

Cambridge University Press

978-1-107-64506-6 - The Collected Papers of Frederic William Maitland:

Downing Professor of the Laws of England: Volume III

Edited by H. A. L. Fisher

Excerpt

[More information](#)THE TRIBAL SYSTEM IN WALES¹

IT is probable that by this time all who take a serious interest in those problems of remote economic history, which are the theme of Mr Seebohm's study, will have read this book². It is certain that if they have read they have admired it, and have fallen once more under that charm which has made *The English Village Community* one of the classical books of our time. Therefore there is here and now no need to expend many words of general praise. The earlier part of this new volume and the precious appendixes that it contains seem to me to be beyond praise. By the earlier part I mean the part which fills the first pages. This explanation may be necessary, for Mr Seebohm still works "from the known to the unknown," so that in his hands the last becomes first and the first last. Perhaps, however, we should say that he works rather from the knowable than from the known. Of the Wales of the thirteenth and fourteenth centuries very little has been known hitherto by the

¹ *Economic Journal*, Dec. 1895.

² *The Tribal System in Wales* by Frederick Seebohm. Longmans, 1895.

Cambridge University Press

978-1-107-64506-6 - The Collected Papers of Frederic William Maitland:

Downing Professor of the Laws of England: Volume III

Edited by H. A. L. Fisher

Excerpt

[More information](#)2 *The Tribal System in Wales*

generality of Englishmen and Welshmen. A great deal now is knowable in these delightful pages, a great deal that is well attested by accurate and authentic documents that are here printed in full and are elucidated by an ingenious commentary. One part of that charm of which I have spoken consists in the author's strong desire to see things in the concrete, and to make his readers see them in the same fashion, and we can now see in the concrete certain bits of Welsh life as that life was lived in the thirteenth century.

Beyond this lies the unknown. Must we say the unknowable? Mr Seebohm will not expect from us a ready answer to that question. He would very properly despise us if, in an off-hand way, we declared that he had solved the many problems of ancient Welsh history. What he has given us on the present occasion is but, as the first words of his preface tell us, "the first part of an essay." "It is confined to an attempt to understand the *structure* of tribal society in Wales. The *methods* of tribal society in Wales and the extension of the inquiry to other tribal systems are left to form the subject of another volume." Now in the exposition of any social system we may well give one chapter, or one book, to structure and another to functions; this is a convenient arrangement. But when we are actually engaged in the task of reconstruction or are examining the results of another man's reconstructive labours, we cannot thus separate the two topics. The proof of the model is in the working. We cannot tell whether or no the organs of the hypothetically restored beast have been correctly shaped

Cambridge University Press

978-1-107-64506-6 - The Collected Papers of Frederic William Maitland:

Downing Professor of the Laws of England: Volume III

Edited by H. A. L. Fisher

Excerpt

[More information](#)*The Tribal System in Wales* 3

until we know what purposes they are going to serve. Therefore, Mr Seebohm would have little but contempt for a critic who at this moment broke forth into indiscriminate laudation. His procedure indeed may have been intended to obtain from some of his readers a statement of those difficulties that they would like to see dissolved so that he may have an opportunity of dissolving them in his next volume. In this spirit of suggestion I offer a few remarks.

Until the day comes (whether it ever will or ever can come I do not know) when those who are skilled in Celtic philology will have sorted that miscellaneous mass which we know as the Ancient Laws of Wales, the materials which will be at the service of investigators will be of an extremely dangerous and unsatisfactory kind. I am not hinting at forgery; the forgery of codes of law would be an uncommon event. I am referring to what is a very common and, at a certain stage of society, an unavoidably common process, namely, the accretion and fusion in the hands of lawyers of rules and institutions which had their origin in widely remote periods. At any given moment the law of a nation contains things new and old. In 1819 the law of England comprised a mass of rules touching trial by battle; it also comprised a mass of rules about negotiable instruments. There is no fear of our saying that the judicial combat and the bill of exchange are institutions which belong to one and the same age. We know the *caput mortuum* when we come upon it in modern times. We have continuous records and a continuous tradition. But do we know the *caput mortuum* when we come upon it in ancient times?

Cambridge University Press

978-1-107-64506-6 - The Collected Papers of Frederic William Maitland:

Downing Professor of the Laws of England: Volume III

Edited by H. A. L. Fisher

Excerpt

[More information](#)4 *The Tribal System in Wales*

Some Welsh lawyer has collected things new and old. Possibly he was bound to copy down some rules that were well-nigh but not quite obsolete when he copied them. In 1819 an English lawyer who wished to make a complete statement of English law would have been bound to speak of trial by battle as of one of the methods by which lawsuits could be decided. We know well from our own history how apt were the lawyers of past ages to fuse the old with the new, to borrow rules from the most various sources, without telling us whether those rules were practicable or impracticable, living or dead, imported novelties or obsolescent survivals of a forgotten age. We seem almost entitled to say that it is improbable *a priori* that the Welsh Laws, even in their purest form, represent to us the life of the people as it was being lived, really and truly lived, at any one moment of time. We seem almost bound to frame some theory of development which will mark some rules as new and others as old. But how to obtain such a theory, that is the difficulty. Out of the laws themselves we shall hardly obtain it, while at present no other body of rules has been brought sufficiently near the Welsh to afford us the means of critical comparison. Philology may have something in store for us. The heir apparent, or successor designate, of the Welsh chieftain is called the *edling*; on this side of Offa's dyke he would be called the *atheling*. Are these two words two, or who has done the borrowing? It has long ago been pointed out that in Wales the bondman is a *taeog* and in England a *theow*. Has there not from a very remote age been going and coming between Taffy's house

Cambridge University Press

978-1-107-64506-6 - The Collected Papers of Frederic William Maitland:

Downing Professor of the Laws of England: Volume III

Edited by H. A. L. Fisher

Excerpt

[More information](#)*The Tribal System in Wales* 5

and my house, and did not the Lords Marchers even at a pretty recent time claim the right of selling English criminals as slaves to the Welsh? But even when philology has done its utmost, we shall, I fear, be compelled to admit that some of the main principles of that “tribal society” which is described in the Welsh laws are susceptible of more than one explanation, and until we have Mr Seebohm’s theory of “methods,” we can pronounce no sure judgment on his account of “structure.”

Let us take, by way of example, what seems to me a matter of cardinal importance. We see set before us a system of mutually exclusive clans. Each has its chieftain; each is an organized unit; the nation, tribe, race is built up out of these units. They can be, and they are, mutually exclusive, because each of them is constructed in accordance with the agnatic principle. Except in an exceptional case, one cannot inherit through a woman: *Mulier est finis familiae*. For all economic, proprietary, possessory purposes the members of each clan cling closely together. All this seems fairly simple. But so soon as there arises a question of blood-feud, of wergild (or *galanas*, as the Welsh call it), this clan system seems to fall to pieces. The “galanas-group,” by which we mean the group which is entitled to receive and liable to pay the blood-money, is defined by a principle radically different from that which gives the clans their shape. It traces consanguinity both through men and through women. The consequence is that the “galanas-groups” are not, and cannot be, mutually exclusive unless there is strict endogamy within each group.

Cambridge University Press

978-1-107-64506-6 - The Collected Papers of Frederic William Maitland:

Downing Professor of the Laws of England: Volume III

Edited by H. A. L. Fisher

Excerpt

[More information](#)

6 *The Tribal System in Wales*

Let us put a concrete case. I belong to a "kindred." The members of that kindred trace their blood from a common ancestor through an unbroken series of males. Also I belong to a proprietary or possessory group which is smaller than the kindred; but this also is agnatically constituted. In the particular case we will suppose that I am living in intimate communion with a number of men who are my paternal first cousins, being sons of the sons of my father's father. All my economic interests are bound up with theirs. This is put before us as a common case. And now one of these men slays my mother's brother. *Quid iuris?* This, we may say, is a question of arithmetic. I am both debtor and creditor, for I belong to two different "galanas-groups." So we have but to set off the debit and credit and perform a subtraction sum. Now this may be a tolerable solution in days when revenge has given place to blood-money; but can we translate it into the language of a time when the blood-feud is not merely permitted by law, but demanded by all that is sacred? My mother's kinsmen are swooping down on the cluster of huts in one of which I live; they are coming to burn and to slay. What is my duty? What is my natural impulse? Shall I defend the cousin who slew my uncle, or shall I make common cause with the raiders? "Divided duties" there will always be; were it otherwise, this would be a poor world for lawyers. But here we seem to have an easily possible case in which the problem goes to the very root of morality and religion. Can we suppose that a state of society which permits, which necessitates, the emergence of such problems, is a normal and stable state? Can it be other than a transi-

Cambridge University Press

978-1-107-64506-6 - The Collected Papers of Frederic William Maitland:

Downing Professor of the Laws of England: Volume III

Edited by H. A. L. Fisher

Excerpt

[More information](#)*The Tribal System in Wales*

7

tional state in which two different conceptions are contending for the mastery?

Mr Seebohm says (p. 104): "The payment of galanas was therefore a matter between two kindreds." Now this is just what we should like to say; but unless there has been some fundamental change in the constitution of the "galanas-group," or in the constitution of the "kindred," these two have never been coterminous, but have been fashioned by two thoroughly different principles. It would be difficult or impossible to improve the excellent exposition that Mr Seebohm has given of the nature of the "galanas-group," but it brings out in sharp outlines this fact that the blood-feud unit is not a kindred, and may or must be composed of men who belong to different kindreds. This has long seemed to me to be the central difficulty of the Welsh laws. I had hoped that Mr Seebohm would have solved or at all events attacked it, and I still hope that he will attack it in his next volume. This problem occurs not only in Wales, but in some other parts of the world, and I venture to think that until we have loosened it we have hardly begun the explanation of tribal society.

Again, let us hope that Mr Seebohm has not said his last word about patriarchy. "It can hardly be doubted," he says (p. 95), "that the Welsh *weles* resemble in their structure much more closely the 'patriarchal family' under its *patria potestas* than what is known as the 'joint family' with its joint ownership under a chief who is only *primus inter pares*." This may be very true, and yet we may be obliged to add that the gulf between the Welsh *wel*, as it is

Cambridge University Press

978-1-107-64506-6 - The Collected Papers of Frederic William Maitland:

Downing Professor of the Laws of England: Volume III

Edited by H. A. L. Fisher

Excerpt

[More information](#)8 *The Tribal System in Wales*

described in the codes and the Roman system of *patria potestas* is almost immeasurably wide. In the Wales of the codes there is nothing that ought to be called *patria potestas* without a qualifying note. The young tribesman when he attains the age of fourteen years is commended to a lord and becomes a fully free man, "and he is himself to answer for every claim that may be made on him." If there was a time when the full-grown son remained in his father's power that time has gone by; but I cannot think that Mr Seebohm has as yet proved that it ever existed.

If the Welsh laws are treacherous, still more treacherous are those Welsh diplomata, would-be deeds of conveyance and the like, which claim an ancient date. Mr Seebohm puts more faith in the *Liber Landavensis* than I dare put until Mr Haddan's unfavourable judgment has been impugned and reversed. Mr Seebohm, though he treads cautiously on this dangerous ground, seems at times to be scarcely aware of the full extent of the danger. At one point (p. 177) he seems inclined to accept as a basis for inferences about the Wales of the sixteenth century, a charter which concedes to a church a full-blown and elaborate "immunity." The church is to hold its lands "with complete legal cognisance of thief, of theft, of violence, of slaying, of waylaying, of incendiarism and contention with blood and without it." Now surely with this document before us we must say one of two things, either that it is a gross forgery, or that Wales, far from being a country in which archaic or primitive phenomena can be studied, is the land which led the van of the nations in their

Cambridge University Press

978-1-107-64506-6 - The Collected Papers of Frederic William Maitland:

Downing Professor of the Laws of England: Volume III

Edited by H. A. L. Fisher

Excerpt

[More information](#)*The Tribal System in Wales*

9

progress from tribalism to feudalism. If we translated this document into Latin and supposed it to come from England, the reign of Canute or of Edward the Confessor would be the earliest age to which we could refer it, and if we supposed it to come from France or Germany we should, to say the least, find few to believe that it was Merovingian. Welsh philologists may say of it what they will, but the dilemma is not to be escaped. If this flamboyant immunity belongs to the sixth, seventh, or eighth century, Welsh ecclesiastics and Welsh conveyancers were far in advance of their foreign brethren. However, though I do not think that Mr Seebohm has been quite sceptical enough in his dealings with these highly suspicious documents, I must not suggest that his use of them vitiates the main argument of his book.

So sparse are the genuine documents which come from the Wales of ancient days that the temptation to eke them out by other evidence is strong. In a few instances it seems to me that Mr Seebohm has yielded too easily to this temptation. To illustrate the Celtic custom of tonsuring serfs he calls to his aid (p. 129) a passage in the Scottish law-book *Quoniam attachiamenta*, in which I can see no tonsure, and nothing Celtic, but merely the Normano-Anglian law of the Scottish lowlands which copies from English law-books, and which tells how the man who submits to become a serf delivers himself to his master “by the front hairs of his head,” a practice of which we have a good deal of evidence coming from Frankland. But this is a small point, and the other instances in which

Cambridge University Press

978-1-107-64506-6 - The Collected Papers of Frederic William Maitland:

Downing Professor of the Laws of England: Volume III

Edited by H. A. L. Fisher

Excerpt

[More information](#)

10 *The Tribal System in Wales*

Mr Seebohm might be accused of similar mistakes are of no great moment.

His second volume we shall eagerly await, and he will easily understand that only because there is a second volume to come has this review of the first been devoted rather to a statement of difficulties than to an expression of the gratitude that is due to him for an excellent piece of work.