

THE ENGLISH BOROUGH
IN THE
TWELFTH CENTURY

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THE ENGLISH BOROUGH IN THE TWELFTH CENTURY

I. BURGESS AND LORD

THERE is no need for me to begin this lecture with a definition : the lawyers of the twelfth century applied the name of borough to certain places and gave the name of burgesses to their inhabitants ; this they did to distinguish these places from their neighbours which were called manors ; and in order to ascertain what were the characteristics of an English borough of the twelfth century, I propose to select the salient features of the 300 odd charters of a date prior to the death of King John which relate to the privileges and duties of the burgesses of the various boroughs. M. Petit Dutailis objects to the use of the term borough, and thinks that "its misleading technical appearance has perhaps greatly contributed to plunge certain English scholars into blind alleys"¹ : but our examination will show that there were certain features in the boroughs which distinguish them

¹ *Studies Supplemental to Stubbs* 71.

ABBREVIATIONS

B. B. C. *British Borough Charters 1042—1216.*

E. H. R. *English Historical Review.*

D. B. *Domesday Book.*

from the unprivileged villages ; and I may be permitted to say that I have found myself hampered in dealing with French municipal charters by the lack of a technical term which would distinguish the privileged from the unprivileged towns : for it was not every privileged town that was a commune. In the first of these two lectures I propose to deal with the borough from the point of view of the burgess and of the lord : and in the second to consider the place of the borough in the national organisation.

In the first place, the borough was a home of freedom : but freedom is a matter of comparison, and the position of the burgess must be compared with that of the villager. Of the two classes of villagers, the villeins were more or less servile in status ; their rents were mainly labour rents and a distinguishing mark of villenage was the liability to work on the lord's demesne for a certain number of days every week, and also at specially busy times such as ploughtime, haytime and harvest ; the villeins could not give their womenfolk in marriage without the payment of a fine for the license of the lord ; they could not send their son to school without a similar payment ; a fine was due from them if they sold their cattle : if they sold their land such sale could be effected only by surrender of the land to the lord and the subsequent admission of the purchaser who often had to pay another fine on his

admission : he was liable in many cases to be tallaged at the will of his lord ; when he died his lord took his best beast by way of heriot, and his heir paid a heavy relief on succeeding to his father's land : if his heiress were unmarried, the lord had the right of giving her in marriage to whomsoever he chose, and he usually chose the highest bidder : all these restrictions reduced the villein to a state of economic slavery. The tenant in socage was better off : his rent was a money rent though he often had to work on his lord's demesne at specially busy seasons : he could sell his cattle and even his land without the payment of a fine to his lord : usually no heriot was payable on the death of a socager, and the relief, if any, was but nominal : his kinsmen were the guardians of his infant children and the lord had no control over the marriage of his heiress.

On the other hand the burgess held his lands by burgage tenure which was a peculiar form of socage tenure : his rent was a money rent, and except in a very few cases he was exempt from all liability to work on the lord's demesne. The burgesses of Leicester and Lancaster had redeemed their agricultural services before the end of the twelfth century but the burgess of Egremont was still liable to provide a man to plough and another to reap on his lord's demesne¹. The distinguishing

¹ *B. B. C.* 94—5.

feature of burgage tenure was that the burgess was at liberty to sell his land and to go where he would¹, without in general the intervention of the lord or his steward; but this freedom was limited in three directions: there were some towns where a burgess might not sell his house which he had inherited, without first giving his kinsmen an opportunity to buy it at the same price as that which had been offered²: and this custom is also found in France and Germany³. At Whitby, the Abbot, who was lord of the town, had a similar right of pre-emption, and at Walsall the lord could purchase for 12*d.* less than any other person had offered⁴: but I cannot find any similar provision in any French or German charter. And the charters of many towns forbade the burgess to sell his burgage to men of religion or religious houses⁵, and thus anticipated the statute of Mortmain. Coupled with this liberty to sell, was the privilege that the burgess could devise his burgage by will⁶ and give his daughter in marriage without the consent of his lord⁷, and occasionally he was allowed to appoint guardians of his infant children by his will⁸.

Normally no heriot was payable on the death of

¹ *B. B. C.* 64—8.

³ *B. B. C.* cx, cxxiii.

⁵ *B. B. C.* 69.

⁷ *B. B. C.* 76.

² *B. B. C.* 69—70.

⁴ *B. B. C.* 69.

⁶ *B. B. C.* 73.

⁸ *Pembroke B. B. C.* 78.

a burgess and at Pembroke, Lostwithiel, Bideford, and Bradninch, the heir's relief was fixed at 12*d.*¹ Common to Great Britain and the greater part of North-western Europe was a clause which gave undisputed title to a burgess who had been in possession of his tenement for a year and a day². There were, however, some towns where the burgess was bound to grind his corn at the lord's mill and bake his bread in the lord's oven³, and no inconsiderable part of the lord's income was derived from these sources. The burgesses of the boroughs which were situate on the King's demesne, were, like the villeins, liable to be tallaged at will, and during the reign of Henry II such tallages or aids were levied every three or four years⁴; but at Egremont, the burgesses were liable for the three feudal aids, those for knight-riding the lord's eldest son, for marrying his eldest daughter and for ransoming his person; they were also liable to pay aids when his military tenants paid aids but all aids were to be assessed by the burgesses⁵. But what especially marked out the borough as the home of freedom was the privilege that a serf who resided there for a year and a day became a free man⁶: Dunwich, and the boroughs that had charters founded on that of Dunwich,

¹ *B. B. C.* 76.

³ *B. B. C.* 96.

⁵ *B. B. C.* 91.

² *B. B. C.* 71, cx, cxxiii.

⁴ *B. B. C.* lxxx.

⁶ *B. B. C.* 103—5.

required his admission to the guild as well as his residence in the town, and the Egremont charter, which had been granted by Richard de Lacy, refused this privilege to villeins from the King's demesne: at Chesterfield, the lord had a veto on the admission of a new burgess¹, but we never find in Great Britain a clause which is very frequent in French charters, forbidding the admission to the franchise of the men of certain lords².

In the second place, the borough was a jurisdictional unit, that is to say, it had a court of its own with jurisdiction over all its inhabitants, except that in some of the larger towns, there were sokens belonging to certain magnates or churches where the burgesses were, in the first instance, justiciable in the courts of the sokens. Domesday book shows that many boroughs were hundreds of themselves and the borough court was frequently called the hundred. Of course in the thirteenth century, the manor was a jurisdictional unit, for the manor court had jurisdiction over all the inhabitants of the manor, but the position of the burgess in this respect was superior to that of the inhabitant of a manor in that, while the villagers could be summoned to the hundred and shire courts, most borough charters contained clauses exempting the burgesses from suits of hundreds and shires³, or from pleading or being

¹ *B. B. C.* 110.

² *B. B. C.* cxii.

³ *B. B. C.* 123.

impleaded elsewhere than at the courts of the borough¹; but to this general exemption there were occasional exceptions, and eventually the rule came to be that pleas relating to lands situated or to debts contracted within the borough could be tried only in the borough court, while pleas relating to lands situate elsewhere and to those burgesses who were servants of the King could be tried elsewhere².

Edgar's law provided that the borough court should be held thrice a year, and the Whitby charter shows that there were three general pleas at which every burgess had to present himself under penalty of a fine³, and that, when required, minor pleas were held to which any particular burgess could be summoned.

Naturally the law administered in the courts of the various boroughs cannot be reduced to a code, but it may be laid down as a general rule that borough law was usually archaic both in its procedure and its rules; the old pre-conquest rules of compurgation were preserved in the boroughs long after they had given way to inquests by witnesses and jury in other courts: and our charters show that the number of compurgators varied from borough to borough, and that sometimes a borough required more or fewer compurgators according to the nature

¹ *B. B. C.* 115—121.

² London 1155. *B. B. C.* 116.

³ *B. B. C.* 142.

of the offence¹. The formal pleading of pre-conquest times was still required in the boroughs, except where there were provisions against miskennen, that is, against the rule which caused a party to lose his cause if he failed in the correct repetition of his formulae². Two of the legal innovations of the Norman conquest were absent from the jurisprudence of the boroughs: they were quit of the murder fine, the fine imposed on a hundred or district in which a murder had been committed³, and except at Pontefract and Leeds, they were exempt from trial by battle⁴; in this latter particular, the English burgesses differed from those in France, Germany, Spain and Palestine, where trial by battle was the general rule, and most elaborate provisions were laid down for the conduct of duels⁵: I have found only one French and three German charters exempting the burgesses from trial by battle, and at Beauvais the commune retained a hired champion at a fee of 20 sous a year⁶.

One of the most highly valued privileges of the burgesses was their exemption from arbitrary fines⁷;

¹ *B. B. C.* 137—9. For compurgation in the County Court see Maitland, *Const. Hist.* 205.

² *B. B. C.* 146.

³ *B. B. C.* 150.

⁴ *B. B. C.* 132—4.

⁵ *B. B. C.* cxiii, cxxiv, cxxx, cxxxiii.

⁶ *B. B. C.* cxiii.

⁷ *B. B. C.* 151—7.

the charter of Henry I to London directs that no one shall be amerced at more than his wergild, 100s.: and there were many boroughs in which the limit was fixed at 12*d.*, the same as in the Norman bourg of Breteuil; in the Devonshire boroughs the limit was usually 6*d.*, while in his new borough at Eynsham the Abbot fixed the maximum at 10s. In some of the Irish boroughs we find a distinction between greater and lesser pleas; in the greater the fine could not exceed 5*s.* and in the lesser the limit was 1*s.*; the Egremont charter alone provided a nicely regulated scale of fines, in which the lord tried to make the punishment fit the crime, and in so doing punished a burgess who insulted his male neighbour by a fine of 3*s.*, but reduced the fine to 4*d.* if one woman insulted another, and in the latter case the complainant, was also fined 4*d.* if she failed in her cause. In a few cases the amount of the fine was fixed by the culprit's fellow burgesses. It is in this connection that we see one of the greatest differences between English and French municipal charters, for in France most charters contain a nicely regulated scale of fines, far more elaborate than that of Egremont: it is very rare to find a French charter fixing a maximum limit for all offences with but one or two exceptions, as is found so frequently on this side of the channel¹.

¹ *B. B. C.* cxiii.

Three charters allowed private compositions for offences; the Norham charter says that free burgesses were wont to settle their offences privately, and implied that this rule prevailed in other towns also; at Whitby the prejudice in favour of these private compositions was such that it was not till after a man had made three attempts at a private settlement that he could summon the offender in the borough court¹. It should be noticed that whereas that offenders convicted of any offence had to make payments both to the offended party and to the lord of the court, the Wells charter exempted the burgesses from any payment to the Bishop, the lord of the town, when they made these private settlements. Similarly, the men of Hythe and Dover were declared to be witefree, that is free from the wites payable to the lord of the borough court on conviction for offences².

Finally, from the point of view of the student of jurisprudence, the most remarkable of the jurisdictional privileges of the burgesses was the privilege that they had of distraining on the goods of their debtors from other towns, or on the goods of the neighbours of those debtors, in order to secure their appearance in the court of the borough³; but this privilege could not be exercised at certain times,

¹ *B. B. C.* 112—3.

² *B. B. C.* 182—3.

³ *B. B. C.* 161—4.

especially on market days, and by the end of the twelfth century many charters forbade distraint on any person who was not the principal debtor or his surety, a prohibition which was made general by the Statute of Westminster in 1275. It is to be borne in mind that this privilege of distraint to secure appearance in the court of the borough is confined to the British Isles, and is unknown in contemporary French charters except at Rouen, which was part of the English dominions till 1204¹.

So far we have been discussing characteristics which are common both to the boroughs of the British Isles and to the privileged towns of the north-west of Europe: especially do the French charters appear to be directed towards securing the freedom of the burgesses—their exemption from feudal or seignorial exactions—and the privileges of their own law courts; but when we come to the next characteristic of the British Borough, we come to a characteristic which is more emphasised here than on the Continent. For thirdly, the English borough was a place of trade; our pre-conquest kings had again and again forbidden traffic outside of boroughs; Maitland suggests that there were two reasons for this prohibition, the prevention of trade in stolen cattle and the facilitation of the collection of tolls²; after the Conquest these rules were not

¹ *B. B. C.* cxiv.

² *B. B. C.* lxvi.

repeated, but Henry I forbad all trading in Cambridgeshire except at the borough of Cambridge¹, and his grandson issued an order to the sheriff of Lincolnshire requiring him to compel all foreign merchants to take their wares to the city of Lincoln, so that the reeves of the city should not lose the royal customs². In Scotland the old rules prevailed much later than south of the Tweed: for William the Lion, who did not die till 1214, forbad all trading in the counties of Aberdeen, Perth and Inverness except in the three burghs of the same names³; but there is no similar prohibition of trade in any Irish charter nor in any Continental charter of which I have any knowledge. Although the charters are sadly deficient in evidence on the subject of markets, yet it may be presumed that most of our boroughs had weekly markets and periodical fairs; there were, however, markets and fairs in villages which were not styled boroughs. In some of the boroughs the burgesses had the right of forming a merchant guild⁴, that is, of uniting all the traders of the town into a society which passed bye-laws and made regulations for the good behaviour of the traders and the improvement of the trade of the

¹ *B. B. C.* 168.

² *Ib.*

³ *B. B. C.* 169—170. Eventually these rules would tend to the protection of the burgess against the foreign trader.

⁴ *B. B. C.* 202—7.

town: only members of these merchant guilds were at liberty to open shops in the town, and where there was no merchant guild the charters often forbad others than burgesses to carry on certain specified trades in the town¹. One of the rules of these merchant guilds insisted that every guildsman must submit any dispute of his with a guild brother to the judgment of the guild, a rule that caused no loss to the lord in those boroughs where private compositions were allowed; hence we often find two tribunals within a town, the court of the merchant guild dealing with disputes between the members of the guild and presided over by the head of the guild, and the borough court dealing with other disputes and presided over by the bailiffs of the King or the lord: Mr Salter has clearly shown the two courts sitting side by side at Oxford². In a few towns we find rules forbidding the keeping of taverns by others than burgesses³; and in Scotland a modification of this rule was pushed to extremities, for no tavern was allowed in the counties of Perth and Aberdeen, except in the towns of Perth and Aberdeen, and except in those villages where the lord was a knight and was actually resident.

But the most common of the mercantile privileges of the burgesses was their exemption from toll

¹ *B. B. C.* 211—4.

² *Oxford Millenary Lectures*, p. 24.

³ *B. B. C.* 216—7.

at markets and fairs; this privilege our kings granted wholesale¹, and in many cases extended it to their continental dominions and to Ireland; often too it was granted by mesne lords over more restricted areas²; the Earls of Cornwall exempted the burgesses of the boroughs which they founded from payment of toll within Cornwall, and Roger de Lacy exempted the burgesses of Pontefract from payment of tolls within the castellaries of Pontefract and Clitheroe. Some of the royal charters provided that in cases where toll had been illegally taken from any burgess the sheriff of the shire in which that borough was situate or the reeve of the borough was empowered to retaliate by seizing the goods of a person from the place where the toll had been taken and detaining them till compensation had been made to the aggrieved party³; but this right must be carefully distinguished from the right of the burgess to distrain on the goods of his foreign debtor to secure his appearance at court. Freedom from toll was not peculiar to burgesses; our kings frequently granted this privilege to monasteries and churches and their tenants, but no provision was ever made for retaliation in case toll had been illegally taken from the churches or their tenants. It is this exemption from toll which

¹ *B. B. C.* 180—190.

² *B. B. C.* 191—4.

³ *B. B. C.* 195—6.

affords the greatest contrast between the French and English municipal charters of the twelfth century; in this country there were at least 40 boroughs whose burgesses during that century received from the king the privilege of being exempted from tolls throughout England; of the 65 French towns whose twelfth century charters I have examined not one received a grant of exemption from tolls throughout the dominions of the French king; but, on the other hand, a few favoured towns, such as Calais and Rouen, received from our English kings exemption from toll throughout their continental dominions. The absence of this privilege from French charters is possibly the result of the extreme subdivision of authority in that country, but it is tempting to suggest that its presence in English charters is evidence that our English kings and their advisers, even in those days, were supporters of an enlightened commercial policy, and anticipated Adam Smith in holding that the best way to encourage trade was to remove all restrictions on it.

A fourth characteristic of some English boroughs was that they were military strongholds, but the military importance of the towns is more prominent in France than in England during this century. We all know the part that the garrison theory has played in the discussions on the origin of the English borough, but it must be confessed that the

charters of the twelfth century throw no light on this question; the knights and rural sokemen of the Abbot were obliged to assist the burgesses in the repair of the walls of St Edmund's Bury¹, and thus it is shown that even at the end of the century, burhbot was being exacted from the landowners of Suffolk, but the charters of Wallingford and Maldon exempted the burgesses from castle work². The burgesses of Inverness covenanted with King William that if he would make a rampart round the town they would maintain a good palisade thereon³. But apart from these four charters and a very vague reference to the fortification of Hereford⁴, there is no reference in any of the 330 documents that I have collected to the walls of any city or borough or the duty of the burgesses in repairing them: and it is not till 1224 that we find any charters authorising the levy of tolls for purposes of murage. Domesday Book shows that in the eleventh century the boroughs sent contingents to the fyrd at the rate of one fully armed man for every five hides of their assessment⁵; even in the sixteenth century military service at this rate was due from some of our boroughs⁶; these contingents were much smaller

¹ *B. B. C.* 93.² *B. B. C.* 94.³ *B. B. C.* 94.⁴ *B. B. C.* 222.⁵ *Domesday Boroughs* 80.⁶ Cambridge 1333; *Cooper's Annals*. Oxford 1523, *Oxford City Records* 43.

than those required from the French communes. The charters of some of the frontier boroughs in South Wales provided for expeditionary service on the part of their burgesses; at Pembroke and Swansea the burgesses were bound to accompany the lord on his raids provided that they could return the same night¹; a similar provision is found in the charter of Lorris, a small town to the east of Paris, whose charter was the exemplar of many others².

To sum up, the advantages of a burgess over a villager were, that he held his lands in the borough by a money rent, and was free from all the servile conditions of tenure, that he could sell his lands and devise them by his will, that he was justiciable in a court of which his fellow burgesses were the dooms-men, and was usually exempt from attending the hundred and shire courts; and that in many cases that he and his fellow burgesses possessed the monopoly of trading within the borough, and could prevent a stranger from opening a shop unless he made a heavy payment to the guild.

These being the advantages of the burgess, what, if any, were the corresponding advantages to the lord of the borough? For landlords have never been in the habit of managing their estates on philanthropic principles, and if the status of a burgess was freer than that of the villager, this was

¹ *B. B. C.* 89.² *B. B. C.* cxi.

not for any sentimental preference in favour of liberty on the part of the lord, but because he gained from the freer area certain advantages in pounds, shillings and pence. Very frequently he would receive a good round sum in cash as consideration for his charter; the burgesses of Pontefract gave 300 marks of silver for their charter¹, while Richard de Grenville was content with a payment of four marks as consideration for his grant of liberties to the burgesses of Bideford². Much larger sums were paid for royal charters, and the citizens of London promised King John 3000 marks for his charter of 1199; but John knew that promises were not payments, and therefore delivered the charter to the Chief Justice "so that if they are willing to pay these 3000 marks they shall have their charter, but if not, they shall not have it³."

Apart from the advantage of a cash payment on the grant of the charter the lord's income was usually increased by the establishment of a borough on his land; in the first place, as to-day, so in the twelfth century the towns were more thickly populated than the villages, and therefore, from corresponding areas, the boroughs produced higher rents; the sites of some boroughs were marked out as building estates, at Burton-on-Trent the area of each burgage was fixed at 24 perches by 4, or a little over half an

¹ *B. B. C.* 239.

² *Ib.*

³ *B. B. C.* lxxxiv.

acre¹; at Stratford-on-Avon the plots were about a quarter of an acre in extent, but in each case the rent of 12*d.* a plot was obtained², whereas the money rent of agricultural land was only 4*d.* an acre, so that, then as now, it was lucrative for a landlord to grant land for building purposes. Other sources of income would be the receipts from the mill and oven, the profits of the court and the market tolls, all of which would vary with the number of burgesses in the borough. But in addition to these regular sources of income, the lord derived occasional sums by way of aid and tallage: the periodical sums which the king received by way of tallage from his boroughs were assessed on the individual burgesses by the itinerant justices, and formed a substantial part of his income; the *Dialogus de Scaccario* tells that occasionally the burgesses offered a certain sum to the justices as the aid from their borough, and if this was accepted, they assessed themselves in such a manner as to raise the amount; but such an offer was a voluntary matter; "the common liability of the town is always the result of its own act and not that of the government³." The income derived from the regular sources, the rents, the mill and oven, the law courts and the markets, was collected

¹ *B. B. C.* 51.

² *B. B. C.* 48, 49.

³ Hughes Crump and Johnson. *Dialogus de Scaccario*, p. 231 qu. *B. B. C.* lxxxii.

by the reeve, who was often a speculator who would undertake to pay the lord a fixed sum and would recoup himself and obtain a profit from the exactions he levied from the burgesses. The charters show that he often added to his receipts in other and less legitimate ways; Henry II ordered that the citizens of London should be quit of Year's gift and Scotale¹; the former appears to have been a gift levied by the authorities on New Year's Day, a precedent for the Christmas box levied by the modern postman, while the Scotale was a drinking party to which the burgesses were invited by the reeve, who afterwards made them pay for the drink that they had consumed. In the early days of the thirteenth century the burgesses of Malmesbury promised to pay 30s. a year to the Abbot for the release of three scotales which they had been accustomed to attend².

Domesday Book shows us that even in the eleventh century speculators had begun to take leases of cities and boroughs and to pay fines for the privilege of taking these leases, and the burgesses of Northampton appear to have taken a lease of their town from the sheriff in that century³; after the conquest, the custom of leasing boroughs to speculators was continued and extended, and the burgesses especially objected to an outsider coming

¹ *B. B. C.* 84.

² *B. B. C.* 85.

³ *B. B. C.* lxxv.

in and taking the borough over their heads: the Pontefract charter contained a covenant on the part of the lord that he would not let the town to an outsider if a burgess would give as good a rent as he was otherwise offered¹, and in 1163 the burgesses of Derby paid a fine of £40 to the King that William Asturcarius should not have a lease of their borough². But the best way of keeping out the stranger was for the burgesses themselves to take the lease, and in order to secure the lease, they were willing to pay an increased rent or a large sum in cash by way of premium. Thus, at the beginning of the reign of Henry II the citizens of Lincoln took a lease of their city at a rent of £180, an increase of £40 on the rent which had been formerly paid by the sheriff³; and in 1189 the burgesses of Cambridge paid the King 100 marks of silver and one of gold as a premium for the lease of their borough at the accustomed rent⁴. But as a general rule, the charters granting the boroughs at farm merely put the body of burgesses in the place of the reeve and did not give them any rights over the soil of the borough; certain land at Newcastle had escheated, not to the burgesses, who had obtained a lease of the borough, but to the King who granted a lease of these escheats to the burgesses at an additional rent of 110s. 6d.⁵

¹ *B. B. C.* 236.

² *B. B. C.* lxxvi.

³ *B. B. C.* lxxvii.

⁴ *Ib.*

⁵ *B. B. C.* 237.

On the other hand, the burgesses of Bristol received a special grant of the waste places within that borough¹, and Richard I gave to the burgesses of Colchester the customs of the water and the shores on each side, "ad perficiendam firmam nostram," to enable them to pay their rent². While speaking of the rents paid from the boroughs, it is interesting to note, that, while Magna Charta enacted that hundreds, wapentakes and shires should be let to sheriffs at the ancient rents³, no mention was made of the rents of cities and boroughs, and the King was therefore at liberty to increase them to the utmost sum that the burgesses or a speculator would pay. Along with the right to farm the borough the burgesses became entitled to appoint their own official to collect the rents and to preside in the borough court, and the Dublin charter expressly mentions the *prepositura*, the provostship, as one of the appurtenances which passed with the right to farm the city⁴. It is interesting to compare the English charters granting the boroughs at farm with some of the French charters which had the same effect; for in France the grant to the burgesses professed to be a grant of the Prévôté, the provostship, with all the rents and dues received by the Prévôt⁵.

¹ *B. B. C.* 237.² *B. B. C.* 236.³ *B. B. C.* lxxvii.⁴ *B. B. C.* 231.⁵ *B. B. C.* cxvii.

There were other than merely pecuniary advantages which the lord derived from his borough. In the first decade of the thirteenth century, William the Lion built a new castle at Ayr and founded a borough at the gates of the castle¹, but in so doing, his aim was not to establish an additional fortification so much as to furnish the garrison with a base of supply. Remember how Domesday tells us that "in the town where rests the body of St Edmund there are living fourscore men less five, who are bakers brewers tailors washermen shoemakers embroiderers cooks and stewards, and all these daily minister to the Saint and the Abbot and the brethren²." And the Scots King would try to attract to his new borough men who would serve the castellan and his soldiers with provisions and clothes and other stores. For a castellan would sometimes have rights of purveyance³, rights of taking goods for the King's use at a low price, and also an unlimited credit, except in those cases where a few of our mesne charters specify a limit within which the lord or his bailiff must pay for the goods which he has obtained⁴: the limit in England and Ireland was 40 days, but in France the limit varies from 15 days to three months; I have not found a 40 day limit in any French charter⁵. A French

¹ *B. B. C.* 3.² *D. B.* 11, 372.³ *B. B. C.* 87.⁴ *B. B. C.* 87—9.⁵ *B. B. C.* cx1.

custom, not found on this side of the Channel, was the ban, the right of the lord to forbid the sale within the town of certain goods, usually wine, for a specified time, during which time the lord had the monopoly of that article¹. Then again, in certain towns, the lord had the right of prise, which in John's Dublin charter is defined as the right to take from every ship laden with wine that entered the port, two casks, one from before the mast and the other from aft the mast, at a fixed price of 40s.² I have already referred to the military services of the burgesses, but one or two charters require a little further notice; the Egremont charter provides that in time of war the burgesses should furnish twelve armed men for the defence of the castle, in time of peace they were to accompany their lord or his steward when he took a distress or made a seizure in Coupland³, and at all times they were to set watches at the gates; similar watching service was required of the burgesses of St Edmund's Bury and Corbridge⁴, and the burgesses of Haverfordwest were to accompany their lord or his bailiff when he went to Parliament or to the army⁵.

To sum up, a lord would establish a borough on his estate, because thereby he would increase his

¹ *B. B. C.* cxvi.

³ *B. B. C.* 92.

⁵ *B. B. C.* 92.

² *B. B. C.* 235.

⁴ *B. B. C.* 93.

income from the rents and other profits of the borough, and he would have at his door tradesmen who would furnish supplies for his castle, and also retainers who would be of service to him in times of civil trouble.

Hitherto we have been dealing with the advantages accruing from the establishment of a borough, on the one hand to the burgess, on the other to the lord: but we have not exhausted the differences between borough and village. Maitland begins his second Ford lecture with these words: "The borough community is corporate: the village community is not: this is a real and important difference—in the fifteenth century it shows out in clear light¹." Granted, but although the difference between corporate boroughs and unincorporate villages is clear in the fifteenth century, it is scarcely visible in the twelfth.

Now, when we speak of the borough community as a corporate body, we mean that in the eyes of the law the individual burgesses lose their identity in a person that has rights and duties of its own, different from the rights and duties of each individual burgess. In the eyes of the law every person has a name of his own, can use a seal of his own, can possess property, can enter into contracts and can sue and be sued. Domesday Book personifies

¹ *Township and Borough* 18.

certain institutions but appears to deny personality to others: it represents the shire, the wapentake, and the hundred as having eyes and ears and voice, and as capable of taking and giving evidence: but the vill and the borough are never represented as giving evidence¹. The whole of the controversy whether the burgesses of the eleventh century possessed corporate property would have been avoided if the Domesday scribe had personified the borough. But, as Maitland says, when we come to the fifteenth century, the difference appears clearly. The little borough of Woodstock received its first charter in 1453 and by it the burgesses were incorporated: they were declared to be one body in name and deed: and this body was empowered to use a common seal and was given the capacity to sue and be sued: and it received property in the shape of a certain meadow called Le Pool, and a grant of the borough at fee farm and also two fairs with the right to appropriate the tolls. But the burgesses of many boroughs acted as corporate bodies and exercised one or another of these functions long before they received a charter of Incorporation. Although the burgesses of Oxford were not formally incorporated till the charter of James I in 1605², yet they made corporate contracts³, owned corporate property

¹ *B. B. C.* xcvi.

² *Royal Letters addressed to Oxford* 228.

³ *B. B. C.* ci.

and used a common seal within the first quarter of the thirteenth century. And when the text-books speak of boroughs by prescription, they mean that the burgesses have acted as a body corporate in one or another of these ways without any formal incorporation. It must be remembered that many of the boroughs which were established by seignorial grant never attained the possession of corporate property or a common seal, and never entered into corporate contracts, although, as at Darlington, the borough court made regulations concerning the trade of the town, and authorised the formation of trade companies. Hence we must distinguish between corporate boroughs and boroughs which were unincorporated.

It is in connection with their property and money that the burgesses first begin to perceive the difference between that which belonged to the individual and that which belonged to the body of burgesses: in 1188 a charter was granted to the burgesses of Preston granting them the toll of the wapentake of Amounderness¹, and the pasture of the forest called Fillewood², that is, pasture rights in the forest: but while it was possible for the individual burgess to send his cattle to enjoy the pasture, it is impossible to imagine that the charter authorised each individual burgess to go on a free-booting

¹ *B. B. C.* 176.

² *B. B. C.* 59.

expedition into the wapentake to collect his share of the tolls: the burgesses must have appointed an officer to collect the tolls and pay them into a common purse. Apparently, the earliest grant of this kind is that contained in Archbishop Thurstan's charter to the burgesses of Beverley about 1130¹, when he granted them for eight marks a year the toll of Beverley except at three fairs. It is not astonishing that the Archbishop should have made a gift to a body of burgesses and should have thought of that body as a person, for often a monastic or collegiate church was personified to such an extent as to be represented as the owner of property: this idea is very prominent in Domesday, especially in the south-western counties; it was the Church of St Peter of Rome that owned Periton in Somerset².

But the most important gift that the burgesses could receive was the grant of the borough at fee farm, and before the death of King John 28 English boroughs were held by their burgesses at fee farm: but although the liability of the burgesses was joint and several³, that is, although the King's officer might distrain on any one of the burgesses for the whole of the farm, yet no burgess considered himself entitled to a share of the income; the collection of

¹ *B. B. C.* 176.

² *D. B.* 1, 91 a 2.

³ *Township and Borough* 77.

the dues and rents was the duty of one or more officers. Let us see what happened at Ipswich on the grant of a charter that the burgesses should have the borough at farm: immediately the charter arrived in the town, the burgesses met and elected their bailiffs and coroners, the officials sanctioned by the charter, a few days later they elected 12 capital portmen, and, after another interval, the bailiffs, coroners and portmen decreed that all the customs of the town should be collected by the bailiffs and four good men of the town, who were to pay the King's farm: and on the same day they ordered a common seal to be made¹. Here it is evident that the grant of the borough to the burgesses at farm did not put a single penny into the pockets of a single burgess except the bailiffs, who collected the income and paid the rent and, as nothing is said on the matter, probably appropriated any surplus for their own use. As Maitland has pointed out, the charter authorised the burgesses to elect a bailiff to "run the town." In the fifteenth century it was held that the grant of a vill in fee farm to the men of that vill, incorporated the latter and authorised them to act as a body corporate². That being so we have to deal with many incorporated

¹ *Gild Merchant* 11, 119.

² *Y. B.* 7 Edw. IV, No. 7, qu. Pike, *Y. B.* 16 Edw. III, pt 1, p. lxxviii.

villages; for King John granted many vills, not styled boroughs, at farm to the men of those vills to whom he denied the style of burgesses.

I have been trying by this mass of details to present some idea of the usual burgensic duties and privileges in the twelfth century; but it must not be thought that this is a fair picture of medieval town life; Mrs Green has painted that picture once and for all, and I fear that my long details about the borough court and the law followed therein may lead you to think that the medieval burgess spent his time in nothing else but either suing his neighbour or being sued by him: but the charters and the custumals were drawn up by lawyers, and as the shoemaker thinks there is nothing like leather, so the lawyer thinks there is nothing like law, and especially legal procedure: if shopkeepers had drawn up the charters, we should probably have learnt more of the trading privileges of the burgesses. But the picture that I have tried to present is a composite picture, and the details are drawn from all parts of the British Isles. Two features, and two features only, can with certainty be predicated of every borough of the twelfth century, the application of burgage tenure to all tenements within its borders, and the possession of a law court with jurisdiction over all the inhabitants of these tenements.

2. BOROUGH AND HUNDRED

I finished my last lecture by stating that two features, and two features only, could with certainty be predicated of the English borough of the twelfth century, that all its tenements were held by burgage tenure, and that it had a court with jurisdiction over all its inhabitants. But this statement, which is apparently so simple, opens great difficulties when we come to consider the place of the borough in the national organisation.

For when we ask ourselves, what is the nature of the borough court, we find ourselves involved in a discussion as to the differences between feudal and royal or national justice. Maitland defines feudal justice as that justice which is exercised by one man over another because they stand in the relation of landlord and tenant¹, and the records of the thirteenth century show that then every lord was holding a court for the tenants of his manor; I do not know of any direct evidence for the existence of manorial courts in the twelfth century, but Domesday Book shows that there were then many men who were exercising over their tenants the rights known as sake and soke, a term which was used by the lawyers of the thirteenth century to imply the ordinary feudal

¹ *Domesday Book and Beyond* 80.

jurisdiction exercised by the lord of a manor over his tenants: it is therefore not unreasonable to believe that these owners of sake and soke held manorial courts in the eleventh century and *a fortiori* that there were manorial courts in the twelfth century¹.

Now the twelfth and thirteenth centuries were especially the age of the establishment of boroughs: we can compile a list of 26 English boroughs which were founded on their own estates by others than the King before the death of King John: sometimes the founders obtained the King's licence for so doing², but usually there is no evidence of such licence. One of the most pregnant examples of such borough-founding is to be seen in a little village about six miles from Oxford: for in 1215 the Abbot of Eynsham granted a charter by which he established a new borough in his manor of Eynsham: he cut out of the manor a piece of land about 20 acres in extent, which he divided into building plots: these

¹ Here I follow Prof. Vinogradoff, "As a rule the grants of sake and soke led to the formation of separate manorial courts" (*English Society in the 11th Century* 117—8), rather than Maitland, "It seems clear that when Domesday Book was compiled, and even at the beginning of the 12th century, sake and soke, whatever they meant, meant a jurisdiction that was not involved in the mere possession of a *manerium*." (*Sel. Pleas in Manorial Courts* I, xxiii.)

² *B. B. C.* 1.

he granted to various tenants at a money rent¹, with powers of sale² and devise³, *i.e.* on burgage tenure, and for the piece of land thus cut out of his manor, he established a court of which the burgesses were the doomsmen⁴. Now it is obvious that, as lord of the manor of Eynsham, the Abbot could ordain that the court of that manor should sit in two sessions, one for the inhabitants of the borough and the other for the inhabitants of the rest of the manor; and that being so, the court of the borough of Eynsham was a feudal court, a court wherein the Abbot exercised over the burgesses the rights defined by the term sake and soke. Long before the establishment of the borough, the Abbey had received a charter exempting its tenants from suit of shires and hundred moots, but even so, his justice was feudal in being restricted to his tenants in his manors and boroughs. There are many instances in which it can be shown that boroughs were formed by the separation of certain areas from the jurisdiction of the manors in which they were geographically situate, and establishing for them separate courts⁵, and if, as frequently happened during the thirteenth century, a whole vill was raised to the status of a borough by a seignorial grant that it

¹ *B. B. C.* 45.

² *B. B. C.* 74.

³ *B. B. C.* xci.

⁴ *B. B. C.* 68.

⁵ *B. B. C.* 157.

