ART. LVIII.—*The Law of Gavelkind.* By COLEMAN PHILLIPS.
(A Reply to Messrs. Wallace and George.)

[*Read before the Wellington Philosophical Society, 14th November*, 1883.]

THE accompanying brief paper purposes to explain the Law of Gavelkind, as opposed to the System of Nationalization of Land advocated by late writers, such as Messrs. Wallace and George, and apparently adopted in New Zealand. The question, being a philosophical one, I have much pleasure in presenting it for discussion to this Society.

The law of gavelkind, before A.D. 1066, was the general custom of England; the feudal law of primogeniture succeeding it. The word is "derived from the Saxon word '*gafol*,' or, as it is otherwise written '*gavel*,' which signifies rent, or a *customary performance of husbandry works*;" and, therefore, the land which yielded this kind of service, in contra-distinction to knight-service land, was called "gavelkind," that is "land of the kind that yields rent."*

Such is our best present authority for the word, but Lord Coke held a different opinion. I am inclined to follow Lord Coke, although, perhaps, in the opinion of feudal lawyers, the definition is a right one. It will be necessary hereafter to enquire more fully into its origin. For present purposes the explanation is sufficient. What I wish you to understand is, that the custom of gavelkind means *the compulsory subdivision of the land.*

As to descent. "Gavelkind land descends in the right line to all the sons equally, being an exception to the law of primogeniture. In default of sons, it descends to the daughters in the ordinary manner."

"It is to be remarked, that though females, claiming in their own right, are postponed to males, yet they may inherit, together with males, by representation. If a man leave three sons, and purchase lands held in gavelkind, and one of the sons dies in the lifetime of his father, leaving a daughter, she will inherit the share of her father; yet she is not within the words of the custom, *inter hæredes masculos partibilis*; for she is no male, but the daughter of a male, coming in his stead *jure representationis.*"

"This custom extends also to the collateral line, for it has been resolved, that where one brother dies without issue, all the other brothers shall inherit from him; and, in default of brothers, their respective issue shall take *jure representationis.* But, where the nephews succeed with an uncle, the descent is *per stirpes* and not *per capita*; and so from the nature of the thing it must be, where the sons of several brothers succeed, no uncle surviving, for though in equal degree, they stand in the place of their respective fathers."†

* Wharton's Law Lexicon. † Ibid.

Primâ facie all the land in Kent is gavelkind, except such as is disgavelled by particular statute. How the custom came to survive the Norman Conquest it is difficult to say, for no lands in England were treated so rigorously as those in Kent, not a single tenant-in-chief being left by William. We can only now suppose that the English sub-tenants of Odo, Lanfranc, and other Norman nobles, held their lands, after the Conquest, as their forefathers held them. I am inclined to doubt Archbishop Stigand's stipulation on behalf of the men of Kent, but nevertheless he may have made the stipulation.

The custom also appears to have ruled in Wales before 34 and 35, Henry VIII., c. 26.

In France, since the Revolution, a great number of small estates in land are held under a similar custom. All the children inherit. There are, I believe, five million landowners in France. Public opinion in that country tenaciously adheres to this compulsory division of land, which was adopted, as John Stuart Mill tells us, to break down the law of primogeniture, and "*counteract the tendency of inherited property to collect in large masses.**

In Norway this custom still holds good. Our Scanian ancestors doubtless brought the law of gavelkind with them to England, about five centuries before the Norman Conquest.

In Belgium, too, some lands are held under this custom. Wherever it is in force the custom appears rigorously to divide the land according to the population, and while preserving the independence of each individual, it prevents the accumulation of land into large estates. Under such a custom as the law of gavelkind it is quite possible to cut up New Zealand into five-acre allotments, if population should ever grow so dense.

The custom, apparently, arose in this way. Each individual man of the Teutonic and Scanian tribes grew to feel himself so independent, that he insisted upon holding the *folkland* as *bocland* (bookland, that is land held by document). The *mark* was laid out upon the communal system, exactly the same as the Maori held his land before he began to individualize it:—so much corn land; so much forest; and so much pasturage; although the Maori only used the two first divisions. If we were to ask our Maori friends, I think the vast majority of them would prefer the individual title; but the chiefs naturally object, as the individualization destroys their *mana*.

The atrocious *lala* custom in Fiji is kept up solely in consequence of the communal title, with the result that the common people are slaves.

The Teuton or Scanian originally became so personally independent, owing to his mode of life on land and sea, that we find he carried this feeling so far as non-submission to chieftainship. He elected his chief for war

* Polit. Econ., B. ii., cap. ii., sec. 4.

and for peace. This election of chieftains is a strange exception to the ordinary custom of hereditary chieftainship. It is to be regretted that Mr. Stubbs did not live and write in the days of our Stuart Kings and the men who maintained the doctrine of "Divine Right."

Before converting the *folkland* into *bocland*, in order to keep his family around him for purposes of defence, he (the Teuton) doubtless divided his communal strip of cultivated land among his sons, share and share alike. And when he individualized his title, the custom still ran. In some such manner we may presume that the custom arose.

Taken as a whole, I may say that the north-western nations of Europe adopted this mode of inheritance in preference to the Asiatic communal customs, which their ancestors had brought with them from Asia Minor during the course of the original migrations. The law of gavelkind is the great opponent to any system of nationalization of land. It also flies directly in the face of Leviticus, cap. xxv., 23:—"The land shall not be sold for ever; for the land is mine: Ye are but strangers and sojourners with me."

I would ask members to carefully read the Mosaic land laws as laid down in Leviticus. It will be noticed that the peoples of Western Asia apparently adopted a six-year rotation of crops. By the 50th Jubilee Year too, all mortgaged property was to be returned to the mortgagor. A curious mode of equalizing wealth, which of course failed.

While thanking Mr. Wallace, therefore, for having directed our attention to the state of the land question in England, Ireland, and Scotland, we must not overlook the fact that the Bible places these words in the mouth of the Deity: "The land shall not be sold for ever," and that the actions of the north-western nations of Europe have run contrary to this command.

We may therefore now accept as a fact, that this custom of gavelkind, this division among the sons, ran concurrently with the individualization of landed property. But while this was taking place, William the Norman conquered England, and imposed his law of primogeniture, under which all the land evils of Great Britain have arisen and grown: the law of primogeniture, the law of primogeniture alone.

William was a land nationalizator pure and simple. He compelled every man to whom he had granted lands, to meet him upon Salisbury Plain, within twenty years of his conquest, and swear to him that they held their lands from him alone. Fifty-nine thousand men solemnly took this oath. William had determined that every acre of land should be held from his Crown. Strange to say, it is not until every vestige of this law, this conquest has been swept away, and we return to the customs of Saxon

England, that we may hope to progress, and to check poverty and crime. The feudal land law may be regarded as a great curse, which enslaved the free English people.

Herein Mr. George's* reading of history and my own entirely disagree. Mr. George, an able writer and an accomplished writer, advocates that the land must be held as common property. I need only point to the fact that the north-western nations of Europe broke away from the communal custom, and they determined to individualize their title.

The reason why we attach so much importance to our "Crown grant" is, that previous to William the Norman's time, land was held some by custom, other by direct grant from different kings. William determined that every acre should be held from him alone, and by his grant, although in the Domesday Survey all such grants as those made by Edward the Confessor were duly recognized. This simplified matters greatly, and because our ancestors each had to plead his Crown grant, therefore we have learnt to value it.

The reason why William determined to take this step was, that the Church of Rome at that time determined, not only that the occupant of the Papal chair should be the spiritual lord of Europe, but also the temporal lord. If the king of every feudal state was supreme lord of every acre of land in that state, or a proper gradation of sub-lords established, then it would be easy for the Roman Pontiff to over-lord the eight or ten kings, and thereby restore, in a higher degree, the vanished splendour of the Augustan Cæsars. This policy was tried, but after a few centuries it completely failed. It left, however, the law of primogeniture firmly established.

The fact of William reserving a rent under all his grants, since lost by the Crown, and appropriated by the English landlord, a matter specially relied upon by Mr. George, who advocates a policy of re-confiscation, can be dismissed with the remark that William had no right to subjugate the free English people and impose this rent. We cannot allow Mr. George to plead the benefit from a wrong. Previous to William's coming, and the imposition of the feudal laws, the lands of England were rapidly becoming individualized among a free independent people. Our duty now is to return to the custom of gavelkind, and endeavour to sweep away any vestige of the feudal laws.

Mr. Wallace too relies upon this feudal reservation of rent in his advocacy of State nationalization. Randolph Flambard certainly never dreamt that he would have such strong supporters so many centuries after his death. But herein Mr. Wallace has not treated us fairly. Travelling in Malaysia,

* Progress and Poverty.

becoming acquainted with the Indian Archipelago, he also became acquainted with the Chinese land law. Quit rent and tenant right is, I believe, the land law of China. Mr. Wallace was doubtless also aware that the land of India is held under a State proprietary. I think both Mr. George and Mr. Wallace should have given us these precedents. They have not done so. Were they afraid to quote precedents for their own argument?

Looking then to the continents from out of which our ancestors migrated, we find that China, India, portions of Turkey, and Egypt are countries wherein the land is nationalized, *and in all these countries the people are a degraded people.* In the face of the communal system, the north-western nations of Europe individualized their land, although it does not appear clear that they intended the law of gavelkind as any check against the accumulation of large estates. I advocate it now as a check to accumulation, as I do not wish to see the peoples of the Anglo-Saxon race become such degraded beings as the Indians, Chinese, or the Egyptian *fellahs.* I take it that perpetual leasehold property will sap and undermine the strength and independence of any nation, as it is impossible for a man to prove himself so free and independent a citizen under the leasehold as under the freehold title.

It will be observed that the nationalization of land has not, in times past, prevented the accumulation of land, nor has it divided the land according to the population. Thus, if New Zealand were divided into 640-acre blocks, or 320-acre blocks, to-morrow, and each given to one man, we could not, by legislative enactment, get back any of this land for the purpose of settling upon it a future excess of population. We might pass laws to take it away, but those laws would be inoperative. On the other hand, we cannot be sure that, under the perpetual leasing system, land will not accumulate; for it may so happen that, nothwithstanding any act we may pass now against accumulation, yet, nevertheless, these two islands may become separate governments, or foreign war may arise, and then prominent and worthy citizens may be given large areas, or acquire them in other ways.

Is it not therefore preferable to place the subdivision of the land apart from the State, and apart from the people? To place the question upon the imperishable basis of a great custom, used for many centuries by the most independent nations of the globe, and still used and tenaciously clung to by the people of France: a custom whereby the area of the land becomes subdivided exactly in proportion to the population!

To prove this, let us refer to the history of the Roman Empire, and to the Agrarian Laws, although I must apologise for troubling you with historical events, with which you are all acquainted. Passing over then

the history of Greece, and the fact of Lycurgus dividing Sparta into 9,000 lots, and Laconia into 30,000, together with the εμφυτευσις title, the model perhaps of feudalism, let us see what the Roman laws were.

You will remember that Rome gradually conquered the countries surrounding the Mediterranean Sea, and confiscated the whole of the lands. These lands became the spoil of the Imperial city, and she colonized them in various ways—by military colonies, and by direct grant to favoured citizens, leaving however to the inhabitants of the conquered countries as much land as they required. Every Roman citizen was supposed, as his birthright, to have a share in the public lands. They were granted upon the condition of paying a tithe rent, or a tenth of their produce, into the Public Treasury, and rough records of the different ownerships were kept, upon which perhaps the record of our own Domesday Survey was afterwards founded. Suffice it to say that the Italian, Punic, and Grecian wars ended by vastly increasing the landed estates of Roman citizens. These estates were mere tenancies-at-will as we may imagine. Time ran on. The public domain was taken up, although we should not consider the different private estates large now-a-days. The mere tenants-at-will, by long-undisturbed possession (I speak now of centuries of time), had converted their leaseholds into absolute ownership. The mere course of time produced such an effect. The lands changed hands, until it was difficult to tell which was public, which private property. The population of the capital, Rome itself, and of other great towns, increased in numbers, and Roman statesmen, in order to relieve the distressed poor, asked themselves why the poor citizens should not have a portion of the public estate? Servius Tullius tried to pass an agrarian law as it was called, but was defeated by the nobles and wealthy capitalists (in many cases commoners) who were monopolizing these lands. Spurius Cassius, the Consul, next tried, but his proposal met with no better fate, and he himself was beheaded. Then Licinius Stolo (about 367 B.C.) tried, and after a struggle of five years carried his Bill.

The Licinian Law was as follows:—Every Roman citizen should be entitled to occupy any portion of the unallotted State land, not exceeding 500 jugera (a jugera was about two-thirds of an acre), and to feed on the public pasture land any number of cattle not exceeding 100 head of large, or 500 head of small; paying in both cases the usual rates to the Public Treasury. Whatever portions of the public land, beyond 500 jugera, were occupied by individuals, should be taken from them, and distributed among the poorer citizens as absolute property, at the rate of seven jugera (about 5 acres) a-piece.

For two centuries and a half this law, and the military colonies drafting away emigrants, relieved distress; but, about 130 B.C., a redistribution of the public estate became absolutely necessary, and Tiberius Sempronius

Gracchus determined to enforce the Licinian law, which had fallen into abeyance. Thereupon he passed the following law, called after him the Sempronian Law:—"That every father of a family might occupy 500 jugera of the State land for himself, and 250 jugera additional for each of his sons; but, where this amount was exceeded, the State was to resume the surplus, paying, however, for the buildings erected thereon. And this surplus was to be distributed among the poorer citizens, a clause being inserted in the Bill to prevent their selling the land, as many of them would have done."

But the owners of the lands objected. They had taken them up or bought them from others, improved them, made them their homesteads. At this time, the *Latifundia* cannot be regarded as excessively large estates; and the owners naturally objected to a confiscation. In subsequent centuries the estates did increase in size under this system of State ownership, until the system thoroughly undermined the independence of the citizens. But, at the time of Tib. Semp. Gracchus, the estates were not excessively large; so when he stood again for the tribuneship, fierce party strife shook the State, and he and 300 others were slain. The Sempronian Law was constantly evaded and rendered inoperative. Tiberius Semp. Gracchus was a good, moderate, and conciliatory man.

We can fully imagine that the inhabitants of the towns stood no chance in a contest of this kind with the sturdy agriculturists fighting for their homesteads. It is a pity that the idea of a compulsory subdivision did not enter the plans of Tib. Gracchus. But that could not be, for at that time a father possessed the power of life and death over his children. The world had not then emerged from slavery.

Thus, then, in Rome we find that the State had little power, and the people became enslaved. (That is to say, the State had little power to deal with their own leaseholds after they had been once granted. This is the weak point in the Land Nationalization Scheme. It is easy to lease the public land once, but it is found almost impossible for the State to take re-possession and re-lease the land as a private owner would do). Yet we must not overlook the harsh debtor and creditor laws of Rome, which also conduced to this slavery. These had a greater effect than the land laws. Under our own Norman feudal laws, too, the free English people became villeins and serfs.

So that we see that while China, India, and Egypt are still pure State lands, the system in Greece and Rome failed, and that the north-western nations of Europe improved upon it, by individualization; carrying such improvement with them, subject to the feudal law of primogeniture, in their migrations to America and Australasia. Had they carried with them

the Anglo-Saxon custom of gavelkind, in place of the feudal laws, I much doubt whether to-day there would be in New Zealand any attempt to restore a system of nationalization of land which, perhaps, best applies to tropical countries, where population is dense, and the rules of government require to be simple. (Nothing is so simple in the way of taxation as a land rent. But its very simplicity has the terrible effect of enslaving the nation. It places too much power in the hands of the Government, whereas a people should always reserve powers as much as possible, granting them out year by year, as in the case of the Mutiny Act).

Having stated this much, I may now lay down certain principles, drawn from the world's history, with respect to the land. I only submit them for your consideration.

1. The land laws of tropical countries do not apply to temperate zones.
2. We cannot trust the State.
3. We cannot trust the people with the leases.
4. It is absolutely necessary that the area of the land of a State should be divided in accordance with the density of the population.

In explanation of the first principle, it is sufficient to say that the north-western nations of Europe broke away from tropical or semi-tropical customs. For the simplification of ruling dense masses of people, there is no better means than nationalization of land and a land-tax. On the other hand, nationalization of land destroys individual independence. The highest aim of any government should be to render each man as free as possible within the State. A very simple form of collecting revenue may be found harmful to a State.

In explanation of the second principle, "that we cannot trust the State," it is only necessary to say that all modern writers, close students of history, agree in condemning Mr. Wallace's proposal upon this one ground. But, then, Mr. Wallace has apparently a very slight knowlege of history. Mr. George is a far more able man, but, living in so free a country as America, he is apparently unaware of the evils of trusting to State management. Would it, however, be well to trust the corrupt government of the United States, or the constantly changing government of France, with the sale and re-sale of the leaseholds? It would certainly not be found advisable, as "party" would then rule in a question with which it, at present, has nothing to do. "Party" is a power which has ruined many a State. We must keep it away from the land question. Directly a piece of land is sold, say in New Zealand, it passes clear away from Government interference. It is as far removed as our judges are supposed to be. All the need there is

for State action is to declare in what manner the land shall pass at death, for herein the paramount and sole duties of Government step in,—the order and protection of life and property. We do not trust the State with a penny of money, as our ancestors, since the Rebellion, found it absolutely necessary to pass the estimates yearly. By placing this question apart from Government interference, we do not interfere with private right. "Although the right of bequest forms part of the idea of private property, the right of inheritance, as distinguished from bequest does not." Primogeniture gave the land to the eldest son. I simply wish to give it to all the sons.

In further explanation of the third principle, or maxim, "that we cannot trust the people," it is only necessary to say that this principle varies in degree. The Roman Senate found that those who held the leaseholds would not give them up, and in our own case here, in New Zealand, we shall find that, being a hilly country, the people will become independent and cling to their lands in spite of any laws the Government may pass to the contrary. Such are the Swiss and the "statesmen" of Cumberland and Westmoreland. It will, therefore, be found highly injudicious to attempt to withhold the free individual title from the people of this Colony; although, at present, there is little necessity for any interference at all with the land question. The people of New Zealand, too, must become a maritime nation, and maritime nations have a strange habit of growing very restive under any strict measure of Government control. The sale of the Crown lands then by way of lease and deferred payment, in order to encourage settlement, is, therefore good, and amply sufficient for our present wants. But, if we expect more than that, we shall find that we cannot trust the people. They will not peaceably resign their leaseholds. And should the Government attempt to use force, the Government would find itself defeated. The best way to treat the people of this colony appears to me to be to give them their lands under the free individual title, and if alteration is required, declare the custom of England previous to the Norman Conquest. The law of gavelkind is an inexorable law, by which we may trust the people, and yet divide the area of the lands exactly in accordance with the population. We recognize the justice of the principle every day, for when a person dies intestate we divide his property among his children.

As to the fourth principle "that the area of a state should be divided in accordance with the density of the population;" there are one or two exceptions to this. 1. Commerce and manufactures will support a town population; and, 2. A certain number of people can be supported by usury or the profit of money-lending. Thus, Manchester, Birmingham, and Sheffield support a fairly large population, and draw their food supplies from abroad. And the profit derived by England from the mere loan of money

must amount to something like £100,000,000 per annum, which, of itself, means an enormous foreign food-supply. England at present is a gigantic money-lender, and the Stock Exchange is the London office. But both sources of these two exceptions are precarious, and it would be better for a state to depend upon its own food-supply. Therefore it follows that the land should be fairly divided among the people. The danger arises, too, of these great manufacturing towns breeding vast hordes of paupers, which in times of war, pestilence, famine, or other trouble, would put to the test not only the food-supply, but the whole machinery of law of whatever kind. In France, this custom of gavel-kind, and a slightly higher tone of civilization, checks the increase of population beyond the food-supply limit, and it is very doubtful whether we shall not have to educate the members of both sexes of the Anglo-Saxon race in this direction. I, of course, include the fish from the adjacent seas in the food-supply limit.

Mr. George ridicules Malthus. I simply desire to record my respect for the principle enunciated by Malthus, and if the limits of this paper would permit, I think I could show that Mr. George's own observations are open to numerous exceptions.

There is little doubt that England is in a precarious position, when she has to import so many hundreds of thousands of tons of corn and meat to feed her population. This is enough to prove to us here how utterly diverse are our circumstances from the circumstances of America. Furthermore that different land laws apply according to the density of the population. Thus there is more necessity for an alteration in the English land law of the present day than there is in Australasia or America. In the latter countries we may still go on as we are, but in order to prevent accumulation we may enact the custom of compulsory division, the same as France enacted it after the revolution. But in England more immediate and drastic measures are required, for from 20,000,000 of a population, in the course of a few years, the United Kingdom has sprung up into 35,000,000, and it is time to check the growth of this population which surpasses the food limit. A great population will test any land law. But then great populations of paupers should not arise.

Of course emigration of a superabundant home population is no cure for the root of the evil. Emigration only allows the matter from the ulcerous sore to escape as it were. The sore itself is not healed. The only cure is the compulsory subdivision of the land, whereby the population itself imposes the voluntary check to excessive increase. This is the cause found to be at work in France. The five million land proprietors do not care to further subdivide their small estates, and population becomes checked. Under any system of leaseholding whatever paupers would continue to breed paupers.

Take the case of Ireland. That country suffered from bad seasons, a dense population, and American competition. The Government of England, led by Mr. Forster, thought that as the people could not possibly pay their rents the landlords should forgive them for a few years. But the law of contract is higher than passing humanitarian motives, and directly the Government began to intefere in the working of the law they stirred up the landlords. The mistake was in having a feudal class of landlords at all, as the only true remedy for Ireland is to divide the land among the population, as in France, and make the people their own landlords. The emigration of the people is a barbarous and temporary remedy. The custom of gavelkind would have long since abolished the "*great*" landlords of Ireland.

And as to this cure of pauperism and compulsory subdivision, I read history differently from John Stuart Mill, who would prefer "to restrict, not what any one might bequeath, but what any one should be permitted to acquire by bequest or inheritance." I prefer to leave the individual perfectly free in all his dealings, only applying the compulsory law at his death. Thus, for the present century, speaking of New Zealand lands, I would content myself with so regulating the law of bequest that a man's sons should inherit their father's land whatever it might be, share and share alike. But with this limitation, that in order to preserve parental *authority, the father may, by will, disinherit any one son, be that son an only one.* There is no necessity to divide the land among the female children of a family, as in a properly regulated State the males should support the females. There should not be so great a disparity in numbers as exists at the present time in England, where there is supposed to be one million more females than males. This is a further incident of the application of the unfortunate feudal laws, and the source of so much misery and crime.

So far as to landed property. As to personalty, I should not hesitate to declare even this divisible among all the children (with a fitting reservation to preserve parental authority), *if necessity arose.* The accumulation of capital leads to the accumulation of land, and it may be necessary for us to insist upon a compulsory subdivision of both. But at the present time I am only dealing with the land question. The subject of usury requires a separate paper. Yet, I am doubtful whether the question of usury should not occupy a higher place in our thoughts than the one of land.

It is necessary for any person desirous of making himself at all acquainted with the land question, to read Leviticus, cap. xxv., the histories of Greece, Rome, and England, and Adam Smith or John Stuart Mill, before reading Messrs. Wallace and George.

Before an Anglo-Saxon Colony or State adopts the principle of nationalization of land, it would be well for it to send a Commission to inquire into

the working of the land laws of China and India. The Imperial Government would do well to publish a *précis* of these laws. In such a great Empire as China, there are many different land laws just as there are four or five in England; viz., freehold, copyhold, gavelkind, and borough-English.

"There is nothing new under the sun," especially with regard to this question of land ownership. I wish to see the people of New Zealand, at least, properly educated as to this question. "*Vox populi vox Dei*," says the proverb; but it is only when the people act upon the experiences of ages,—only when they are properly led,—only when they act with caution and not with impulse, that the voice of the people can be truly considered as the voice of God.

Having laid down four principles or maxims, I may be allowed to add one or two more—

5. That the population of a state should not exceed the limit of its home food-supply.
6. That the state has a perfect right to manipulate the rules of inheritance without injury to private property.
7. That different rules of inheritance apply according to the density of the population.

These three principles have already been explained.

In order that we may perceive how easily we may be led into error, it is only necessary to refer to the Rev. W. Blakely's Scheme of National Insurance as a cure for poverty and crime. This writer proposes a scheme which, like emigration, only cures the outcome of the evil, not the cause. Either Mr. Wallace or Mr. George would laugh at Mr. Blakely, and yet neither of those writers is to be depended upon; that is in regard to their scheme of nationalization of land as the cure. To check poverty and crime we must first teach the people that paupers should not breed paupers. The best teacher is the compulsory subdivision of the land, as in France, whereby the people themselves will see the inadvisability of too minutely subdividing their freeholds. A leasehold title of any kind will only continue existing evils. Neither emigration nor national insurance can possibly check paupers breeding paupers.

Pauperism is a question best left to the people to voluntarily relieve. The less a government interferes with a people the better, therefore a government should stand apart both from the land question and the relief of the poor. Under the compulsory subdivision of land there will be found no need for poor laws. Furthermore, should a person, by bequest, devise in charity, no tax ought to be levied upon such a bequest; and this to encourage the independent action of the people. But in the ordinary

bequest of personalty, I see no objection to a much higher scale of stamp duties than exists at present. But the scale should be a graduated one, the largest amounts paying the heaviest duty.

It may be desirable hereafter to watch carefully the manner in which companies acquire large landed areas, but no immediate action is necessary. No association partaking of the character of Mortmain should be allowed to stand in the way of a compulsory subdivision of the land. Herein, too, I would point out the growing danger to the State of "capital," when administered by powerful companies. Justice, railroads, telegraphs, stocks, even the constitution itself of the United States, may almost be said to be at the mercy of powerful monetary combinations. Compulsory subdivision appears to be the only safeguard against accumulation, whether of land or money. The custom of gavelkind is advocated for the first; the second is hardly a matter for present consideration. Except, perhaps, I may be allowed now to say, that the State has a perfect right to declare in what way property shall pass from the dead to a living possessor. By a proper manipulation of the laws of inheritance, the State possesses a lever of gigantic force. Never yet, in the world's history, has this Herculean instrument been applied, except by our Anglo-Saxon ancestors, in their custom of gavelkind. If I now uncover the baby giant from the dust of ages, it is for the good of my fellow men, and I trust to see its strength grow and grow, until the Anglo-Saxon world recognizes its power, and by its aid sweeps away much of the misery, crime, and poverty, and unequal distribution of wealth ruling amongst us. I think our Parliament should once and for ever declare what the common law of England was previous to the Norman Conquest (the custom of gavelkind), reserving the right of disinheriting one son.

As to the danger of the land, when subdivided, falling into the hands of the usurer, it is only necessary to point out that the law of compulsory division works inexorably. Of whatever land the usurer dies possessed, that land would have again to be divided. There is no escape.

I therefore think the ideas of both Mr. Wallace and Mr. George unworthy of our adoption. They are as unsound as the Rev. W. Blakely's. History, too, condemns them. And I would say, as my earnest opinion, that the nationalization of the land destroys personal independence. The tendency of humanity has been to free the individual. Property now belongs to the individual, not to the family, clan, or State. It would be a step backwards were we to say that it should belong to the State. The highest aim of Government should be to render the individual as free as possible within the Home borders. The more the Government interferes, the more the personal independence of the citizen suffers, and if the unit

suffers, the State suffers accordingly. Has there not been too much State interference of late, both with regard to the child and the man. From slavery and from villein service we have developed into free individual action. "Our home is our castle," a noble maxim: Blackstone says from the centre of the earth to the sky. For this principle Earl Godwin fought, eight and a half centuries ago, and it is the highest principle a nation can cherish.

It will be observed, too, that the tendency of the age has been to free England from the feudal idea of nationalization of land. Primogeniture has gone, entail has gone, settlement is being swept away. The next step is to compulsorily divide the land as in France.

With respect to collateral relatives. I agree with Mill, that in cases of intestacy, and the failure of direct heirs, property should escheat to the State. But this is a minor point in the manipulation of the rules of inheritance.

If we really wish to check poverty and crime, and to progress as Mr. George wishes, our bounden duty is to teach parents the great obligation of "not bringing children into the world unless they can be maintained in comfort during childhood, and brought up with a likelihood of supporting themselves when of full age."* I know of no better means than the compulsory subdivision of the land. The great towns will not then become the receptacle of agricultural paupers, as the English towns are flooded at the present time by the Irish. The utter carelessness of the Irish population, in the neglect of this important matter, shows how necessary it is for us to strike at the root of the evil, and by subdividing the land to cause such a people to impose the voluntary check to excessive increase. Poor Ireland has terribly suffered from the incidence of the feudal laws. Time it is for us to divide the area of that country exactly according to the population.

A feature, too, with regard to the free individual fee-simple title as applied to the present circumstances of this colony merits our attention, and our duty is to act for the present. Leaving upon one side the drainage of great swamps, the irrigation of plains, the clearing of forests, or the destruction of pests, let us take the scant timber-supply of the South Island into consideration. Men will not be found to plant trees as readily under the leasehold title as under the freehold. A man will do anything, if he consider his title secure in perpetuity to himself and his offspring; but he will weigh every action if he holds a lease, be that lease called a perpetual lease or by any other title. Of course the State may, and perhaps should, undertake the conservation of the forests; but it is very doubtful whether the private individual will not carry out this work better, *when it pays him to*

* J. S. Mill.

do so. Thus in England, at the present time, there are large private plantations. I would much rather see the private individual surround his property with trees, than leave the State to conserve in different plantations. The supply of wood to the community would be larger and cheaper by individual effort than by State production. Still, by all means, let the State make a beginning. Personally, I have no faith in State interference with material objects of any kind whatsoever. The duties of government are best confined to the protection of life and property and immaterial requirements.

It is not my intention to refer to any of the minor objections to the leasehold title, numerous as they are, such as the exhaustion of the land by cropping, other bad treatment, the horde of officials necessary to form the "department" when in full work, etc., etc. I confine myself to the broad philosophical, or rather economical questions. These matters can best be left to our politicians. In China, the *beau ideal* land of quit-rent and tenant-right, there is a land board for every village, composed of the oldest inhabitants. If a man farm his land badly, he is publicly admonished. And if he still continue the malpractice, he is publicly whipped. Such, of course, must be the effect of the submersion of the free independent title to State ownership. There is also another curious law in that country, worthy the attention of our legislators, viz., the right of the mortgagor to offer his interest to so many members of his family before the mortgagee can take possession. Thus: A mortgages to B for 10,000 taels. The time expires, and B wishes to foreclose. A cannot pay, but he has the right, first to offer his interest to C,—his brother,—who can pay if he is willing and able, and take the property; or to D,—another brother,—or to E his uncle, and so on. As I have before remarked, any Anglo-Saxon State or Colony desirous of adopting the system proposed by Messrs. Wallace and George, would do well to study the land laws of China. At the same time, I think we might ask Sir James Fergusson, the present Governor of Bombay, who, I believe is a member of this Institute, to furnish us with some information touching the Indian land laws. I believe that gentleman would willingly do so.