

We have been pleased and very interested to receive a contribution from overseas.

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The authors have surveyed, and here comment on, the literature about the Statute of Merton.

## **COLLECTIVE RIGHTS AND ENCLOSURES IN 13<sup>TH</sup>- CENTURY ENGLAND: an interpretative approach around the Statute of Merton (1236)**

**The Statute of Merton (1236) reflects political and economic trends that were inseparable from the social system. Thus, to study this problem is to understand processes of transformation of crucial importance to feudal England.**

The 13th century was, in Western Europe, the period of full stabilisation of feudal structures and, to a large extent, the crowning point of a process of economic growth that was not going to come to a halt until 1270-1280. A phenomenon of widespread reach, the feudal expansion adopted peculiar features according to the different regions in which its dynamic continuity flowed. In England's case, the economic development and its social consequences were accompanied by certain imbalances, some of which reflected the rise of change factors in society.

Within this context, we notice the importance of the Statute of Merton (1236) in England. Such a statute would represent a legal-political expression of the early presence of enclosures. Indeed, this document reports on an authorisation mechanism to create spaces for collective use, anticipating the long privatisation process of its use and control.<sup>1</sup>

The problem offers fertile territory for studying the approach in depth whenever a specialist in agricultural history rejects the influence of the Assembly of Merton, and maintains only that enclosures achieved limited progress in the English countryside during the 15<sup>th</sup> century.<sup>2</sup> This perception of the concentration process is endemic in thinkers as renowned as Weber,<sup>3</sup> for whom the communal fence phenomenon is identified with that century.

Academic research on the agrarian implications of the Statute of Merton does not seem to have received the systematic attention it deserves. Researcher Abel and other distinguished scholars who have investigated the rural environment of the Old World, such as Slicher van Bath and Rösener, have made no room for the aforementioned research in their thorough analyses.<sup>4</sup> The same is true of Hilton, who ignores the Assembly of Merton in his main research on agrarian structures in England.<sup>5</sup>

Nonetheless, the statute deserves to be considered as regards some specific matters, since the process of economic change that affected England in the 13<sup>th</sup> century cannot be separated from the institutional mechanism that was entailed in the phenomenon of *enclosure*. This phenomenon involved the total or partial reduction of *open fields* and the freeing of individual peasants from communal control.<sup>6</sup>

From the legal-historical viewpoint, several authors chronicle the relevance of the Statute. Some of them interpret it as an empowering factor in feudal enclosures in the 13<sup>th</sup> century;<sup>7</sup> others see its influence even in the enclosure process of the 17<sup>th</sup> and 18<sup>th</sup> centuries.<sup>8</sup> Likewise, there are those who propose that the Assembly of Merton was a sign of several social phenomena of the 13<sup>th</sup> century and of certain political interactions between royalty and barons.<sup>9</sup> These are aspects whose backgrounds recall *Magna Carta* and that turn the Statute into the first comprehensive body after it.<sup>10</sup>

The interpretation of Merton rules acquires greater weight when a fundamental fact is emphasised: if the lord could prove that peasants had enough pasture and regular access to it, then his enclosing measures would be protected.<sup>11</sup> Powicke took this view, holding that the Statute only allowed the enclosure of communal pastures where the open space was extensive enough to exercise peasants' common law.<sup>12</sup>

As regards studies at the end of the 19<sup>th</sup> century, Pollock and Maitland<sup>13</sup> presented a broader treatment and agreed that the Statute of Merton established the restriction of communal rights and the use of waste lands by the lords. Likewise, the Assembly may have confirmed a trend that existed before the approval of the Statute; this last approach accords with an idea already outlined by Scrutton.<sup>14</sup>

Similarly, it is necessary to take into account other relevant aspects. First of all, the idea of 'enough' pastures should be understood in relation to the livestock economy at the beginning of the 13<sup>th</sup> century. Given the socio-economic level of development, it is possible to conjecture that the pasturing of animals was the deciding factor from which the land and its uses were assessed. It is worth pointing out that the change towards sheep rearing was partly underpinned by the expansion of foreign trade,<sup>15</sup> with wool exports to Flanders and Italy playing a significant role in the finances of the monarchy. This fact could explain the interest on the part of the monarchy in favouring the enclosure process.

Again Neilson and Nabholz take up aspects of this conjecture when they propose that the Statute of Merton may have given licence to the lords to enclose plots of land and use them for agricultural and livestock purposes, or cede them to a lessee.<sup>16</sup> Their enquiry outlines a significant link with the expanding framework of feudalism, which is given importance in other publications, though here it benefits from analytical weight. Indeed, these authors' proposal links the increase in sheep rearing with foreign trade, the expansion of pastures and the interest of certain groups in taking advantage of that expansive movement. A similar idea pervades the work of one of the greatest specialists in agrarian history, Genicot, who pointed out how the Statute of Merton allowed the lords to enclose plots of land if they showed that peasants had enough wasteland and space for their cattle.<sup>17</sup>

It is also interesting to observe Le Goff's viewpoint as regards the implications of the Statute. He maintains that the Statute inaugurated the period of enclosed fields, a period that resulted from the 'economic choice' of wealthy agricultural producers to turn arable lands into pastures, which is a phenomenon that originated in the demand for wool.<sup>17</sup> The importance of such interpretation is somehow underestimated, because it comes from an author who is not a specialist in rural history. However, it is strengthened by the overall importance of his work in historiography.

Similar ideas to those of Le Goff were outlined by Duby. This author held that agreements between lords and peasants for livestock farming often legalised the construction of permanent fences. This legalisation reserved the use of land to individual farming, a process that lords encouraged and from which they benefited. In this respect, Duby asserted that the authorisation to erect fences was also acquired by considerable numbers of non-noble landowners, the city bourgeoisie or prosperous villagers, with the purpose of freeing them from joint obligations.<sup>18</sup>

Moreover, it is important to bear in mind that Duby's and Le Goff's formulations are taken up again, from a different viewpoint, in Coss's work. This author considers the Statute as the instrument used by lords to increase their benefits and productivity.<sup>19</sup> The fact that a historian from the end of the 20<sup>th</sup> century endorses this viewpoint highlights that the hypothesis of the economic influence of Merton on enclosures preserves its validity.

On the other hand, although Fossier shares the viewpoint that links enclosures with the economic changes of the time, he claims that it consisted of an order of the English monarch to regulate the seizure of communal lands executed by feudal lords through arbitrary enclosures. This last idea at some point diverges from what has been clearly specified by most authors, and entails some reformulation to understand the problem; according to Fossier the Statute was not just a simple instrument of manorial compulsion but a strategy of the monarchical power to counterbalance pressure from the nobility on the rights of the peasant population.<sup>20</sup>

An author who anticipated this viewpoint was Beresford, who considered that the Statute of Merton represented a petition to set a limit, though modest, to ploughing of pasture areas.<sup>21</sup> Subsequently, Birrell assessed this royal regulation as an instrument through which peasants tried to defend their rights in face of the lords' advance.<sup>22</sup>

It is also interesting to assess the historian Dyer's contribution; he proposes that it was permitted to fence plots of wasteland under certain conditions. However, he suggests that communities could recover those plots of wasteland in exchange for income, or the payment of a fine.<sup>23</sup> In subsequent work the author held that the Statute, besides regulating certain relationships between the monarch and the lords, would not have

made great changes in the enclosure process because, even though it authorised certain actions by the nobility, it also granted some margin to restrict the concentration of farming plots.<sup>24</sup>

It is appropriate to conclude that the Statute of Merton and its legal and socio-economic implications depict a complex and dynamic profile prompting numerous interpretations for historical analysis. Gay's work was already oriented towards this direction at the beginning of the 20<sup>th</sup> century, when he held that the Statute was part of the plurisecular history of manorial enclosure on wastelands and communal lands, a phenomenon which did not culminate until the end of the 18<sup>th</sup> century.<sup>25</sup>

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