



of property, and there, it is predicated, that the earth and all it contains is the general property of all mankind as the gift of Him who created it.

It is quite a reasonable supposition to postulate, in the primitive periods of man's existence, the common ownership of all property - both movables and immovables. Such a community of ownership, however, would not necessarily entail a community of rights and interests as understood in modern times, but rather the reverse; for such communion of goods could never be applicable to anything save the substance of things. Doubtless such is the true conception of the most primitive "form" of ownership, but such a theory of a race or common property in the mere body or substance of things distinguishable from the notion of rights and interests, is too abstract a conception in which to found a theory as to the origin of proprietary right, either individual or collective. We must, therefore, search elsewhere for this, and base our enquiries on something, in its essence, more practical.

In tracing the historic origin of proprietary right, the first conceptions of it appear to be revealed in the doctrine of primitive use and occupation. "Occupatio" or occupancy, is the "advisedly taking possession of what is at the time, the property of no man (res nullius) with a view to acquiring property in it for himself." He who first came into possession of a thing by force or strength or skill in handicraft, acquired therein a certain right of ownership, in its essence transient, yet which lasted so long only as the duration of the first possession. Thus the right of possession was inseparably dependent on the act of possession, and from this it would appear that the "usufruct" was the first estate (if such we may call it) enjoyed by man. In the old Roman Law, title by occupancy was considered to be based on the "jus gentium" or the law common to all nations.

This would be a sufficient proprietary right for nomadic tribes and races, but as population increased, things of a

necessity were bound to assume a more permanent status, and proprietary title to become a more substantial quality of right than that afforded by a mere usufructuary property in things. Ownership and possession began to depend not on the immediate use only, but also on the appropriation of the "corpus rerum" as well. This phase of permanent dominion would naturally ~~attach~~ attach itself to movables long before any proprietary right whatever had been acquired in lands and immovables, as the primitive needs of the race would require first, a permanency of possession in chattels. The art of cultivation of the soil became an institution of industry only, as the civilizing process of social development increased. This is amply illustrated in the comparatively recent history of our North American Indians. Who can doubt but that his first right of property was to be had in his tomahawk, his bow and quiver, or his buffalo skin, and that too, but a transitory right coincident with actual possession.

In reviewing ethnological history, one circumstance has shown itself to be standard, namely, that of the period of migration. In that ancient migratory movement ever westward, we trace the origin of proprietary right in immovables. It betokened compression of population on territorial subsistence, to relieve which it was necessary to migrate to unoccupied lands. Natural subsistence had to make way for artificial cultivation and with the development of the primitive husbandmen came the introduction of a more permanent dominion in the soil. Thus necessity seems to have been the father to proprietary right; but whether civil society was organized subsequently to insure its security, or whether society as a combined unit existed antecedent to the individual right to property, is a matter of conjecture. But I submit that the origin of proprietary right in general seems undoubtedly to have sprung from the ancient usufruct, whether we view it from the stand-point of the community or the individual, and having passed through the graduating stages of varied permanence, ultimately realized

itself in the dominion of the "corpus rei sue", Savigny, the greatest of modern jurists, holds all property to be founded in adverse possession ripened by prescription. Occupancy would appear, therefore, to be the origin in the first instance of a usufructuary proprietary right, while "necessity" or prescription seems to have been the medium through which initial permanence was established.

Some authors hold against the theory of occupancy as the primary basis of proprietary right, holding that joint ownership is the truly archaic institution and that to arrive at the right conception we must view the forms of property as associated with the inseparable rights of the tribe or family. Such authorities repudiate the testimony of Roman law on the ground that its channels of observation had become colored by the philosophy of the lex naturae, or the law of nature, whereby the impression was left that individual ownership was the initial and normal state of proprietary right. However this may be, it affects not the present issue as to the nature and origin of proprietary right in general, whether such original right were individual or composite as to its subjective possession. For it is, in the same, immaterial, whether the primal state of society recognized as the unit the proprietary right of the individual or the group; in as much as the primary original term of possession what it will. It is not here in place to enter upon a discussion as to the organization of primitive society or its probable constitution and status at its original formative period. Whatever that, it appears an irrefragable sequence which jumps with Savigny's dictum that proprietary right is based on adverse possession perfected by prescription. With the advance in society property in things assumed a more permanent aspect. Mutual convenience led to the displacement of title by use and occupation and gave rise to sale and transfer - de emptione et venditione. Where the holder had secured a more or less permanent title in a thing which he felt

he could do without and yet might not feel like abandoning it  
 entirely, while at the same time having the desire to possess  
 something which another might have, and for which he would be  
 willing to make an exchange - a proposition of barter would be  
 the natural and logical outcome. This mode of exchange would  
 first assume the form of barter until mutual convenience, the  
 cause of its origin, again modified and perfected it into a  
 more workable system of sale and transfer through a common  
 medium of exchange.

This leads to the question of the extent of an estate in  
 reality and the tenures by which such might be held. Two  
 distinctive and opposite systems appear to have prevailed at  
 different times, in the various modes of land tenure, namely:  
 the allodial and feudal systems. The former was closely akin  
 to the old Roman Domain, and both were in marked contra-  
 distinction to the feudal tenure in that they were of the nature  
 of an absolute grant. In the forward march of history the  
 German Allod and the Roman Domain became supplanted by the  
 fiefs of the feudal system. The great allodial proprietors  
 made themselves into feudal lords by conditional alienations of  
 portions of their land to dependents. This transformation was  
 one of slow growth and did not reach completion till the latter  
 part of the twelfth century.

Feudalism appears to have had its origin in the benedictary  
 gifts of merovingian chieftains invading Roman territory. These  
 were lavishly distributed by Charlemagne, and consisted of  
 grants of Roman provincial lands to be held by the benedic-  
 tary on terms primarily conditional upon military service. The  
 great allodial proprietors do not seem to have found in company  
 with their sovereign - his entourage being at first made up of  
 personal dependents. This, as the system gained strength, assum-  
 ed larger proportions till finally the sovereign ruled over all  
 and the ultimate title to all lands within his dominion rested  
 in him.

In the latter days of the Empire, there is traceable in  
 Roman law a species of land tenure which affords a satisfactory