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A BRIEF INTRODUCTION TO THE STUDY OF  
THE LAW OF ASSOCIATION.

BEING, IN PART, A REVIEW OF PROFESSOR MAITLAND'S  
LATEST WORK.

When two or more persons are associated in the holding of a right or in the pursuit of a common interest, the question at once arises whether they must act in concert in exercising the right or in pursuing the interest. If they must, then a given act, if it is to be binding on all the associates, depends for its validity upon the joinder of all in the doing of it, or upon the delegation of the requisite authority to a representative. If concurrence is not necessary, the alternative is that "the law may accept the action of those who can be brought to concur in place of the action of all the associates, ignoring those who fail to act, or determining, where all are willing to act, but disagree as to the course to be pursued, which of the several contending parties or factions shall prevail over the others."<sup>1</sup> In either case, when the act

<sup>1</sup> Freund: "The Legal Nature of Corporations," Sec. 13. See this and following sections for the development of the theory of "majority control."

is finally done, those not acting are represented by the actor. Where the representation is by law an incident of a given form of association Freund calls it "original representation." When the authority of the actor rests upon express delegation the representation is styled "secondary."

The groups of which the law takes cognizance are many. Associates are bound together by the ties of common right or common interest with varying degrees of closeness. Leaving out of consideration such loose forms of association as societies formed for literary, scientific or religious purposes, we note the gradual tightening of the bond as we pass from tenancy in common through joint tenancy to the tenancy of a joint stock in partnership; then through tenancy of a joint stock in company form, until, finally, we reach the extreme case of the collective holding of rights by persons who are "incorporated" for business or other purposes or are knit together as citizens of a municipality, state or nation. Joint tenancy and tenancy in common are relations which, in the typical case, are constituted without voluntary or conscious association. Persons standing in the relation of co-tenants have not, as a rule, come together for the sake of pursuing a common interest. Their primary desire is usually for a division of their property and for their satisfaction there has been developed the remedy of partition. As representative action is foreign to their desires, it follows that representation is not an incident of such tenancies.<sup>2</sup> Coming to the case of partnership, however, we recognize the representative principle in the familiar rule that partners are "agents of one another" within the scope of the business of the firm. A partner's authority does not rest upon express delegation. It is said to be "implied"; that is, it is an incident of the relation.<sup>3</sup> Beginning with partnership and running through the closer forms of association we trace

<sup>2</sup> For example, one tenant cannot pass title to the common property or make a valid lease of it. See *McKinley v. Peters*, 111 Pa. 283 (1886). Possibly the germ of representation is discernible in the doctrine that delivery of a deed to one of several vendees is delivery to all. *Payne v. Echols*, 15 Atl. 895 (1888). See also *Holt's Appeal*, 98 Pa. 257 (1881).

<sup>3</sup> See, for example, *Burdick on Partn.*, p. 159.

the development of this representative principle. In partnership, one associate *may* act for the group; but if all choose to join in the act, the act is legally valid. In the case of a joint stock company or other statutory association it is sometimes left optional with the associates to retain the acting-right for the whole group or to vest it exclusively in representatives.<sup>4</sup> In the event of incorporation, the acting-right is, as an incident of the relation, exercisable only by the duly elected representatives of the members. Hence a deed or mortgage of corporate property in which all the members join is void.<sup>5</sup> When people become incorporated they subject themselves to a form of organization which has definite legal incidents. Common rights must be dealt with in the common name and by the regular representatives. This principle holds even when all the stock is assembled in the hands of a single holder.<sup>6</sup> So strenuous is the insistence on compliance with the formalities of organization that all the stockholders in meeting assembled cannot validly appoint any other agent than the directors to do an act which, by custom, falls within the scope of their representative powers.<sup>7</sup> In the municipal corporation, the state or the United States, the operation of the principle is so familiar as almost to escape observation. The citizens resident in a certain geographical area, invested with the privileges and responsibilities of local self-government, might conceivably enact their legislation at a meeting at which every voter is present. But such a meeting could probably never

<sup>4</sup> An illustration is furnished by the Pennsylvania statute of 1899, May 9; P. L. 261. Section 4 is (in part) as follows: "The partners may provide [by by-law] that certain only of the members shall have active charge of the business and be authorized to enter into contracts, undertakings or engagements whereby the partnership shall be held liable and may change the same as they see fit."

<sup>5</sup> *Bundy v. Iron Co.*, 38 Ohio St. 300 (1882). In this case the court, while treating the mortgage as void at law, gave effect to it as an equitable mortgage.

<sup>6</sup> *Parker v. Bethel Hotel Co.*, 96 Tenn. 252.

<sup>7</sup> See the language of Vice-Chancellor Pitney in *Loewenthal v. Rubber Reclaiming Co.*, 52 N. J. Eq. 445 (1894). Also the language of Vice-Chancellor Green in *Plaquemines Tropical Fruit Co. v. Buck*, 52 N. J. Eq. 219 (1893).

assemble. A more practical rule is that which gives validity to the acts of those who attend as representatives of the whole group.<sup>8</sup> In large communities even this rule would prove unsatisfactory. Hence the situation with which we are most familiar, *i. e.*, the enactment of legislation by chosen representatives sitting in council, in legislature or in Congress. Occasionally the people feel the necessity for direct and immediate action otherwise than through representatives. At such times a plebiscite is taken or a "town meeting" is called. Such a gathering is significant if the people assemble spontaneously and under a powerful common impulse. Often, however, it is a gathering mechanically contrived by a handful of irate citizens or by a group of practical politicians.

When a representative system is fully developed, as in the case of incorporation, an opportunity is afforded for the explanation of its phenomena by conceiving of a "legal person" (distinct from the members of the group) as being the principal for whom the representatives act. The "United States," the "State of New York," the "City of Philadelphia" are said to act when the legislative bodies at Washington, Albany or Harrisburg pass laws. "The Standard Oil Company" is said to fix prices whenever the representatives of the stockholders associated under that name determine upon a scale of rates. "The corporation" is said to own property when the situation is that the associated owners can pass title only by a deed executed by a representative in the common name. "The corporation" is said to make a contract—to owe a debt—to hold a chose-in-action—to commit a tort—when the situation is that common action is legally possible only when the appropriate machinery is set in motion to enable the associates to perfect an obligation, to collect a debt that is due to them; or to enable their creditor to reach that common fund which alone is liable for his satisfaction.

Some minds accept as satisfactory a conception of the corporate person which ascribes to such person no real existence. The corporate person is only *persona ficta*. Chief Jus-

<sup>8</sup> Such is the case with the New England town. See Dillon *Munic. Corp.*, Sec. 270 *et passim*.

tice Marshall's celebrated definition<sup>9</sup> accurately expresses the idea with which English-speaking lawyers have been operating for centuries whenever they have been called upon to develop corporation law. To some minds, on the other hand, the invocation of a fiction seems altogether objectionable, for the reason that to invoke a fiction is not to explain a legal difficulty: it is merely to adopt a device to cover up the difficulty and discourage all attempts at legal analysis. The fiction becomes, as it were, a local anæsthetic. It works no cure, but deadens the pain. Unfortunately, however, it is used not to render a mental operation possible, but to serve as a substitute for one. No substitute could be more inadequate. Its inadequacy is coming to be generally recognized wherever lawyers take time to consider the efficiency of the tools with which they are called upon to work. In Germany and in France the *persona ficta* has been weighed and found wanting.<sup>10</sup> In American courts results are constantly reached which are not in harmony with the fiction theory.<sup>11</sup> There are, now and then, grumblings at the theory itself.<sup>12</sup> Association is a permanent economic force. Corporations and companies of various sorts have come to stay. The importance of these groups gives a corresponding importance to the law which governs persons associated in such relations. The twentieth century will be, without doubt, a century during which English law will be subjected to a closer analysis than ever before. The common law must "pass through the schools." This means that a sound theory on which to work out corporation problems is indispensable. Nothing can be more timely, therefore, than a work which will serve as a

<sup>9</sup> "A corporation is an artificial being, invisible, intangible and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly, or as incidental to its very existence." *Dartmouth College v. Woodward*, 4 Wheaton 517 (1819).

<sup>10</sup> If such an expression can be used respecting that which is by supposition imponderable.

<sup>11</sup> See, for example, *Port of Mobile v. Watson*, 116 U. S. 289 (1886); *Gibb's Estate*, 157 Pa. 59 (1893); *Moore, etc., Hardware Co. v. Towers, etc., Co.*, 87 Ala. 206 (1888); *Shelmerdine v. Welsh*, 47 L. I. 26 (1890); *Mobile, etc., R. R. Co. v. Nicholas*, 12 S. R. 723 (1893).

<sup>12</sup> *Morawetz, Priv. Corp.*, Sec. 227. See *State v. Standard Oil Co.*, 40 Ohio St. 137 (1892).

stimulus to clear thinking on the subject and an incentive to further research.

Such a work is Professor Maitland's translation of a portion of *Das deutsche Genossenschaftsrecht* by Dr. Otto Gierke, of the University of Berlin.<sup>13</sup> Of equal importance with the text and possessing a livelier interest for all American students of corporation law is the translator's Introduction. In it Professor Maitland (after explaining the scope of Dr. Gierke's work) sketches briefly, and in his singularly attractive style, the history of the law in Germany since the "Reception."<sup>14</sup> He tells of the deluge of Italian doctrine which swept over Germany and submerged German law. "In theory what was received was the law of Justinian's books. In practice what was received was the system which the Italian commentators had long been elaborating." "Englishmen," says Professor Maitland (and the same remark is applicable to Americans) "are wont to fancy that the law of Germany must needs savour of the school, the lecture room, the professor; but in truth it was just because German law savoured of nothing of the kind, but rather of the open air, oral tradition and thoroughly unacademic doomsmen that the law of Germany ceased to be German and that German law has had to be disinterred by modern professors." Dr. Gierke is one of those who is aiding to disinter it and he is a champion of that Germanist school which is waging a winning warfare against the Romanist school, whose theory of corporation law rests upon the *persona ficta*.<sup>15</sup> With the *persona ficta* Dr. Gierke has no patience. Perhaps it would

<sup>13</sup> "Political Theories of the Middle Age," by Dr. Otto Gierke, Professor of Law in the University of Berlin. Translated, with an Introduction, by Frederic William Maitland, LL. D., D. C. L. Downing Professor of the Laws of England in the University of Cambridge. Cambridge: at the University Press; 1900. The portion which Professor Maitland has selected for translation is a section of the third volume of Dr. Gierke's work.

<sup>14</sup> *I. e.*, of Roman Law. "Very often Renaissance, Reformation and Reception will be set before us as three intimately connected and almost equally important movements which sever modern from medieval history."

<sup>15</sup> "According to Dr. Gierke, the first man who used this famous phrase was Sinibald Fieschi, who in 1243 became Pope Innocent IV. More than one generation of investigators had passed away, indeed that whole school of glossators was passing away, before the Roman texts

be better to say that with infinite patience he has conducted his researches and developed his argument until he has displaced the fiction. We are reminded that the fiction theory leads naturally to the "concession theory"—the theory that the corporation is and must be the creature of the state. When the doctrine was once established that corporate rights were obtainable only by concession from the prince, the prince was enabled to keep the corporation "safe under lock and key."<sup>16</sup> English lawyers received the concession theory from the Canonists.<sup>17</sup> In America it has been loudly pro-

would yield a theory to men who lived in a Germanic environment, and, when a theory was found, it was found by the canonists, who had before their eyes as the typical corporation, no medieval city, village or guild, but a collegiate or cathedral church. In Dr. Gierke's view Innocent, the father of 'the Fiction Theory,' appears as a truly great lawyer. He really understood the texts; the head of an absolute monarchy, such as the Catholic Church was tending to become, was the very man to understand them; he found the phrase, the thought, for which others had sought in vain. The corporation is a person; but it is a person by fiction and only by fiction. Thenceforward this was the doctrine professed alike by legists and canonists, but, so our author contends, it never completely subdued some inconsistent thoughts of Germanic origin which found utterance in practical conclusions. In particular, to mention one rule which is a good touchstone for theories. Innocent, being in earnest about the mere fictitiousness of the corporation's personality, and having good warrant in the Digest, proclaimed that the corporation could commit neither sin nor delict. As Pope he might settle the question of sin, and at all events could prohibit the excommunication of an *universitas*, but as a lawyer he could not convince his fellow-lawyers that corporations must never be charged with crime or tort." P. xix.

<sup>16</sup>"One outspoken Legist reckoned as the fifty-ninth of the sixty-seven prerogatives of the Emperor that he, and only he, makes fictions: '*Solus princeps fingit quod in rei veritate non est.*'" P. xxx.

<sup>17</sup>"Blackstone could even boast that the law of England went beyond 'the civil law' in its strict adhesion to this theory." *Commen. I, 472.* "Lawyers could even say that the common law reckoned it a crime for men 'to presume to act as a corporation.'" Professor Maitland points out that the inconvenience of such a theory was not felt in England because English lawyers might say, "Allow us our trusts, and the law and theory of corporations may indeed be important, but it will not prevent us from forming and maintaining permanent groups of the most various kinds; groups that, behind a screen of trustees, will live happily enough, even from century to century, glorying in their unincorporatedness. If Pope Innocent and Roman forces guard the front stairs we shall walk up the back."

claimed. "Ignorant men on board the *Mayflower* may have thought that, in the presence of God and of one another, they could covenant and combine themselves together into 'a civil body politic.' Their descendants know better. A classical definition has taught that 'a corporation is a franchise,' and a franchise is a portion of the state's power in the hands of a subject. A sovereign people has loved to deck itself in the purple of the Byzantine Basileus and the triple crown of the Roman pontiff."<sup>18</sup> "In Germany," we read in another place, "the concession theory has fallen from its high estate; the Romanists are deserting it; it is yielding before the influence of laws similar to, though less splendidly courageous than our Act of 1862, that 'Magna Carta of co-operative enterprise,' which placed corporate form and legal personality within easy reach of 'any seven or more persons associated for any lawful purpose.' It has become difficult to maintain that the state makes corporations in any other sense than that in which the state makes marriages, when it declares that people who want to marry can do so by going, and cannot do so without going, to church or registry. The age of corporations created by way of 'privilege' is passing away. The constitutions of some American states prohibit the legislatures from calling corporations into being except by means of general laws, and among ourselves the name 'chartered' has nowadays a highly specific sense. What is more, many foreign lawyers are coming to the conclusion that in these days of free association, if a group behaves as a corporation, the courts are well-nigh compelled to treat it as such, at least in retrospect. It has purposely, let us say, or negligently, omitted the act of registration by which it would have obtained an unquestionable legal personality. Meanwhile it has been doing business in the guise of a corporation, and others have done business with it under the belief that it was what it seemed to be. It is strongly urged that in such cases injustice will be done unless corporateness is treated as matter of fact, and American courts have made large strides in this direction. It seems seriously questionable whether a permanently organized group, for example a trade union, which has property held for it by trustees,

<sup>18</sup> P. xxxi.



should be suffered to escape liability for what would generally be called 'its' unlawful acts and commands by the technical plea that 'it' has no existence 'in the eye of the law.' Spectacles are to be had in Germany which, so it is said, enable the law to see personality wherever there is bodiliness, and a time seems at hand when the idea of 'particular creation' will be as antiquated in corporation law as it is in zoology. Whether we like it or no, the concession theory has notice to quit, and may carry the whole fiction theory with it."<sup>19</sup>

If one rejects the fiction theory, it by no means follows, however, that he must banish the "corporate person" from the realm of law: On the contrary (if he takes Dr. Gierke as his master) he will solve all the problems of corporation law upon the theory that where persons are associated in "fellowship" groups the group itself is a person distinct from the associates. "No fiction, no symbol," says Professor Maitland; "no piece of the state's machinery, no collective name for individuals, but a living organism and a real person, with body and members and a will of its own. Itself can will, itself can act; it wills and acts by the men who are its organs as a man wills and acts by brain, mouth and hand. It is not a fictitious person; it is a *Gesammperson* and its will is a *Gesamtwille*; it is a group-person and its will is a group-will."<sup>20</sup> Such is the organic theory of the corporate person which affords to the German Realist a satisfaction which the fiction theory fails to yield him. "The Realist's cause," Professor Maitland observes, "would be described by those who are forwarding it as an endeavor to give scientific precision and legal operation to thoughts which are in all modern minds and which are always displaying themselves, especially in the political field. We might be told to read the leading article in to-day's paper and observe the ideas with which the writer 'operates': the will of the nation, the mind of the legislature, the settled policy of one state, the ambitious designs of another: the praise and blame that are awarded to group-units of all sorts and kinds. We might

<sup>19</sup> P. xxxvii. For a consideration of the legal incidents of irregular incorporation the reader may be referred to 36 Am. Law Reg. and Rev. (N. S.) 100, 161.

<sup>20</sup> P. xxvi.

be asked to count the lines that our journalist can write without talking of organization. We might be asked to look at our age's criticism of the political theories and political projects of its immediate predecessor and to weigh those charges of abstract individualism, atomism and macadamization that are currently made. We might be asked whether the British Empire has not yet revolted against a sovereign that was merely many (a sovereign number, as Austin said) and in no sense really one, and whether 'the people' that sues and prosecutes in American courts is a collective name for some living men and a name whose meaning changes at every minute. We might be referred to modern philosophers: to the social tissue of one and the general will, which is the real will, of another. Then, perhaps, we might fairly be charged with entertaining a deep suspicion that all this is metaphor, apt, perhaps, and useful, but essentially like the personification of the ocean and the ship, the storm and the stormy petrel. But we, the Realist would say, mean business with our group-person and severe legal logic. We take him into the law courts and markets and say that he stands the wear and tear of forensic and commercial life. If we see him as the state, in an exalted sphere where his form might be mistaken for a cloud of rhetoric or mysticism, we see him also in humble quarters, and there we can apprehend and examine and even vivisect him. For example, we are obliged to ask precise questions concerning the inferior limit of group-life. Where does it disappear? That is no easy question, for the German partnership goes near to disengaging a group-will from the several wills of the several partners; but, on the whole, we hold, and can give detailed reasons for holding, that in this quarter the line falls between our partnership and our joint-stock company."

In an essay, to which reference has already been made,<sup>22</sup> Professor Freund, of the University of Chicago, stated Dr. Gierke's theory in 1897, and also noted some cogent objec-

<sup>22</sup> "The Legal Nature of Corporations." Sec. 29. Of this essay Professor Maitland says that it contains the only English statement of the Organic Theory which he has seen.

tions to it.<sup>23</sup> He pointed out that it is quite possible to admit the distinctive individuality of collective bodies under certain circumstances without accepting it as the solution of the problem of corporate rights. An aggregate will may be distinguished (as in the case of a deliberative body or a mob) where persons are subject to a close physical connection or to a constancy of common impressions. "But the collective holding of rights is not dependent upon associations of such strongly-marked cohesion.

A family with strong elements of cohesion is without corporate will, while a stock company without any noticeable psychological connection between the members may easily exercise common rights."<sup>24</sup> Indeed, the question asked by Professor Maitland, in the extract last quoted from his Introduction with respect to the disappearance of the group-person, seems to touch the German theory in a vital part. The line is drawn between the joint stock company and the partnership. In the former case there is, in the latter case there is not, a group-person. This is, possibly, a necessary conclusion if the theory is to be adhered to; but the theory is not thereby recommended as a basis of legal development. Where the economic interests of the associates are so closely allied, as is the case in partnerships, joint stock companies and corporations, any legal theory which compels us to relegate these groups to different categories loses much in comparison with a theory which enables us to treat them all as instances of the progressive development of a single principle. The problem with which the law is confronted is an economic problem and legal science and economic science should work harmoniously in the solution of it. Economic science recognizes that much depends upon emphasizing the individuality of each member of corporate and other groups in order to determine with nicety the extent to which the interests of the several members are in harmony and the

<sup>23</sup> Sec. 30.

<sup>24</sup> *Id.* He adds: "The people of the United States have perhaps the individuality of a nation, they certainly have it to a much more marked degree than the people of the State of New York, but as to their holding of rights both stand exactly alike, while neither New Englanders nor Southerners as such can be parties to any legal relation."

extent to which they are in conflict. Economics, accordingly, never for a moment forgets that the unit in the problem continues to be the individual, although it is true that he must now be studied in the relation which he has assumed towards other individuals.

So, also, ethical science detects the individual in the group and denies to him the right to escape from his personal accountability for his acts by endeavoring to lose himself amid the crowd of his associates. If the business is carried on upon lines which run athwart the moral law, each of the associates is answerable in the forum of conscience, whether he takes an active part in the management or suffers himself to be represented by unworthy agents. It will not do for A to plead that the wrong was done by the "group." The answer of ethics is that the group is nothing but the aggregate of A and his responsible associates.

Political science, likewise (if a group happens to be one which comes within its ken) refuses to lose sight of the individual. Ethics pursues the individual to make sure that he does not escape his responsibilities. Political science seeks out the individual that he may not be deprived of his rights. Just as the government is from the people and by the people so also it is *for* the people. It is the people as a group of individuals who own the public land. It is the people to whom the holders of office are accountable. It is the people who sue to redress public wrongs. It is the people who act when laws are made, notwithstanding that an orderly system requires that they should act through representatives.

Not only may it be objected that the theory of the group-person tends to prevent the attainment of harmony between law and related sciences, but there is room for doubt whether (even in the field of law) it affords a satisfactory basis for adjusting the rights of associates *inter se*. If it were to be conceded that the group, when acting as a whole, is an organic person, there would still remain for determination the respective rights of majorities and minorities of associates within the group, the relation of the group to the single associate and the relation of the single associate to the common creditor. It is easy to see the advan-

tages of a theory which recognizes the individual associates as co-owners of property who have conflicting interests requiring adjustment or harmonious interests to which effect must be given; of a theory which identifies the associate as a debtor responsible for the common debt within the limits of a restricted liability; of a theory which regards the associate as the principal for whom the directors act. Such a theory makes a "trust fund doctrine" unnecessary and a law of *ultra vires* impossible. It affords a basis for the solution of problems affecting voting rights, the distribution of dividends and the transfer of corporate shares. These advantages are possessed by the representative theory as outlined at the beginning of this paper. To the extent, however, that the organic theory leads to the same result, it does so only by assuming the existence between the associates of an organic relation analogous to the relation between the brain and heart and hand of man. From the assumption of the existence of a group-person follows the reconstruction of his body in a fashion which is perilously near the domain of fancy. Professing to discard fiction, it may be questioned whether the theory does not involve the most audacious of all fictions—the assertion that fiction is reality.

The student must, then, make his choice between a legal development in which a part is played by a person distinct from the species to which the student himself belongs and a development in which men are the only actors. If he gives his allegiance to the "legal person," he must decide whether he owes it to a *persona ficta* or to a being with real existence. If he repudiates both doctrines of the legal person he must solve all the problems in the law of association by referring rights and liabilities to the individual associates, always giving full scope to the operation of the representative principle. It is clear that Professor Maitland can no longer be numbered among the followers of the fictional "entity." Is he prepared to acknowledge the sway of the *Gesammperson*? His Introduction leaves us in doubt. However this may be, he surely can be claimed as the most powerful of all allies by those who contend that the corporation must be studied in its relation to partnerships, to guilds, to tenancies (joint and in common), to municipalities, to trusts; in fact, to

every kind of association which men are led to form by those economic impulses which are our springs of action. That he has grasped this fundamental and all-important conception sufficiently appears from the following interesting passage:

“Let us try to imagine—we are not likely to see—a book with some such title as *English Fellowship Law*, which in the first place described the structure of the groups in which men of English race have stood from the days when the revengeful kindred was pursuing the blood feud to the days when the one-man-company is issuing debentures, when parliamentary assemblies stand three deep above Canadian and Australian soil and ‘Trusts and Corporations’ is the name of a question that vexes the great Republic of the West. Within these bounds lie churches, and even the mediæval church, one and catholic; religious houses; mendicant orders; non-conforming bodies; a Presbyterian system; universities, old and new; the village community, which Germanists revealed to us; the manor, in its growth and decay; the township; the New England town; the counties and hundreds; the chartered boroughs; the guild, in all its manifold varieties; the inns of court; the merchant adventurers; the militant ‘companies’ of English condottieri, who, returning home, help to make the word ‘company’ popular among us; the trading companies; the companies that become colonies; the companies that make war; the friendly societies; the trade unions; the clubs; the group that meets at Lloyd’s Coffee-house; the group that becomes the Stock Exchange; and so on, even to the one-man-company, the Standard Oil Trust and the South Australian statutes for communistic villages. The English historian would have a wealth of group-life to survey, richer even than that which has come under Dr. Gierke’s eye, though he would not have to tell of the peculiarly interesting civic group, which hardly knows whether it is a municipal corporation or a sovereign republic. And then we imagine our historian turning to inquire how Englishmen have conceived their groups: by what thoughts they have striven to distinguish and to reconcile the manyness of the members and the oneness of the body. The borough of the later middle ages he might well regard with Dr. Gierke as a central node in the long story. Into it

and out from it run most of the great threads of development, economic and theoretical. The borough stretches one hand back to the village community and the other forward to freely formed companies of all sorts and kinds. And this Dr. Gierke sets before us as the point at which the unity of the group is first abstracted by thought and law from the plurality, so that 'the borough' can stand out in contrast to the sum of existing burgesses as another person, but still as a person in whom they are organized and embodied."<sup>25</sup>

*George Wharton Pepper.*

<sup>25</sup> P. xxvi.