wants .. and in like manner the constitution of the members vary according to the wants of the society ... The first societies formed on these principles were the sacrificial ones from which later on the Religious Gilds were developed for association in prayer and a<sup>41</sup> good works. Then as soon as the family could no longer satisfy the need for legal protection men were united into artificial-families for that purpose, as the State was not able to afford the needful help in this respect" (page 16)

The German family loved to share in common the joys and sorrows of life. Its resources sufficed for the support

M 4/13, f.25  
*Their origin*

*Gilds*

3

of its members under physical calamities and under those punishments which the society might law upon them" If one misdo let all bear it; let all share the same lot" say the statutes of the Cambridge gild, taking up this family duty. But for religious services the family seemed too weak. And in the Roman sacrificial colleges and the medieval religious gilds, men united to "solve the great problem of the reconciliation of man with God."

#### I. *The religious (or Social) Gilds.*

"After the German tribes had settled in fixed abodes, the families dwelling in a certain district united themselves into common sacrificial assemblies. As a rule, common meals were connected with them, to which everyone taking part had to bring what he wanted of food and drink. From this these unions were called *Gilds* ..... But, as Hincmar pointed out, the "*obsequium religionis*" included not only devotions and orisons, but also every exercise of Christian charity, and therefore, above all things, mutual assistance of the Gild-brothers in every exigency, especially old age, in sickness, in cases of impoverishment, - if not brought on by their own folly, - and of wrongful imprisonment, in losses by fire, water, or

M 4/13, f.26

The religious (or social) *Gilds*<sup>42</sup>

4

or<sup>43</sup> shipwreck, aid by loans, provision of work, and lastly, the burial of the dead. It included, further, the assistance of the poor and sick, and the visitation and comfort of prisoners not belonging to the gild. And, as in the Middle Ages instruction and education were entirely supplied by the Church, and were considered a religious

duty, we find among the objects of religious guilds also the aid of poor scholars, the maintenance of schools, and the payment of schoolmasters.

No guild pursued all these objects together; in each separate guild one object or the other predominated, and, besides it, the guild pursued several others. But often too, we find guilds for the fulfilment of quite *<an> \*a\** concrete and merely local task, as for instance, the guild [for conducting the procession of] Corpus Christi at York”, or for representing religious plays as that at Ober-Ammergau; while the work now performed by various insurance offices was then often, partially at least, of the work performed by Religious guilds. He refers to Ludlow in Fortnightly for Oct 1869 who says the distinction between social and trade guilds became prominent at the close of the fourteenth century.

M 4/13, f.27

The religious (or social) *Gilds*

5

He (Ludlow) considers that the friendly and trade societies of modern times are related to one another very much as these social and trade guilds were, that is, they ran into one another so that it was scarcely possible to draw a sharp line between them, but there was this distinction, in old times legislation did not try to separate between them; in modern times it has.<sup>44</sup>

### I. The Guild Merchants

Their leading but *\*not\** exclusive *\*idea\** was, combination for self-defence. Though they were town guilds and most of the members carried on a trade or handicraft, the distinguishing mark of the earliest burghers was, the possession of town land. In most cases all those thus qualified united themselves into one guild. “The numerous grants of communal rights to French towns from the eleventh to the thirteenth century, are nothing but the recognition by the king of such Frith-Gilds as had been previously in existence for a longer or shorter period.

Kings, even when they did not favour guilds upon their own demesnes, generally did so upon those of the nobility, whose power they wished to break.” The Frith-gilds seem to have been developed most fully in Denmark and England, particularly

M 4/13, f.28

*Gilds*

5,1

Supplementary notes

Quote more at length pp 37-8 & 29 about the purposes of these guilds.

//

Quote also the German Edition p 12 where he shews how Charlemagne’s centralization depressed the poorer class of freemen. [This of course partly through the military services he demanded of them] The analogy between this movement & that of<sup>45</sup> due to the large factory system. The freemen & the old masters “saved themselves only where their numbers & other circumstances rendered it easy for them to combine in guilds or in Trades Unions.

M 4/13, f.29

6

*Gilds*

the *<former> \*latter\**. Much of our information is derived from Denmark. The guild revenged the death of a brother and defended the brother who had committed homicide, or who having justice on his side was in any way involved in difficulty. Brentano infers that they must have acted up strictly to their conceptions of justice, because “whenever 12 persons were required to act as jurors or compurgators, half the number of guild brothers or even less were deemed sufficient.” Assistance in all forms was given to brothers labouring under any especial calamity. One form was that of “gratuitous loans given to the poor guild brother for carrying on his trade. “Although the body of citizens and the guild originally included the same persons, yet the quality of being a full citizen did not of itself include the fellowship of the Sworn-gild; for this a special acceptance was required. Now, as the towns flourished and increased in well-being, material differences in property must have arisen among the full citizens – partly through the failure of individuals in the race for wealth, partly through the settlement of new poor families in

the town – which could not but have a lowering effect on their occupations.

M 4/13, f.30

7

*Gilds*

This led to closing the old gild which hitherto had existed alone in a town; by the side of which others then formed themselves with the same or similar ends. But the oldest gild maintained a very natural precedence over the others, and was even called the “higher” or “highest” gild. Gradually, some system of hereditary transmission of the freedom of the gild came into existence *de facto*, in that the son generally entered the fraternity to which his father belonged: the sons of gild brothers were naturally more willingly accepted than other new members, and, later on, the conditions of entry were rendered more easy for them. Thus originated a certain circle of families which from generation to generation belonged to the highest gild, and continually constituted its stock. The oldest gild remained no longer equivalent to the whole body of citizens; the Full Burghers gild became the Old Burghers gild, and according to place and time its development became more or less aristocratic.” The new gilds after a time in many places but first, and prominently in London united themselves under the highest gild. “This united gild governed the town as is

M 4/13, f.31

8

*Gilds*

proved by the fact that their regulations bound even non-members.” They thus attained great strength and the desire of liberty, but where this was gained most completely, the spirit which had gained it was almost completely lost. “The older the gild statutes the more favourable are they to the men of low rank: And again “The greater dependence on a strong executive power in which the towns remained in England and Denmark was one of the causes why we find there no patrician order, whilst the ruling class in the Belgian and German towns, which had grown into small and almost independent republics formed itself into an exclusive aristocracy.” In matters of form and ceremony the lower classes were severely <oppressed> repressed, as far as possible all the burden of taxation was thrown upon them. “As many of the craftsmen had once stood in the *mundium* of the bishop or the burgrave, as long as these ruled over the towns, so, after the patricians had got the dominion a *mundium* of these over the lower classes came into existence ... The mundmen were obliged to swear an

M 4/13, f.32

9.

*Gilds*

oath (*fidelitas*) and to agree to services and taxes, for which the mundmasters promised them protection and assistance. This relation was particularly rigid at Strasburg; some of the ruling families there extorted in this way from the craftsmen a yearly rent of from 300 to 400 quarters of oats. In Cologne the craftsmen were almost the serfs of the patricians. Had the dominion of the patricians lasted longer, this dependence would certainly have become hereditary.

The general deep hatred of the governed towards their oppressors seems therefore only too just; and the one idea which animated the souls of the craftsmen of the thirteenth and fourteenth \*centuries\* seems only too easy<sup>46</sup> to be understood.” The struggle lasted throughout the whole of the thirteenth century, it was carried on in almost every town. “Towards the end of the fourteenth century, the victory was almost everywhere on the side of the craft-gilds.

Fierce as the civil war had been, the people were moderate and generous in their victory. Their idea was that of equality of political rights and of justice. Notwithstanding their hatred

M 4/13, f.33

10

*Gilds*

against their tyrants, the multitude did not wish violence to put its stamp on their laws; they did not wish to oppress those who for former merits might have a right to participate in the government of the towns, and who by education were their superiors. Mixed governing bodies were formed, consisting of patricians and craftsmen; and

often even a majority of one vote was left to the former.” In Edward II’s time the trade guilds had obtained the rule over London, but for all that, here, as elsewhere, the craftsmen did not maintain their position, the burghers entered the craft guilds, ruled them, and thus ruled the town. <48> \*12\* of the richer companies had by Edward III’s time separated <from> themselves from the others, and obtained the right to have the Mayor chosen from them.

M 4/13, f.34

11

*Gilds*

#### IV. *The Craft Gilds*

Roughly speaking, the time of the origin of craft-gilds is from <the> 1000 to 1250. They were originally voluntary combinations of the best workmen, afterwards, inferior workmen made use of them, as in modern times of the trades unions. Ultimately they strove to obtain a prohibition of the carrying of the craft by any one not a member: this they obtained in return for a special impost of the King to the great disgust of the burghers, whose undivided sway was thus overthrown.

Their meetings were invested with great solemnity; their wardens had great authority which they exercised with severe justice. “No gild member could be arraigned about trade matters before any other judge.” The chief punishments were fines and exclusion from the gild, and consequently from the craft. To enforce fines they Rattaned but had a legal right to do so. \*p63\*

Their rules had reference (1) to securing the good quality of the work, and (2) to the temporal and eternal welfare of the members.

(1.) In this group are contained duration

M 4/13, f.35

12

*Gilds*

of apprenticeship; (In England 7 years, abroad less) the apprentice to be admitted into the family; the master piece at the end of his service: no member to use bad tools or to mix bad materials with good, or to sell patched up articles as new: no one to “work longer than from the beginning of the day till curfew,” or “at night by candle light” (prohibition of work on Festivals and Sundays, and afternoon on the days before was based rather on religious grounds): limitation as to number of servants and apprentices. \*p 66\*

(II). Relief to be given in various forms to those who want it, “as long as members of the gild were out of work, no members were to work with non-members.” All gilds had particular Saints for patrons, they performed all sorts of religious services in common.

\*p 70\* There would be often several gilds for one trade and these would be “amalgamated” in some cases, notably among the masons these were branch societies which often had communication by means of deputies with the central society. “At these meetings the common good of the gild was discussed and all concerns which could not be regulated by the branches were settled. Sometimes even, the branches and central societies divided their money proportionately among themselves.”

M 4/13, f.36

13.

*Gilds*

Excepting in the cloth trade of the Belgian towns, the class of servants was not important. (Many gilds forbade a master to have more than one) “In some places as at Bruges the servants received a real share in their masters’ profits. \*p 72\*

But as soon as they had obtained their end they followed the example of their predecessors the town gilds, they became exclusive and oppressed the working-men. The class of laborers was increasing extremely rapidly in consequence of the number of villeins who came up from the country. Then came the rise in wages consequent on the plague and combinations among the workmen in many trades and counties, but notably in the building trades.

In London the city authorities kept issuing ordinances against them. The process went on in the fifteenth century the trade gilds becoming more and more exclusively capitalists and the laborers organizing their relations with them. In Germany \*p 89\*, there would be in each town an inn for travelling journeymen. At this a list of all

masters in want of labor was kept. If he failed to obtain this he received a gift to which the masters contributed to enable him to pass to the next town.

M 4/13, f.37  
14

*Gilds*

Brentano thinks that the necessity of providing thus, and in<sup>47</sup> for travelling journeymen helped on the formation of an organized society among the journeymen. He gives an interesting account of one formed by the “shoe-servants” in 1628 at Arnstadt. The masters advised its formation, and delegates from their body had one of the keys of the box that contained their seals, valuables, etc, and attended at the solemn \*meetings\* which were opened with the opening of the box. A social cup was passed round and the severest order observed during the whole time. Aid was given to a member in sickness, but if he <had to> returned to health he had to re-imburse the society. “Associating with common women, playing at dice, immoderate drinking, inducing others to drink, gaming and such like things were all punished” according to their statutes. Both the craft-gilds and the tradesmen fraternities kept “black-lists” in which the “reviled” masters and men who had committed any offence: no one would work under or with a master or man so “Reviled”. “Frequently – as for example, when the gild omitted to punish a master who had injured

M 4/13, f.38  
15

*Gilds*

any of the trade customs of the journeymen, or who in their judgment was not honorable, or when the masters, by means of the local authorities, had carried a resolution which was to be entered in their book of Articles – all the journeymen of a place struck work, and then wrote to the journeymen of other districts, warning them from coming to the places of strikes. .... Among all these seditions, though, I do not know one which had its origin in disputes about wages. It was rather presumed infringements of privileges, innovations in trade customs and the like, which always produced the uprising. In France, it is true, we already find strikes on account of wages.” Brentano does not, however, think that laborers were organized in England; but the most important regulation for which some modern trades-unions have striven – namely, a strict limitation of the number of apprentices a master might take, was contained in the ordinances of some gilds. On the whole their regulations seemed to have been favorable to the workmen, and when uprisings occurred they were not to overthrow the authority of the gilds, but to enforce the carrying out of their rules. The main

M 4/13, f.39  
16

*Gilds*

evils which gilds seemed to have caused was the hampering of trade, resulting from organized opposition to improvements in modes of production and from the jealousy between gilds corresponding from trades that a<sup>48</sup> large debateable area in common. The Tudor Kings regarded them as sponges from which gold might be squeezed.

They were ruined not as their predecessors had been by the succession to power of younger rivals, but by the development of <the> great-industry. Birmingham, Manchester and such places become very great because they had been very small, so were consequently free from gild restrictions. [For an account of a combination of villeins to raise wages in 1377, see *Labor* 1348-81 pp 4-5]<sup>49</sup>

M 4/13, f.40  
16,1

*Gilds*

Supplementary notes

The Handicrafts men had been partially in the \*Town\* gilds partially bondsmen.

The growing exclusiveness on the one hand of the gilds & the gradual abolition of bondage on the other generated the craft gilds.

//

The <sta> ordinances of the craft guilds <forbidding> forcing each member to swear not to take as an apprentice the son of a bondsman <caused> \*promoted\* the growth of a laboring class after the plague.

Other causes were the increase in the fee for an apprenticeship & in the value of the useless masters piece w<sup>h</sup> was demanded.

M 4/13, f.41

17

Gilds

### V. Origin of Trades-Unions

Brentano does not believe the theory given by Ludlow (in Macmillan for Feb and March 1861)<sup>50</sup> that Trade Unions were formed by the withdrawal of the masters from the trades-gilds. He does not \*think\* they ever did withdraw. He thinks that the earliest trade societies had for their object “the legal prosecution of transgressors of the 5<sup>th</sup> Eliz. C. 4, of the 5<sup>th</sup> and 6<sup>th</sup> Edward VI C. 22 and the 2<sup>nd</sup> and 3<sup>rd</sup> Philip and Mary C. 11.” (See \*Brentano p 103\* *Labor. 1562. and 1555.*)<sup>51</sup> He considers that they are *bona fide* successors of the gilds, but not continuations of them. They arose as did the gilds at a time of disintegration when the old ties loosened – that they arose “among the men suffering from <this> \*dis\*organization with the object of maintaining independence and order. [It is rather hard to know on what <this> organization the religious guilds were based. Perhaps on that caused by the introduction of the belief in a deity. The Frith-gilds rose amidst the ashes of Feudalism; the crafts gilds were due to the specialization of labor; the villages had ceased to be nearly self-sufficing and gradually manufactures became developed, but all arrangements of the small-production system were thrown <of>

M 4/13, f.42

18.

Gilds

out of gear by the large system. And this breaking up of their relations to their masters led them perhaps to seek for the formation of new relations with one another. But the spirit of individualism shews itself here more strongly, men associate with others not through the instincts of sociability primarily, but primarily in consequence of a desire to obtain an end and the perception, deliberately formed that this end can be best obtained by united action.

Trade-Unions are as far as they go, communistic, as of course were the old gilds. But (with the exception of <one or two> \*a few\* members connected with one or two of the schemes) characteristic of modern socialism is the deliberation with which it has sought its ends, one of the principal of which has been the development of the social sentiments. But though it be true that all such schemes have if they have lasted long enough tended to develop these emotions. They do not seem to have been developed as the older gilds and communities were from family relations either natural or that of an artificial kind which is illustrated by a number of chops of wood floating undisturbed down the same river near to another; the attraction between them may be at first sight,

M 4/13, f.43

18. ½

Gilds

but there is a perpetual tendency causing them to adhere and none tending to separate them, gradually they coagulate and comparatively speaking considerable force is now required to break up the group. But that does not appear to be any reason for doubting that Trades Unions combinations which have had their origin in \*reasoned\* self interest and the perception of duty <to a> as an abstract sentiment to those of the same trade, should not ultimately be cemented by warm personal affection.] The main suffering which according to Brentano was due to the large-production system was the uncertainty of employment. It appears that the small masters did not in general work to order, they had no objection to accumulating stock, they got accustomed to having to keep on their workmen for long periods, and generally their trade did not involve as much uncertainty at present. This of course means the producers in a certain locality produced as a whole for a certain number of consumers which \*number\* was not subject to very rapid variations; if some consumers fell off the loss would in general be shared among all the producers for that market. But now-adays an iron master may certainly receive an order to the extent of

M 4/13, f.44

£100,000 from a person from whom he has never heard. He may be partly prepared for such an emergency, but he will partly meet it by hiring many laborers in the market, and causing thereby a temporary vacuum which brings an increased number of men into the trade. Thus all the evils which lie on the surface of *irregular* employment and those greater ones which lie under the surface are introduced. Brentano (p. 109) quotes a parliamentary Report, 1800, which says “the opulent clothiers made it a rule to have  $\frac{1}{3}$  more men than they could employ and these had to stand idle part of the time.” <The committee> He gives a long history of the struggles in the cloth trade the <work house> *workers* formed “an institution” under the cover of course of a benefit to society to guide the agitation “During the whole of the Middle Ages after Charlemagne the political gilds abroad concealed themselves in like manner under cover of the religious gilds.” The London Book-Binders society seems to have been founded for the purpose of “taking a social pint of porter together”.

M 4/13, f.45

20

Gilds

Just so had religious gilds been transformed into craft gilds. In the <craft> trade, a temporary solution of the difficulty was found so late as 1773 in the assessment of wages by justices of the peace. It was penal to give either more or less. The masters tried to evade this and resistance to their doing so seems to have been the main motive of <the> some trade unions. It is to be remarked however that the contribution to Trade Unions were originally voluntary and that they became fixed much later. [For the law repealing that against combinations and for similar laws, see an article in “Report of Committee of Social Science Association; on Trade Societies, 1860. And for an account of the evil of the laws of apprenticeship see Adam Smith I. ch X. pt. 2.]

M 4/13, f.46

Gilds

21.

Retrospect

Integration of molecules into masses - & of molecular motion into motion of masses – specialisation – integration  
“a change from a confused simplicity to a distinct complexity”

H.S. F.P.<sup>52</sup> 545

Disintegration “a decrease in the motion of wholes and an increase in the movement of parts”

Ib 526

Craft gilds not ruined by rivals of same form  
they were rather rendered effete than overthrown

Dissolution caused by Production on a large scale was breaking up of motion of masses & causing motion of units. Workmen tolerably well provided for under the old régime & where not they felt that they got in general all that they had a right to expect. Now they saw their rights nonentities & endeavoured by various means to rearrange matters – the chief means being the enforcement of old Statutes.

M 4/13, f.47

Gilds

22

Mainly associations for defensive purposes and arising mainly from feeling of weakness as was case of all three previous gilds. Local bickerings frequent between nearly allied trades: but adhesive communism has sprung up & manifested itself in many ways.

The real evils of the new state of things were i that position depended more & more even low down on wealth. Show became more important to the workman. Before he could satiate this passion by appropriating part of show of his master. Thus an immense increase in the amount of elaborate manufactured articles that he could

enjoy while he obtained even more raw produce than before left him under “the task-master hunger.” ii The making for distant markets renders the individual master more necessary & more powerful because it increases the importance of personal connexions & of acquaintance

M 4/13, f.48

*Gilds*

23

with the state of the markets in distant places. Prompt action & to some extent secret deliberations become necessary. This of course throws obstacles in the way of corporations. But even when this would otherwise not come to pass, the habits when once set going have a tendency to extend themselves & the number of ways in which a man can free himself from the dominion of masters, by setting up as a small master &c is diminishing. The uncertainty of occupation moreover has the disadvantage of causing reckless habits.

The removal of the first of these two evils is \*one of\* the main points of modern communistic schemes. Even T. More ordered uniformity of clothes. Trades Unionism without professing to do this yet may do it to some slight extent.

M 4/13, f.49

*Gilds*

24

The removal of risk is the great point to be discussed. But as to uncertainty of employment – The trades unions rules about apprentices were one defence.

Of amalg: Engin: \*a five year apprenticeship before age of 21 required.\* Any person not having worked five years before this age must have worked steadily & <give> be likely to be a useful member. Fathers are not bound to apprentice their sons (Brent: in N. B. R. vol 55 p 67.<sup>53</sup> Independently of their strikes their support to men out of work does this: but indirect evil effects are guarded against by repaying the “duration” to those who have been discharged in consequence of drunkenness, disorderly conduct or dishonesty.” Besides insisting on apprentices & limiting number of apprentices they war against overtime & piece-work (Mill wrong in his \*unqualified\* defence of piece work) but not blindly ten Tables III IV V at end of Brentano’s

M 4/13, f.50

*Gilds*

25

Supl: German ver. pp 245-6 also Tables 12, 13, 14, 15, 16, 17.

Conf also their rules about swing rations

This may be done with union funds when 7 ½ per cent are out of employ N.B.R. 53 p 37

As to their elaboration of statistics see Brentano & the Table by Beesly in F<sup>r</sup> March VI 1867 p 328<sup>54</sup>

Attempts to introduce settled arrangements Ib 329

In the old times the masters used to contribute to experience of inculcating labor. Why not now.

## Part IV: Modern History

### Contents

1. Gneist [10ff]
2. France under the Ancien Régime [6 + 2ff]
3. Morier on Prussian Land Reform [7ff]
4. Cairnes on Slavery [2ff]

### 1. Gneist’s *Verwaltung*

## Introduction

Ten folios, from R. Gneist, *Verwaltung, Justiz, Rechtsweg: Staatsverwaltung und Selbstverwaltung nach englischen und deutschen Verhältnissen mit besonderer Rücksicht auf Verwaltungsreformen und Kreisordnungen in Preussen* (Berlin: J. Springer, 1869)

The hand is throughout rapid, deliberate and compressed. The last three folios, however, are written in a more cramped script, suggesting that there was perhaps an interval between the composition of the pages numbered 1-7 and pages numbered 8-10.

## Text

M 4/14, f.6

Gneist  
(Verwaltung &

1  
Ch I. §1 English government rests on

i a completely defined system of rights & powers of government (Staatshoheits-rechte) Constitutional theories have systematically ignored this – the most specialised system of administrative rights (verwaltungsrecht) in the world. The tying down by fixed rules and <al> laws <according> subject to strict juridical application was the only way of meeting the overwhelming power of the State. Magna Charta was the first step: progress has been continuous.

ii The “Mittelbau” of self government arising from the services of war justice prolia & the heavy taxes which the Norman government imposed.

iii the parliamentary constitution. This was not so much the cause as the effect of the other two.

M 4/14, f.7

Gneist  
(Verwaltung &

2  
Ch I. §2

Alfred achieves a Staatswesen about the same time as Karl. But England was falling to pieces in the same way as the Continent was when William came. In dem Zwiespalt der Nationalitäten lösen sich die altständischen Institutionen von selbst auf.<sup>55</sup> A regularly organised system of officials starts into life: absolutism is perfected by the end of the 12<sup>th</sup> Century all classes & nations aim to to<sup>56</sup> obtain Magna Charta. The idea of nomination from above was however still retained: & it is in this that the English Parliament separates from the Continental Reichstags.

//

On the Continent there is no sufficient State authority running through the three systems on which i landed property ii property in towns iii church property is held. Moreover the work done in return for their possessions – the military work by the landholders – the educational work by the Church – is badly done. In France the efforts of the strong royal power to remove these evils may

M 4/14, f.8

Gneist  
Verwaltung &

3  
be divided among Epochs.

Epoch i. The old system is patched up brought into something like harmony & working order

Epoch ii Government sets to work to make a system of officials do what is necessary

Epoch iii The old system is displaced by the new (various steps traced). But the new has two difficulties 1 the old orders (stande) were united in opposition to new burdens: & through their position in the Parliament could make their opposition effectual. 2 For direct taxes you must be mainly dependent on local standards &c.

Epoch iv commencing <with> at middle of Louis XIV reign. Foreign glory diverts attention from home policy.

Still Stand.

//

Germany

I Verwaltungsrecht.<sup>57</sup> This is not introduced from above by a strong government. But it comes as the result of the deliberate conviction of the people \*i.e. the educated classes\* that there must be unity of law. The administration of this could not be left in the hands of the Schöffen since they were

M 4/14, f.9

*Gneist*  
Verwaltung &c

4

all soaked through with the ideas of the right of privileged classes. So there arose a bureaucracy.

II Self government was impossible for the reason above given. Moreover the splitting up of the monarchy was caused i by its size ii by the military character of the organisation of each separate part: everything thus being prepared for the absolutism of the local magnate.

III Parliamentary bodies, representative bodies of all kinds there were in Germany. But they never represented all classes. Whatever they might undertake to represent the lower members of those professedly represented were left out. They wanted then to prassel with themselves. Vested rights, oppressions, the welfare of an order or of a portion of an order were heard of constantly: but never the general welfare. In particular the constitutional privileges of those who were fortunate enough to be represented were abused in order to shift the burden of the taxes onto the shoulders of the others. The "Fürst" was the protection of the people from the so called representative assemblies: not vice versa.

M 4/14, f.10

*Gneist*  
Verwaltung &

5

Ch I. §3

The formation of State since the Reformation.

*In England*

The Tudors get the upper hand of the nobility: but meanwhile the classes below them are increasing in strength, and all performed state duties. After the Revolution the parliament went on increasing in strength. We never had a skilled higher official bureaucracy: but the necessary qualities for directing it were possessed by many members of the two houses. The ministers all mainly legislators: consequently they can well be party leaders.

*In France*

The incompetence, negligence, selfishness, & partisanship of the local authorities rendered them unfit for the work of administration, which passed entirely into the hands of a bureaucracy. This achieved its victory under Louis XIV – after this there was a pause of a century till the revolution

M 4/14, f.11

*Gneist*  
Verwaltung &

6.

*In Germany*

Two of the conditions of a state life were present in Germany : considerable power concentrated in the hands of the lord of each territory : & a system of common private law : but the public law was a mass of privileges granted unfortunately in writing: & no thorough government was possible. The \*great\* lords found that as they could get no money out of the higher estates it was their interest to protect the people against them. Thus ultimately they overthrew these privileges helped on in so doing by the consciousness which had spread over the whole nation that uniform law was necessary. The oppression of the privileged classes was therefore mainly passive : no organised system of open resistance was possible.

The transition from a government by order (Ständischer Staat) into a bureaucracy had much resemblance to the corresponding change in England. The great Curfust, Fred Will I & Fred the great saw that portion of Germany must obtain the lead who could shew the right

7

way to introduce unity & order into the <government> state functions. It is a misrepresentation to say that they in vague aimless way destroyed liberty. On the contrary every attempt was made to induce the nobility to associate themselves with the government. But they wanted the spirit, the willingness to pay heavy taxes, & <the> to perform unpaid services which the English gentry possessed. They preferred having paid places in the Bureaucracy [In this apparently unlike the Aristocracy of France]

Of course Prussia's disputa mambra rendered unity a more pressing need for her than for others.

The general process (Gneist gives many details) was the formation of Colleges to carry on the separate portions of the administration.

Their acts formed precedents out of which uniformity of rules could not but follow.

For almost everything done he finds a parallel a long while ago in England.

[On the administration of Fr. Ib. I & Fr: the great see Heeren Hist researches 218-9 & 271-3]

8

Ch I. §4

The changes since the  
Reform bill (1832)

The Achilles heel of the English Representation system had always been the preponderance of the boroughs. This was in consequence of the tax <levying> granting functions of the Commons. In Germany the relics of self-administration are found chiefly in the towns. In England on the other hand it is in the large Commercial towns that the separation of private from public interests has been most complete. The reform bill has given them greater power, but not made them bear themselves part of the state burden. Again the power of the lower classes has forced the state to provide for such needs as those of overcrowded, badly managed factories &c: but the higher classes have not come forward to do the necessary work themselves.

The Reform bill cast aside the old connexion between jury-duty & having a vote. The new Corporation Act while it made distinctions yet took no account of this. It classed together some potential jurymen <with> having only one vote with the dutyless rabble.

Part of the hostility against property is due to the fact that state privileges are attached to property not to state duties.

English parties are reckless & unprincipled bidders for popular favor. A crash is coming soon

9

In *Germany*

The nobles lost their privileges more slowly & with more ample compensation than elsewhere. Frederick's great liking for the feudal system took the form of a real wish to utilise it, to make it into an efficient military & administrative organisation. His very taste for French culture made him careful that no copy of the useless French court lawyers should gather round him. But under his weak successors instead of reforms in administration, only financial experiments were made. Parsimony & corruption were the two leading features of his court & hence of the whole administration. Fred Will III had a dull sense of his duties as a monarch. Jena set him free from his court. He set to work at once. In 1808 came a law of which the effect was i to abolish restrictions [see *Stein*]<sup>58</sup> & privileges of orders ii to displace administrative bodies by administrators (the sole exception being for administration of justice for „Nationelle Entscheidungen“.) The attempt was made to unite all classes & attach them to the state by giving them duties.

Great <power> \*freedom\* was given to the administrators in order that they might by their practices build up a system of principles : this was well : but new hands soon came too weak for the task. The privileged orders were very obstinate in asserting their rights: on the whole there was retrogression.

The court became a focus of cabals. 1848 startled it out of its propriety into concessions. Thus we have the present (67) state of affairs. – no homogeneity.

M 4/14, f.15

*Gneist*

10

After attacking somewhat unjustly Mill as wishing to grant to the people as many rights with as few duties as possible he goes on in

Chap I §6

to consider the relations between administrative & legal authority. In *England* common & statute law can be overruled only by legislation: the power of the minister is as circumscribed as possible, the limits within which he may use it are accurately defined: & if law has to be overruled for a time or a great exercise of administrative power made it is done by an “order in council” not by an act of the individual minister.

In *France* under the old regime personal government meant government by law nominally but really by exceptional tribunals & exceptional ministerial edict. Hence when the revolution came the French substituted merely the *immediate* government of the sovereign people for that of the sovereign king.

In Germany

## 2. France under the *Ancien Régime*

### Introduction

Eight folios. The note headed *Gabelle* (f.73) is in a compressed, deliberate and moderately fair hand. The folios headed *History of Labor* (f.4) and *Livre* (f.5) are written in a very fair hand, and it seems possible that they originally formed part of a larger set of notes on French history. In general we seem to have here a number of discrete notes, and it is only for reasons of editorial convenience that these notes have all been placed together under the heading of ‘France under the Ancien Régime’ (indeed the folio headed ‘Land Tax’ is about England). The bibliography is as follows:

1. J. H. Bridges, *France under Richelieu and Colbert* (Edinburgh: Edmonston & Douglas, 1866)
2. H. Meyer, *Neues Conversations-Lexikon. Ein Wörterbuch des allgemeinen Wissens 15 Bände und Kartenband sowie Register* (17 volumes, Hildburghausen. Bibliograph. Institut., 1861).
3. A. Tocqueville, *On the State of Society in France before the Revolution of 1789 and on the causes which led to that event*, translated by Reeve, H., (London, 1856) [ML]

### Text

M 4/13, f.1

*Parliament*

1

The Parliament of Paris like that of England was originally the privy council of the king formed of his chief barons. Louis IX in 13<sup>th</sup> century ... introduced 20 lawyers as secretaries. The feudal element gradually disappeared; these secretaries gradually became the acting members of the body & were constituted as the Supreme Court of appeal from all courts of France excepting those of the outlying provinces such as Brittany Languedoc & Burgundy where similar courts existed. In 1345 the members of this supreme court were appointed for life: subsequently they were allowed to elect new members into their body: & under Henry IV their office ... became virtually transmittable to their descendents or might be sold like appointments in the British army to any properly qualified purchaser. The system ... had at least the compensatory advantage

M 4/13, f.2

*Parliament*

2

of keeping the judicial power of France free from undue pressure on the part of the executive.” They gradually acquired a political power: it was their duty to register <deg> decrees: “And the theory softly whispered under a Sully or a Richelieu was boldly broached under their feeble successors, that until... so registered ... they had not the force of law” and thus Parliament “could interpose an indefinite & irregular but sometimes very effective check

to unreasonable expenditure.”

Bridges France under Richelieu & Colbert pp 45-7

For a contest of Parliament with the Regent in 1718 see *Law*<sup>59</sup>

M 4/13, f.65

1. Land Tax

At the restoration of Charles II or as that period may more justly be called, the accession to supreme power of the English Aristocracy the question <was d> of dealing with the feudal dues was raised . . . . The lords of England held the land in consideration of important services, defence of the soil, defence of the sovereign &c yearly rendered. The occasion of these particular services having passed away, they should have been commuted for an equitable land-tax. But a parliament of landowners preferred to raise the required sum by excise duties.

Bridges France under R & C p 71 & he refers to Hallam Const Hist<sup>60</sup> ch xi vol II p312

q.v.

M 4/13, f.73

1700 (Bridges.) Gabelle

Vauban proposed “that the State shall buy up the salt-marshes, and sell the produce freely to all buyers at a moderate profit. From this source he computed a revenue of 23,400,000 livres. The monstrous abuses of the *gabelle* continued unaltered, with so many others, till the French Revolution. In 1781, the revenue from salt was 72,000,000 livres; the cost of collection being 18,000,000. There were, on an average, 3500 convictions for smuggling, annually. In 1782 an edict was launched against those who kept a peculiar breed of large dogs specially trained to carry contraband salt from Anjou to Brittany.” (France under R. & C. p 97).

M 4/13, f.70

1 Under “ancient Regime”

*Pauperism*

Under the ancient feudal state of society the lord of the soil, if he possessed important rights, had at the same time very heavy obligations. It was his duty to succour the indigent in the interior of his domains. The last trace of this is to be found in the Prussian code of 1795 which says “The lord of the soil must see that the indigent peasants receive an education. It is his duty to provide means of subsistence to those of his vassals who possess no land, as far as he is able. If any of them fall into want, he must come to their assistance.”

But no law of this kind had existed in France for a long time. The lord when deprived of his former power considered himself liberated from his former obligations; & no local authority had taken its place. . . . The central government had boldly undertaken to provide for their wants by its own resources.

Every year the Council assigned to each province certain funds derived from the general produce of the taxes which the state Intendant distributed for the relief of the poor in the different parishes. It was there that the indigent labour had to apply, &<sup>61</sup> times of scarcity it was he who caused

M 4/13, f.71

2 Under Anc Reg

*Pauperism*

corn or rice to be distributed among the people. The council annually issued ordinances for the establishment of charitable workshops (articles du charité) where the poorer among the peasants were enabled to find work at low wages & the council took upon itself to determine where these were necessary. . . . .

The central government caused distribution of small pamphlets upon the science of agriculture offered prizes & kept up at a great expense nursery gardens of which it distributed produce.

Tocq: Anc Reg : 71-3

In a note(P)he says

“Legal Charity gives scope for abuses whatever the system presumed: but it is perfectly impracticable when exercised by the central government from a distance & without publicity.”

M 4/14, f.4

## History of Labour

French Peasantry in 1870 (Tocqueville Anc Reg bk 2 ch 12)

The taille forced labor.

//

M 4/14, f.5

Livre

Till 1795 the livre tournois was the unit of the French currency. It was then displaced by the franc.

By 80 franc = 31 livre tournois

(Meyers Lexicon)

### 3. Morier on Prussian Land Reform

#### Introduction

Seven folios, all written in a compressed but fair hand, and all taken from R. Morier, 'Agrarian Legislation of Prussia during the Present Century', in *Systems of Land Tenure in Various Countries, A series of essays published under the sanction of the Cobden Club*, (London, 1870), pp. 279-327 [ML].

**Text**

#### **Morier on Stein and land tenure in Prussia**

M 4/16, f.16

1807.

Stein

and land tenure in Prussia

*Morier in Cobden Club Essays gives an account of "the state of things which the decree of 1807 was intended to supersede. At the period in question the entire land of Prussia (then, it must be remembered, consisting of the few provinces left to the King of Prussia by the peace of Tilsit) was distributed among three classes of society, carefully kept asunder, not by usage only, but by strict legal enactment – nobles, peasants and burghers. In other words it was held by knights' tenure villein tenure, and a sort of civil tenure which had grown up out of the privileges of town municipalities. These classes were distinct castes – their personal status was reflected in the land held by them, and conversely the land held determined the status of the holder. The noble could follow no avocation but those of his caste. He could administer his estate, and serve the king either in a civil or military capacity. He could not occupy himself with trades or industries. He could acquire nobles' land, and therewith manorial rights over land held under villein tenure; but he could not acquire burgher land or the "dominium utile" – i.e. the possession of peasant land.*

The Burgher had a monopoly of trades and industries, which with some very limited exceptions, such as the business of wheelwrights and smiths, were confined to the towns, and would not be exercised in the country. He could not acquire nobles' land or peasants' land. The military profession was closed to him, as well as the higher civil employments." The circumstances of the peasants were very various; there were two forms of velleinage of various severity. "The free peasant differed from the villein in having no personal dues to pay, and in his services and dues being usually recorded in writing in the grants made to him, and therefore bearing more directly the character of a legal contract. He could not, however, acquire by purchase or inheritance other than peasant land, nor could he change his position by changing his country life for a city life; nor could he in the country exercise any trade or calling but that of agriculture." In some cases the peasant owned the land, in others he merely had rights of usual function. The lord had various rights over him, but in no case might he enter upon peasant land.

Frederick the Great was very strict on

M 4/16, f.17

2.

Stein

and land tenure in Prussia  
this point. He propped up the Feudal system; he found it convenient for his purposes. It fell to pieces under his successor.

Extract from preamble.

“Whereas, it is not only conformable to the everlasting dictates of justice but likewise to the principles of a sound national economy, to remove all hindrances in the way of the individual attaining to that measure of material well-being which his capacities may enable him to attain” (loquitur Adam Smith); <And, Whereas> [“The three persons more immediately concerned with the framing of the measure – Schön, Schrötter and Auerswald – had all of them been students at Konisberg and pupils of Kraus, the great expounder of Adam Smith at that university”]

Extracts from Edict.

“§I. Every inhabitant of our dominions is, as far as the State is concerned, henceforth free to acquire and own landed property of every kind and description. The noble, therefore, can acquire not only noble land but burgher and peasant land, so also the burgher and the peasant can acquire not only burgher and peasant land, i.e., land not noble but likewise noble land. Every such transfer of real estate must, however, continue, as before, to be notified to the authorities.”

“§. 2. Every noble without derogation to his rank, is henceforth free to exercise the trades and callings of the burgher – the burgher may become peasant, the peasant burgher.”

“§. 4. All owners of real property, in its nature saleable, can after due notice to the provincial authority, sell the same piecemeal and in detail as well as in block. Co-proprietors can in the same way divide amongst them property owned in common.”

“§.9. Every entailed estate, whatever the nature of that entail, can be freed from the entail by the consent of the family.”

Signed .

**Friederich Wilhelm,  
Schrötter,  
Stein,  
Schrötter II.**

M 4/16, f.18

2 1/1 i

*Stein*

### The Legislation of 1811

“The edict of 1807, great and incisive as had been its operation, was of a negative kind. It removed disabilities, undid the shackles which bound the peasant to the glebe, allowed such rights as existed to be used freely, and pulled down the walls which separated from each other the different classes of society. But it created no new forms of property; it proclaimed freedom of exchange, but it did not provide the title-deeds required as the first condition of exchange. Peasants’ land could now be held indiscriminately by all the citizens of the State; but it was still held under the old forms of tenure; there were still two “dominia”. The lord was still owner of the peasants’ land, but had no right to its possession. The peasant was free, but was not master of his labor.”

“The legislation of 1811 was in the highest degree positive.”

Part 1. deals with hereditary holdings

“All tenants of hereditary holdings, i.e., holdings which are inherited according to the common law, or in which the lord of the manor is bound to select as tenant one or other of the heirs of the last tenant, *whatever the size of the holding*, shall by the present edict become the proprietors of their holdings, after paying to the landlord the indemnity fixed by this edict. On the other hand, all claims of the peasant on the manor, for the keeping in repair of his farm buildings, &c, shall cease.”

Landlords and tenants are to come to an agreement within two years if possible,

*The Legislation of 1811.*

if not, the State will do the work for them.

“The rights to be commuted may be thus generally classed: -

I. Rights of the landlord

i. Right of ownership (“dominium directum”)

ii. Claim to services.

iii. Dues in <stock> money and kind.

iv. Dead stock of the farms.

v. Easements, or servitudes on the land hold.<sup>62</sup>

II. Rights of the tenant.

i. Claim to assistance in case of misfortune.

ii. Right to gather wood, and other forest rights, in the forest of the manor.

iii. Claim upon the landlord for repairs of buildings.

iv. Claim upon the landlord, in case tenant is unable to pay public taxes.

v. Pasturage rights on demesne lands or forests.”

The following general principles are laid down: -

“1. That in the case of hereditary holdings, neither the services nor the dues can, under any circumstances, be raised.

2. That they must, on the contrary, be lowered if the holder cannot subsist at their actual rate.

3. That the holding must be maintained in a condition which will enable it to pay its dues to the State.”

The conclusion arrived at were roughly that the tenant should surrender  $\frac{1}{3}$  of his land and that most dues should be abolished.

*Legislation of 1811.*

Part II

“The class of holdings treated of in the second part, are those held at will, or for a term of years or for life. In these cases the landlord gets an indemnity of one-half of the holding under much the same conditions as in the case of the hereditary holdings. When the conditions differ, they do so in favour of the lord of the manor.”

A clear account is given of the intricate common property of relations which had to be done away with. The <prominent> \*leading\* idea in the edict is that of absolute possession, ownership. v. tenancy, and perfect freedom of exchange, and of leaving the property by will by any portions to any persons whatever. The edict gives at great length the advantages of such freedom, among which is prominent the chance that present proprietors will be freely recruited from the ranks of laborers.

(Stein had been expelled from Germany in 1808 by an edict of Napoleon.)

*The Legislation of 1850*

This abrogated without compensation the “dominium directum” or over-lordship of the lords of the manor. All dues were commuted into fixed rent charges; these were compulsorily redeemable by either a lump sum or an annuity of 56 or 41 years. The state was the broker through whom the annuity had to be paid. It gave the landlord “rent debentures paying 4% interest on 20 years purchase of the rent. The peasant, along with his ordinary rates and taxes, paid into the

*The Legislation of 1850.*

hands of the district tax collector each month one twelfth part of a rent calculated at 5 or 4 ½ percent on this capital sum according as he elected to free his property from encumbrance in 41 1/12 or 56 1/12 years, the respective terms within which at compound interest the 1 or the 2 ½ percent.<sup>63</sup>, paid in addition to the 4 per cent. interest on the debenture, would extinguish the capital.”

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Morier compares these changes with the enclosures in England in the 16<sup>th</sup> century. “The great “enclosing” movement in the sixteenth century is usually described as if it had merely had for its object to turn arable land into pasture. Its importance as a joint effort on the part of the lords of the manor to withdraw their demesne lands from the “communion” of the township has been overlooked. That this object was in itself highly desirable, and the “conditio sine qua non” of any improvements in agriculture is undeniable; it was an organic change through which every Teutonic community had necessarily to pass. The evils which attended the process in England, at the time referred to arose from the fact that instead of being affected by impartial legislation, as has been the case in Prussia during the present century, the change was forcibly brought about by the one sided action of the landlords.” The enclosure of demesne lands scattered often in small pieces over the village fields, rendered the cultivation of

lands in common difficult, and caused peasants to be willing to sell their <lands> rights on almost any terms: but the lords were not very careful in allowing them their full rights. Of course the result of the newly acquired liberty of agricultural operations was to increase sheep farming. But “the immense increase in stock, apparently without any diminution in the amount of corn grown (for<sup>64</sup> during the period when the clamor against the enclosures was hottest, the price of corn remained uniformly low), was the result of the natural improvement in agriculture, caused by the change from “champion” to “serverall” which enabled more produce of all kinds to be got out of the land with less labor”. [This is of course not inconsistent with the laborers being much oppressed for want of occupation]

[The State which received from the peasant a terminable annuity at 4 ½ or 5 % <was> and gave the landlord a perpetual annuity at 4% was really borrowing money by an ingenious artifice. It should have been mentioned that State Banks were created in every district to facilitate financial operations]

## 4. Cairnes on American Slavery

### Introduction

Two folios, written in a rapid but deliberate hand, and taken from J. E. Cairnes, *The Slave Power: its Character, Career and Probable Designs: being an attempt to explain the real issues involved in the American context*, 2<sup>nd</sup> edition, London and Cambridge: Macmillan and Co, 1863.

### Text

*Cairnes* The slave power pp 384-6 quotes from the decision of a Southern judge trying the case of a man who had shot & wounded a slave-girl, whom he had been chastising, as she ran away from him. On her side it had been pleaded that the court would interfere to restrain undue maltreatment of a son by his father. The judge – without saying that the court would never punish any act on the part of a master & while lamenting “as a man” the “duty of the magistrate” – replies that the analogy does not hold. “There is an impassable gulf between the two cases.” ..... In the one the end in view is the happiness of the youth born to equal rights with

that governor, on whom devolves the duty<sup>65</sup> of training the young to usefulness in a station which he is afterwards to assume among freemen. To such an end & with such a subject moral & intellectual instruction seem the natural

M 4/11, f.74

1.

*Slavery*

Cairnes

means; & for the most part they are found to suffice. Moderate force is superadded only to make the others effectual. If that fail it is better to leave the party to his own headstrong passions & the ultimate correction of the law than to allow it to be immoderately inflicted by a private person. With slavery it is far otherwise. The end is the profit of the master, his security & the public safety; the subject are doomed in his own person & his posterity to live without knowledge, & without the capacity to make anything his own & to toil that another may reap the fruits. What moral considerations shall be addressed to such a being to convince him what the most stupid must feel & know can never be true, - that he is thus to labor upon a principle of natural duty, or for the sake of his own personal happiness; such services can only be expected from one who has no will of his own, who surrenders his will in implicit obedience to that of another. Such obedience is the consequence only of uncontrolled authority over the body. There is nothing else which can operate to produce this effect”

L Wheeler pract: treatise on law of slavery, 244-8<sup>66</sup>

## Appendix

1. Agriculture [6ff]
2. Essay Question [1f]

### 1. Agriculture

#### Introduction

Six folios, all from the archive folder M 4/23, and all in the same rapid hand. The folios provide notes on the history of English agriculture from the thirteenth through to the nineteenth century, and can be seen to summarize, and then continue into more recent times, the story of English agriculture and labour set out in many of the folios contained in Part III above.

I have decided to place these notes in an appendix, rather than include them in Parts III or IV, in order to draw attention to what might be called their transitional nature. For these folios illustrate the way in which, as Marshall draws near to the present in his historical research, he begins to substitute statistical details for statements of events. As such, the latter folios in these notes on the history of English agriculture point towards the many early folios in the Marshall Archive headed ‘Statistics’, and which, to date, have been very little examined.

#### Text

M 4/23, f.9

1200 - 1300 Advertisements Nasse 60

1349 Black death. Statute of laborers

1381 Wat Tylers rebellion

1400 - 1500 In this century the turning point as regards the number of small holdings: up to this time growth of small holdings consequent on a high price of labor. Enclosures fostered by interests of lords of manor who could no longer claim labor services: &c Nasse 74 &c

/

1488 two laws against enclosures Nasse 76

1492 Discovery of America

1498 Sea route to East Indies

1519 & 1533 laws against turning arable land into pasture: 1550 no flock to exist of more than 2000 sheep Nasse 76

1549 Insurrection for removal of enclosures

1555. No clothier living in county to keep more than 2 looms or 2 apprentices

1562 Statute of apprentices. First compulsory poor relief act.

M 4/23, f.1

Conditions of agricultural labourer early in XVII<sup>th</sup> century

//  
woollen clothing far dearer than now  
/  
linen almost inaccessible  
/  
no cheap calicoes & prints  
/  
no tea sugar &c  
/  
Fresh meat eaten twice a week by one half of the working people: never by the other half  
/  
Salt to cure his pork dear & bad  
/  
His hovel had one chimney, unglazed, badly thatched & with bad walls  
/  
His furniture was a bench & a plank on tressels an iron pot & a brown basin or two  
/  
He had ague; & scarcely any medical aid  
/  
He had no knowledge & no power of rising  
/  
But as yet he was not pauperized

Knight Hist V <vol> p 51

M 4/23, f.5

*Agriculture Hist*

From Creasys hist

1681 Sheep eat turnips  
potatoes beginning alternative

1701 horse shoeing becoming common

1745 Threshing machine worked by water invented by Menzies

Early in XVII<sup>th</sup> century change *from*  
Succession crops of white corn till land was exhausted & then many years of fallow  
*to* intervening years between cereals & letting land lie occasionally fallow land been pretty well made. But land still not inclosed generally. The village cattle grazed in common; & the arable land occupied together”

But by middle of century introduction of

of [sic] clover & turnips to alternate with cereals was becoming common. Norfolk taking the lead About middle of century Bakewell & others set to work to diminish bones & put flesh on wherever they pleased.<sup>67</sup> Though Paley said thats a lie.

Then came growth of manufactures & trade for great war & bad harvests with fearful prices

/

“With scarcely an exception the rent of land has doubled since 1790” (Porter p 153)

per acre

	1790	1812	1818	1850
Farms in Essex	10 s	45.50	35	20
Berkshire Wilts	14	70	50	30
Staffordshire	8	35		20

Hist

For abstract of Corn Laws see separate papers

/

As to trade From 1700 to 1766 imports were nearly nothing except in the years 1728, 29, 57, 58. <In the year 6> While the exports were generally somewhat over 100,000; rising occasionally to 500,000, & once 1750 to nearly 1,000,000 after <18>1766 the imports predominated they were over a million in 1800, 01, 10, 17, 18, 28 & onwards: but generally they were not more than 500,000 on average till 1828: after that they were generally over a million & often nearly two. (M<sup>c</sup> C's notes to AS)

## 2. Essay Question

### Introduction

The following question, no doubt intended for students, is found in the same archive folder as the historical notes above.

### Text

y.

3 Mommsen complains that the Roman Senate by throwing on the \*Roman\* market a great amount of corn, imported as tribute from the colonies, at a very low price, ruined the <Roman> Italian farmers & thereby paved the way for the ruin of the Empire. Can a valid argument thence be deduced against the repeal of the English corn laws?

<sup>1</sup> Prescott's text, as quoted by Buckle, reads "no amusement".

<sup>2</sup> I am indebted to Joonhahn Cho for identifying this book.

<sup>3</sup> This might be a mistake. As Marshall (correctly) notes on f. 31 below, Müller regards 477 B.C. as the most plausible date of the Buddha's death.

<sup>4</sup> Sic. Müller reads: "and the dawn 'Ushas'".

<sup>5</sup> The entire part of the paragraph at the top of this folio page has been crossed through with a red pen.

<sup>6</sup> Commandments 6-10 are bracketed, and 'T.O.' written by the side of the bracket. On the other side of the folio is written: "6,7,8 binding on those in orders & for a limited time

adopted by religious laymen (a kind of lent I suppose)

9 & 10 binding on those in holy orders, & 10 often neglected by them"

<sup>7</sup> I am indebted to the detective work of Julie Dexheimer in identifying this work.

<sup>8</sup> Freeman reads: "...the laws of eternal justice...".

- [9](#) “Since it is not because of the nobility of one’s family or ancestors but the virtues of the soul and of the body that one is decreed to be esteemed” [translation: Rachel Stroumsa].
- [10](#) Sic.
- [11](#) This parenthesis is Marshall’s (i.e. it is not in Maine’s text).
- [12](#) In Marshall’s copy of *Ancient Law* there is, on page 273, the same annotation - ‘See 283’.
- [13](#) This would appear to refer to one of Marshall’s notes, but no folio with this heading has been identified.
- [14](#) See chapter three of De *Tocqueville’s Democracy in America*, ‘Social Condition of the Anglo-Americans’. Marshall owned the 1862 edition translated by H. Reeve (which is now in the Marshall Library).
- [15](#) Sic.
- [16](#) In Maine’s text here: ‘chieftain’.
- [17](#) Sic. Smith writes “the authority of the great allodial lords.”
- [18](#) In his notes on chapter four of Book III of Smith’s *Wealth of Nations* (M 4/3, f. 23) Marshall writes “The Saxon allodial laws had at least as much power as the Norman Feudal laws, indeed Feudalism had for its chief effect the imposing on them a number of services and duties”, and offers the comment “this is undoubtedly true to some extent of England.”
- [19](#) In a note, Morier (p. 285) after discussing the etymology of ‘allod’ and noting that how the “syllable *od*, in Old High German *ôt* ” signifies ‘possession,’ ‘wealth’ or ‘treasure’, writes “Compare *Kleinod*, a jewel, i.e. a small possession, or rather a possession dear to me, the diminutive being used to express endearment, as in the exactly analogous case of jewel, French *joyau*, i.e. *gaudiculum*, a little joy.”
- [20](#) Maine in fact writes: “exuberant and erratic genius of the Germanic races”.
- [21](#) Morier (p. 285) in the same note as quoted in the footnote above, writes “*Feodum*, if derived from Old High German *fihu* (modern German, *Vieh*), cattel, and *od*, possession, meant originally possession in cattle.”
- [22](#) [Japan] “with its purely feudal organisation of landed property and its developed *petite culture*, gives a much truer picture of the European middle ages than all our history books.”
- [23](#) “When Christianity was born, religion essentially meant moral teaching; it educated the soul through the search for the truly beautiful, the truly honest. By the fifth century, it [religion] had been directly connected to orthodoxy. By the seventh century, it had been reduced to generosity towards the monasteries.”
- [24](#) This would appear to refer to one of Marshall’s notes, but no such note has yet been identified.
- [25](#) “It seems lazy and indolent to achieve by sweat what may be done through bloodshed, has been the motto of all early medieval times [translation: Rachel Stroumsa, who notes that the Latin is from Tacitus’ *Germania*].
- [26](#) “The whole history of the Christian world was marked by a deep conflict between the idea of Christianity and the official church. Monasticism attempted in its own way to resolve this conflict” [translation: Phoebe von Held].
- [27](#) “The Franciscans managed as popular soul caretakers the heart and soul of the people, which they were very close to in good and bad times; the Dominicans patronized the sciences, and their institutes were surveying the purity of the Catholic dogma, and as inquisitors and persecutors of heretics brought their order into discredit” [translation: Phoebe von Held].
- [28](#) This last comment - which follows after “Rogers does not” - begins at the bottom of the folio and then continues into the margin.
- [29](#) Sic.
- [30](#) See Macpherson, D., *Annals of commerce, manufactures, fisheries, and navigation : with brief notices of the arts and sciences connected with them; containing the commercial transactions of the British Empire and other countries, from the earliest accounts to the meeting of the Union Parliament in January, 1801; and comprehending the most valuable part of the late Mr. Anderson’s History of commerce ...* (London: Nichols and Son, 1805) [SJCL].
- [31](#) Nasse (p. 68) explains, in a footnote: “*Adæratio*, i.e. fixing a money value on labour services, or instead of them”.
- [32](#) Nasse discusses W. S. Gentleman’s ‘briefe examination of certayne ordinary complaints’ (1581), which Marshall also transcribed a part of.
- [33](#) See George Campbell’s essay ‘Tenure of Land in India’ in the Cobden Club’s *Systems of Land Tenure in Various Countries* (London 1870, 145-227). Marshall evidently studied Morier’s essay in this volume very carefully, but does not appear to have taken notes from any of the other essays.
- [34](#) The whole of this last paragraph is a quotation from Nasse 1871, pp. 67-9.
- [35](#) This refers to Marshall’s voluminous early statistical notes.
- [36](#) These two tables are from Eden 1797, I, p. 33 and p. 44.
- [37](#) Sic. Eden (1797, I, pp. 53) has “they”.
- [38](#) This was originally “1500-50” but has been corrected in pencil to read “1601”.
- [39](#) Correction made in pencil.
- [40](#) The number 3 crossed out in pencil, and then added again in pencil.
- [41](#) Sic.
- [42](#) Initially Marshall had underlined the entire title, but he then crossed through the underlining of the first four words, and reinforced the underlining of the last.
- [43](#) Sic.
- [44](#) See J. M. Ludlow, ‘Old guilds and new friendly societies’, *Fortnightly Review*, 6, 1869, pp. 390-406.
- [45](#) Sic. The word ‘today’ seems to be missing here.
- [46](#) Sic - Brentano has ‘easily’.
- [47](#) Sic.
- [48](#) Sic.
- [49](#) See M 4/14, f.32 and f.33 above.
- [50](#) See J. M. Ludlow, ‘Trade societies and the Social Science Association’, Part I in *Macmillans*, 13, 1861, 313-325, and Part II in

Macmillans, 13, 362-372.

[51](#) See M 4/14, f.39 and M 4/13, f.72 above.

[52](#) The reference is to H. Spencer's *First Principles* (2<sup>nd</sup> edition, London, 1867) [ML].

[53](#) This is Brentano's 1870 paper in the *North British Review*.

[54](#) See E. Beesly, 'The Amalgamated Society of Carpenters', *Fortnightly Review*, 7, 1867, pp. 319-334.

[55](#) "If there are any conflicts between nations the old feudal institutions will naturally dissolve" [translation: Phoebe von Held].

[56](#) Sic.

[57](#) Administrative law.

[58](#) This refers to Marshall's notes from Morier on Prussian land reform, transcribed below.

[59](#) An apparent reference to one of Marshall's notes; but such a note has not yet been identified.

[60](#) In general Marshall is loosely quoting from Bridges (1866: 70-1), but note that the edition, and hence the page reference Marshall supplies to Hallam is different from the one offered by Bridges (who refers to the 5<sup>th</sup> edition of Hallam's *Constitutional History*).

[61](#) The bottom left hand corner of the manuscript, where one would expect the word 'in', is missing.

[62](#) In Morier's text this last word is 'held'.

[63](#) Morier's text here reads "... compound interest the 1 or the ½ per cent..."

[64](#) This word underlined twice later in pencil.

[65](#) Marshall places a mark here which suggests that the word order should be reversed – and indeed Caines' text reads "the duty devolves".

[66](#) See Wheeler, J. D., *A practical treatise on the law of slavery. Being a compilation of all the decisions made on that subject, in the several courts of the United States, and state courts. With copious notes and references to the statutes and the other authorities, systematically arranged* (New York, A. Pollock jr; New Orleans, B. Levy, 1837).

[67](#) This refers to Robert Bakewell's (1725-1795) pioneering stockbreeding methods.